

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.2034 of 2023

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Ganesh Yadav Son of Nathun Yadav Resident of Village- Sadavah, P.S.-
Tankuppa, Distt- Gaya, Bihar.

... .. Petitioner/s

Versus

1. The State of Bihar.
2. The Chief Secretary Government of Bihar, Patna.
3. The Principal Secretary, Department of Revenue and Land Reforms,
Government of Bihar.
4. The District Mgistrate, Gaya, Bihar.
5. The Circle Officer, Tankuppa, Distt- Gaya, Bihar.
6. Sri Laxman Yadav S/o Sri Baleshwar Yadav Village- Sadavah, P.S.-
Tankuppa, Distt- Gaya, Bihar, Pin Code- 824232.
7. Sri Madan Yadav, S/o Sri Baleshwar Yadav. Village- Sadavah, P.S.-
Tankuppa, Distt- Gaya, Bihar, Pin Code- 824232.

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr.Ranjeet Tiwary, Advocate
For the Respondent/s	:	Mr.Md. Khurshid Alam (AAG 12)

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CORAM: HONOURABLE THE ACTING CHIEF JUSTICE
and
HONOURABLE MR. JUSTICE PARTHA SARTHY
ORAL JUDGMENT
(Per: HONOURABLE THE ACTING CHIEF JUSTICE)

Date : 10-02-2023

In the present writ application, filed under Article 226
of the Constitution of India, in the nature of public interest
litigation, the petitioner is seeking direction to State respondents
to remove encroachments caused by certain persons over the
public road/way of description: Khata No.48, Khesra No. 193,
Thana No. 463, area 50 Decimal situated at Mouza Sadavah



Circle Tankuppa, Distt- Gaya made by the respondent No.6, namely Laxman Yadav and respondent No. 7, namely Madan Yadav and others.

2. According to the petitioner, the land in question is a public land. The question of removal of encroachment from public land in a public interest litigation proceeding has been extensively dealt with by a Division Bench of this Court in the case of ***Sanjay Jha Vs the State of Bihar***, reported in **2016(1) PLJR 248**, wherein general instructions were issued to be followed by all concerned in accordance with the statutory requirement under Section 133(1) of the CrPC. In the case of ***Sanjay Jha*** (supra), this court has noted that disobedience of an order under Section 133 of the CrPC attracts penal provisions of Section 188 of the IPC. For the benefit of quick reference paragraph 25 of this Court's decision in the case of ***Sanjay Jha*** (supra) is being reproduced hereinbelow: -

“25. We, accordingly, issue general directions to be followed by all concerned, in the State of Bihar, in following terms : -

(i) Once a District Magistrate or Sub-Divisional Magistrate or any other Executive Magistrate, specially empowered in



this regard by the State Government, receives an information, on the basis of a report of a police officer or otherwise, that condition precedent for exercise of power under sub-Section (i) of Section 133 of the Code are present, the Magistrate shall at once make a conditional order for removal of obstruction or nuisance from public place and it will be the bounden duty of the person -- who may be a natural person or a juristic person, such as, a Municipal Body or a Gram Panchayat -- to either comply with the order or appear in the proceeding and, upon appearance of the proceedee, the Magistrate shall be duty bound to ask the proceedee if he (the proceedee) wishes to deny the existence of facts leading to the conditional order and if the proceedee denies existence of any unlawful obstruction or nuisance on any public place or from any way, river or channel, which is or may be lawfully used by the public, and gives reliable evidence in support of such denial, the Magistrate shall stay further proceedings until a competent court decides; but if the proceedee



fails to give any reliable evidence in respect of denial of the existence of the facts leading to making of conditional order, the Magistrate shall order the proceedee to comply with the conditional order and, if the conditional order is not complied with and obeyed, penal consequences, as embodied in Section 188 of the Penal Code, shall follow.

(ii) It will be the duty of the Chief Executive Officer or any other Officer, specially authorized by him/Head of the local body, by whatever name he may be called, to inform or cause to be informed the District Magistrate, Sub-Divisional Magistrate or any other Magistrate, specially empowered in this behalf by the State Government, as regards existence of obstruction/nuisance and other factors, enumerated under Section 133(1) of the Code. The Officer-In-Charge of the concerned police station shall also have similar duty to inform the Magistrate concerned under Section 133 of the Code. In the event, any public nuisance or unlawful obstruction of the nature, as provided under Section



133(1) of the Code, is found to be existing without any information to the concerned Magistrate, the Officer-in-Charge of the concerned police station and the Chief Executive Officer or any other Officer, authorized on his behalf of the local body, shall be jointly responsible for inaction and will be liable for disciplinary action accordingly.

(iii) The Magistrate, upon receiving information, in the manner as aforesaid, shall proceed at once in accordance with Section 133(1) of the Code and pass appropriate order as required of him under the said provision. Any inaction or dereliction of duty by the Magistrate in this regard shall make him liable for disciplinary action.

(iv) A conditional order, if not objected to, or an order, which has been made absolute, shall have to be obeyed by all concerned and any disobedience of the order shall attract penal provisions of Section 188 of the Penal Code, 1860.

(v) This order must be followed with utmost scruples and without any demur. Any person, who is



found to be not complying with the present order, shall be liable for disciplinary/criminal action apart from contempt of this Court.”

3. As has been held in the case of ***Sanjay Jha*** (supra), it is observed that the petitioner has an alternative and efficacious remedy available under the CrPC, as envisaged under Chapter 10 B of the Code and the Magistrate under the said chapter is vested with adequate authority to deal with the situation as complained by the petitioner in the present writ application.

4. We notice, at this juncture, that a copy of the said decision in the case of ***Sanjay Jha*** (supra) was ordered to be communicated to the Chief Secretary of Bihar, who, in turn, was directed to communicate the same to all the District Magistrates, Sub Divisional Magistrates, the Police Officers and the Chief Executive Officers of the local bodies in the State of Bihar, for strict compliance of the directions issued in the said decision.

5. We do not find any exceptional circumstance in the present case to exercise our extraordinary writ jurisdiction when a statutory enactment provides specific procedure and jurisdiction to deal with the situation, as such, in the present case.



6. Accordingly, this writ application is disposed of in terms of this Court’s decision in case of *Sanjay Jha* (supra).

7. We further observe that the petitioner shall also be at liberty to take recourse to any other provision of law for the redressal of grievance, which he has raised in the present writ application.

(Chakradhari Sharan Singh, ACJ)

(Partha Sarthy, J)

K.C.Jha/-Sujit

AFR/NAFR	
CAV DATE	
Uploading Date	15.02.2023
Transmission Date	

