

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.16707 of 2016

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1. Md. Jubair Ansari Son of Sri Abdul Gafar resident of Village - Tirhuta, P.S. –
Babubarhi, District - Madhubani.

.... Petitioner/s

Versus

1. The State of Bihar through the District Magistrate, Madhubani.
2. The Divisional Commissioner Darbhanga Division, Darbhanga.
3. The Collector, Madhubani.
4. The Additional Collector, Madhubani.
5. The Deputy Collector Land Reforms, Madhubani.
6. The Sub-Divisional Officer, Madhubani.
7. The Circle Officer, Babubarhi, District - Madhubani.
8. Md. Yunush Ansari Son of Siddki Ansari resident of Village - Tirhuta, P.S. –
Babubarhi, District - Madhubani.
9. Md. Allahuddin Ansari Son of Siddki Ansari resident of Village - Tirhuta, P.S. –
Babubarhi, District - Madhubani.
10. Mustak Ansari Son of Siddki Ansari resident of Village - Tirhuta, P.S. –
Babubarhi, District - Madhubani.
11. Israil Ansari Son of Late Jainul Ansari resident of Village - Tirhuta, P.S. –
Babubarhi, District - Madhubani.
12. Khalil Ansari Son of Late Prikshan Ansari resident of Village - Tirhuta, P.S. –
Babubarhi, District - Madhubani.
13. Abdul Gaffur Ansari Son of Late Hanif Ansari resident of Village - Tirhuta,
P.S. - Babubarhi, District - Madhubani.
14. Isha Ansari Son of Late Abdul Aziz resident of Village - Tirhuta, P.S. –
Babubarhi, District - Madhubani.
15. Mainuddin Ansari Son of Abdul Aziz Ansari resident of Village - Tirhuta, P.S. -
Babubarhi, District - Madhubani.
16. Said Ansari Son of Abdul Aziz resident of Village - Tirhuta, P.S. - Babubarhi,
District - Madhubani.
17. Usman Ansari Son of Khurshid Ansari resident of Village - Tirhuta, P.S. -
Babubarhi, District - Madhubani.
18. Majid Ansari Son of Khurshid Ansari resident of Village - Tirhuta, P.S. –
Babubarhi, District - Madhubani.
19. Mostt. Bholi Devi Son of Ram Lakhan Sah resident of Village - Tirhuta, P.S. –
Babubarhi, District - Madhubani.
20. Parikshan Sah Son of Uttim Lal Sah resident of Village - Tirhuta, P.S. –
Babubarhi, District - Madhubani.

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Gagan Deo Yadav, Adv.
Mr. Shashi Bhushan Kumar, Adv.
Mr. Udestya Kumar Yadav, Adv.
For the Respondent/s : Mr. Abul Kalam, A.C. to A.A.G.-12.

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CORAM: HONOURABLE MR. JUSTICE DINESH KUMAR SINGH



ORAL JUDGMENT

Date: 06-04-2017

Heard learned counsel for the petitioner and learned A.C. to A.A.G.-12 for respondent nos. 1 to 7.

The present writ application has been filed with a prayer for a direction to the respondent authorities for implementation/execution of the order dated 24.06.2014 passed in Encroachment Case No. 11/2013-14 by Circle Officer, Babubarhi, respondent no.7, whereby the order has been passed for removal of encroachment made by respondent nos. 8 to 20 over the Gairmajarua land appertaining to Thana No. 111, Khata No. 337, Plot No. 2266, measuring an area of 95 decimals, situated in the Village Tirhuta, under the Block Babubarhi in the District of Madhubani.

It is submitted by the learned counsel for the petitioner that on the application of the petitioner and villagers, Encroachment Case No. 11/2013-14 was initiated and respondent no.7, Circle Officer, Babubarhi issued notice to respondent nos. 8 to 20 on 24.06.2014, as contained in Annexure- 1 (series) directing them to remove the encroachment within a period of one week i.e., by 08.07.2014. Thereafter, again, on 30.04.2013, the public petition was submitted before respondent no.7 for removal of the encroachment, as contained in Annexure-2. Thereafter, public petition was submitted before the District Magistrate, Madhubani on 09.07.2013, as



contained in Annexure-3. The Circle Inspector, Babubarhi submitted his report on 15.06.2013, as contained in Annexure-4, to the effect that Plot No. 2266, Khata No. 337 measuring an area of 1 katha 15 dhurs is recorded in the revenue record as Gairmajarua Aam land and the nature of land has been described as Bandh. During enquiry, it was found that 14 persons have constructed houses but the extent of individual encroachment can be verified after measurement of the land in question, hence, recommendation was made for calling for a report, with trace map, from Circle Amin, as is contained in Annexure-4. Thereafter, vide order dated 08.08.2013, as contained in Annexure-5, passed by respondent no.7 in Encroachment Case No. 11/2013-14, the encroachers were directed to be present on 27.08.2013 along with the documents relating their respective claim to the land in question. The order dated 31.12.2013 reflects that the encroachers sought for several adjournments but never produced any documents and hence notices were again issued to the respondents., The encroachers were directed by respondent no.2 vide order dated 01.02.2014, as contained in Annexure-5, to vacate the land in question as well as to submit certificate to that effect, failing which the encroachment will be removed by the administration and the cost of the same will be recovered from the encroachers. The order dated 24.06.2014 reflects that the last notice was issued to the encroachers



for vacating the land in question and submitting certificate to that effect in writing but till date neither the encroachment has been removed nor encroachment proceeding has been concluded.

Learned A.C. to A.A.G.-12 submits that at present, he does not have any instruction with regard to conclusion of encroachment proceeding and removal of encroachment.

Considering the rival submission of the parties, this Court is dismayed that the writ applications are being filed for exercise of writ jurisdiction for giving direction to the respondent authorities to implement/execute the order of the Circle Officer.

It appears that the order was passed on 24.06.2014 by respondent no.7 in Encroachment Case No. 11/2013-14 but there is nothing on record to suggest that till date encroachment proceeding has been concluded or encroachment has been removed.

This Court is of the view that the Collector, under Sections 6(2) and 7 of the Bihar Public Land Encroachment Act (herein after called as “The Act”) has power to punish a person who fails to comply the order of the Collector under Section 6 of the Act by awarding imprisonment for a term which may extend to one year or fine up to ₹2000/- or with both or if any person fails to comply with the orders passed by Collector under Section 6 of the Act directing the removal of the encroachment by the date fixed then get the



encroachment removed in such manner as he deems fit and recover the cost of such removal from such person . The provisions under Section 6(2) and 7 of the Act 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 fine up to ₹2000/- 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.”

There is nothing on record to suggest that respondent no.7 resorted to seek remedy under the provisions of Sections 6(2) and 7 of the Act till date which reflects the callous manner in which respondent no.7 has discharged his quasi judicial function. Hence, if respondent no.7 has not exercised the jurisdiction under Section 6(2) and 7 of the Act, it is expected from him to conclude the proceeding of Encroachment Case No. 11/2013-14 within a period of six weeks, if it has already not been concluded and if it has been concluded and



final order of respondent no.7 has not been stayed and annulled in any other collateral proceeding, then the final order of respondent no.7 should be implemented/executed within a period of four weeks thereafter, after giving due opportunity of being heard to all affected persons.

With the above observation, the present writ application is disposed of.

(Dinesh Kumar Singh, J)

Amrendra/-

AFR/NAFR	NAFR
CAV DATE	N/A
Uploading Date	22/04/2017
Transmission Date	N/A

