

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.15300 of 2017

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Pankaj Kumar Singh Son of Chitranjan Singh, Resident of Village- Chamtha,
Police Station- Bachhwara, District- Begusarai.

.... Petitioner/s

Versus

1. The State of Bihar through the District Magistrate, Begusarai.
2. The Deputy Collector Land Reforms, Teghra, Begusarai.
3. The Sub Divisional Officer, Teghra, Begusarai.
4. The Circle Officer, Bachhwara, Begusarai.

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Gajendra Kumar Singh, Adv.
For the Respondent/s : Mr. Rishi Raj Sinha –SC 19

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CORAM: HONOURABLE MR. JUSTICE SANJAY KUMAR

ORAL JUDGMENT

Date: 14-03-2018

This application has been filed for setting aside the notices dated 05.08.2017 and 01.09.2017 issued by the Circle Officer, Bachhwara against the father of the petitioner whereby and whereunder the father of the petitioner was directed to appear in his office on 27th July 2017 at 11:00 A.M. and also on 19th September 2017 at 10:30 A.M. to show cause as to why the encroachment made by him over 200 Sq.ft. of plot no.1831 of village Chumtha, Thana 63, Police Station-Bachhwara, District-Begusarai, be not removed under the provision of Bihar Public Land Encroachment Act, 1956.

2. Heard learned counsels for the petitioner, learned Standing Counsel for the State and learned counsel for the intervenor-petitioner of I.A. No. 1032 of 2018.



3. It has been submitted that the petitioner is a Raiyat of plot no. 1831 over which, he after constructing the house is residing with his family members. The ancestor of the petitioner and some of his villagers had executed two registered deed of gift in the year 1925 and 1962 for construction of a school in the village. As per the aforesaid deed of gift the land measuring 2 bigha 18 Katha 18 dhurki was donated and a school building was constructed over some of the portion of gifted land and some portion was kept open for the use of student of the school. In the year 2009, a Tower of Uninor Company was constructed in northern side of the school land. After installation of tower, the villagers started protesting and several applications were also filed before different forums. A complaint was filed by one Santosh Kumar before the Lokayukt, Bihar vide Lokayukt (Education) Case No. 237 of 2010 and the Lokayukt after hearing both the parties, came to the conclusion that tower has been erected over the land of school. The Lokayukt accordingly directed for taking step for removal of mobile tower from the school premises. The Circle Officer initiated proceeding and after due measurement, came to the conclusion that an area measuring 200 sq.ft. of plot as stated above has been encroached by the father of this petitioner and as per impugned notices dated 05.08.2017 and 01.09.2017, directed the father of this petitioner to appear before the Collector-cum-Circle



Officer, Bachhwara to show cause as to why encroachment be not removed.

4. Learned counsel for the petitioner submitted that the present notices have been issued without giving any opportunity to the petitioner or his father to get the land measured. The S.D.O. along with several Amins visited over the land in question on 17.07.2017 for measurement where the petitioner's family raised protest. It has been further submitted that the petitioner was neither informed nor any measurement was done and so the notices issued against the father of the petitioner are not sustainable and are fit to be set aside.

5. Learned counsel for the respondent on the other hand submitted that this petitioner or his ancestor had or has no concern with the land donated to the school. An encroachment case bearing No. 1/1997-98 was initiated against the ancestor of this petitioner. The petitioner has not produced a single chit of paper in support of his claim and title over the land in question. The petitioner has filed a title suit bearing No. 100 of 2017 before the Sub-Judge, Bachhwara which is pending for disposal. The petitioner and his father, instead of filing show cause before the Collector-cum-Circle Officer in compliance of notices issued against him, has filed this writ application and also a title suit which is not legally maintainable.

6. On perusal of documents on record I find that the



matter relating to removal of encroachment has been initiated on the application of one Santosh Kumar filed before the Lokayukt vide Lokayukt (Education) Case No. 237 of 2010. The notices were issued against the father of this petitioner who has not assailed the said notice. From the documents it further appears that neither the petitioner nor his father instead of several opportunity produced any paper in support of their claim. The father of the petitioner was directed to appear before the Collector-cum-Circle Officer on several occasions by notices annexed to this application, but instead of appearing and filing show cause, he has filed this writ application. A title suit bearing No. 100 of 2017 for the same relief is also pending before the Civil Court. The Circle Officer on the basis of report of Amin, has held that the father of the petitioner is responsible for continuance of the encroachment over the land of the school. The petitioner has already approached different forum. The impugned notices have been issued under the provision of section 3 of the Encroachment Act and so and the petitioner/his father is bound to obey the notice and submit show cause in compliance of the aforesaid notices.

7. In view of above facts, I do not find any merit in this application requiring any interference under inherent power under Article 226 of the Constitution of India. This application is devoid of



merit and is accordingly dismissed. The petitioner is directed to appear before the Collector-cum-Circle Officer, Bachhwara and submit show cause in compliance of notices issued for removal of encroachment where the concerned authority after hearing would pass order in accordance with law on its own merit.

(Sanjay Kumar, J)

Mahesh/-

AFR/NAFR	NAFR
CAV DATE	N/A
Uploading Date	20.03.2018
Transmission Date	

