

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.526 of 2015

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Asharfi Yadav son of Late Lalji Yadav, resident of village- Amarpura, P.S.
Lokahi, District - Madhubani

.... Petitioner/s

Versus

1. The State of Bihar through Secretary Department of Revenue, Patna
2. The Collector, Madhubani
3. The Deputy Collector Land Revenue, Madhubani
4. The Sub-Divisional Officer, Phulparas, District- Madhubani
5. The Circle officer, Lokahi, District- Madhubani
6. Renu Yadav W/o Sri Satyendra Kumar Yadav, resident of Singarahi,
P.S. Lokahi, District - Madhubani

.... Respondent/s

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Appearance:

For the Petitioner/s : Mr. Sushil Kumar Jha, Advocate
For the Respondent/s : Mr. Nasim Yahya, G.P.-13

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CORAM: HONOURABLE MR. JUSTICE JYOTI SARAN
ORAL ORDER

2 20-02-2015 Heard Mr. Gajendra Kumar Jha, learned counsel

appearing on behalf of the petitioner and Mr. Ratnakar Ambastha,

Assisting counsel to G.P.-13 for the State.

The petitioner is aggrieved by the order dated
18.11.2014 passed by the District Magistrate-cum-Collector,
Madhubani in Appeal Case No. 10 of 2014-15 whereby the
Collector as appellate authority under the Bihar Public Land
Encroachment Act, 1956 (hereinafter referred to as 'the Act')
while dismissing the appeal has confirmed the order of the Circle
Officer, Lokahi in the district of Madhubani passed in un-
numbered encroachment case initiated under the provisions of the



Act for removal of encroachment over Plot No. 1099 of Khata No. 275 situated in village Amarpura, Circle-Lokahi in the District of Madhubani to the extent of six dhurs. The petitioner has also questioned the subsequent notice issued by the Circle Officer, Lokahi present at Annexure-1/1 whereby he has been directed to vacate the land within 15 days failing which it would be removed through due process of law.

The short submissions made by Mr. Gajendra Kumar Jha to question the impugned orders is that an area of three katha out of the total area of 2 bighas, 13 kathas and 4 dhurs of a Plot bearing Khata No. 275, Plot No. 1099 was settled with the petitioner by the Ex-Zamindar i.e. the Darbhanga Raj in 1926 and after vesting of the estate in 1950, it has continued to be in possession of the petitioner whose name stands entered in Register-II and he has been paying the rents thereof. He submits that even when the petitioner is in continued possession of the said plot for almost 90 years, that the encroachment proceedings was initiated at the instance of one Renu Yadav, the respondent no. 6 and it is pursuant to a direction of this Court passed in CWJC No. 3050 of 2014 that mechanically the orders have been passed without cognizance of the legal position. He submits that even when the Collector appreciating the position that three kathas of

the land was settled with the petitioner as back as in 1926, yet has proceeded to confirm encroachment to the extent of 6 dhurs which apparently becomes unsustainable as it is self contradictory.

Let a comprehensive counter affidavit be filed by the State on the issue raised and with a categorical statement whether six dhurs of alleged encroachment is within the three kathas of land settled with the petitioner by the Darbhanga Raj or is beyond that. The respondents would also indicate the materials to support the impugned order.

Issue notice to the respondent no. 6 for which requisites under ordinary process as well as registered cover with A/d be filed within one week, failing which this application as against the concerned respondent shall stand dismissed without further reference to the Bench.

Put up after service of notice.

In the meantime, operation of the order dated 18.11.2014 passed by the Collector, Madhubani in Encroachment Appeal No. 10 of 2014-15 bearing Memo No. 2700 dated 1.12.2014 as well as the notice issued pursuant thereto by the Circle Officer dated 8.12.2014, the copies of which are placed at Annexure-1 and 1/1 respectively shall remain stayed and let no steps be taken by the statutory authorities under the Act pursuant to the said orders.

Since the order has been passed in presence of the State
counsel, he shall communicate the same to the Circle Officer,
Lokahi, District- Madhubani for ensuring compliance.

(Jyoti Saran, J)

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