

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.13233 of 2015

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1. Afsana Parveen wife of Md. Rizwaan Jamauddin,
 2. Md. Rizwaan Jamauddin son of Md. Israiyl, Both residents of Village and P.O.- Nirmali, P.S.- Nirmali, District- Supal.

.... Petitioners

Versus

1. The State of Bihar through District Magistrate, Supaul.
2. The Circle Officer, Nirmali, Supaul.
3. The Sub Divisional Officer, Nirmali, Supaul.
4. The Superintendent of Police, Supaul.
5. The Station House Officer, Nirmali, Supaul.
6. Md. Sahjad, son of late Sagir,
7. Kaushar Khatoon, wife of Md. Kayum Nat,
8. Pramod Sahu, son of late Dhuran Sahu, All residents of Village and P.O.- Nirmali, P.S.- Nirmali, District- Supaul.
9. Jageshwar Yadav, son of Khushilal Yadav and
10. Dhuran Pandit Both residents of Village- Parikoch, P.S. Marouna, District- Supaul.

.... Respondents

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Appearance :

For the Petitioners : Mr. Jitendra Kishore Verma, Adv.

For Respondent nos. 1 to 5 : Mr. Ashutosh Ranjan Pandey, A.A.G-15

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CORAM: HONOURABLE MR. JUSTICE DINESH KUMAR SINGH

ORAL JUDGMENT

Date: 21-03-2017

Heard learned counsel for the petitioner and Mr.
Ashutosh Ranjan Pandey, learned A.A.G.-15 for respondent nos. 1 to
5.

The present writ application has been filed for a
direction to the respondent authorities for removal of encroachment
made by respondent nos.6 to 10 on the government land appertaining
to Plot No. 1520, 1522 (old), 249 (new) Khata no. 252 (old), 317
(new) situated at village and P.O.-Nirmali, P.S. Nirmali in the District



of Supaul.

Learned counsel for the petitioners submits that the petitioners have constructed their house on a rayati land appertaining to Khata No. 400 (old) 276 (new), Plot No. 1523 (old) 243/1254(new) situated at village+P.O.+P.S.- Nirmali in the district of Supaul which is adjacent to the above mentioned government land. The petitioners use the aforementioned government land as a link road for reaching the main road but the same has been encroached by respondent no.6 and others.

On the representation of petitioner no.1, Encroachment Case No. 02 of 2013-14 was initiated against respondent no.6. Consequently, respondent no.6 appeared but failed to produce any evidence to justify the construction made by him adjacent to Ring Bandh which is a government land. Respondent no.6 also did not file his show cause, as a result of which proceeding was concluded *ex parte*. The order dated 12.11.2013 passed by respondent no.2, Circle Officer, Nirmali in Encroachment Case No. 02 of 2013/14 as contained in Annexure-1 reflects that after hearing the counsel for petitioner no.1 and perusing the letter of Executive Engineer, Kosi Project, stipulating request for removal of the encroachment from the land in question, respondent no.2 came to a conclusive finding that respondent no.6 has encroached upon the land appertaining to Plot



No. 1520, 1522 (old), 249 (new) Khata no. 252 (old), 317 (new) and hence directed respondent no.1 to remove the encroachment failing which he directed for action being taken in accordance with Bihar Public Land Encroachment Act.

It is further submitted that till date no action has been taken by respondent no.2 for executing the order dated 12.11.2013 passed in Encroachment Case No. 02 of 2013-14 as contained in Annexure-1. The petitioners also filed representation before respondent no.2 on 22.02.2014 for executing the final order passed in Encroachment Case No. 02 of 2013-14 as contained in Annexure-1. The further case of the petitioner is that respondent no.6 after passing of final order as contained in Annexure-1 allowed many persons like respondent nos. 7 to 10 to encroach the further area of the land appertaining to above mentioned plot numbers. Hence further encroachment has been made due to inaction of respondent no.2.

Mr. Ashutosh Ranjan Pandey, learned A.A.G.-15 submits that at present he has no instruction whether the final order passed in Encroachment Case No. 02 of 2013-14 as contained in Annexure-1 has still been executed or not. So far as the further encroachment made by respondent nos. 7 to 10 and others is concerned, it does not appear that any proceeding has been initiated against them. The order dated 12.11.2013 passed by respondent no. 2



as contained in Annexure-1 neither reflects that respondent nos. 7 to 10 were party to Encroachment Case No. 02 of 2013-14 nor they were noticed nor any finding has been recorded as to whether they have encroached upon the land in question.

Considering the rival submissions of the parties, this Court is of the view that the Collector, under Sections 6(2) and 7 of the Bihar Public Land Encroachment Act (herein after called as “The Act”) has power to punish a person who fails to comply the order of the Collector under Section 6 of the Act by awarding imprisonment for a term which may extend to one year or fine up to ₹2000/- or with both or if any person fails to comply with the orders passed by Collector under Section 6 of the Act directing the removal of the encroachment by the date fixed then get the encroachment removed in such manner as he deems fit and recover the cost of such removal from such person . The provisions under Section 6(2) and 7 of the Act read as follows:-

“6(2). If any person does not comply with the orders passed by the Collector under this Section, he shall be punishable with imprisonment for a term which may extend to one year or with fine up to Rs. 2000/- or with both.

7. Power of the Collector to get encroachment removed and recover cost of the removal.- If any person fails to comply with the orders passed by the



Collector under Section 6 directing the removal of any encroachment by the date fixed, the Collector shall cause the encroachment to be removed in such manner as he deems fit and the cost of such removal shall be recovered from such person.”

There is nothing on record to suggest that respondent no.2 resorted to seek remedy under the provisions of Sections 6(2) and 7 of the Act. So far as the encroachment made by respondent no.6 is concerned, final order under Section 6 of the Act has been passed on 12.11.2013 against him, as contained in Annexure-1. Hence, if respondent no.2 has not exercised the jurisdiction under Section 6(2) and 7 of the Act then it is expected that he may exercise such jurisdiction for removal of the encroachment from the land in question within a period of six weeks from the date of receipt/production of the copy of this order, provided the final order, either in appeal or in any other collateral proceeding has not been stayed or annulled.

So far as encroachment made by respondent nos. 7 to 10 on the public land adjacent to the land in question, is concerned, though, the petitioner has submitted a representation to that effect before respondent no.1 on 28.05.2015 as contained in Annexure-5(series), but even if it is not available, the petitioner is at liberty to file a detailed representation before respondent no.1 within a period of



four weeks, which, the respondent no.1 will dispose it of with reasoned order within a period of six weeks of submission of the representation and if prima facie it is found that there is further encroachment on the public land then the proceeding may be initiated under the provisions of Bihar Public Land Encroachment Act and the same may be concluded after giving due opportunity to all the affected persons within further period of six months.

Accordingly, the present writ application is disposed of.

(Dinesh Kumar Singh, J)

Amrendra/-

AFR/NAFR	NAFR
CAV DATE	N/A
Uploading Date	03/04/2017
Transmission Date	N/A

