

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.16771 of 2015

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Wakil Ram, Son of Late Sukkal Ram, Resident of Village- Narthua, P.S.-
Alamnagar, P.O.- Bhogipur, District- Madhepura

... .. Petitioner/s

Versus

- 1) The State of Bihar through Chief Secretary Revenue and Land Reforms
Department Bihar, Old Secretariat, Patna- 800001
 - 2) The District Magistrate, Madhepura
 - 3) The Sub-Divisional Officer, Uda-Kishunganj, District- Madhepura
 - 4) The Deputy Collector, Land Reforms, Udakishunganj, District- Madhepura
 - 5) The Block Development Officer, Alamnagar, District- Madhepura
 - 6) The Circle Officer, Alamnagar, District- Madhepura
 - 7) Jitan Ram, Son of Late Nirdhan Ram
 - 8) Muso Ram, S/o Late Devo Ram
 - 9) Raj Kumar Ram, S/o Late Mangar Ram
- Respondent Nos. 7 to 9 are Resident of Village- Narathua, P.O. Bhagipur, P.S.
Alamnagar, District- Madhepura

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr. Anant Kumar-1, Adv.
For the Respondent/s :

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CORAM: HONOURABLE MR. JUSTICE DINESH KUMAR SINGH
ORAL ORDER

2 16-10-2017 Heard Mr. Anant Kumar, learned Counsel appearing on
behalf of petitioner and learned AC to SC-7, appearing on behalf
of the respondent – State.

Since the Writ application was filed in 2015, but no counter
affidavit has been filed till date, hence, this Court is not inclined
to adjourn the matter any further.

The nature of order this Court intends to pass does not
require issuance of notice to the private respondent nos. 7 to 9,
namely, Jitan Ram, Muso Ram and Raj Kumar Ram.

The present Writ application has been filed for a direction



to the respondent authorities to get the encroachment removed from the public road appertaining to Khata No.890, Plot No.2865, situated in Village-Narthuwa, P.S.- Alamnagar, District- Madhepura, and the same has been encroached upon by respondent nos. 7 to 9.

It is submitted by learned Counsel for the petitioner that Encroachment Case No. 04 of 2010-11, has been initiated by respondent no.4, the DCLR, Uda-kishunganj, wherein in spite of issuance of several notices, the private respondents failed to appear or produce any documentary evidence in support of the claim of the land in question. Hence, ultimately, vide order dated 23.01.2013, as contained in Annexure-1, the respondent no.6, Circle Officer, Alamnagar, was directed to remove the encroachment from the public road in question within a period of 14 days, failing which the encroachment will be removed forcefully and the cost of removal of the encroachment will be realized from the encroacher. The said order passed by the DCLR has been challenged by the private respondent nos. 7 to 9 in Encroachment Appeal No. 01 of 2013 before respondent no. 2, the District Magistrate, Madhepura. The said appeal was dismissed vide order dated 16.06.2014, but till date the encroachment has not been removed.



Learned AC to SC-7 submits that at present, he is not having any instruction whether the encroachment has been removed or not. However, if it has not been removed, the same will be removed within a time frame.

Having heard learned Counsels for the parties, this Court is really dismayed to find that the citizens of the State are compelled to seek remedy under Article 226 of the Constitution of India for execution/implementation of the order passed by the Circle Officer under Section 6(1) of the Bihar Public Land Encroachment Act (hereinafter referred to as 'the Act'), which is a sad reflection on the callous manner in which the Circle officer is discharging the *quasi judicial* function.

There are two provisions under the Act, which are prescribed for implementation or execution of the final order and action being taken in case of non-compliance of the final order. Those provisions are Sections 6(2) and 7 of the Act, which read as under :-

“6(1) Final order of the Collector -

(1) In all cases not covered by the provisions to sub-Section (2) of Section, the Collector shall after hearing the persons concerned and taking evidence, if any under section 5 and after making such enquiry as he deems necessary the Collector may, as the circumstances of the



case require –

(a) either drop the proceeding,
or

(b) make the temporary injunction issued under sub-clause (a) of Sub-section (1) of section 3 absolute against the person making encroachment of the public land, or

(c) if any person who together with his homestead does not own more than 5 acres of land, has encroachment up to 10 dec. of public land continuous to his agricultural holding and has used the encroached public land for agricultural purposes, the Collector shall order the settlement of such public land with such person on payment of rent and damages for the use of his land. The amount of damages and rent shall be calculated by considering the rent payable in case of similar land in the neighbourhood. Where no rent is payable the rent and damages for the encroachment public land shall be calculated on the basis of such fair rent as the Collector may deem proper, or

(d) where the temporary encroachment on public land has been removed by the person making encroachment after some time the Collector shall order payment of damages for the use of the land during the period of encroachment. The amount of damages shall be calculated according to the prescribed procedure, or

(e) In the cases not covered by the foregoing sub-clauses, the Collector shall direct the person making encroachment of the public land to remove the encroachment



within specified period which shall not in any case be more than two weeks in case the encroachment is not removed within the specified time the crops standing or all types of structures existing on the encroached land shall be forfeited by the Collector;

Provided if any landless person encroached up to 12 ½ dec. of public land before the 10th of October, 1955, no action shall be taken against him under this Act

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.20000/- 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.”

Section 6(2) of the Act clearly envisages that if any person does not comply with the orders passed by the Collector under the Act, he shall be punished with imprisonment for a term which may extend to one year or with fine up to Rs.20,000/- or with both, whereas, Section 7 of the Act prescribes the power of the Collector to get the encroachment removed and to recover



the cost of removal of encroachment.

In the present case, this Court finds that none of these two jurisdictions have been exercised by the respondent no.6, the Circle Officer, Alamnagar.

In the circumstances, respondent no.6, the Circle Officer, Alamnagar, is directed to implement/execute the final order passed in Encroachment Case No.04 of 2010-11 by resorting to the provisions of Sections 6(2) and 7 of the Act, within a period of two months, if the final order has not been implemented, or has not been stayed/annulled or modified by any competent authority or by Court of competent jurisdiction.

The Writ application is, accordingly, disposed of with the above observation and direction.

(Dinesh Kumar Singh, J)

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