

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.5682 of 2016

1. Md. Hussain son of Late Sarfuddin Mina,
2. Ram Suresh Singh, son of Late Nagina Singh
3. Arjun Chaudhary, Son of Late Gariban Chaudhary,
4. Mahendra Yadav, Son of Late Nathun Yadav, All residents of Mohalla- Chawani, Ward No.- 10, Government of Bihar, Patna

... .. Petitioner/s

Versus

1. The State of Bihar through its Chief Secretary, Government of Bihar, Patna
2. The District Magistrate, Gaya
3. The Sub Divisional Officer, Tekari, District- Gaya
4. The Circle Officer, Tekari, District- Gaya
5. The Executive Officer, Tekari Municipality, Tekari, District- Gaya
6. Md. Shamim, Son of Md. Nazir,
7. Muneshwar Sharma, son of Late Harihar Sharma, Respondents No. 6 and 7 residents of Mohalla- Chawani, P.S.- Tekari, District- Gaya

... .. Respondent/s

Appearance :

For the Petitioner/s : Mr. Rajiv Nayan Singh
For the Respondent/s : Mr. Rajan, AC to G.A. 11

CORAM: HONOURABLE MR. JUSTICE DINESH KUMAR SINGH
ORAL ORDER

2 08-01-2018 Heard learned counsels for the parties.

Learned counsel for the petitioners is permitted to make necessary correction in the petition.

Since the writ application was registered on 28.3.2016 but no counter affidavit has been filed as yet and in view of the nature of order this Court intends to pass, this Court is neither inclined to adjourn the matter any further nor to issue notice to private respondent nos. 6 and 7.

The present writ application has been filed for a direction to the respondent nos. 2 to 5 to get the encroachment



removed from the public land/drainage appertaining to Khata No. 171, Plot No. 351 (new/4204(old), situated in Mauza Jainandan Bigha in the District of Gaya and the land situated in Ward No. 11 of Tekari Municipality.

It is submitted by learned counsel for the petitioners that the petitioners are marginal farmers and are having their respective residential houses in Mohalla Chawani, Ward No. 11 of Tekari Municipality, Tekari. The said public drainage situated on the public land in question drains out the sewage water as well as the rain water to the low lands which are utilized for irrigation purposes by the farmers. In the year 1967-68, few locals encroached the public drainage but the same was removed. In April, 2013, respondent no. 6 Md. Shamim made construction over the said public land adjacent to the house of petitioner no. 1. On protest being made, petitioner no. 1 was threatened. Thereafter, petitioner no. 1 made a complaint, as contained in Annexure 1 before the respondent no. 4, the Circle Officer, Tekari on 24.4.2013. On the application of petitioner no. 1, respondent no. 4, Circle Officer, Tekari directed the Revenue Karmchari to make enquiry by conducting spot inspection. Accordingly, the Revenue Karmchari conducted spot verification and found that the public land on which drainage



and the road are situated, have been encroached upon.

Hence, he suggested vide letter dated 4.6.2013, as contained in Annexure 2, for measurement of the said land for ascertaining the actual extent of encroachment. Subsequently, on the order of respondent no. 4, Circle Officer, Tekari, the Anchal Amin conducted measurement and found that respondent nos. 6 and 7 have encroached upon the public drain and as such, the respondent no. 4, the Circle Officer, Tekari submitted measurement report dated 5.8.2013, as contained in Annexure 3. It is further submitted that the measurement report of Anchal Amin reflects that respondent no. 6 made an encroachment of 375 sq.ft. and respondent no. 7 has made an encroachment of 36 sq.ft.

Consequently, a proceeding under the Bihar Public Land Encroachment Act was initiated through Encroachment Case No. 2 of 2013. Consequently, after passing the final order, private respondent nos. 6 and 7 were directed to remove the encroachment by 10.6.2014 vide notice dated 29.5.2014 failing which the encroachment was directed to be removed by 17.6.2014 with the aid of police force and cost of removal of encroachment will be realized from the encroachers. Similar notice was sent by the respondent no. 4 on 29.11.2014 as



contained in Annexure 5 to remove the encroachment by 16.12.2014 and lastly vide notices dated 24.2.2015 and 25.3.2015, as contained in Annexure 6 series, to remove the encroachment by 5.5.2015 failing which the encroachment will be forcibly removed and cost thereof shall be realized from the encroacher but till date the encroachment has not been removed. Hence, the present writ application.

AC to G.A. 11 submits that at present he is not having any instruction whether the encroachment has been removed or not but, he submits that if the same has not been removed, it will be removed within a time frame.

Considering the rival submissions of the parties, this Court is of the view that for removal of encroachment from a public land/road or drainage, a proceeding can be initiated by the Collector under the Act under the Bihar Public land Encroachment Act (hereinafter referred to as the 'Act'), if it appears to the Collector under the Act from an application made by any person or upon the information received from any source that any person has made or is responsible for the continuation of encroachment upon any public land.

No doubt, after report of the Revenue Karmchhari and the measurement report submitted by the Anchal Amin, the



Circle Officer came to a prima facie finding that the public drainage has been encroached upon and initiated a proceeding being Encroachment Case No. 2 of 2013 but there is nothing on record to suggest that final order under section 6(1) of the Act was passed. However, the purport of the notices as contained in Annexures 4 and 5, is that the same have been issued under section 6(2) of the Act but they are not in Form II nor they bear any encroachment case number, though the notice as contained in Annexure 6 bear encroachment case number but this also does not reflect, as to when was the final order was passed.

The parameters for initiation of proceeding and conclusion of the encroachment proceeding or its implementation has been incorporated in Sections 3 to 7 of the Act. Section 3 of the Act prescribes the procedure for initiation of proceeding and issuance of notice to encroacher requiring him to appear on a date which shall not be less than two weeks from the date of service of notice to show cause whereas Section 4 of the Act prescribes the procedure for allowing the persons so noticed under Section 3 of the Act to put their defence and Section 6 of the Act provides for giving opportunity of hearing to all affected persons. The Circle Officer is supposed to pass final order under Section 6(1) of the Act and Section



6(2) of the Act prescribes for punishing any person who fails to comply the order under section 6(1) and imposition of fine up to Rupees Twenty Thousand. However, Section 7 of the Act gives power to the Collector, in the circumstances when any person fails to comply the order passed by the Collector under Section 6 of the Act.

In view of this Court, if the manner for conducting a proceeding is prescribed under the Act, the Circle Officer is supposed to strictly follow the procedure prescribed under the Act. Accordingly, respondent no. 4, Circle Officer, Tekari is directed to take the proceeding of Encroachment Case No. 2 of 2013 to its logical conclusion as per the procedure prescribed under the Act as discussed above within a period of three months after giving due notice to all affected persons including respondent nos. 6 and 7.

This writ application is, accordingly, disposed of.

(Dinesh Kumar Singh, J)

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