

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.12228 of 2016

Priya Ranjan Kumar, Son of Shri Ram Lakhan Thakur, Resident of Village -
Madhubani, Police Station - Sangrampur, District - East Champaran

... .. Petitioner

Versus

1. The State of Bihar, through the Chief Secretary Government of Bihar, Patna
2. The District Magistrate, East Champaran at Motihari
3. The Superintendent of Police, East Champaran at Motihari
4. The Sub - Divisional Magistrate, Areraj, East Champaran
5. The Officer - In - Charge, Sangrampur Police Station, East Champaran
6. The Anchal Adhikari, Sangrampur Anchal, District East Champaran
7. Rabindra Hazara, Son of Late Bhuteli Hazara
8. Lal Babu Hazara, Son of Rabindra Hazara
9. Ramayan Hazara, Son of Rabindra Hazara
10. Sukhal Raut, Son of Late Mahabir Raut
11. Pundeo Raut, Son of Sukhal Raut
12. Sudeesh Raut, Son of Sukhal Raut
13. Kumud Raut, Son of Sukhal Raut

All are resident of Village - Madhubani, Police Station, Sangrampur, District -
East Champaran

... .. Respondent/s

Appearance :

For the Petitioner/s : Mr. Sanjay Kumar No.-7, Adv.
For the Respondent/s : Smt. Kumari Amrita, GP-3

CORAM: HONOURABLE MR. JUSTICE DINESH KUMAR SINGH
ORAL ORDER

2 30-01-2018 Heard learned Counsels appearing on behalf of the
petitioner and for the respondent-State.

Though the Writ application was registered on 29.07.2016,
no counter affidavit has been filed on behalf of the respondent-
State and the nature of order this Court intends to pass, does not
require issuance of notice to the private respondent nos.7 to 13.
Hence, without adjourning the matter any further, the matter is
being disposed of at this stage itself.



The present Writ application has been filed for a direction to respondent nos. 1 to 6 to get the encroachment removed made by respondent nos. 7 to 13 from the public land/road appertaining to Khata No. 1495, Plot No. 2299, situated in Village - Madhubani, Police Station -Sangrampur, District-East Champaran. As a result, the ingress and egress of the petitioner, as well as that of the villagers at large has been substantially obstructed.

It is submitted by learned Counsel appearing on behalf of the petitioner that petitioner's raiyati land appertaining to Khata No. 772, Plot No.2326 is situated in the Village-Madhubani and the petitioner used to reach his raiyati land through the 'Aam Rasta', which is the public road in question, but the same has been encroached upon by respondent nos. 7 to 13, as a result of which, the egress and ingress of the petitioner has been obstructed. The petitioner submitted an application before respondent no.6, the Circle Officer, Sangrampur, on 01.02.2016, as contained in Annexure-1, for initiating encroachment proceeding for getting the encroachment removed from the public road/land in question. Consequently, Encroachment Case No. 01 of 2011 was initiated by respondent no.6. Thereafter, the respondent no.6, the Circle Officer, Sangrampur directed the



Circle Amin and the Karamchari for enquiry and measurement of the land in question. In pursuance to the same, the Circle Amin submitted the report dated 17.06.2011, as contained in Annexure-2, to the effect that in the western side of the petitioner's Plot No. 2326, there is Plot No.22, which is 'Gair Majarua Aam Rasta' and the same has been encroached upon by respondent nos. 7, Ravindra Hajara and respondent no.10, Sukhal Raut. Though the report reflects that only respondent nos. 7 and 10 have made the encroachment, but in fact respondent nos. 8 and 9, the sons of respondent no. 7, whereas, respondent nos.11,12 and 13, the sons of respondent no.10 have also made encroachment. Hence, they have been impleaded as party respondent. Consequently, vide order dated 04.07.2011, the Circle Officer issued a notice to the encroachers and adjourned the matter to 20.07.2011, as contained in Annexure-5. However, the order dated 20.07.2011 further reflects that notice in Form-II under Section 6(2) of the Bihar Public Land Encroachment Act, 1956 (hereinafter referred to as the 'Act') has been issued and it has been validly served, but in spite of that nobody had appeared to file show cause, nor anyone appeared to make an objection. Hence, the Circle Officer vide order dated 27.12.2012 directed for transmitting a request to the



Sub-Divisional Officer, Areraj with regard to deployment of Magistrate and police force for removal of encroachment from the land in question. But the Magistrate and the police force were not deployed, as a result vide order dated 04.07.2014, the Circle Officer further directed to transmit request to the Sub-Divisional Officer, for deployment of Magistrate and police force. But the police force was not deployed, hence, the encroachment could not be removed from the land in question. Hence the present Writ application.

Learned GP-3 submits that at present, he is not having any instruction whether the encroachment has been removed or not, but if it has not been removed or the order passed in Encroachment Case No. 01 of 2011 has not been executed, the same will be executed and encroachment will be removed within a time frame.

Having heard learned Counsels for the parties, this Court is really dismayed to find that the citizens of the State have to seek remedy under Article 226 of the Constitution of India for execution of the order passed by the Circle Officer under the provisions of the Act.

There are two provisions under the Act, which are prescribed for implementation or execution of the final order



and action being taken in case of non-compliance of the final order. Those provisions are Section 6(2) and 7 of the Act, which read as under :-

“6(2) If any person does not comply with the orders passed by the Collector under this Section, he shall be punishable with imprisonment for a term which may extend to one year or with fine up to Rs.20000/- or with both.

(7) Power of the Collector to get encroachment removed and recover cost of the removal.-If any person fails to comply with the orders passed by the Collector under Section 6 directing the removal of any encroachment by the date fixed, the Collector shall cause the encroachment to be removed in such manner as he deems fit and the cost of such removal shall be recovered from such person.”

Section 6(2) of the Act clearly envisages that if any person does not comply with the orders passed by the Collector under the Act, he shall be punished with imprisonment for a term which may extend to one year or with fine up to Rs.20,000/- or with both, whereas, Section 7 of the Act prescribes the power of the Collector under the Act to get the encroachment removed and to recover the cost of removal of encroachment.

The document brought on record by the petitioner including the various orders passed by respondent no.6, in



Encroachment Case No. 1 of 2011 does not suggest that respondent no.6 resorted to exercise the jurisdiction as incorporated and quoted above.

In the circumstances, respondent no.6, the Circle Officer, Sangrampur, is directed to take the proceeding of Encroachment Case No. 1 of 2011 to its logical conclusion under the provisions of the Act within a period of three months after giving due notice to all the affected persons including respondent nos. 7 to 13.

Accordingly, the Writ application is disposed of with the direction and observation aforementioned.

(Dinesh Kumar Singh, J)

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