

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.11643 of 2013

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Sukhdeo Singh Son Of Late Laxmi Singh Resident Of Village - Pawai, P.S.
Surajgada, District - Lakhisarai

... .. Petitioner/s

Versus

1. The State Of Bihar through the District Magistrate, Lakhisarai
2. The Collector - Cum - District Magistrate, Lakhisarai
3. The Divisional Officer, Lakhisarai
4. The Sub Divisional Magistrate, Lakhisarai
5. The Circle Officer, Pipra, P.S. Pipra, District - Lakhisarai
6. Amin Singh Son Of Late Doman Singh Resident Of Village - Pawai, P.S.
Surajgada, District - Lakhisarai

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr.Prabhat Kumar
For the Respondent/s : Mr.Namrta Mishra

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CORAM: HONOURABLE MR. JUSTICE MOHIT KUMAR SHAH
ORAL JUDGMENT

Date : 25-06-2019

The present writ petition has been filed for directing the respondents to take action against the Circle Officer, Pipra, District-Lakhisarai for his illegal action as well as removing the pucca constructed boundary wall from the land of the petitioner under the garb of Encroachment Case No. 1/2010-11/1/2012-13.

2. The brief facts of the case, according to the petitioner herein are that the private respondent no. 6 had filed an application for removal of encroachment from the Gairmajarua



land of Khesra No. 202, 662, 665, 946 and 971, Khata No. 112 and 113, Area 71 decimals of Mauza Pawai, P.S.-Surjgadha, District- Lakhisarai whereupon an Encroachment Case No. 1 of 2010-11 and 1 of 2012-13 was registered, however, since no action was taken, the private respondent had approached this Court by filing a writ petition bearing CWJC No. 6400 of 2010, seeking a direction upon the respondents for removal of the encroachment wherein the Circle officer, Piparia had filed his response and had submitted that an encroachment case bearing Case No. 1 of 2010-11 has been instituted against the encroachers. This Hon'ble Court had then disposed of the aforesaid writ petition bearing CWJC No. 6400 of 2010 by an order dated 17.10.2011 with a direction to the Circle Officer, Piparia to complete the encroachment proceedings in accordance with the provisions of the Bihar Public Land Encroachment Act, 1956. The petitioner had, thereafter, appeared before the Respondent No. 5, however, the Respondent No. 5 directed for removal of the encroachment and then, the Pucca constructed boundary wall of the petitioner was broken on 25.4.2013 without any final order having been passed in the aforesaid Encroachment Case No. 1 of 2010-11 and 1 of 2012-13, whereafter, the petitioner is said to have given an



application to the District Magistrate, complaining of the illegal demolition of his boundary wall at the behest of the Circle Officer, Piparia, however, no action was taken leading to filing of the present writ petition.

3. The learned counsel appearing for the State-Respondents, referring to the counter affidavit filed on behalf of the respondents, has submitted that though it is true that on 18.10.2011, the petitioner had appeared in the aforesaid Encroachment Case No. 1 of 2010-11 but then he had raised no grievance or objection and in fact, after hearing the petitioner, the Circle officer, Piparia had directed the Anchal Amin to measure the Gairmajarua Aam Rasta and had sought a report vide order dated 18.10.2011 passed in the aforesaid encroachment case. Subsequently, a report was submitted by the Anchal Amin to the respondent no. 5 whereafter the respondent no. 5 had passed the final order dated 26.3.2013 in the aforesaid encroachment case, directing 27 encroachers including the petitioner herein to remove the encroachment.

4. The Circle Officer, Piparia (Lakhisarai) has also filed a supplementary counter affidavit wherein it has been stated that an order dated 27.5.2013 was passed by him which would depict that the petitioner was present during the course of the hearing



and had made a statement that he had himself removed the encroachment i.e. the boundary wall situated on the public land. It has also been stated that the claim of the petitioner that the pucca construction of the petitioner has been removed forcibly, is a false and an imaginary statement.

