

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.15055 of 2017

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Ram Naresh Prasad, Son of Brahna Dev Yadav, Resident of Village- Mithu Bigaha, P.S.- Makhadumpur, District- Jehanabad.

... .. Petitioner

Versus

1. The State of Bihar through its District Magistrate, Jehanabad.
2. The Block Development Officer, Makhadumpur, Dist- Jehanabad.
3. The Circle Officer, Makhadumpur, Dist- Jehanabad.
4. The District Program Officer (Establishment), Jehanabad.
5. The District Education Officer, Jehanabad.
6. The Block Education Officer, Makhadumpur, Jehanabad.
7. Pankaj Kumar, S/o- Raj Nath Yadav.
8. Baidhy Nath Yadav, S/o- Prabhu Yadav.
9. Krishna Yadav, S/o- Prabhy Yadav.
10. Ramashish Yadav, S/o- Prabhu Yadav.
11. Ambika Yadav, S/o- Ramesh Yadav,
12. Sakaldeo Yadav, S/o- Nanhak Yadav, Respondent nos. 7 to 12 are Resident of Village- Makarpur, P.S.- Makhadumpur, District- Jehanabad.

... .. Respondents

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Appearance :

For the Petitioner/s : Mr. Sheo Nandan pandit
For the Respondent/s : Mr. S.C. YADAV-GP15

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CORAM: HONOURABLE MR. JUSTICE DINESH KUMAR SINGH
ORAL JUDGMENT

Date : 27-03-2018

Heard Mr. Sheo Nandan Pandit, learned counsel for the petitioner and Mrs. Sangh Mitra Ghosh, learned AC to GP-15 for the respondent-State.

Since the present writ application was registered on 13.10.2017, but till date no counter affidavit has been filed, hence this Court is not inclined to adjourn the matter any further.

In view of the nature of order this Court intends to pass, this Court is not inclined to issue notice to private respondent nos. 7 to 12.



The present writ application has been filed for a direction to the respondent authorities to get the encroachment removed from the land, appertaining Khata No. 199, Plot No. 857, situated in Mauza-Makarpur, Circle-Makhadumpur, District- Jehanabad.

It is submitted by learned counsel for the petitioner that the land in question is recorded in the Revisional Survey as 'Gairmazarua Malik', over which there is a proposal for construction of building of a Primary School, but the same has been encroached upon by private respondent nos. 7 to 12. The said facts also get reflected from the letter dated 27.01.2015, issued by respondent no.2, the Block Development Officer, Makhadumpur, as contained in Annexure-2. Consequently, for removal of the encroachment from the land in question, a petition was submitted before respondent no.3, the Circle Officer, Makhadumpur on 29.08.2014, as contained in Annexure-1. Consequently, respondent no.3, the Circle Officer, Makhadumpur directed the Circle Amin to measure the land in question and thereafter, the Circle Amin submitted a report on 15.10.2016, as contained in Annexure-3 to the effect that the land in question has been encroached upon by private respondent nos. 7 to 12. Subsequently, the petitioner also filed an application before Sub-Divisional Public Grievance Redressal Officer, Jehanabad, under the Public



Grievance Redressal Act and the Sub-Divisional Public Grievance Redressal Officer, vide order dated 05.11.2016 directed respondent no.3, the Circle Officer, Makhadumpur to get the encroachment removed from the land in question, but the same has not been removed till date.

However, an encroachment proceeding, being Encroachment Case No. 02 of 2016-17 was initiated, wherein notices were issued to the encroachers, but they failed to submit any documentary proof in support of their claims. Ultimately, vide order dated 16.05.2017, respondent no.3, the Circle Officer, Makhadumpur came to a conclusive finding that private respondent nos. 7 to 12 have encroached upon the land in question and hence, directed for issuance of final notice for getting the encroachment removed, but till date neither notice under Section 6(2) of the Bihar Public Land Encroachment Act, 1956 (hereinafter referred to as 'the Act') has been issued, nor the encroachment has been removed from the land in question. Hence, the present writ application.

Learned AC to GP-15 submits that at present, she is not having any instruction whether the proceeding of Encroachment Case No. 02 of 2016-17 has been taken to its logical conclusion or not or whether the final order has been executed or not, but she



submits that if the same has not been executed till date, then the same will be executed within a time frame.

Having heard the learned counsels for the parties, it appears that basically the present writ application has been filed for a direction to comply the order passed under Section 6(1) of the Act by the Collector under the Act.

Section 6(2) of the Act prescribes the punishment if any person does not comply with the order passed by the Collector under the Act. Section 6(2) reads 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. 20,000/- or with both.”

Similarly, Section 7 of the Act provides the power of the Collector under the Act to get the encroachment removed and recover the cost of removal of encroachment from the encroachers, if any person fails to comply the order passed by the Collector under Section 6(1) of the Act. Section 7 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.”



There is nothing on record to suggest that the petitioner has submitted any application before respondent no.3, the Circle Officer, Makhadumpur for exercise of jurisdiction under Section 6(2) or Section 7 of the Act. It is true that it is not imperative on the part of the petitioner to file such application. Such power has to be exercised by the Collector under the Act in exercise of quasi judicial authority vested in his office.

In the circumstances, it is expected from respondent no.3, the Circle Officer, Makhadumpur to get the proceeding of Encroachment Case No. 02 of 2013-14 to reach its logical conclusion and to implement the final order passed under Section 6(1) of the Act within a period of two months from the date of receipt/production of a copy of this order, in view of the discussions made above.

Accordingly, the present writ application is disposed of.

(Dinesh Kumar Singh, J)

Amrendra/-

AFR/NAFR	
CAV DATE	
Uploading Date	16.04.2018
Transmission Date	

