

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.4417 of 2014

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Umesh Prasad Patel @ Umesh Patel, Son of Sri Birbahadur Patel, Resident Of
Village - Sonvarsha, Anchal and P.S.- Harsidhi, District - East Champaran

... .. Petitioner

Versus

1. The State of Bihar
2. District Magistrate, Motihari, East Champaran
3. Sub - Divisional Officer, Areraj, District - East Champaran
4. Anchala Adhikari, Harsidhi Anchal, District - East Champaran
5. Mohan Patel, Son of Ramdeo Patel
6. Asha Patel, Son of Ramdeo Patel
7. Sanjay Patel, Son of Asha Patel, All private respondent nos. 5 o 7 are Residents of Village - Sonvarsha, Anchal And P.S.- Harsidhi, District - East Champaran

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr. Umesh Chandra Verma
For the Respondent/s : Mr. Anil Kr Uapdhyay

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CORAM: HONOURABLE MR. JUSTICE DINESH KUMAR SINGH
ORAL JUDGMENT

Date : 29-01-2018

Heard Mrs. Rashmi Jha, learned counsel for the petitioner
and Mr. Kumar Kamal Nayan, learned AC to SC-28 for the
respondent-State.

Though, on the prayer of learned AC to SC-28, the matter
was adjourned vide order dated 27.07.2017 for filing counter
affidavit, but the same has not been filed as yet.

In view of the nature of order, this Court intends to pass, this
Court is not inclined either to adjourn the matter any further or to
issue notice to private respondent nos. 5 to 7.

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



land appertaining to Plot No. 1090, situated in Village Sonvarsha, Circle Harsidhi, District East Champaran, which is recorded in the Revenue Records as Gairmajarua Aam Rasta, but the same has been encroached upon by private respondent nos. 5 to 7 by constructing boundary wall.

It is submitted by learned counsel for the petitioner that the petitioner purchased 6 dhurs of land, appertaining to Khata No. 243, Plot no. 943, situated in Village Sonvarsha, Circle Harsidhi, District East Champaran, through registered sale deed dated 08.02.2010 from one Bishundeo Rai, over which the residential house of the petitioner is existing, which is south to the land in question. Private respondent nos. 5 to 7 have constructed the boundary wall on the land in question, as a result of which the ingress and egress of the petitioner on his residential house has completely been impeded.

On the application of the petitioner, submitted before Deputy Collector Land Reforms, Areraj, East Champaran, Land Dispute Resolution Case No. 17 of 2011-12 was registered. The petitioner also submitted an application before Grievance Cell of the Hon'ble the Chief Minister and the same was forwarded to the court of the Deputy Collector Land Reforms, Areraj, on the basis of which, Land Dispute Resolution Case No. 26 of 2011-12 was registered.



Subsequently, Deputy Collector Land Reforms, Areraj heard both the cases, being Land Dispute Resolution Case Nos. 17 and 26 of 2011-12, wherein, since the private respondent nos. 5 to 7 had not appeared, the Deputy Collector Land Reforms, Areraj, vide order dated 16.12.2011, as contained in Annexure-2, came to conclusive finding that the land appertaining to Khata No. 243, Plot no. 943, situated in Village Sonvarsha, Circle Harsidhi, District East Champaran, belongs to the petitioner, but the encroachment over the public land, appertaining to Plot No. 1090 has not been removed, though, the petitioner had also submitted an application for removal of encroachment from the public land in question on 18.08.2012 before respondent no.4, the Circle Officer, Harsidhi, as contained in Annexure-3. Hence, the present writ application.

Learned AC to SC-28 submits that at present, he is not having any instruction. So far as encroachment over the raiyati land of the petitioner, appertaining to Khata No. 243, Plot no. 943, situated in Village Sonvarsha, Circle Harsidhi, District East Champaran, is concerned, for that, the remedy of the petitioner lies under the provisions of Bihar Land Dispute Resolution Act, but so far as encroachment over public land in question is concerned, if the proceeding has already not been initiated under the provisions of Bihar Public Land Encroachment Act (hereinafter referred to as



‘the Act’), then the same will be initiated forthwith and will be taken to its logical conclusion within a time frame.

Having heard the learned counsels for the parties, so far as encroachment over public land appertaining to Plot No. 1090 is concerned, for initiating a proceeding under the Act, the precondition is provided under Section 3 of the Act that 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 public land has been encroached upon by any person.

In the present case, an application has been submitted before respondent no.4, the Circle Officer, Harsidhi for removal of encroachment, but there is nothing on record to suggest that any proceeding has been initiated for removal of the encroachment from the land in question.

In the circumstances, it is expected from respondent no.4, the Circle Officer, Harsidhi to examine the Revenue Record, and if need be, conduct spot verification, and if it appears to him that the land in question is a public land and the same has been encroached upon, then he will initiate a proceeding under the Act forthwith, if the same has already not been initiated, and take the same to its logical conclusion within a period of three months from its



initiation, after giving due opportunity of hearing to all affected persons, under the provisions of the Act.

It is made clear that this Court has not expressed any opinion with regard to encroachment over raiyati land of the petitioner appertaining to Khata No. 243, Plot no. 943, situated in Village Sonvarsha, Circle Harsidhi, District East Champaran, for which, the petitioner is at liberty to approach appropriate forum.

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

(Dinesh Kumar Singh, J)

Amrendra/-

AFR/NAFR	
CAV DATE	
Uploading Date	06.02.2018
Transmission Date	

