

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.10064 of 2023

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Umesh Yadav Son of Ramprit Yadav, Resident of Village- Soharwa, Ward No. 17, Panchayat- Indrawa, Circle- Sonbarsa, P.S.- Sonbarsa, District- Sitamarhi.

... .. Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Department of Revenue and Land Reforms, Government of Bihar, Patna.
2. The Principal Secretary, Animal and Fisheries Resources Department, Government of Bihar, Patna.
3. The Director (Fisheries), Animal and Fisheries Resources Department, Government of Bihar, Patna.
4. The Collector-Cum-District Magistrate, Sitamarhi.
5. The District Fisheries Officer, District- Sitamarhi.
6. The Circle Officer, Circle- Sonbarsa, District- Sitamarhi.
7. The Executive Engineer, Local Area, Engineering Organization, Work Division-2 Pupri, District- Sitamarhi.
8. The Bihar State Minority Commission, through its Incharge Officer, 6/South Bailey Road, Patna.
9. The Incharge Officer, Bihar State Minority Commission through its Incharge Officer, 6/South Bailey Road, Patna.
10. The Sub Divisional Officer, Sadar Sitamadhi, District- Sitamarhi.
11. The Sub Divisional Police Officer, Sadar Sitamadhi, District- Sitamarhi.
12. The SHO, Sonbarsha, District- Sitamarhi.

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr. Brisketu Sharan Pandey, Advocate
For the Respondent/s : Mr. Prabhakar Jha, GP 27

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CORAM: HONOURABLE THE CHIEF JUSTICE
and
HONOURABLE MR. JUSTICE PARTHA SARTHY
ORAL ORDER

(Per: HONOURABLE THE CHIEF JUSTICE)



4 08-09-2023

1. The petitioner is aggrieved with the fact that there is an encroachment on a water body in the nature of a catchment area which is recorded in the revenue record as *gairmajarua aam* having an extent of 87 decimals at Indarwa Panchayat bearing Khata no. 512, Khesra no.1029, Circle Sonbarsa Pupri, Sitamarhi. It is stated that the Circle Officer, Sonbarsa has declared it as a Kabristan, illegally, vide his letter dated 17.6.2022 and directions have also been issued for constructing boundaries on such public land declaring it to be Kabristan/Graveyard. The Circle Officer who is said to have acted against the instructions issued by the Government and also against the interest of the Government has not been impleaded as a party respondent herein. It is also clear that the alleged encroachers have also not been impleaded especially since now an interlocutory application bearing I.A. No.1 of 2023 has been filed to intervene. It is stated that the intervenors have been in possession of the land for more than 30 years and that a graveyard is established therein which will be deemed to be a waqf property and not a private property. The said intervenor has also requested the District Magistrate to demarcate the boundary.

2. In the circumstances of the conflicting rights



claimed by the intervenor who shall also stand impleaded as the additional 13th respondent, we are of the opinion that the petitioner should approach the authority under the Bihar Public Land Encroachment Act, 1956 for removal of encroachment with the proper parties in the party array. If such an application is filed, notice shall be issued and the Circle Officer shall consider the issue in accordance with law and also looking at the rights of the additional 13th respondent.

3. The learned counsel for the petitioner submits that the very same Circle Officer has issued the letter dated 17.6.2022, with which contention we are not impressed; since the Circle Officer in an encroachment case will be acting under the statutory powers conferred by the Act. If such an application is filed within one month, notice shall be issued to the affected parties and the matter settled as expeditiously as possible.

4. The learned counsel for the petitioner also submitted that an affidavit has been filed on behalf of the 4th respondent alleging that the said land belongs to the Fisheries Department. If that be so, there was nothing preventing the Fisheries Department from initiating an encroachment case and it cannot be said that in that circumstance the petitioner could agitate the cause before this Court, as a public interest.



5. The writ petition stands closed with the above liberty, subject also to what the statutory authority finds on the maintainability and on merits.

(K. Vinod Chandran, CJ)

(Partha Sarthy, J)

Bibhash/Saurabh

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