

**IN THE HIGH COURT OF JUDICATURE AT PATNA**

**Civil Writ Jurisdiction Case No.8156 of 2014**

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Rajendra Rai son of Basdeo Rai resident of Village + Post - Manpaur, Via -  
Parihar, P.S. Bela, Distt. - Sitamarhi

.... .... Petitioner/s

Versus

1. The State of Bihar
2. The Collector - Cum - Magistrate, Sitamarhi
3. The Sub - Divisional Magistrate, Pupri
4. The Circle Officer, Parihar, Block - Parihar
5. The Deputy Collector Land Reforms, Parihar, Distt. - Sitamarhi
6. Md. Jabbar Safi S/O Late Ramjan Safi At - Manpaur, P.S. Bela, Anchal -  
Parihar, Distt. - Sitamarhi
7. Tawark Safi S/O Mahmud Safi At - Manpaur, P.S. Bela, Anchal - Parihar,  
Distt. - Sitamarhi

.... .... Respondent/s

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**Appearance :**

For the Petitioner/s : Mr. Devendra Kumar, Advocate

For the Respondent/s : Mr. SC-11 ASHOK KUMAR

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

ORAL JUDGMENT

**Date: 21-03-2017**

Heard learned counsel for the petitioner and learned AC  
to SC-18 for respondent nos. 1 to 5.

The present writ application has been filed for a  
direction to the respondent authorities to remove the encroachment,  
made by respondent nos. 6 and 7, from the public road, appertaining  
to Khata No.1099, Plot No. 2423, situated in front of Mai Asthan in  
village –Manpur, Circle-Parihar, P.S.-Bela, under the District of  
Sitamarhi. The said encroachment has not been removed in spite of  
the final order being passed under section 6 of the Bihar Public Road



Encroachment Act (hereinafter referred as to the 'Act') in Encroachment Case No.11/2013-14, by respondent no.4, the Circle Officer, Parihar, Block-Parihar.

It is submitted by learned counsel for the petitioner that in view of the encroachment made, by constructing brick house, impeding the approach road to Mai Asthan, several persons filed an application on 11.09.2013, before the Circle Officer, Parihar, respondent no.4, to the effect that in the village Manpur, Khata No.1099, Khesra No.2423, Area 0.05 decimal, there is a PWD road/public road in front of Mai Asthan and respondent nos.6 and 7 have encroached upon the said road. The villagers, at large, usually go to Mai Asthan for worship, but due to such encroachment, they are facing inconvenience in visiting Mai Asthan. Consequently, Encroachment Case No.11/13-14 was initiated and vide order dated 11.09.2013, as contained in annexure-1, respondent no.4 directed to call a report from the Halka Karmachari and Anchal Amin. Consequently, the Halka Karmachari, submitted his report along with trace map of the land, in question. On perusal of the report of the Halka Karmachari and subsequent site visit, respondent no.4 found that the land appertaining to Thana No.116, Khata No.1099, Plot No.2423, situated in Mauza Manpuar, area 05 decimal is recorded in the revisional survey, in the name of Mai Asthan. The



Shrine still exists on the land, in question, and in front of Mai Asthan there is a PWD road known as Parihar Bela Path and the said road has been encroached by Md. Jabbar Safi (respondent no.6) and Tawark Safi (respondent no.7), by constructing their houses. As a result, the approach road to Mai Asthan has been reduced to a narrow passage. It has further created tension between two communities.

Consequently, after finding the allegation of encroachment upon the said land, in question, to be true, the encroachers were noticed by the Circle Officer, vide order dated 30.09.2013. On service of notice, respondent no.6 submitted his written show cause, but failed to produce any evidence with regard to the claim over the land, in question. Hence, vide order dated 01.11.2013, respondent no.4 arrived at a conclusion that during site visit and on enquiry from the villagers it was found that respondent nos. 6 and 7 have their residential land and house elsewhere also, in the village, but in spite of that they have encroached the public road, in question, by constructing their houses forcefully. The land, in question, appertaining to Thana No. 116, Khata No.1099, Plot No.2423, area 05 decimal in front of PWD road was held to be a public land in view of section 2(B) of the Bihar Public Land Encroachment Act, 1956, and, accordingly, encroachers were



directed to vacate the land, in question.

The attention of this Court has also been drawn on annexures-3/4 and 3/5, which suggest that notices in Form-2 under section 6(2) of the Bihar Public Land Encroachment Act, have been issued by the Circle Officer, Parihar, vide order dated 11.11.2013, to the encroachers, i.e. respondent nos. 6 and 7 for removal of the encroachment from the land, in question, within a period of 10 days. But, thereafter, no action has been taken by the respondent authorities. The Circle Officer, Parihar, respondent no.4, submitted a report, vide letter no.1104, dated 14.11.2013, as contained in annexure-5, to the sub-Divisional Officer, Sitamarhi, Sadar, admitting this fact that respondent nos. 6 and 7, have constructed their house by encroaching upon public road, in spite of the fact that they have residential land and houses in another village and they want to disturb the communal harmony by throwing garbage and dirty water in the Hindu Shrine.

Learned AC to SC18 submits that he has no instructions whether the encroachment has been removed or not.

The conscience of the Court is shocked by the fact that despite the final order under section 6 of the Act, having been passed on 01.11.2013, holding the respondent nos. 6 and 7 to be encroachers and resultantly notices were also issued to respondent



nos. 6 and 7 on 11.11.2013, whereas the instant writ application was filed on 29.04.2014, yet the respondent authorities concerned, have failed to execute their own order, despite repeated reminders by the petitioner.

Considering the rival submissions of the parties, this Court is of the view that the Collector, under Sections 6(2) and 7 of the Act has power to punish a person who fails to comply the final order passed 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 and 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 Rs. 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 that respondent no.4 resorted to the provisions of Sections 6(2) and 7 of the Act despite the final order, under Section 6 of the Act being passed on 01.11.2013, in Encroachment Case No.11/2013-14, as contained in Annexure-1. Hence, if respondent no.4 has not exercised the jurisdiction under Section 6(2) and 7 of the Act, till date then it is expected that he may exercise such jurisdiction for removal of the encroachment from the road in question within a period of six weeks from the date of receipt/production of the copy of this order, in accordance with the provisions of the Act, provided the final order either in appeal or in any other collateral proceeding has not been stayed or annulled.

Accordingly, the present writ application is disposed of.

**(Dinesh Kumar Singh, J)**

Ashwini/-

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