

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.20009 of 2014

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Arun Mandal, S/o-Late Jitu Mandal, Resident of Village-Bhagirathpatti, P.S.-
Basopatti, District-Madhubani.

... .. Petitioner

Versus

1. The State of Bihar through the District Magistrate, Madhubani.
2. The Sub-Divisional Officer, Jai Nagar (Madhubani).
3. The Deputy Collector, Land Reforms Jai Nagar (Madhubani).
4. The Senior Deputy Collector-cum-in charge Officer, Revenue Section, Madhubani.
5. The Circle Officer, Basopatti (Madhubani).
6. The Officer-in-Charge, Basopatti (Madhubani).
7. Kusheshwar Sah, S/o Late Kashiram Sah
8. Sukram Sah @ Krishna Prasad Sah, S/o- Bindeshwar Sah, Both resident of Village- Bhagirath Patti, P.S.- Basopatti, District- Madhubani.

... .. Respondents

with

Civil Writ Jurisdiction Case No. 13739 of 2013

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1. Kusheshwar Sah, Son of Late Kashi Ram Sah, Resident of Village- Bhagirath Patti, P.O.- Damu, P.S.- Basopatti, District- Madhubani
 2. Sri Sukh Ram Sah, Son of Late Bindeshwar Rah, Resident of Village- Bhagirath Patti, P.O.- Damu, P.S.- Basopatti, District- Madhubani

... .. Petitioner/s

Versus

1. The State Of Bihar
2. The District Magistrate, Madhubani
3. The D.C.L.R. Benipatti, District- Madhubani
4. The Circle Officer-Basopatti, District- Madhubani
5. Balchand Paswan Son Of Kishundeo Paswan Resident Of Village- Bhagirath Patti, P.O.- Damu, P.S.- Basopatti, District- Madhubani
6. Sobhit Paswan Son Of Late Mager Paswan Resident Of Village- Bhagirath Patti, P.O.- Damu, P.S.- Basopatti, District- Madhubani

... .. Respondent/s

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Appearance :

(In Civil Writ Jurisdiction Case No. 20009 of 2014)

For the Petitioner/s : Mr. Ratanakar Jha

For the Respondent/s : Mr. S.A. ALAM

(In Civil Writ Jurisdiction Case No. 13739 of 2013)

For the Petitioner/s : Mr. Gopal Jha

For the Respondent/s : Mr. KAUSHAL KR JHA AAG-14

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CORAM: HONOURABLE MR. JUSTICE DINESH KUMAR SINGH
ORAL ORDER

3 21-11-2017 Heard Mr. Manoj Kumar, learned counsel appearing on behalf of Mr. Arun Mandal, who is petitioner in C.W.J.C. No. 20009 of 2014, Mr. Gopal Jha, learned counsel appearing on behalf of Kusheshwar Sah and Sri Sukh Ram Sah, who are petitioners in C.W.J.C. No. 13739 of 2013 and respondent nos. 7 and 8 in C.W.J.C. No. 20009 of 2014, and Mr. Kaushal Kumar Jha, learned AAG-8 for the official respondents.

However, none is appearing on behalf of Balchand Paswan and Sobhit Paswan, who are respondent nos. 5 and 6 in C.W.J.C. No. 13739 of 2013.

In view of the nature of order this Court intends to pass, this Court is not inclined to issue notice to respondent nos. 5 and 6 in C.W.J.C. No. 13739 of 2013.

CWJC No. 20009 of 2014 has been filed with following reliefs as stipulated in paragraph no.1 of the writ application, which reads as follows:-

“1. That, this writ petition has been filed for issuance of an appropriate order/s, direction/s including a writ preferably in the nature of mandamus commanding and directing upon the respondents to remove the encroachment from Gairmazarua Aam land made by private respondents forcibly and the land in question is being used for public purpose ssituated in mauza Damu within Basopatti police station in the district of Madhubani with regard Khata No. 444, Khesara No. 4478, measuring 7 katha 17 dhurs.

Further the private respondents may be restrained from cutting six trees standing on the aforesaid plot and solf for



Rs. 30,000/- to which they are needed to be proceeded in accordance with law.

