

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.23386 of 2013

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Shamshul Ansari @ Shamshul Mansuri, Son of Late Alizan Mansuri
Resident of Village - Masaurha, Ward No. 10, P.S.-Piparahi, District-
Sheohar

.... Petitioner

Versus

1. The State Of Bihar
2. The District Magistrate, Sheohar
3. The Sub-Divisional Officer, Sheohar
4. The Deputy Collector Land Reform, Sheohar
5. The Circle Officer, Piparahi, Dist. Sheohar
6. The Officer-In-Charge, Police Station Piparahi, District Sheohar
7. Taiyab Ansari, Son of Rashul Ansari, Resident of Village - Masaurha,
Ward No. 10, P.S.- Piparahi, District-Sheohar

.... Respondents

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Appearance :

For the Petitioner/s : Mr. Hans Lal Kumar

For the Respondent/s : Mr. G.K. Agrwal

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CORAM: HONOURABLE MR. JUSTICE DINESH KUMAR SINGH
ORAL ORDER

2 01-08-2017 Heard Mr. Hans Lal Kumar, learned counsel for the
petitioner and learned counsel for respondent nos. 1 to 6.

The nature of order this Court intends to pass does
not require issuance of notice to private respondent no.7.

Since the present writ application was registered on
22.11.2013 and no counter affidavit has been filed till date, this
Court is not inclined to adjourn the matter any further.

The present writ application has been filed for
following relief:-

- (i) For issuance of writ in the nature of mandamus



directing and commanding the respondent authorities to comply its own order dated 09.05.2010 and accordingly, giving effect to the Letter dated 07.06.2013 issued under the signature of the Circle Officer, to remove the encroachment from Plot No. 145/A under Khata No. 282 which is a public passage.

(ii) For further direction to the respondent authorities to dispose of the representation of the petitioner by reasoned and speaking order within time framed.

(iii) And for any other relief/reliefs for which the petitioner is found to be entitle in the eye of law.

It appears that a proceeding vide Measurement Case No. 05 of 2009-10 was initiated and the measurement of the land with regard to Khata No. 282, Plot No. 1458, an area of 6 decimals, situated in Village Masaurha, District Sheohar, was made and consequently, vide Memo No. 179, dated 11.04.2013, as contained in Annexure-3, respondent no.5, the Circle Officer, Piparahi issued notice to respondent no.7, Taiyab Ansari for removal of encroachment from Plot No. 1458, situated in Village Masaurha, District Sheohar. Subsequently, vide Memo No. 292, dated 07.06.2013, as contained in Annexure-4, respondent no.5, the Circle Officer, Piparahi requested the Officer-in-Charge, Piparahi Police Station for deputation of police force on



17.06.2013 for removal of the encroachment from Plot No.1458, but the encroachment has not been removed. Hence, the present writ application.

From the prayer made in the writ application, it appears that the petitioner has come to this Court for a direction to get the encroachment removed from Plot No. 145/A of Khata No. 282, whereas, the measurement was made and the notices were issued for removal of encroachment by requisitioning police force with regard to Plot No. 1458 of Khata No. 282. But, there is nothing on record to suggest that any appropriate proceeding under the Bihar Public Land Encroachment Act, 1956 (hereinafter referred to as 'the Act') was ever initiated or the respondent no.5, Circle Officer, Piprahi came to a conclusion that the land in question is a public land.

In view of the inconsistencies stated above, this Court is not inclined to exercise the discretionary jurisdiction under Article 226 of the Constitution of India in favour of the petitioner. The State and its authorities cannot be allowed to take arbitrary action, dehors the procedure, which has been prescribed by the Statute. A thing, which is prescribed to be done in a particular manner, has to be done in that particular manner or not at all.



In the circumstances, respondent no.5, the Circle Officer, Piprahi is expected to initiate the proceeding under Section 3 of the Act, if it appears to him on any application being filed on behalf of the petitioner or any persons that the land in question being purchased land has been encroached upon, and to take such proceeding to its logical conclusion within a time frame after giving due opportunity of hearing to all affected persons, in accordance with the provisions of the Act.

Accordingly, the present writ application is disposed of.

(Dinesh Kumar Singh, J)

Amrendra/-

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