

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.4753 of 2016

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Shiv Shankar Singh, Son of Late Rajju Singh, Resident of Village- Bharwari,
P.S.- Hayaghat, District- Darbhanga.

... .. Petitioner

Versus

1. The State of Bihar through the Chief Secretary, Govt. of Bihar, Patna.
2. The Principal Secretary, Home Department, Govt. of Bihar, Patna.
3. The District Magistrate, Darbhanga.
4. The Superintendent of Police, Darbhanga.
5. The Sub-Divisional Officer, Darbhanga Sadar, Darbhanga.
6. The Circle Officer, Baheri, District- Darbhanga.
7. The Officer-Incharge, Hayaghat Police Station, District- Darbhanga.
8. Lakhan Paswan, Son of Saltan Paswan, Resident of Village- Bharwari, P.S.- Hayaghat, District- Darbhanga.

... .. Respondents

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Appearance :

For the Petitioner/s	:	Mr. Abhay Shankar Singh, Adv. Mr. Amit Kumar Mishra, Adv.
For the Respondent/s	:	Mr.

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CORAM: HONOURABLE MR. JUSTICE DINESH KUMAR SINGH
ORAL JUDGMENT

Date : 05-01-2018

Heard Mr. Abhay Shankar Singh, learned counsel for the petitioner. However, non appears on behalf of respondent nos. 1 to 7.

In view of the nature of order this Court intends to pass, this Court is not inclined to issue notice to private respondent no.8.

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 Thana No. 66, Old Plot No. 770, New Plot No. 960, situated in Mauza Bharwari, Circle Baheri, District Darbhanga.



It is submitted by learned counsel for the petitioner that the land in question is recorded in the revenue records as 'Gairmajarua Aam Land' and the same is being used as a public road. The land in question also connects two villages and adjacent to the public land, the petitioner's residential land, appertaining to Old Plot No. 768, is situated and due to encroachment on the land in question, the ingress and egress of the petitioner have also been obstructed. For removal of the encroachment from the land in question, the petitioner and other co-villagers filed a public petition before respondent no.6, the Circle Officer, Baheri, on 10.09.2014, as contained in Annexure-1. Thereafter, a public petition was filed before the Public Grievance Officer, Darbhanga and consequently, a report was submitted by the Revenue Karamchari before respondent no.6, the Circle Officer, Baheri on 11.10.2014, as contained in Annexure-2, stipulating therein that the hutment was constructed by private respondent no. 8. Thereafter, the Circle Amin measured the land in question and submitted a report on 22.11.2014 with trace map of the road and adjacent plots before the Circle Officer, as contained in Annexure-3. Consequently, the encroachment proceeding was initiated vide Encroachment Case No. 04 of 2014-15 on the application of the petitioner submitted on 10.09.2014. Thereafter, after getting the measurement done and



making spot verification, respondent no.6, the Circle Officer, Baheri, vide order dated 27.12.2015, found that the land in question is a public land/road, which has been encroached upon by private respondent no.8, the same has been brought on record as Annexure-4 (series), but till date the encroachment has not been removed. Hence, the present writ application.

Though, none is appearing on behalf of official respondents, but a counter affidavit filed on behalf of respondent nos. 3, 5 and 6, is on record which suggests that in pursuance to application submitted by the petitioner, a proceeding under the Bihar Public Land Encroachment Act (hereinafter referred to as the Act) being Encroachment Case No. 04 of 2014-15 was initiated and thereafter report from Circle Amin was called for and after proper enquiry, final order in encroachment proceeding was passed and thereafter, SDM, Sadar has been requested, vide letter no. 138 dated 14.02.2017, as contained in Annexure-A to the counter affidavit, to provide Magistrate and police force for removal of the encroachment from the land in question, hence, the efforts were made for removal of encroachment.

Having heard learned counsel for the petitioner and perusing the materials on record, this Court finds that respondent no.6, the Circle Officer, Baheri has failed to perform his quasi judicial



function, as prescribed under the Act. It appears that the final order in the encroachment proceeding was passed on 27.12.2015, and since last two years, the said order has not been implemented/executed.

There is specific provision under Section 6(2) of the Act which prescribed the punishment/penalty if any person does not comply the final order passed by the Collector under the Act. Section 6(2) reads as follows:-

“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 extent to one year or with fine up to Rs. 20,000/- or with both.”

Further Section 7 of the Act provides the power of the Collector under the Act to get the encroachment removed and recover the cost of the removal. Section 7 reads as follows:-

“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.”

From perusal of the counter affidavit filed on behalf of respondent nos. 3, 5 and 7, it does not appear that the Circle Officer has resorted to exercise of power either under Section 6(2) or Section 7 of the Act, obviously for two reasons, i.e., either he is



not aware about the provisions of the Act and exercising quasi judicial function, or he deliberately chose not to exercise the jurisdiction, but on both counts, the inaction of the Circle Officer, who is the Collector under the Act, appears on the face of it.

In the circumstances, the District Magistrate is directed to look into the entire matter and to ensure that respondent no.6, the Circle Officer, Baheri takes the proceeding of Encroachment Case No. 04 of 2014-15 to its logical conclusion after giving due notice to all affected persons in accordance with the provisions of the Act within a period of two months from the date of receipt/production of a copy of this order.

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

(Dinesh Kumar Singh, J)

Amrendra/-

AFR/NAFR	
CAV DATE	
Uploading Date	
Transmission Date	

