

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.8642 of 2015

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Smt. Kamini Kumari @ Kamini Devi, W/o Sri Pawan Kumar, Resident of
Village - Narouchh Dham, P.S. Jale, District - Darbhanga.

... .. Petitioner/s

Versus

1. The State of Bihar.
2. The Commissioner, Darbhanga Division, Darbhanga.
3. The District Magistrate, Darbhanga, District - Darbhanga.
4. The Additional Collector, Darbhanga, District - Darbhanga.
5. Sub Divisional Officer, Darbhanga, District - Darbhanga.
6. Circle Officer, Darbhanga, District - Darbhanga.
7. Mahila Mithila College, Darbhanga, District Darbhanga through its Principal.

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr. Pranav Kumar Jha, Adv.
For the Respondent/s : Ms. Archana Prasad, AC to SC-19

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CORAM: HONOURABLE MR. JUSTICE DINESH KUMAR SINGH
ORAL ORDER

2 19-09-2017 Heard Mr. Pranav Kumar Jha, learned Counsel

appearing on behalf of the petitioner and Ms. Archana

Prasad, learned AC to SC-19, appearing on behalf of the

respondent State.

The nature of order this Court intends to pass, does not
require issuance of notice to the private respondent no.7, i.e.,
the Mahila Mithila College, Darbhanga.

The present Writ application has been filed for a
direction to the respondent authorities, particularly,
respondent no.6, the Circle Officer, Darbhanga, to get the
encroachment removed from the public road appertaining to
Khata No.13, Thana No.455, Plot No. 42, situated in Mauza –



Fateh Aliganj, Ward No.5, Azamnagar, District – Darbhanga.

It is submitted by learned Counsel appearing on behalf of the petitioner that the land in question is a public road, but the same has been encroached upon by respondent no.7, i.e., Mahila Mithila College, Darbhanga. The petitioner has purchased the adjacent land appertaining to Plot No.37, Khata No.13, measuring an area of 32.06 decimals and part of the said plot has been settled with respondent no.7 and thereafter, ingress and egress of the petitioner has been obstructed by respondent no.7. The petitioner represented before respondent no.6, the Circle Officer, Darbhanga, for removal of the encroachment on 06.03.2014, as contained in Annexure-5, but no action has been taken for removal of the encroachment from the land in question. However, on an application submitted by the petitioner on 14.03.2013, with a request to get the land in question measured, respondent no.6, the Circle Officer, Darbhanga, directed the Anchal Amin to get the said land measured and to submit a report in this regard. Consequently, the Anchal Amin after measuring the land in question, submitted the report on 29.01.2014, as contained in Annexure-10 series, to the effect that the land in question is recorded in Khatian as 'Dagar/Rasta and



petitioner's ingress and egress has been obstructed. Even, thereafter, no action has been taken by the respondent authorities. Consequently, the petitioner submitted a representation before respondent no.2, the District Magistrate, Darbhanga, on 13.08.2014, as contained in Annexure-12. Hence, the Writ application.

It is further submitted by learned Counsel for the petitioner that much after filing of the present Writ application in order to save their skin, a counter affidavit has been filed on behalf of respondent nos. 3 to 6, stipulating therein that Encroachment Case No.01/2016-17 was initiated and notice was issued for the first time to the encroachers on 13.08.2016, i.e., prior to initiation of proceeding and thereafter on 05.09.2016 and 13.12.2016.

Learned AC to SC-19 appearing on behalf of the respondent state submits that in pursuance to the measurement report called for by respondent no.6, the Circle Officer, Darbhanga, from the Anchal Amin vide Memo No.1096, dated 27.07.2016, the report was submitted on 08.08.2016 by the Anchal Amin, which stipulates that respondent no.7 has encroached upon total area of 1882 square feet of the land in question by installing iron gate,



some flowers and tree. Thereafter, notices were issued to the encroacher private respondent no.7, but neither respondent no.7 chose to appear nor did he remove the encroachment from the land in question. Hence, the encroachment proceeding could not be further proceeded.

