

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.8587 of 2014

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Surya Lal Sah, Son of Late Keshav Lal Sah, Resident of Village- Sarotar, Police Station- Dumariya Ghat, District- East Champaran at Motihari.

.... Petitioner/s

Versus

1. The State of Bihar
2. The District Magistrate Cum Collector, East Champaran at Motihari.
3. The District Planning Officer, East Champaran at Motihari.
4. The Sub Divisional Officer, Chakiya, East Champaran at Motihari.
5. The Deputy Collector Land Reforms, Chakiya, East Champaran at Motihari.
6. The Circle Officer, Kesaria, East Champaran at Motihari.

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Dhurendra Kumar, Advocate

For the Respondent/s : Mr. Manoj Kumar, AC to G.P. 4

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CORAM: HONOURABLE MR. JUSTICE DINESH KUMAR SINGH
ORAL JUDGMENT

Date: 25-08-2017

Heard learned counsels for the parties.

I.A. No. 2701 of 2016 has been filed along with supplementary affidavit dated 11.7.2017 with a prayer for substituting the legal heirs of the sole petitioner, Surya Lal Sah, who died on 15.5.2015.

It is submitted by learned counsel for the petitioner that Surya Lal Sah died on 15.5.2017. His wife pre-deceased him. Late Surya Lal Sah has no daughter and has only five sons, namely, Bijendra Prasad Prabhakar, Rajat Kishore Ranjan,



Harendra Prasad Ravi, Ravi Nandan Kishore and Narendra Prasad Sah, details of which has been given in paragraph 2 of the I.A. The aforesaid I.A. has been filed with Vakalatnama of the proposed legal heir of the sole petitioner. Learned A.C. to AAG 4 has no objection in substituting the legal heirs of the petitioner. Accordingly, I.A. stands allowed. Learned counsel for the petitioner is permitted to delete the name of Surya Lal Sah and substitute the names of his five sons as petitioners in the writ petition.

The present writ application has been filed for a direction to the respondent authorities to get the encroachment removed from land appertaining to Plot No. 3873 of Mauza – Sarotar, Circle – Kesaria in the district of East Champaran.

It is submitted by learned counsel for the petitioner that the residential house of the petitioner is situated over Plot Nos. 2677 and 2684, Khata No. 542 and 714, situated in Mauza Sarotar, Circle – Kesaria in the District of East Champaran. Adjacent south to the residential house of the petitioner, there is a public road over Plot No. 3873. The said road connects the village to N.H. 28. The road situated on Plot No. 3873 is the only way of ingress and outgress of the petitioner to his residential house in question. The villagers usually use the said public road over Plot



No. 3873 but the same has been encroached by some persons. The father of the petitioners had earlier filed an application before the respondent no. 5, D.C.L.R., Chakia, East Champaran under Bihar Land Dispute Resolution Act vide Case No. 80 of 2012-13, who after considering the materials on record and hearing the parties, vide order dated 27.12.2012/29.12.2012, as contained in Annexure 1, directed the respondent no.6, Circle Officer, Kesaria to get the encroachment removed, if the encroachment has been made on the government road and to keep a vigil upon the same, so that no encroachment resurfaces on the road in question.

Consequently, in pursuance to the order of respondent no.5, respondent no. 6, The Circle Officer, Kesaria called for a report from Halka Karmchari and Circle Inspector. The Circle Inspector submitted a report dated 20.2.2013 as contained in Annexure 2, to the effect that Plot No. 3873 is a public road, over which, during Durga Pooja celebrations a makeshift temple is erected. But construction of a permanent temple was in process which has been stalled by restraining the villagers and accordingly he recommended for getting the encroachment demarcated by the Anchal Amin and also for getting the encroachment removed from the land in question. The report also suggests that the local chowkidar was directed to keep



vigil so that the temple should not be constructed on public road in question.

Subsequently, the District Rural Development Authority sanctioned a plan for construction of Yatri Shed beside N.H. 28, but the authorities concerned, in collusion with the encroachers, selected Plot no. 3873 for the said construction, against which the father of the petitioners submitted a representation before the District Magistrate on 11.2.2014, as contained in Annexure 3, as also a petition as contained in Annexure 4 before the respondent no. 5, D.C.L.R. under Bihar Land Dispute Resolution Act vide Case No. 80 of 2012-13. Thereafter, the respondent no. 5, vide order dated 18.2.2014 as contained in Annexure 5, directed respondent no. 6, the Circle Officer, Kesaria to stop illegal construction after conducting enquiry and to initiate a proceeding under the provisions of Bihar Public Land Encroachment Act (hereinafter referred to as the 'Act') against encroachment, if any, on the land in question. Respondent no. 5, D.C.L.R. vide letter no. 432 dated 18.12.2014, as contained in Annexure 6, again reminded the respondent no. 6, the Circle Officer, Kesaria to comply the order dated 29.12.2012 passed in Bihar Land Dispute Resolution Act vide Case No. 80 of 2012-13, whereby the Circle Officer was also directed to stop the



construction. The father of the petitioners also filed representation dated 26.2.2014 as contained in Annexure 7, before Respondent no.3, the District Planning Officer, East Champaran but till date no action has been taken. The petitioners have brought on record the sketch map and finding of the Amin, as contained in Annexure 8 to suggest that the Yatri Shed is constructed over Plot No. 3873, but till date neither encroachment proceeding has been initiated nor the encroachment has been removed, hence this writ application.

Since the writ application was filed on 6.5.2014 but no counter affidavit has been filed till date, this court is not inclined to adjourn the matter any further. It is submitted by learned AC to AAG 4 that the construction of temple was stopped by the Circle Officer and it appears that the Yatri Shed was constructed on the direction of the higher authorities. But, learned AC to AAG 4 fails to justify inaction of the respondent no. 6, Circle Officer, Kesaria, in not initiating the proceeding in spite of the specific direction of the DCLR.

Considering the rival submissions of the parties, this Court is of the view that for initiating a proceeding under section 3 of the Act, the only pre-condition is that it should appear to the Collector under the Act from an application made by any person



or upon the information received from any source that any person has made or is responsible for the continuation of encroachment upon any public land, then the Collector may cause to be served upon such person a notice in the prescribed form requiring him to appear on a date which shall not be less than two weeks from the date of service of notice. In the present case, it appears that the respondent no. 5 in Bihar Land Dispute Resolution Act vide order dated 27.12.2012/29.12.2012 in Case No. 80 of 2012-13 directed the respondent no. 6, Circle Officer, Kesaria to remove encroachment and keep vigil that the public road is not blocked. Thereafter, the respondent no. 5, DCLR directed vide order dated 15.2.2014, as contained in Annexure 5 to respondent no. 6 to initiate a proceeding accordingly, but instead of initiating the proceeding, the respondent no. 6 allowed the encroachment on the road in question by getting the Yatri Shed constructed. Hence, the action of the Circle Officer is reprehensible.

In view of the aforesaid facts and circumstances, it is expected from the respondent no.2, District Magistrate, East Champaran to look into the matter and to take disciplinary action against respondent no. 6. Respondent no. 2 is further directed to ensure the initiation of an encroachment proceeding, if it has already not been initiated with regard to the encroachment made



on the road in question over Plot no. 3873 situated in Mauza – Sarotar, Circle – Kesaria in the district of East Champaran and take it to its logical conclusion within a period of three months from the date of receipt/production of a copy of this order, after giving due notice to all affected persons, in accordance with the provisions of the Act.

This writ application is, accordingly, disposed of.

(Dinesh Kumar Singh, J)

Anil/-

AFR/NAFR	
CAV DATE	
Uploading Date	
Transmission Date	