The petitioner seeks indulgence of this Hon'ble court to grant him any other relief/s to which he is entitled in the facts and circumstances of the case."

C.W.J.C. No. 13793 of 2013 has been filed with following reliefs as stipulated in paragraph no.1 of the writ application, which reads as follows:-

"1. That the petitioner seeks indulgence of this Hon'ble Court on the ground interalia:-

(i) To hold and declare the notice dated 03.07.2013 passed by respondent no.4 as illegal and beyond jurisdiction by which petitioners have been directed to vacate the land in question within 24 hours, bearing Old Khesra No. 4478 and 4359 measuring 8 Katha.

(ii) To issue a writ in the nature of Certiorari for the quashing of notice bearing Memo No. 629 dated 03.07.2013 by which the petitioners have been directed to vacate the land in question without following the due process and procedure of law and without initiating the any proceeding.

(iii) To issue a writ in the nature of Mandamus for a direction to the respondent authorities to not disturb the petitioners from their present possession till the disposal of the present proceeding.

(iv) any other relief of reliefs for which the petitioner is legally and validly entitled in the facts and circumstances of the case."

Since the issue is common in both the writ applications with regard to removal of the encroachment from the land appertaining to Khata No. 444, Plot No. 4478, measuring an area of 7 katha 17 dhurs, situated in village Bhagirathpatti, Circle Basopatti, District Madhubani, hence, both the writ applications are being heard together and is being disposed of.

The factual matrix of the case is that Balchand Paswan and



Sobhit Paswan, who are respondent nos. 5 and 6 in C.W.J.C. No. 13739 of 2013 preferred writ application being C.W.J.C. No. 1117 of 2013 claiming that the land in question is a Gairmajarua Aam land, which has been encroached upon by Kusheshwar Sah and Sukh Ram Sah, who are respondent nos. 8 and 9 in the said writ application and respondent nos. 7 and 8 in present C.W.J.C. No. 20009 of 2014 and petitioners in C.W.J.C. No. 13739 of 2013. A Bench of this Court (since now retired) vide order dated 18.01.2013, disposed of the writ application being CWJC No.1117 of 2013 in following terms:-

“Grievance of the petitioners is that some Gair Mazarua Aam land is being encroached upon by the private respondents and the live trees are being cut.

From Annexure-7, it appears that the petitioners have already filed a complaint before the District Magistrate, Madhubani in this regard.

This writ application is accordingly disposed of with a direction to the District Magistrate, Madhubani to get an enquiry held on the complaint of the petitioners and pass appropriate orders in accordance with law, as early as possible.”

Consequent to the order dated 18.01.2013, passed by this Court in C.W.J.C. No. 1117 of 2013, the District Magistrate, Madhubani directed DCLR, Jai Nagar to call for a report from the Circle Officer, Basopatti. Consequently, Additional Collector, Madhubani wrote a letter to the Circle Officer, Basopatti vide letter No. 329 Dist. Legal dated 09.02.2013, which is Annexure-A to the counter affidavit filed on behalf of respondent no.2 in C.W.J.C. No. 13739 of 2013. In the



meantime, Balchand Paswan and other preferred contempt application being M.J.C. No. 2899 of 2013 for violation of the order dated 18.01.2013 passed in C.W.J.C. No.1117 of 2013. The said contempt application was disposed of by a co-ordinate Bench of this Court vide order dated 29.01.2015, which has been brought on record as Annexure-4 to the counter filed on behalf of respondent nos. 7 and 8 in C.W.J.C. No. 20009 of 2014, which reads as follows:-

“Heard learned counsel for the petitioner, learned AC to GA No. 10 as well as Sri Gopal Jha, learned counsel, who has appeared on behalf of opposite party no. 8 and 9.

The present petition has been filed with a prayer to initiate contempt proceeding against opposite parties on an allegation of willful disobedience to an order dated 18/1/2013 passed in CWJC No. 1117 of 2013. By the said order the writ petition was disposed of with a direction to the District Magistrate, Madhubani, to get an enquiry held in respect of complaint of the petitioners regarding encroachment by private respondents of the writ petition.

