

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.8397 of 2018

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Manoj Kumar Sharma, Son of Sri Arjun Sharma, Resident of Village- Pachna Road, Naya Bazar, Ward No. 16, P.S. and District- Lakhisarai Cum Secretary Dream land Party & Club(D.L.P. & Club), Lakhisarai.

... .. Petitioner

Versus

1. The State of Bihar through the Secretary, Education Department, Government of Bihar, Patna.
2. The Collector, Lakhisarai.
3. The Officer on Special Duty, District Confidential Section, Lakhisarai.
4. The District Education Officer, Lakhisarai.
5. The Circle Officer, Lakhisarai.
6. The Head Master, K.R.K. High School, Lakhisarai.

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr. Mukesh Kumar
For the Respondent/s : Mr. Jitendra Kr. Roy No. 1, SC-13

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CORAM: HONOURABLE MR. JUSTICE DINESH KUMAR SINGH
ORAL JUDGMENT

Date : 15-05-2018

Heard Mr. Mukesh Kumar, learned counsel for the petitioner and Mr. Vijay Bhushan Prasad, learned AC to SC-13.

The present writ application has been filed for quashing the notice dated 30.03.2018 and order dated 15.03.2018/26.03.2018, passed in Encroachment Case No. 03 of 2017-18, by Respondent no.5, the Circle Officer, Lakhisarai, as contained in Annexure-3(series), whereby the petitioner has been directed to remove the encroachment within fifteen days from the land appertaining to Thana No. 125/1, Plot Nos. 308, measuring an area of 1 decimal, situated in Mauza Mathar Khagaur, District 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 shall 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.5, the Circle Officer, Lakhisarai, as contained in Annexure-4, whereby the petitioner has been directed to remove the encroachment from the land appertaining to Thana No. 125/1, Plot No. 308, situated in Mauza Mathar Khagaur, District Lakhisarai, within a period of two weeks, failing which the petitioner will be liable 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 heir 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.4, 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 months. Consequently, Encroachment Case No. 03 of 2017-18 was initiated and admittedly final order was passed on 15.03.2018.



It is further submitted that in fact the impugned orders were passed on the dictates of learned Lokayukta. The order of learned Lokayukta virtually pre-empts the ultimate order which ought to have been passed by the Circle Officer. This is not in dispute that the petitioner was 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 petitioner is 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.5, 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 SC-13 submits that admittedly, the final order has been passed. The petitioner was noticed under Section 3 in Form-I 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 the exercise of discretionary jurisdiction under Article 226 of the Constitution of India is subject to self-imposed restraint, in cases where there is availability of efficacious alternative remedy. In the present case, the petitioner has the 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 petitioner to prefer an appeal against the final order dated 15.03.2018/26.03.2018 passed by Respondent no.5, the Circle Officer, Lakhisarai in Encroachment Case No. 03 of 2017-18, as contained in Annexure-3(series), along with a prayer to stay the operation of the order passed by Respondent no.5, 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.5, the Circle Officer, Lakhisarai, as contained in Annexure-3(series), is stayed for a period of four weeks from today.

(Dinesh Kumar Singh, J)

Amrendra/-

AFR/NAFR	
CAV DATE	
Uploading Date	
Transmission Date	

