

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.7257 of 2018

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1. Anil Kumar, Son of Late Arjun Prasad, Resident of Naya Bazar Kaibaya Road, P.S.- Lakhisarai, District- Lakhisarai.
 2. Shambhu Kumar, Son of Late Sargun Sao, Resident of Naya Bazar, P.S and District- Lakhisarai.
 3. Md. Iftekhar Ahmad, Son of Late Rahmat Ali, Resident of Naya Bazar, Panjabi Mohalla- P.S. and District- Lakhisarai.
 4. Abhishek Kumar, Son of Paras Nath Arya, resident of Mohalla- Pachna Road, P.S. and District- Lakhisarai.
 5. Md. Sagir Ansari, Son of Aabbas Ansari, resident of Naya Bazar, Pachna Road, P.S. and District- Lakhisarai.
 6. Sajjan Kumar Droliya, Son of Late Shayam Sunder Droliya, resident of Naya Bazar Dalpatti, P.S. and District- Lakhisarai.
 7. Roshan Ara, Wife of Late Moin Ansari, Resident of Purani Bazar, Bari Dargah, P.S. and District- Lakhisarai.
 8. Hena Kaushar, Wife of Late Mashid, Resident of Mohalla- Purani Bazar Bari Dargah, P.S. and District- Lakhisarai.

... .. Petitioner/s

Versus

1. The State of Bihar through Principal Secretary Revenue and Land Reforms Department Bihar, Patna.
2. The District Magistrate, Lakhisarai.
3. The Circle Officer Lakhisarai.
4. The Head Master K.R.K High School, Lakhisarai.

... .. Respondent/s

Appearance :

For the Petitioner/s : Mr. Shilpi Keshri, Adv.
For the Respondent/s : Mr. Fakhruddin Ali Ahman, AC to AAG-12

CORAM: HONOURABLE MR. JUSTICE DINESH KUMAR SINGH
ORAL JUDGMENT

Date : 23-04-2018

Heard Mrs. Shilpi Keshri, learned counsel for the petitioners and Mr. Fakhruddin Ali Ahmad, learned AC to AAG-12 for the respondent-State.

In view of the nature of order this Court intends to pass, this Court neither inclined to adjourned the matter any further, nor inclined to issue notice to private respondent no.4.

The present writ application has been filed for quashing



the order dated 15.03.2018/26.03.2018, passed in Encroachment Case No. 03 of 2017-18, by respondent no.3, the Circle Officer, Lakhisarai, as contained in Annexure-5(series), whereby 67 persons, including the petitioners, were directed to remove the encroachment within fifteen days from the land, appertaining to Thana No. 125/1, Khata No. 475, Plot no. 497, measuring an area of 70 decimals, Khata Nos. 477, 426 and 427, Plot Nos. 308, 344, 345 and 496, measuring an area of 6.1839 decimals and Khata No. 477, Plot No. 496, measuring an area of 43.14 decimals, situated in Mauza Mathar Khagaur, under the premises of K.R.K. High School, 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 will 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.3, the Circle Officer, Lakhisarai, as contained in Annexure-5(series), whereby, the petitioners have been directed to remove the encroachment from the land appertaining to Thana No. 125/1, Plot No. 497, situated in Mauza Mathar Khagaur, District Lakhisarai, within a period of two weeks, failing which, the petitioners will be liable to be prosecuted for the offences punishable 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 heirs 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.3, 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 weeks. Consequently, the impugned order dated 15.03.2018/26.03.2018 have been passed.

It is further submitted that this is not in dispute that the petitioners were given the shop in question on rent by the School management and they have been 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 petitioners are in possession of the area under question under a valid tenancy. The school management has also not denied the factum of tenancy of the petitioners. Hence, without considering all these facts,



respondent no.3, 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 AAG-12 submits that admittedly, the final order has been passed. The petitioner was noticed under Section 3 in Form-II 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 and above all the petitioners have the statutory remedy of appeal under Section 11 of the Act.

Considering the rival submissions of the parties, in exercise of discretionary jurisdiction conferred under Article 226 of the Constitution of India, where there is availability of efficacious alternative remedy, this Court cannot in ordinary circumstances exercise discretionary jurisdiction. In the present case, the petitioners are having 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 petitioners to prefer an appeal against the final order dated 15.03.2018/26.03.2018, passed by respondent no. 3,



the Circle Officer, Lakhisarai in Encroachment Case No. 03 of 2017-18, as contained in Annexure-5, along with a prayer to stay the operation of the order passed by respondent no.3, 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.3, the Circle Officer, Lakhisarai, as contained in Annexure-5 series, so far as it relates to the petitioners, is stayed for a period of four weeks from today.

With the above direction, the writ petition is disposed of

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(Dinesh Kumar Singh, J)

Ashwini/-

AFR/NAFR	NAFR
CAV DATE	N.A.
Uploading Date	25.04.18
Transmission Date	N.A.

