

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.16593 of 2016

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Ramdeo Yadav, S/o- Late Surat Yadav, R/o- Village-Bagaul, P.S.-Babu Barhi,
District-Madhubani

... .. Petitioner/s

Versus

1. The State of Bihar through the District Magistrate, Madhubani
2. The District Magistrate, Madhubani
3. The Sub Divisional Officer, Sadar Madhubani
4. The Circle Officer, Babu Barhi, District Madhubani
5. Jagdish Yadav
6. Basudeo Yadav
7. Sukdeo Yadav
8. Sahdeo Yadav, All Sons of late Rameshwar Yadav, R/o- Village-Panchruki,
Tole-Baganl, P.S.- Basubarhi, District-Madhubani

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr. Suraj Narain Yadav
For the Respondent/s : Mr. Subhash Chandra Yadav, GP-15

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CORAM: HONOURABLE MR. JUSTICE DINESH KUMAR SINGH
ORAL JUDGMENT

Date : 24-04-2018

Heard Mr. Suraj Narain Yadav, learned counsel for the
petitioner and Mr. Sangmitra Ghosh, learned AC to GP-15 for the
respondent-State.

Though, the present writ application was registered on
29.09.2016, but till date no counter affidavit has been filed, hence,
in view of nature of order this Court intends to pass, this Court is
neither inclined to adjourn the matter any further nor inclined to
issue notice to private respondent nos. 5 to 8.

The present writ application has been filed with a prayer
for a direction to the respondent authorities to get the
encroachment removed from the public land/road, appertaining to



Thana No. 184, Plot No. 2478, situated in Village Bagaul, Circle Babu Barhi, District Madhubani, as the same has been encroached upon by private respondent nos. 5 to 8.

It is submitted by learned counsel for the petitioner that the land in question is recorded in the Khatiyani as public road, which runs from Khoir Durga Asthan to Rampur Chauk, passing through Begaul Village. Adjacent to the public road in question, houses of private respondent nos. 5 to 8 are situated over the land appertaining to Plot Nos. 1866, 1860, 1862, 1863 and 1864, and they have also encroached upon the public road in question.

On an application made by the petitioner with regard to the removal of encroachment from the land in question, Encroachment Case No. 15 of 2013 was registered, wherein respondent no.4, the Circle Officer, Babu Barhi, vide order 05.09.2013, as contained in Annexure-3, called for the measurement report from the Circle Amin. Subsequently, Circle Amin, after having measured the land in question submitted the report on 03.09.2013, as contained in Annexure-2, suggesting therein that private respondent nos. 5 to 8 have encroached upon the land in question. Subsequently, vide order dated 09.09.2013, passed in Encroachment Case No. 15 of 2013, notices were issued to private respondent nos. 5 to 8 and they were directed to appear



on 24.10.2013 for putting their defence with regard to the said encroachment. Thereafter, respondent no.4, the Circle Officer, Babu Barhi passed the final order on 24.10.2013 for removal of encroachment from the land in question, but till date, encroachment has not been removed, however, final order has not been brought on record. The order of respondent no.4, the Circle Officer, Babu Barhi, issued vide Memo No. 981, dated 09.09.2014, as contained in Annexure-5, suggests that during proceeding of Encroachment Case No. 15 of 2013, it was found that the land appertaining to Thana No. 184, Khata No. 613, Plot No. 2039, is recorded in the Revenue Record as 'Kaisar-e-Hind', which has been encroached upon by private respondent nos. 5 to 8, hence, the Circle Inspector was deputed as Executive Magistrate for getting the encroachment removed on 19.04.2014, but even then the encroachment has not been removed from the land in question. Hence, the present writ application.

Mrs. Sangmitra Ghosh, learned AC to G.P.-15 submits that at present, she is not having any instruction whether the final order, if passed, in Encroachment Case No. 15 of 2013, has been executed/implemented or not.

Considering the rival submissions of the parties, though, prayer has been made for a direction to the respondent authorities,



to get the encroachment removed from the land in question, but the pleading of the petitioner suggests that he is more concerned with the execution of the final order passed in Encroachment Case No. 15 of 2013.

Since the petitioner has not brought on record the final order passed in Encroachment Case No. 15 of 2013, this Court is not in a position to give any positive direction for execution of the same. However, as per the provision under Section 6(2) of the Bihar Public Land Encroachment Act, 1956 (hereinafter referred to as 'the Act') which mandates that if any person does not comply with the orders passed by the Collector under the Act, he shall be punishable with imprisonment for a term which may extend to one year or with fine up to Rs. 20,000/- or with both. 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 extend to one year or with fine up to Rs. 20,000/- or with both.”

Accordingly, Section 7 of the Act provides the power to the Collector under the Act to get the encroachment removed and to recover 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.”

In the circumstances, the writ application is disposed of with liberty to the petitioner to file an application before the authorities for implementation/execution of order passed under Section 6(1) of the Act, in Encroachment Case No. 15 of 2013, within a period of three weeks from the date of receipt/production of a copy of this order. On filing of such application, if final order has been passed in Encroachment Case No. 15 of 2013, it is expected from respondent no.4, the Circle Officer, Babu Barhi to implement the same, if the same has not been either stayed or quashed by any Superior Court.

(Dinesh Kumar Singh, J)

Amrendra/-

AFR/NAFR	
CAV DATE	
Uploading Date	27/04/2018
Transmission Date	

