

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.24310 of 2013

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Panna Lal Sharma, Son of Bharat Sharma, Resident of Village -
Dhaminaha, P.O. - Musahara, P.S. - Sathi, District West Champaran

.... Petitioner/s

Versus

1. The State of Bihar
2. The Collector, Narkatiyaganj, West Champaran, Bettiah
3. The Deputy Collector Land Reforms, Narkatiyaganj, West Champaran,
Bettiah
4. The Sub-Divisional Officer, Narkatiyaganj, West Champaran, Bettiah
5. The Circle Officer, Narkatiyaganj, West Champaran, Bettiah
6. Bachcha Prasad, Son of Shankar Prasad Resident of Narkatiyaganj
Ward No. 9, P.S. Narkatiyaganj, District - West Champaran, Bettiah
7. Harendra Mishra, S/o Kameshwar Mishra Resident of Narkatiyaganj
Ward No. 23, P.S. Narkatiyaganj, District - West Champaran, Bettiah

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Surendra Kishore Thakur, Adv.
For the State : Mr. Anil Kumar Sinha, GA-1
Ms. Nutan Kumari Sharma, AC to GA1

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**CORAM: HONOURABLE MR. JUSTICE DINESH KUMAR
SINGH**
ORAL ORDER

2 23-06-2017 Heard learned counsel appearing on behalf of the

petitioner and learned AC to GA-1, appearing on behalf of

respondent nos. 1 to 5.

In view of the relief prayed for and the fact that the
writ application was filed on 05/12/2013, but the counter affidavit
has not been filed till date, this Court is not inclined to adjourn the
matter any further. However, the nature of order which this Court
intends to pass it does not require issuance of notice to the private
respondents.



The present writ application has been filed for directing the respondent authorities to implement the order dated 02/01/2012, passed by the learned Sub-Divisional Officer, Narkatiaganj, in Encroachment Case No. 16/2008-09, whereby it has been held that Respondent Nos. 6 and 7, namely, Bachcha Prasad and Harendra Mishra, have encroached the land in question pertaining to Khata No. 89, Plot No. 458, situated in Ward No. 23 of Narkatiaganj Nagar Parishad, hence, they have been directed to remove the encroachment within 15 days, failing which, it has been directed that the encroachment will be removed in accordance with the provisions of the Bihar Public Land Encroachment Act (hereinafter referred to as the Act) and the cost of such removal shall be recovered from the encroachers.

It is submitted by learned counsel for the petitioner that the petitioner and other people constructed their houses on Plot No. 458, Khata No. 89, situated under Narkatiaganj Nagar Parishad, Ward No. 23, in the district of West Champaran. The purchaser of the land left vacant 8 feet (width) of land for being used as road, but the same has been encroached by Respondent Nos. 6 and 7. On the application of the petitioner, Encroachment Case No. 16/2008-09 was initiated, wherein notices were issued to Respondent Nos. 6 and 7, after getting measurement done by the



Anchal Amin and after perusing the document submitted by the parties. The Respondent No.4, the Sub-Divisional Officer, Narkatiyaganj, West Champaran, Bettiah, vide order dated 02/01/2012, came to a definite finding that the road in question was brought in existence by the petitioner and other purchaser of the adjoining land and the same is being used as a public road and the same has been encroached by Respondent Nos. 6 and 7, hence, they were asked to remove the encroachment within 15 days, failing which, it was directed that the encroachment will be removed in accordance with the provision of the Act and the cost of such removal shall be recovered from the encroachers, but till date the said order has not been implemented. It is further submitted that the order in question has not been challenged by Respondent Nos. 6 and 7 or any other person.

Learned AC to GA-1 submits that, at present, she does not have any instruction whether the order has already been implemented or not or whether the same has been challenged in any other proceeding or not.

Having heard the counsels for the parties, this Court is dismayed that the writ application was registered on 05/12/2013, but till date no counter affidavit has been filed. It is really shocking that the order has been passed in 2012 and the



same has not been implemented till date, when there is specific provision for implementation of the order under section 7 of the Bihar Public Land Encroachment Act (hereinafter referred as to the Act'), which reads as under :

“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.”

The aforesaid provision clearly stipulates that if any person fails to comply with the order passed by the Collector under section 6 of the Act directing the removal of any encroachment by the date fixed, the Collector shall get the encroachment removed and in such manner as he deems fit and proper and the cost incurred in removal of the same shall be recovered from such person.

Sub-section (2) of section 6 of the Act stipulates that if any person fails to comply the order passed by the Collector under this section, shall be punished with imprisonment for a term which may extend to one year or with fine up to Rs.20,000/- or both. Section 6(2) of the Act reads as under :-

“ 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.20,000/- or with both.”

It is really shocking that the order has not been implemented in last five years and the petitioner had to invoke the writ jurisdiction of this Court for implementation of the order passed in Encroachment Case No.16/2008-09.

In view of the discussions made above, the writ application is disposed of with a liberty to the petitioner to file appropriate application before Respondent Nos. 4 within a period of three weeks, who is expected to implement the order dated 02/01/2012, passed in Encroachment Case No.16/2008-09, in accordance with the provision of the Act, within a period of six weeks, after giving due opportunity of being heard to all the affected persons, if the same has not been challenged/ modified or quashed by any authority or Court.

(Dinesh Kumar Singh, J)

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