

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.12373 of 2014

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1. Gita Devi W/o Shri Upendra Rani R/o Village Krishna Nagar, New Abhanda,
P.S. Lakhisarai, District Darbhanga.

.... Petitioner/s

Versus

1. The State of Bihar through the Chief Secretary, Govt. of Bihar, Patna.
2. The District Magistrate, Darbhanga.
3. The Deputy Collector Land Reforms cum Collector under the Land
Encroachment Act, Darbhanga Sadar.
4. The Sub Divisional officer, Sadar, Darbhanga.
5. The Circle Officer, Darbhanga Sadar, Darbhanga.
6. The Officer in Charge, Lakhisarai P.S., Darbhanga.
7. Leela Devi W/o Ram Sharan Rai
8. Yugeshwar Rai S/o Ramdeo Ram
9. Murari Ram S/o Ramdeo Ram
10. Prahlad Ram S/o Late Dwarika Ramdehi/ Respondent 6 - 8 Residents of
Asfandiarpur, Near Kishan Nursery, P.S. Lahariasarai, District Darbhanga.

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Ashok Kumar Kashyap

For the Respondent/s : Mr. MD. N. HODA KHAN

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CORAM: HONOURABLE MR. JUSTICE DINESH KUMAR SINGH

ORAL JUDGMENT

Date: 04-04-2017

Heard learned counsel for the petitioner and learned
A.C. to S.C.-1 for respondent nos. 1 to 6.

The present writ application has been filed for a
direction to the respondent authorities to remove the encroachment
from the land appertaining to Thana No. 241, Khata No. 169, Plot No.
99, measuring an area of 19 decimals situated at Mauza Asfandiarpur
in the District of Darbhanga which is recorded as Anabad Sarva
Sadharan Bandh upon which the encroachment is continuing despite a



direction having been passed by the Circle Officer, Darbhanga, vide order dated 27.09.2012 in Encroachment Case No. 24 of 2012, to remove such encroachment.

It is submitted by the learned counsel for the petitioner that Plot No. 99, Thana No. 241, Tauzi No. 1782 appertaining to Cadastral Survey Khata no. 169 measuring an area of 4 katha 7 dhurs was recorded in the Cadastral Survey as Gairmazarua Aam which is used by the general public as road. During Revisional Survey, Plot No. 320 has been carved out from Cadastral Survey Plot No. 99 having an area of 20 decimals and the same was recorded under Revisional Survey Khata No. 612 as Anabad Sarv Sadharan and nature of the land is recorded as Bandh.

Respondent no. 7 purchased the land adjacent to the public Bandh, while the petitioner also purchased 2 kathas 5 dhurs of land adjacent to the said Bandh. The petitioner and respondent nos. 7 to 10 were using the said Bandh as Aam Rasta but subsequently respondent nos. 7 to 10 amalgamated the said Bandh land with their purchased land and thereby blocked the public road which was being used by the villagers. On the application of the petitioner, Encroachment Case No. 240 of 2012 was initiated on 24.05.2012 for removal of the encroachment. Subsequently, the Circle Inspector conducted spot verification and after examining the records, came to



the conclusion that Khatiyani R.S. Plot No. 320 has been carved out from C.S. Plot No. 99 having an area of 20 decimals. During spot verification, it was found that the land in question which was being used as a road by the general public has been completely encroached by respondent nos. 7 to 10 by erecting a boundary wall, as a result the free flow of the traffic has been blocked. Hence, the Circle Inspector submitted his report dated 26.06.2012 as contained in Annexure-2 to the Circle Officer, Darbhanga, Sadar and recommended for conducting the measurement of the land in question and suggested that on receipt of measurement report encroachment proceeding can be initiated.

Consequently, Circle Officer, Sadar, Darbhanga, respondent no.5, vide order 16.08.2012 passed in Encroachment Case No. 240 of 2012, came to a finding that the land in question has been encroached. Hence notice under Form-1 under Section 3 of the Act was directed to be issued. The order dated 08.09.2012 reflects that only Murari Ram, respondent no.9 asked for adjournment for a week which was refused and notices in Form-II under Section 6(2) of the Act was issued. The order dated 27.09.2012, as contained in Annexure-3, reflects that none vacated the land in question and since the land in question is recorded as Gairmajarua Aam in the Cadastral Survey, hence, respondent no.5 directed to request the Sub-Divisional



Officer for deputation of Executive Magistrate for removal of encroachment, but till date the encroachment has not been removed.

Learned counsel for respondent nos. 1 to 6 submits that he does not have any specific instruction with regard to conclusion of the Encroachment Case No. 240 of 2012 and if concluded whether the order passed in Encroachment Case No. 240 of 2012 has been implemented/executed or not.

Considering the rival submission of the parties, the writ application is disposed of with a direction to the respondent no.5, Circle Officer, Darbhanga, Sadar to see that if Encroachment Case No. 24 of 2012 has not concluded then it should be concluded and the final order is implemented/executed under the provisions of Sections 6(2) and 7 of the Act within a period of two months after giving due opportunity of being heard to all the affected persons, provided the order passed in encroachment proceeding is not stayed or annulled in any collateral proceeding.

(Dinesh Kumar Singh, J)

Amrendra/-

AFR/NAFR	NAFR
CAV DATE	N/A
Uploading Date	24/04/2017
Transmission Date	N/A

