

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.23016 of 2013

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1. Jag Setu Das Son of Late Ram Das Resident Of Village - Dengha East, Police Station - Arer, And District - Madhubani

.... Petitioner/s

Versus

1. The State of Bihar Through The Principal Secretary, Revenue And Land Reforms Department, Bihar, Patna
2. The Commissioner Darbhanga Division, Darbhanga
3. The District Magistrate, Madhubani
4. The Sub Divisional Officer, Benipatti, Madhubani
5. The Deputy Collector, Land Reforms Benipatti, Madhubani
6. The Circle Officer Benipatti, Madhubani
7. The Officer In Charge, Arer Police Station, District Madhubani
8. Sushil Jha, Son of Late Maneshwar Jha Resident Of Village - Dengha East, Police Station - Arer, And District - Madhubani

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. RATANAKAR JHA

For the Respondent/s : Mr. AC to AAG 14

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CORAM: HONOURABLE MR. JUSTICE DINESH KUMAR SINGH
ORAL JUDGMENT

Date: 23-06-2017

Heard learned counsel for the petitioner and A.C. to AAG 14 for the respondent-State.

The present writ application has been filed for a direction to the respondent authorities to get the encroachment removed from the government Gairmazarua Aam land pertaining to Khata No. 436, Old Plot No. 3283, New Plot No. 4918, situated in Mauza Dhenga in the district of Madhubani, in pursuance to the execution of order dated 7.10.1991, passed by Respondent no. 6, the



Circle Officer, Benipatti, Madhubani in Encroachment Case No. 4 of 1989-90. Further prayer has been made to restrain the private respondents from making further encroachment upon the land in question.

It is submitted by learned counsel for the petitioner that the land in question is recorded in the revenue records as Gairmajarua Khas Parti Kadim. Encroachment Case No. 4 of 1989-90 was initiated and after getting report from the Revenue Karmchari, respondent no. 6, the Circle Officer, Benipatti issued notice to respondent no. 8 but all the times, he filed petitions for adjournment and never submitted any document in support of his claim. The land in question got measured by the Circle Amin and it was found that Harischandra Jha alias Wokil Jha has encroached the land in question by erecting a hut and stocking the heap of straw. Hence, Harischandra Jha alias Wokil Jha was directed to remove the encroachment, failing which it was directed that the encroachment will be removed and cost of removal will be realized. The Circle Officer, vide order dated 7.10.1991, directed to issue notice to the encroacher under Section 6(2) of the Bihar Public Land Encroachment Act (hereinafter referred to as the 'Act') and also directed for lodging case under Section 188 of the Code of Criminal Procedure. It is further submitted on behalf of the petitioner that till date the order has not been implemented nor the



encroachment has been removed.

Learned counsel for the respondent State submits that he does not have any instruction whether the order of the Circle Officer has been executed/implemented or not.

Having heard the rival submissions of learned counsels for the parties, considering that the writ application was filed on 18.11.2013, this court is not inclined to adjourn the matter any further. The petitioner prays for implementation of the order dated 7.10.1991, passed in Encroachment Case No. 4 of 1989-90. On perusal of the same, it appears that the encroachment proceeding was initiated on the application of the petitioner, Jag Setu Das and notices were issued to Harischandra Jha alias Wokil Jha, son of Maneshwar Jha, who during enquiry and measurement by the Anchal Amin, found to have encroached upon the land in question. Hence, this court is not inclined to issue notice to respondent no. 8, as he does not appear to be a party in the encroachment proceeding.

This court is really dismayed with the manner in which the authorities of the State are discharging quasi-judicial function. The impugned order was passed on 7.10.1991 but it is claimed that the same has not been implemented/executed till date which demonstrates the callous state of affairs.

The present writ application is pending since last four



years but no counter affidavit has been filed on behalf of the respondent-State.

Section 7 of the Act prescribes the procedure to implement the final order passed under section 6 of the Act. Section 7 of the Act reads as follows:

“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 above provision prescribes the procedure for removal of encroachment if any person fails to comply with the order passed by the Collector under section 6 of the Act by getting encroachment removed and cost of the same to be recovered from such person.

Section 6 (2) of the Act prescribes the punishment of the imprisonment for a term which may extend to one year or with fine up to Rs.20,000 or with both if any person fails to comply with the order passed by the Collector under section 6 of the Act. Section 6(2) of the Act reads as follows:

“6. Final order of the Collector-

(1).....

(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.20,000 or with both.”

In view of the above discussions, the writ application is disposed of with a liberty to the petitioner to file appropriate application before respondent no. 6, the Circle Officer, Benipatti, Madhubani, within a period of four weeks from the date of receipt/production of this order to get the order dated 7.10.1991, passed in Encroachment Case No. 4 of 1989-90, implemented by resorting to the aforementioned provisions of the Act. If such application is filed, respondent no. 6 will pass appropriate order under the provisions of the Act after giving due opportunity of being heard to all affected persons within a period of six weeks thereafter, if the said order has not been already executed/modified by any superior authority/court.

(Dinesh Kumar Singh, J)

Anil/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	
Transmission Date	NA

