

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.3026 of 2016

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Rajendra Rai @ Bachchan Sadhu, Son of Late Sakaldeep Rai, Resident of
Village - Kathrai, Police Station - Kochas, District - Rohtas

... .. Petitioner

Versus

1. The State of Bihar, through Principal Secretary, Department of Land Reform,
Bihar, Patna
2. The District Magistrate, Rohtas
3. The Superintendent of Police, District - Rohtas
4. The Circle officer, Kochas, District - Rohtas
5. The Station House Officer, Parsathua, District - Rohtas
6. Sri Kishun Ram , Son of Late Shiv Bachan Ram
7. Mohan Ram, Son of Sri Kishun Ram
8. Sheshnath Ram, Son of Sri Kishun Ram
9. Santosh Ram, Son of Sri Kishun Ram
10. Bhuwan Ram, Son of Sri Kishun Ram
11. Gabbar Ram, Son of Sri Kishun Ram, Respondent No. 6 to 11 are Resident
of Village - Kathrai, Police Station - Kochas, District - Rohtas

... .. Respondents

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Appearance :

For the Petitioner/s	:	Mr. Shyam Bihari Singh, Adv. Mr. Yugal Kishore, Adv.
For the Respondent/s	:	Mr. Pramod Kr. Singh, AC to SC-16.

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CORAM: HONOURABLE MR. JUSTICE DINESH KUMAR SINGH
ORAL JUDGMENT

Date : 05-01-2018

Heard Mr. Shyam Bihari Singh, learned counsel for the
petitioner and Mr. Pramod Kumar Singh, learned AC to SC-16 for
the respondent-State.

In view of the nature of order this Court intends to pass, this
Court is not inclined to issue notice to private respondent nos. 6 to
11.

The present writ application has been filed for a direction to
the respondent authorities to get the encroachment removed from



the public land appertaining to Plot No. 1138, Khata No. 170, situated in Village Kathrai, P.S.- Kochas, District Rohtas.

It is submitted by learned counsel for the petitioner that the land in question is recorded in the Revenue Record as 'Sarva Sadharan Aam' land and the same is being used as pathway by the villagers including the petitioner, but private respondent nos. 6 to 11 had encroached upon the land in question by constructing boundary wall, as a result of which, common pathway has been obstructed. Over the land in question, there are several trees, which is important for the environment. The encroachment over the land in question was brought to the notice of the local Gram Kachahari and consequently, Sarpanch and other Panches tried to stop the unauthorized construction, but respondent nos. 6 to 11 did not remove the same. Thereafter, Sarpanch intimated about the same to the Senior Official vide letter dated 25.06.2015, as contained in Annexure-1. On the letter of Sarpanch dated 25.06.2015, respondent no.4, the Circle Officer, Kochas directed the Circle Inspector for spot verification and consequently, a report was submitted to the Circle Officer by the Circle Inspector on 13.07.2015, as contained in Annexure-2, whereby it was confirmed that the land in question has been encroached upon. On the basis of report dated 13.07.2015, respondent no.4, the Circle Officer,



Kochas vide Memo No. 485 dated 04.07.2015, as contained in Annexure-3, requested the SHO, Parsathuan for restraining the private respondent nos. 6 to 11 from making construction on the land in question, since there is proposal for construction of Angan Bari Centre on the land in question and when the local police station did not take action, the petitioner made an application before Dy. S.P., Sasaram, Rohtas for stopping the illegal construction, but he also slept over the matter. Hence, the present writ application.

A counter affidavit has been filed on behalf of respondent nos. 3 as well as respondent nos. 2 and 4 taking stand that encroachment proceeding under the Bihar Public Land Encroachment Act (hereinafter referred to as 'the Act') being Encroachment Case No. 01 of 2016-17 has been initiated, whereby, notices have been issued to respondent nos. 6 to 11.

Considering the rival submissions of the parties, this is not in dispute that the land in question is a public land and the encroachment proceeding has been initiated. One of the notices issued in Encroachment Case No. 01 of 2016-17, under the signature of respondent no.4, the Circle Officer, Kochas has been brought on record, as Annexure-C to the counter affidavit, whereby Rajendra Rai, Krishna Rai, Mohan Rai and Meghnath Rai



have been directed to remove the encroachment from the land in question by 22.06.2016, but the said notice does not stipulate, whether, the same has been issued under Section 3 in Form-I of the Act or Section 6(2) in Form-II of the Act, however, the purport of the notice reflects that notice has been issued under Section 6(2) of the Act, which suggests the mechanical manner in which the encroachment proceeding is being conducted.

This is high time that the District Magistrate should look into the whole affair and get acquainted with the manner in which the Circle Officer is conducting the proceeding under the Act. The notice brought on record and the statement made in the counter affidavit do not suggest that any final order has been passed under Section 6(1) of the Act.

For initiating a proceeding under the Act, it should appear to the Collector under the Act 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, the Collector may cause to be served upon such person a notice in the prescribed form requiring him to appear on a date which shall not be less than two weeks from the date of service of notice. Section 4 of the Act provides that any person on whom notice is served under Section 3 or 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. Section 5 provides that on the date specified in the notice served under Section 3, should be given opportunity of being heard. Thereafter, the final order is being passed under Section 6 (1) of the Act.

The document brought on record on behalf of official respondent does not reflect that the procedure, as stipulated in the Act, is being followed.

In the circumstances, respondent no.4, the Circle Officer, Kochas is directed to take the proceeding of Encroachment Case No. 01 of 2016-17 to its logical conclusion within a period of three months after giving due opportunity of hearing to all affected persons in accordance with the provisions of the Act.

Accordingly, the with the above observation and direction, the present writ application is disposed of.

(Dinesh Kumar Singh, J)

Amrendra/-

AFR/NAFR	
CAV DATE	
Uploading Date	09.01.2018
Transmission Date	

