

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.10371 of 2011

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1. Jitendra Mishra @ Jeetendra Mishra, son of Shiv Shankar Mishra, resident of Village- Ward No.22 Mela Road, Dhawadepur, P.S. Sitamarhi, District- Sitamarhi.
 2. Shiv Narayan Mishra, son of Bivendra Mishra, resident of Village- Ward No.22, Mela Road, Dhawadepur, P.S.- Sitamarhi, District- Sitamarhi.

.... Petitioner/s

Versus

1. The State of Bihar.
2. The District Magistrate, Sitamarhi.
3. The Superintendent of Police, Sitamarhi.
4. The Sub-Divisional Officer, Sitamarhi (Sadar)
5. Nagar Executive Officer, Nagar Parishad, Sitamarhi.
6. Executive Magistrate, Sitamarhi.
7. Mohammad Sakil
8. Mohammad Samim.
9. Mohammad Shalil.
10. Mohammad Saheb.

7 to 10 are sons of Late Mohammad Shafik.

All are residents of Village- Ward No.22, Mela Road, Bhawadepur, P.S. Sitamarhi, District- Sitamarhi.

.... Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Dinesh Jha
For the Respondent-State	:	Mr. Radhika Raman, GP-23
For the respondent-Municipality	:	Ms. Sushmita Mishra
For the private Respondents	:	Mr. Ashhar Mustafa

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CORAM: HONOURABLE MR. JUSTICE JYOTI SARAN
ORAL ORDER

5 18-08-2015 Heard Mr. Dinesh Jha, learned counsel appearing for the petitioners, learned Counsel for the State, Ms. Sushmita Mishra, learned counsel appearing for the Municipality and Mr. Ashhar Mustafa, learned counsel appearing for the private respondents.

Though the petitioners complain that the private respondent nos.7 to 10 have encroached upon a public land bearing plot no. 221 in Ward No.12 (old), 22(new) situated in



Mela Road, Bhawadepur, P.S.- Sitamarhi in the district of Sitamarhi and even when the records transpire that some kind of order has been passed by the authorities but it is complained that the encroachment has not been removed. Amongst the grievances, the fact remains that the petitioners have not chosen to take recourse to the rightful remedy as available to them under the provisions of the Bihar Public Land Encroachment Act, 1956 (hereinafter referred to as 'the Act').

Mr. Dinesh Jha, learned counsel appearing on behalf of the petitioners refers to a representation submitted to the District Magistrate by the petitioners placed at Annexure-1 to submit that complaint of encroachment indeed was made but was transferred to the Sub-Divisional Officer and who instead of drawing any proceeding under 'the Act' has in turn shifted the burden on the Executive Officer of the Municipality even when the jurisdiction vests in the State to initiate proceedings under 'the Act' and to remove any encroachment from a public land which would include the land of the Municipality.

Having heard learned counsel for the parties and in the circumstances discussed, this writ petition is disposed of. The petitioners, if so advised, may file a duly constituted application before the appropriate authority under 'the Act' by giving the details of the public land allegedly encroached, the

name of the alleged encroachers and the extent of encroachment made by them in which application they can also arraign the Municipality for clarification of the issue. Filing of a mere representation in cases of encroachment does not suffice the requirements and it is for this reason that the complaint of the petitioners has remained pending for last four years.

It goes without saying that should any such application be filed by the petitioners, the same shall be considered by the appropriate authority under 'the Act' and be disposed of in accordance with law after hearing the petitioners and the alleged encroachers and considering the nature of grievance raised, an expeditious disposal preferably within a period of six months from the date of filing of such application would be appreciated.

I shall make it clear that I have not expressed any opinion as to the relative merits of the case and the parties shall be at liberty to raise all issues before the statutory authority in case any such proceeding is initiated.

(Jyoti Saran, J)

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