5. In pursuance to the order of this Court dated 29.4.2019, having regard to the contradictory statement made in the counter affidavit vis-a-vis the document enclosed with the supplementary counter affidavit, the Court had directed the Circle Officer to explain his conduct in making contradictory statements or take corrective measures by reconstructing the boundary wall, whereafter I.A. No. 1 of 2019 has been filed for recall / modification of the said order dated 29.4.2019 and the entire sequence of events have been explained and this Court is satisfied, upon perusal of the records of this case that it is the petitioner who himself had informed the then Circle Officer that he had got the boundary wall situated on the public land removed on his own, as is apparent from the order dated 25.4.2013 passed by the Circle Officer, Piparia. It is also apparent from the aforesaid I.A. No. 1 of 2019 that the Circle Officer, Piparia, after passing of the order dated 29.4.2019 by this Court, had directed the petitioner to remain present on



25.5.2019 so that fresh measurement could take place and had also informed the Mukhia, Up-Pramukh and the Sarpanch of the said Panchayat to remain present during the course of fresh measurement to be taken, whereafter fresh measurement was carried out on 25.5.2019 by a team of three Anchal Amin in presence of incharge Circle Inspector, the petitioner herein, Up-Pramukh and Sarpanch and the videography of the fresh measurement was also carried out, whereafter it was found that the boundary wall in question had been constructed by making encroachment over Khesra No. 971. It is also submitted that the petitioner has made further encroachment upon Khesra No. 971 by constructing a new toilet over 90 sq. Kari, which is required to be removed in order to ensure that the public lands are made encroachment free. It has also been stated that the petitioner is a habitual encoracher, as is apparent from the fresh measurement report.

6. I have heard the learned counsel for the parties and perused the materials on record, whereupon, this Court had posed a question to the learned counsel appearing for the petitioner as to whether the boundary wall in question was situated on a public land amounting to encroachment, to which, the learned counsel for the petitioner responded by submitting



that the said fact could not be denied, nonetheless, he submitted that the said boundary wall could not have been demolished by the Circle Officer, Piparia without passing a final order in the encroachment proceedings. This Court is surprised at the audacity of the petitioner inasmuch as on the one hand, it has been conceded on behalf of the petitioner that the boundary wall has been constructed by encroaching public land, but on the contrary, it is submitted that even if the petitioner has encroached public land, the same cannot be removed without passing of final orders under the provisions of the Bihar Public Land Encroachment Act, 1956, nonetheless, this Court finds that the petitioner is an encroacher and only after passing of the order dated 26.3.2013 by the Circle Officer, Piparia, either the petitioner had himself removed the encroachment or the same was removed by the State authorities, which is a disputed question of fact and can not be decided in the present proceedings, hence, no action is required to be taken against the respondent no. 5, especially in view of the fact that in the order dated 27.5.2013 passed by the Circle Officer, Piparia not only the presence of the petitioner is recorded, but his statement to the effect that he has removed the boundary wall in question which had been constructed by making an encroachment, has



also been recorded, which leaves nothing to imagination.

7. Before parting, it may be pertinent to express dismay and anguish over the conduct of the petitioner during the pendency of the present writ petition inasmuch as he seems to have made yet another encroachment upon the Government land during the interregnum period, hence, the Circle Officer, Piparia i.e. the Respondent No. 5 is directed to institute fresh encroachment proceedings against the petitioner herein forthwith whereupon the petitioner shall appear before the respondent no. 5 on 19.9.2019 at 10:30 AM and submit his written defence whereupon the respondent no. 5 shall pass necessary final order under Section 6(1) of the Bihar Public Land Encroachment Act, 1956 within a period of four weeks thereafter.

8. Having regard to the facts and circumstances of the case and for the reasons mentioned hereinabove, as also for unnecessarily keeping the present case pending since the year 2013 without there being any merit in the case of the petitioner as well as for demonstrating audacious behaviour / stand during the course of the present proceedings, the writ petition stands dismissed with a cost of Rs. 10,000/- to be deposited by the petitioner with the Patna High Court Legal Services Committee forthwith.



9. Let a copy of this order be transmitted to the respondent
no. 5 by the registry of this Court immediately.

(Mohit Kumar Shah, J)

ajay gupta/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	31.8.2019
Transmission Date	NA

