

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.7007 of 2018

1. Sheo Shankar Prasad, Son of Late Nathuni Sao, Resident of Naya Bazar Road, P.S.-Lakhisarai, District-Lakhisarai.
2. Ravi Prasad Gupta, Son of late Nunu Lal Sao, Resident of Purani Bazar, Santar Mohalla, P.S. and District-Lakhisarai.
3. Md. Sattar Ansari, Son of Late Akbar Ali, Resident of Naya Bazar Road, P.S.-Lakhisarai, District-Lakhisarai.
4. Pramod Kumar Mandal, Son of Late harilal Mandal, Resident of Mohalla-Karpuri Kanan Chandni Chowk, Pachna Road, P.S. and District-Lakhisarai.
5. Ram Sewak Mandal, Son of Bodhan Mandal, Resident of Pachna Road, P.S. and District-Lakhisarai.
6. Rajesh Chandra Agrawal, Son of Late Hira Lal Agrawal, Resident of Brindaban Keul R.S., P.S. and District-Lakhisarai.

... .. Petitioners

Versus

1. The State of Bihar through Principal Secretary, Revenue and Land Reforms, Department, Bihar, Patna.
2. The District Magistrate, Lakhisarai.
3. The Circle Officer, Lakhisarai.
4. The Head Master, K.R.K. High School, Lakhisarai.

... .. Respondents

Appearance :

For the Petitioner/s : Mrs. Shilpi Keshri, Adv.
For the Respondent/s : Md. Khurshid Alam , AAG-12

CORAM: HONOURABLE MR. JUSTICE DINESH KUMAR SINGH
ORAL JUDGMENT

Date : 13-04-2018

Heard Mrs. Shilpi Keshri, learned counsel for the
petitioners and Mr. Arun Kumar Bhagat, learned AC to AAG-12
for the respondent-State.



The present writ application has been filed for quashing the order dated 15.03.2018/26.03.2018, passed in Encroachment Case No. 03 of 2017-18, by respondent no.3, the Circle Officer, Lakhisarai, as contained in Annexure-5(series), whereby the petitioners and others were directed to remove the encroachment within fifteen days from the land, appertaining to Thana No. 125/1, Khata No. 475, Plot no. 497, measuring an area of 70 decimals, Khata Nos. 477, 426 and 427, Plot Nos. 308, 344, 345 and 496, measuring an area of 6.1839 decimals and Khata No. 477, Plot No. 496, measuring an area of 43.14 decimals, situated in Mauza Mathar Khagaur, under the premises of K.R.K. High School, Lakhisarai, failing which, it has been directed that the encroachment will be removed by deployment of police force and cost of removal of such encroachment will be realized from the encroachers. Further prayer has been made for quashing the notice dated 31.03.2018, issued under the signature of respondent no.3, the Circle Officer, Lakhisarai, as contained in Annexure-5(series), whereby the petitioners have been directed to remove the encroachment from the land appertaining to Thana No. 125/1, Plot No. 497, situated in Mauza Mathar Khagaur, District Lakhisarai, within a period of two weeks, failing which the petitioners will be



liable to be prosecuted for being prosecuted under Section 188 of the IPC.

It is submitted by learned counsel for the petitioners that in pursuance to a complaint made by one Yugal Kishore Khetan, being the heirs of donee of the land in question to K.R.K. High School, Lakhisarai, The Lokayukta, Bihar, vide order dated 15.11.2017, as contained in Annexure-1, directed respondent no.3, the Circle Officer, Lakhisarai to initiate a proceeding under the Bihar Public Land Encroachment Act, 1956 (hereinafter referred to as 'the Act') for removal of the encroachment from the land in question and to conclude such proceeding within a period of six weeks. Consequently, the impugned order dated 15.03.2018/26.03.2018 have been passed.

It is further submitted that this is not in dispute that the petitioners were given the shop in question on rent by the School management and they are paying rent to the school regularly, hence they cannot be treated as encroachers. The enquiry report of the Circle Inspector and Halka Karamchari submitted in pursuance to the order of Circle Officer also suggests that the petitioners are in possession of the area under question under a valid tenancy. The school in question has also not denied the factum of tenancy of the petitioners. Hence, without considering all these facts, respondent



no.3, the Circle Officer, Lakhisarai passed the order. Moreover, the issue involving title and possession, cannot be resolved through a summary proceeding under the Act. The petitioners claim to be in possession of the shop in question since last several decades.

Learned AC to AAG-12 submits that admittedly, the final order has been passed. The petitioner was noticed under Section 3 in Form-II of the Act and thereafter, after passing final order under Section 6(1), notice under Section 6(2) in Form-II of the Act has been issued for removal of the encroachment from the land in question. Moreover, statutory remedy of appeal is available to the petitioners.

Considering the rival submissions of the parties, it is settled proposition of the law that for exercise of discretionary jurisdiction under Article 226 of the Constitution of India where there is efficacious alternative remedy. In the present case, the petitioners have statutory remedy of appeal under Section 11 of the Bihar Public Land Encroachment Act, 1956.

Hence, the present writ application is disposed of with liberty to the petitioners to prefer an appeal against the final order dated 15.03.2018/26.03.2018 passed by respondent no.3, the Circle Officer, Lakhisarai in Encroachment Case No. 03 of 2017-18, as contained in Annexure-5, along with a prayer to stay the



operation of the order passed by respondent no.3, the Circle Officer, Lakhisarai, within a period of three weeks from the date of receipt/production of a copy of this order.

It is made clear that this Court has not expressed any opinion on the merits of the case.

It is expected from the appellate authority to dispose of the said appeal preferably within a period of sixty days of its filing.

In the meantime, the operation of the order dated 15.03.2018/26.03.2018, passed in Encroachment Case No. 03 of 2017-18, by respondent no.3, the Circle Officer, Lakhisarai, as contained in Annexure-5, is stayed for a period of four weeks from today.

(Dinesh Kumar Singh, J)

Amrendra/-

AFR/NAFR	
CAV DATE	
Uploading Date	19.04.2018
Transmission Date	

