

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.22659 of 2013

=====

Ajay Kumar Thakur @ Ajay Thakur, S/O Raj Narayan Thakur, R/O Gayatri Bhawan, Sarvodaya Nagar, P.S. Begusarai, District - Begusarai Through His Cousin Brother & Power Of Attorney Holder Shobha Kant Thakur

.... Petitioner

Versus

1. The State of Bihar, through Chief Secretary, Old Secretariat, Patna
2. The Collector - Cum - District Magistrate, Begusarai, Bihar
3. The Circle Officer, Matihani, Begusarai, Bihar
4. The Commissioner, Munger Commissioner, Munger, Bihar

.... Respondent

=====

Appearance :

For the Petitioner/s : Mr. Manas Prakash, Advocate

For the Respondent/s :

=====

CORAM: HONOURABLE MR. JUSTICE DINESH KUMAR SINGH

ORAL JUDGMENT

Date: 28-02-2017

Heard learned counsel for the petitioner and learned AC
to GP24.

Re. Interlocutory Application No.5786 of 2014.

The present interlocutory application has been filed for impleading Fulendra Singh, son of Ramashrai Singh, as party respondent no.5 and for a direction to the said Fulendra Singh to stop ongoing construction over the land, in question.

This Court is not inclined to implead Fulendra Singh as party respondent after four years of filing of the writ application which will delay disposal of the present writ application unnecessarily.



Accordingly, the interlocutory application is disposed of.

Re. C.W.J.C. No.22659 of 2013.

The present writ application has been filed by the petitioner Ajay Kumar Thakur @ Ajay Thakur through his power of attorney holder Shobha Kant Thakur since the petitioner resides abroad for a direction to respondent no.3, the Circle Officer, Matihani, to execute the order dated 16.12.2011, passed by the Collector-cum- District Magistrate, Begusarai, in Miscellaneous Case No.79 of 2009 whereby the Circle Officer, Matihani (respondent no.3) was directed to take further necessary action to get the encroachment removed from Survey Plot No.1093, in view of the provisions of the Bihar Public Land Encroachment Act (hereinafter referred to as the 'Act').

The reliefs claimed by the petitioner in paragraph no.1, read as under :-

"(A) For issuance of order/orders, direction/directions, writ/writs particularly in the nature of writ of mandamus for a direction upon the Respondent no.3 to comply with the order dated 16.12.2011 passed in Misc. Case No.79 of 2009 by the respondent no.2 to get encroachment removed from the Public Land in question in the light of the Public Land Encroachment Act.

(B) For issuance of order/orders, direction/directions, writ/writs particularly in the nature of writ of mandamus for a direction upon the Respondent No.2 to ensure that the encroachment is removed from the public land in question in terms of



order dated 16.12.2011.

(C) Any other relief/relief(s) for which the petitioner is legally entitled to."

It is submitted by learned counsel for the petitioner that the encroachment has been made on Survey Plot No.1093 by Fulendra Singh, for which proceeding being Miscellaneous Case No.79 of 2009 was initiated by the Collector, Begusarai. The said proceeding was disposed of by the Collector, Begusarai, vide order dated 16.12.2011, recording therein that both parties have admitted that the Survey Plot No.1093 is '*Gair Mazarua Aam land*' and the same has been encroached by Fulendra Singh. Hence, by the said order, as contained in annexure-1 to the writ petition, the Circle Officer, Matihani, was directed to take proper action and get the encroachment removed under the provisions of the 'Act'.

Learned counsel for the respondents submits that Encroachment Case No.01/2009-10 has been initiated by the Circle Officer, Matihani, with regard to encroachment over Survey Plot No.1093. Subsequently, vide letter no.2954/GO, dated 06.11.2009, issued by the confidential section, Begusarai, the Circle Officer, Matihani, directed Anchal Amin to get the land of Survey Plot No. 1093 of mauza Matihani measured and submit a report with regard to encroachment over the said land. In pursuance to the said direction, the *Anchal Amin* visited the spot, measured the land in



presence of the parties along with other persons and submitted his report to the effect that the petitioner and Fulendra Singh, both have encroached the entire land, measuring 11 Kathas 14 dhurs, by constructing house and boundary walls. The nature of land is '*Gairmazarua Khas Land*'. The respondent no.3, the Circle Officer, Matihani, issued notices to the encroachers to remove the encroachment from Survey Plot No.1093. The report of the '*Anchal Amin*' is annexed as annexure-A to the counter affidavit. It is further submitted that in pursuance to the letter issued by the confidential section, the Block Statistical Supervisor also enquired into the matter of encroachment. The Block Statistical Supervisor visited the spot on 18.11.2009 alongwith C.I. and '*Karmchari*' and submitted a detailed report with spot note on 18.11.2009 which also suggests that the petitioner and Fulendra Singh, both encroached the government land of Survey Plot No.1093. The report of the Block Statistical Supervisor is annexed as annexure-B to the counter affidavit.

Considering the rival submission of the parties it appears that on simple application of the petitioner, Miscellaneous Case No.79 of 2009 was initiated and a direction was issued by the Collector-cum-District Magistrate, Begusarai, vide order dated 16.12.2011, to the Circle Officer, Matihani, to remove the encroachment from the land in question.



The order dated 03.08.2010, passed in Encroachment Case No.01/2009-10, reflects that notices were issued to the encroachers. In pursuance to the same, both sides appeared and prayed for stay of the proceeding of Encroachment Case till disposal of the Miscellaneous Case No.79 of 2009 pending before the Collector-cum-District Magistrate, Begusarai, which gets reflected from the order dated 20.08.2010. Though, it is also pleaded that the petitioner was abroad on the alleged date i.e. 20.08.2010. Further the order of the Circle Officer dated 14.01.2012 reflects that encroachers were noticed in Encroachment Case No.01/2009-10 in view of disposal of Miscellaneous Case No.79 of 2009 by the Collector-cum-District magistrate vide order dated 16.12.2011, as contained in annedure-1.

Learned counsel for the state-respondent further submits that the Encroachment Case No.01/2009-10 has not been concluded as yet.

In view of the fact that Miscellaneous Case No.79 of 2009 has been disposed of and Encroachment Case No.01/2009-10 has not been concluded, the writ application appears to be premature. It is not only surprising but shocking to the Court that encroachment proceeding is pending since last about seven years.

Under the circumstances, the writ application is



disposed of with a direction to the respondent nos.2 and 3 to get Encroachment Case No.1/2009-10 concluded within a period of four months in accordance with the provisions of Bihar Public Encroachment Act.

Accordingly, the writ application is disposed of.

(Dinesh Kumar Singh, J)

Ashwini/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	
Transmission Date	NA

