

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.20673 of 2014

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1. Barbari Gosai, Son of Late Rmjee Gosai,
 2. Kesho Gosai, Son of Late Balchand Gosai, both are residents of Village – Kekraha, P.S. – Sheosagar, District – Rohtas at Sasaram

.... Petitioner/s

Versus

1. The State of Bihar,
2. The District Magistrate-cum-Collector, Rohtas at Sasaram,
3. The Circle Officer, Sheosagar, Rohtas at Sasaram.

.... Respondent

4. Akhilesh Singh, Son of Late Ayodhya Singh,
5. Bhupesh Singh, Son of Late Ayodhya Singh,
6. Kamlash Singh, Son of Late Ayodhya Singh,
7. Mithilesh Singh, Son of Late Ayodhya Singh, Private respondent nos. 4 to 7 are residents of Village – Kekraha, P.S. – Sheosagar, District – Rohtas at Sasaram

..... Private Respondents

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Appearance :

For the Petitioner/s : Dr. Kislay,
Mr. Chhote Lal Mishra, Advocates
For the Respondent/s : Mr. H.S. Sundaram, AC to S.C. 8

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CORAM: HONOURABLE MR. JUSTICE DINESH KUMAR SINGH
ORAL ORDER

2 05-09-2017

Heard learned counsels for the parties.

The present writ application has been filed for a direction to the respondent authorities for implementation/execution of the order dated 27.11.1999 passed in Case No. 4 of 1997-98 by the Additional Collector, Rohtas whereby respondent no.3, the Circle Officer, Sheosagar was directed to remove the encroachment from Plot No. 101, after getting the land measured and giving due notice to all affected persons.



It is submitted by learned counsel for the petitioner that Plot No. 101 situated in village Kekadahan, Circle – Sheosagar in the district of Rohtas was recorded as ‘Gairmajarua Aam Chhabar’ in Khatian, but the same has been encroached upon by the private respondent nos. 4 to 7. Encroachment proceeding was initiated for removal of the encroachment but the then DCLR, Sasaram, vide order dated 23.10.1997, dropped the proceeding since there was some settlement for plantation in the year 1991-92 in favour of Late Ram Ayodhya Koeri, father of respondent no.4 and the public road has not been obstructed, whereas, against other encroachers, action is being taken for removal of the encroachment. However, the said order was challenged in Case No. 4 of 1997-98 before the Additional Collector, Sasaram who, vide order dated 27.11.1999, as contained in Annexure 1, came to a finding that the land in question being a public road, cannot be settled, hence, directed the respondent no. 3, the Circle Officer, Sheosagar to get the encroachment removed and also for getting the land measured after giving notice to all affected persons. But, thereafter the respondent no. 3, the Circle Officer, Sheosagar did not take any action despite representations filed on behalf of the petitioners, necessitating an application being filed for initiation of a proceeding under section 133 of the Cr.P.C.



Counter affidavit has been filed on behalf of the respondent no.2, District Magistrate, Rohtas. In the entire counter affidavit, it has not been controverted that the land in question is a public land. It further appears that the counter does not explain the reason for not implementing the order dated 27.11.1999 passed by the Additional Collector, Rohtas in Encroachment Case No. 4 of 1997-98. However, for such inaction shelter has been sought to be taken of pendency of Title Suit No. 44 of 2007, without explaining the circumstances under which the order dated 27.11.1999 passed by the Additional Collector, Rohtas has not been implemented till 2017 and seemingly, in a malicious manner some of the encroachers have been allowed to file title suit. The further stand which has been taken in the counter affidavit is that the Encroachment Case No. 23 of 2014-15 has been initiated and the Anchal Amin has been directed to measure the land.

This Court is dismayed to find the casual manner in which the respondent authorities, particularly, respondent, 2, the District Magistrate, Rohtas and respondent no. 3, the Circle Officer, Sheosagar are discharging the quasi judicial functions.

In the circumstances, it is expected from the respondent no. 3, the Circle Officer, Sheosagar to conclude the proceeding of Encroachment Case No. 23 of 2014-15 within a



period of three months from the date of receipt/production of a copy of this order after giving due opportunity of hearing to all affected persons in accordance with the Bihar Public Land Encroachment Act. It is expected from respondent no. 2, the District Magistrate, Rohtas to see that the proceeding should be taken to its logical conclusion and if the public road has been found to have been encroached upon, it should be removed forthwith. Needless to say that respondent no. 2, the District Magistrate, Rohtas will see to it that no encroachment proceeding should meet the same fate as has been done in the present case.

This writ application is, accordingly, disposed of.

(Dinesh Kumar Singh, J)

Anil/-

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