In this case a show cause has been filed on behalf of opposite party no. 2 and in the show cause it has been indicated that in compliance with the order of the writ court an encroachment case was instituted and notices were issued. However, the noticee filed a writ petition before this court and by the order dated 25/7/2013 passed in CWJC No.13739 of 2013 this court has already passed an order restraining the respondents from disturbing the possession of the petitioners of the said writ petition, who are opposite party no. 8 and 9 in the present petition. Since in compliance with the order of the writ court steps were already taken by the opposite parties, the court is of the opinion that order passed by this court in an another proceeding, there is no need to further proceed with the case.

The petition stands disposed of.”

Consequently, on the direction of the District Magistrate,

Madhubani, the Senior Deputy Collector, I/c Legal Section,



Madhubani, vide letter no. 1383 dated 28.06.2013 called for an enquiry report from the Circle Officer, Basopatti, which is Annexure -B to the counter affidavit filed on behalf of respondent no.2 in C.W.J.C. No. 13739 of 2013. The Circle Officer, Basopatti submitted a report vide letter no. 652 dated 08.07.2013 along with the report of the Revenue Karamchari, Circle Amin along with a trace map of the land in question and according to report of Circle Officer, Basopatti, the land in question was recorded in the revenue records as Gair Majarua Land which reflects that both the Plot nos. 4478 and 4359, Khata No. 444, situated in Mauza Damu Tole Bhagirath Patti, have been recorded as Gair Mazarua land. However, Kusheshwar Sah has encroached 4 dhurs of land on plot no. 4478, Nathuni Pandit and Sadhu Pandit have encroached 5 dhurs of land on plot no. 4478, Sukhram Sah has encroached 5 dhurs of land on plot no. 4359. After perusing the report of the Circle Officer, the District Magistrate, Madhubani directed the Circle Officer to initiate appropriate proceeding under the Bihar Public Land Encroachment Act (hereinafter referred to as 'the Act') and get the encroachment removed in accordance with the provisions of the Act. Consequently, the Encroachment Case No. 01 of 2012-13 was initiated and the encroachers were



noticed vide Memo No. 179 dated 25.02.2013 and 261 dated 15.03.2013. In the meantime, Kusheshwar Sah and Sukh Ram Sah preferred C.W.J.C. No. 13739 of 2013, challenging the notice dated 03.07.2013 issued under the signature of respondent no.4, the Circle Officer, Basopatti, as contained in Annexure-6 to C.W.J.C. No. 13739 of 2013, whereby the petitioners were directed to remove encroachment from the land in question within a period of 24 hours. The claim of the petitioners was that the enquiry was not conducted by the District Magistrate, Madhubani.

Consequently, a Bench of this Court (since now retired) vide order dated 25.07.2013, passed in C.W.J.C. No. 13739 of 2013, restrained the dispossession of the petitioners Kusheshwar Sah and Sukh Ram Sah. Thereafter, counter affidavit was filed by respondent no.2 in C.W.J.C. No. 20009 of 2014 and keeping in view the fact that the stay has been granted, the contempt application was disposed of by a Bench of this Court vide order dated 29.01.2015 passed in M.J.C. No. 2899 of 2013. The counter affidavit further stipulates that due to the accidental fire, the records in the Madhubani Collectariate got burnt, but the records of Encroachment Case No. 01 of 2012-13 has already been reconstructed and consequently, the notices have been



issued.

The grievance of the petitioner in C.W.J.C. No. 20009 of 2014 is that in spite of the earlier order dated 18.01.2013 passed in C.W.J.C. No. 1117 of 2013, the encroachment has not been removed till date from the land in question, hence the respondents be directed to restrain from selling the trees as they have already sold the trees worth Rs. 30,000/-.

