

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.6143 of 2015

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Piyush Shukla, aged about 27 years approx, S/O Sri Madan Shukla, Resident of Village- Katra (Bhabhangawan), P.O +P.S.- Chenari, District- Rohtas.

... .. Petitioner/s

Versus

1. The State of Bihar.
2. The Collector - cum - District Magistrate, Rohtas at Sasaram, District- Rohtas
3. The Sub-Divisional Officer, Sasaram at Sasaram, District- Rohtas.
4. The Circle Officer, Chenari at Chenari, District- Rohtas.
5. Sanjay Paswan, S/O late Suryavansh Paswan, Resident of Village- Katra (Bhabhangawan), P.O +P.S.- Chenari, District- Rohtas.

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Dr. Ansuman, Adv. Mr. Kuber Pathak, Adv.
For the State	:	Mr. Sarvesh Kumar Singh, AAG-13 Mr. Tej Pratap Singh, AC to AAG-13

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CORAM: HONOURABLE MR. JUSTICE DINESH KUMAR SINGH
ORAL ORDER

2 14-09-2017 Heard learned Counsels appearing on behalf of the petitioner and for the respondent State.

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

Keeping in view, the nature of prayer made in the Writ application and the nature of order this Court intends to pass, does not require issuance of notice to the private respondent no.5, Sanjay Paswan.

The present Writ application has been filed for implementation of the order dated 17.07.2014, passed in



Encroachment Case No.08 of 2014-15, whereby, respondent no.4, the Circle Officer, Chenari, has directed for removal of encroachment made by respondent no.5, Sanjay Paswan, from a land appertaining to Khata No.47, Plot No.108, measuring an area of 1.41 acres, situated in Mauza-Babhangawan, Circle-Chenari, District-Rohtas.

It is submitted by learned Counsel appearing on behalf of the petitioner that the total area of the abovementioned land is 1.41 acres, but out of the same, only 0.05 acres of the land has been encroached upon by respondent no.5. The land in question is recorded in the revenue record as “Sarva Sadharan Anabad Bihar Sarkar’ and the same is being used as a public road by the petitioner and the public at large. A public petition was filed by the petitioner before respondent no.5, the Circle Officer, Chenari, for removal of the encroachment from the land in question. Consequently, Encroachment Case No.08/2014-15 was initiated, wherein, notices were issued to the private respondent no.5. Though, in the said proceeding, private respondent no.5 appeared, but he failed to produce any document in support of his claim over the land in question. A report was also called from the Halka Karmachari, who submitted a report stipulating therein that the land in question is



recorded as 'Sarvasadharan Anabad Bihar Sarkar', but part of the land has been encroached upon by private respondent no.5 to the extent that no vehicle can cross through the said public road. Ultimately, vide order dated 17.07.2014, as contained in Annexure-4, respondent no.4, the Circle Officer, declared the private respondent no.5 as an encroacher and directed for removal of the encroachment from the land in question. Consequently, notices were issued to the private respondent no.5 to remove the encroachment, but the encroachment has not been removed. Subsequently, the Circle Officer visited the spot on 31.07.2014 and fixed 06.08.2014, as the next date for removal of encroachment and transmitted a requisition dated 24.11.2014 to respondent no.3, the SDO, Sasaram, as contained in Annexure-5, for deployment of police force for removal of the encroachment from the land in question. The petitioner also submitted a representation on 07.08.2017, as contained in Annexure-6, in Janta Darbar of respondent no.2, the District Magistrate, Rohtas at Sasaram, but in spite of all the efforts being made by the petitioner and others, the encroachment has not been removed from the land in question as yet. Learned Counsel for the petitioner further submits that the petitioner is in habit of encroaching the public land as earlier the land in



question was encroached upon by the respondent no.5 and the encroachment was removed from the land in question but, fresh encroachment has been made by respondent no.5 and when the same was restrained by the police, respondent no.5 created nuisance. Consequently, a criminal case being Chenari P.S. Case No. 41/2005 was instituted against the respondent no.5 and one other person levelling accusation under Sections 186/188/189/190/353 of the IPC, wherein charge-sheet has also been submitted finding the case to be true.

Learned AC to AAG-13 submits that at present, he is not having any instruction whether the final order passed in encroachment proceeding has been implemented or not. However, if it has not been implemented, the same will be implemented within a time frame.

Having heard learned Counsels for the parties, this Court is really dismayed to find that the citizens of the State have to seek remedy under Article 226 of the Constitution of India for execution of the order passed by the Circle Officer under the provisions 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 Collector/District Magistrate and the Circle Officers are 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 Section 6(2) and 7 of the Act, which read as under :-

“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 jurisdiction have been exercised by the respondent no.4, the Circle Officer, Chenari. The material available on record also does not suggest that any notice in Form-II under Section 6(2) of the Act has been issued to respondent no.5. Though, a notice dated 17.07.2014 has been brought on record, as contained in Annexure-4, which stipulates that the same has been issued under Section 5 (1) of the Act.

Basically, Section 5 of the Act prescribes providing of an opportunity of hearing to the affected persons after notice. Section 5 of the Act reads as under :

“(5) Hearing- On the date specified in the notice served under section 3, the matter shall be heard, unless the hearing is adjourned by the Collector to a future day, and the Collector shall hear the applicant if any, the person on whom the notice has been served and any other person who may be interested either in the encroachment or in the removal thereof and take such other evidence as may be adduced in that behalf

Provided that, if the person on whom notice has been served under section 3 or any other person interested in the encroachment, fails to appear and show cause on the date specified in the notice, or any other date to which the hearing may be adjourned, the matter shall be heard,



ex parte.”

In the circumstances, respondent no.4, the Circle Officer, Chenari, is directed to issue notice to the respondent no.5 under Section 6(2) of the Act in Form-II and thereafter to implement the final order passed in Encroachment Case No.08 of 2014-15 by resorting 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, or annulled 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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