The *sine qua non* to initiate a proceeding is prescribed in Section 3 of the Bihar Public Land Encroachment Act (hereinafter referred to as 'the Act') which stipulates that if it appears to the Collector under the Act from an application made by any person or upon information received from any sources that any person has made or is responsible for the continuance of any encroachment upon any public land, he will initiate a proceeding under the Act. Section 3(1) of the Act reads as under :-

[3(1). Initiation of the proceedings- if it appears to the Collector under the Act from an application made by any person or upon information received from any sources that any person has made or is responsible for the continuance of any encroachment upon any public land, 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 to show cause-

(a) Why he should not be restrained from making such encroachment by issue of injunctions; or

(b) Why such encroachment should not be removed.”

From the pleadings of the petitioner in the Writ application, it appears that the land in question is recorded in Khatiyan as ‘Gair Majarua Aam road’ and the representations were submitted before respondent no.6, the Circle Officer on 06.03.2014 and thereafter on 13.08.2014 before respondent no.3, the District Magistrate, Darbhanga. The Anchal Amin has submitted the report on 08.08.2016 stipulating therein that the land in question is recorded as Dagar/Rasta, but the same has been encroached upon by respondent no.7, which speaks on the face of it that respondent no.6, the Circle Officer, Darbhanga, has failed to discharge the *quasi-judicial* function by not initiating the proceeding under the provisions of the Act. This Court is convinced that the encroachment proceeding was initiated after more than a year of the filing of the Writ application, only in order to save the skin.

Sub-Section (2) of Section 3 of the Act clearly stipulates that the Collector shall have power to issue temporary injunction at any stage to restrain such



encroachment till the disposal of the proceeding or till further orders or he may pass such orders as he deems proper for preventing such encroachment.

The Collector without issuing a notice as required under sub-section (1) of Section 3 of the Act may direct for immediate removal of the encroachment, if the encroachment on public land is in the nature of exposure of articles for sale, or opening temporary booth for vending. The Collector may also consider immediate removal of encroachment, if the nature of removal of encroachment is essential for the safety of general public. Section 3(2) of the Act reads as under :-

“(2) Under clause (a) of sub-section (1) the Collector shall have power to issue temporary injunction at any stage to restrain such encroachment till the disposal of the proceeding or till further orders or he may pass such orders as he deems proper for preventing such encroachment;

Provided that where the encroachment on public land is in the nature of exposure of articles for sale, or opening temporary booth for vending, the Collector may without the formality of issuing a notice as required under sub-section (1) order for its immediate removal or cause it to be removed immediately and for the purpose he may use such force as is



necessary in the case:

Provided further that where the encroachment on public land is of such a nature as the Collector considers its immediate removal essential for the safety of general public or for the safety of any other structure on the public land and the notice cannot be served without unnecessary delay upon the person responsible for the encroachment or his representative owing to his absence or for any other reason, he may order the removal of encroachment or if necessary cause it to be removed immediately and may use such force for the purpose as is necessary.

Sub-Section (3) of Section 3 of the Act further stipulates that the Collector may affix the notice in the neighbourhood of the alleged encroachment, if the person who has made or is responsible for the continuance of the encroachment is not known or cannot be found. Sub-Section 3 of Section 3 reads as under :-

“(3) If the person who has made or is responsible for the continuance of the encroachment is not known or cannot be found, the Collector may cause notice to be affixed in the neighbourhood of the alleged encroachment requiring any person interested in the same to show cause by the date



specified in the notice why the encroachment should not be removed and it shall not be necessary to name any person in such notice.”

Hence, the above provision clearly stipulates that in the case of emergency the notice can be served or affixed on the neighbourhood of the alleged encroacher for removal of the encroachment. But this Court is dismayed to find that in the present case, none of the notices as contained in Annexure- C series to the Counter affidavit, bear any encroachment case number, which reflects the casual manner in which respondent no.6, the Circle Officer, Darbhanga, is discharging the *quasi-judicial* function.

In the circumstances, respondent no.6, the Circle Officer, Darbhanga, is directed to conclude the proceeding of Encroachment Case No.01/2016-17 by taking the same proceeding to its logical conclusion within a period of three months, after giving due notice of hearing to all the affected persons, including respondent no.7.

Let a copy of this order be communicated to respondent no.2, the District Magistrate, Darbhanga, so that he is acknowledged with the manner in which the respondent no.6, the Circle Officer, Darbhanga is casually discharging



the *quasi-judicial* function.

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

Ashwini/-

(Dinesh Kumar Singh, J)

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