

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.11279 of 2015

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| 1. Nago Devi, W/o- Parasuram Dubey,
Langerkakayee, P.S- Chenari, District- Rohtas. | R/o- Village- |
| 2. Sanjay Singh, S/o- Rajendra Singh,
Langerkakayee, P.S- Chenari, District- Rohtas. | R/o- Village- |

... .. Petitioners

Versus

1. The State of Bihar
2. The Collector, Rohtas, Sasaram.
3. The Sub Divisional Magistrate, Sasaram.
4. The Superintendent of Police, Rohtas, Sasaram.
5. The Circle Officer Chenari, District- Rohtas.

... .. Respondents

Appearance :

For the Petitioner/s	:	Mr. Ashutosh Tripathy, Adv.
For the Respondent/s	:	Mr. Tej Pratap, AC to AAG-13.

CORAM: HONOURABLE MR. JUSTICE DINESH KUMAR SINGH
ORAL ORDER

4 15-09-2017 Heard Mr. Ashutosh Tripathy, learned counsel for the petitioners and Mr. Tej Pratap, learned AC to AAG-13 for the respondents.

The present writ application has been filed for a direction to the respondent authorities to get the encroachment removed from the public land appertaining to Plot No. 1371, Khata No. 144, situated in Village Langerkakayee, P.S. Chenari, District Rohtas.

It is submitted by learned counsel for the petitioners that the land in question is a public road, but the same has been encroached upon by several persons. For removal of encroachment from the said land, petitions were filed by the



petitioners before respondent no.2, the Collector, Rohtas, which were subsequently, transmitted to respondent no.5, the Circle Officer, Chenari, vide letter dated 13.06.2013 and 28.08.2014, as contained in Annexure-1(series). Consequently, respondent no.5, the Circle Officer, Chenari initiated three encroachment proceedings, being Encroachment Case Nos. 9, 14 and 16 of 2014-15, under the provisions of the Bihar Public Land Encroachment Act (hereinafter referred to as 'the Act'). Subsequently, a report was called for by respondent no.5, the Circle Officer, Chenari from the Circle Inspector, who submitted the report on 22.09.2014, as contained in Annexure-2, stipulating therein that the land in question is a village road, but the same has been encroached upon by Yamuna Vind, Uday Vind and Ramanand Vind. Hence, the Circle Inspector recommended for removal of encroachment from the land in question. Consequently, respondent no.5, the Circle Officer, Chenari, vide order dated 22.09.2014 passed in Encroachment Case No. 16 of 2014-15, issued notice to the abovenamed three encroachers, under Section 3 of the Act. Consequently, vide order dated 15.10.2014, ex-parte final order was passed, since encroachers failed to submit any document. It is further submitted that notices were issued for removal of encroachment,



but the encroachment could not be removed from the land in question, since protest was made by the encroachers. Hence, the present writ application.

A counter affidavit has been filed on behalf of respondent no.4, the Superintendent of Police, Rohtas stating therein that encroachment was found on the land in question and on 15.04.2015, attempt was made for removal of the encroachment by taking help from the police force, but it could not be removed, since protest was made and stones were pelted by the encroachers. Consequently, Chenari P.S. Case No. 68 of 2015 was registered with accusation under Sections 353, 147, 148, 149 and 435 of the IPC against the fourteen encroachers.

Considering the rival submissions of the parties, this Court is dismayed to find that for implementation of a quasi judicial order, a person has to approach this Court invoking jurisdiction under Article 226 of the Constitution of India, which reflects the sordid state of affairs in the State.

This Court also finds that most of the Circle Officers in the State, who are Collector under the Act, conduct the proceedings without going through the provisions of the Act. The order dated 15.10.2014, passed in Encroachment Case No. 16 of 2014-15, by respondent no.5, the Circle Officer, Chenari, as



contained in Annexure-4, reflects that after passing the final order under Section 6(1) of the Act, respondent no.5, the Circle Officer, Chenari directed for issuance of notice under Section 5(1) of the Act, which stipulates the opportunity of hearing being given to the parties or passing of an ex-parte order, if none appears in spite of valid service of notice. After passing of the final order, there is provision under the Act which stipulates the issuance of notice, under Section 6(2) of the Act.

The record does not suggest that any such notice in form II under Section 6(2) of the Act has ever been issued, which reflects the casual manner on which the quasi judicial functions are being discharged by the State authorities.

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

“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 fin up to Rs. 20,000/- 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, 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 respondent no.5, the Circle Officer, Chenari. On the other hand, what has been done is that a criminal case has been lodged as an excuse for not implementing the final order passed under the Act. Such Circle Officers or any officer under the Act, if they cannot implement their own order, have no justification to hold the office.

In the circumstances, respondent no.5, the circle Officer, Chenari is expected to proceed in the matter from the stage of Section 6 of the Act and issue fresh notice, after giving due opportunity to all the affected persons and to implement the



final order, within a period of two months from the date of receipt/production of a copy of this order.

Let the copy of the order be transmitted to respondent no.2, the Collector, Rohtas so that he is acknowledged with the manner, in which the respondent no.5, the Circle Officer, Chenari, is casually discharging the quasi judicial functions.

Accordingly, with the above observation and direction, the present writ application is disposed of.

(Dinesh Kumar Singh, J)

Amrendra/-

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