It is submitted by learned counsel for the petitioners of C.W.J.C. No. 13739 of 2013 that they are aggrieved by the notice dated 03.07.2013, issued under the signature of respondent no.4, the Circle Officer, Basopatti, as contained in Annexure-6, by which they have been directed to remove the encroachment from Plot No. 4478 and 4359, within 24 hours, which is contrary to the purport of the order dated 18.01.2013, passed in C.W.J.C. No. 1117 of 2013, as enquiry was not conducted by the District Magistrate, Madhubani.

Mr. Kaushal Kumar Jha, learned AAG-8 submits that Encroachment Case No. 01 of 2012-13 was initiated after thorough enquiry by the District Magistrate, Madhubani in pursuance to the order dated 18.01.2013 passed in C.W.J.C. No. 1117 of 2013 and considering the said facts, the contempt application was disposed of by this Court. Now in pursuance to



order dated 25.07.2013, passed in C.W.J.C. No. 13739 of 2013, proceeding of Encroachment Case No. 01 of 2012-13 has been stayed. However, being dissatisfied with the explanation submitted by the Circle Officer, Basopatti, departmental proceeding has been initiated against him, and if the encroachment proceeding has not been concluded till date, it will be concluded forthwith.

Considering the rival submissions of the parties, this is not in dispute that Encroachment Case No. 01 of 2012-13 was initiated and in pursuance to the order dated 18.01.2013 passed in C.W.J.C. No. 1117 of 2013, the writ petitioners in one of the cases is aggrieved with non-conclusion of the encroachment proceeding, while in the other writ application, the writ petitioner is aggrieved with the conduction of the encroachment proceeding in derogation to the earlier order of this court.

Section 3 of the Act stipulates that proceeding under the Act may be initiated if it appears to the Collector from an application made by any person or upon information received from any sources that any person has made or is responsible for the continuance of any encroachment upon any public land.

No doubt, in the present case, the Circle Officer, Basopatti, who is the Collector under the Act, had the information in



pursuance to the report of the Circle Amin and Revenue Karamchari that the land in question is recorded in the Revenue Records as Gair Mazarua Aam Land and the same has been encroached upon. Hence, this Court finds no lacunae in initiation of proceeding, but the Act provides that on initiation of proceeding, notice has to be issued to the proposed encroachers under Section 3(1) in Form -I of the Act, thereafter, on service of notice under Section 3(1), any person interested in the encroachment may appear before the Collector and raise any defence which he could have raised if he was a defendant in a properly framed suit for the removal of the encroachment, as is provided under Section 4 of the Act. Thereafter, under Section 5 of the Act, the opportunity of hearing has to be given by the Collector under the Act to all affected persons and then under Section 6(1) in Form-II, the final notice has to be issued.

In the present case, there is nothing on record to suggest that any notice was issued under Section 3(1) or any opportunity of putting of defence under Section 4 or opportunity of hearing under Section 5 of the Act was given to the affected persons. Notice dated 03.07.2013, as contained in Annexure-6 of C.W.J.C. No. 13739 of 2013, suggests that it has been issued under Section 6(2) of the Act, but it is not in Form-II, which is



mandated under the Act. Moreover, there is nothing on record to suggest that any final order was passed under Section 6(1) of the Act.

In the circumstance, this Court has no option but to quash the notice dated 03.07.2013, passed under the signature of respondent no.4, the Circle Officer, Basopatti, as contained in Annexure-6 to C.W.J.C. No. 13739 of 2013. Accordingly, the same is quashed.

It is expected from respondent no.4, the Circle Officer, Basopatti to proceed in the Encroachment Case No. 01 of 2012-13 from the stage of Section 3(1) of the Act by issuing notice to all affected persons within a period of three weeks from the date of receipt/production of a copy of this order. The Circle Officer, Basopatti will provide opportunity to the affected person to put their defence within a period of three weeks of issuance of notice under Section 3(1) of the Act, thereafter, give opportunity of hearing to all affected persons and then pass final order under the Act.

It is expected from the Circle Officer, Basopatti to take the proceeding of Encroachment Case No. 01 of 2012-13 to its logical conclusion within a period of three months from the date of receipt/production of a copy of this order.



With the above observation and direction, both the writ applications are disposed of.

(Dinesh Kumar Singh, J)

Amrendra/-

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