

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.11034 of 2016

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Ram Lakhan Mahto, S/o Late Bhojan Mahato, R/o Village- Shiv Nagar,
Bakhiyarpur, District- Samastipur

.... Petitioner/s

Versus

1. The State of Bihar through Chief Secretary, Bihar, Patna.
2. The Collector-cum-District Magistrate, Samastipur.
3. The Superintendent of Police, Samastipur.
4. The L.R.D.C., Samastipur.
5. The Circle officer, Kalyanpur, Samastipur.

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Rajiv Prashant, Advocate

For the Respondent/s : Mr. Nirbhay Prashant, AC to SC-17

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CORAM: HONOURABLE MR. JUSTICE DINESH KUMAR SINGH
ORAL JUDGMENT
Date: 15-03-2017

Heard learned counsel for the petitioner and learned
AC to SC-17 for respondent State.

The present writ application has been filed for a
direction to respondent no.2, the Collector-cum-District Magistrate,
Samastipur, to pass fresh and reasoned order to remove the
encroachment made over the government land appertaining to Plot
No.631 being used as public road which runs from Kushiya
Chowk to Shaidpur in Kalyanpur Block of Samastipur District.

The factual matrix would unveil that Plot No.631 is
recorded in revenue record as government land. The said land is
used as public road which runs from Kushiya Chowk to Shaidpur
under Kalyanpur Block of Samastipur District. Abutting the said



public road the petitioner's *raiya* land appertaining to Thana No.19, Plot No.1231 is situated, but due to encroachment upon the said public road by Rajendra Mahto the petitioner is unable to reach his aforesaid *raiya* land.

Aggrieved by the said encroachment the petitioner filed representation before the Circle Officer, Kalyanpur, respondent no.5 on 20.12.2013 and 26.12.2013, as contained in annexure no. 3 and 3A. Considering the representation of the petitioner, respondent no.5, called for a report from *Halka Karmachari*, who submitted the report on 26.12.2013, as contained in annexure-4, to the effect that abovementioned government land has been encroached by Ramchandra Mahto, who disclosed that part of the land has been settled with his brother Rajendra Mahto, since he is an army personnel.

Since no action was taken to remove the encroachment the petitioner submitted an application on 28th May, 2015 in Public Grievance Cell of the District Magistrate, Samastipur, respondent no.2. Consequently, encroachment proceeding being Encroachment Case no.04/2015-16 was initiated. The Circle Amin submitted a report to respondent no.5, as contained in annexure-6 to the effect that one Katha of public land has been encroached by Ramchandra Mahto and Rajendra Mahto obstructing the petitioner's passage to



reach the *raiya* land. In spite of the report of Amin, the encroachment proceeding did not make any headway, upon which the petitioner moved this Court in CWJC No.14446/2015 wherein vide order dated 01.10.2015, a Bench of this Court directed for concluding the proceeding of Encroachment Case No.4/2015 initiated with regard to the land in question, within a period of six months. In pursuance to the same, the Circle Officer, Kalyanpur, vide order dated 04.02.2016, concluded the hearing and dropped the encroachment proceeding by staying any further action under the provisions of Bihar Public Land Encroachment Act, 1956 (hereinafter referred to as the 'Act'), holding that the land, in question, has been settled, vide Settlement Case No.5/69-70 LR 20/70-71, with Rajendra Mahto, who is ex-military person. Consequently, Jamabandi no.1011 was opened in his name and he has paid rent for the year 2015-16.

It is submitted by learned counsel for the petitioner that the proceeding has been concluded on the basis of the report of the Circle Amin dated 15.07.2015, as contained in annexure-6, which clearly reflects that part of Khesra No.631 has been encroached by Ramchandra Mahto and Rajendra Mahto.

However, it is submitted by learned counsel for the respondent State that the report of the 'Halka Karmachari' dated



26.12.2013, as contained in annexure-4, reflects that the land, in question, was settled in favour of Rajendra Mahto, who is ex-army personnel. Moreover, the said Rajendra Mahto or his brother Ram Chandra Mahto, have not been made party in the present proceeding.

Considering the rival submissions of the parties and from the material available on record, it does not appear that that the petitioner has ever challenged the settlement order passed in Settlement Case No.5/69-70/ LR 20/70-71 in favour of Rajendra Mahto. Moreover, the petitioner has not made Ramchandra Mahto or his brother Rajendra Mahto as party respondent. It is settled proposition that where there is *bonafide* dispute of title and possession then it can not be decided in summary proceeding under the Bihar Public Land Encroachment Act. Such dispute can only be decided by a competent civil Court as has been held by a Division Bench of this Court in the case of **Vishwanath Dubey Vs. State of Bihar and Ors.** reported in **2014 (4) PLJR 412.**

In the present case also the title of the land, in question, has been claimed by Rajendra Mahto on the basis of order passed in Settlement Case No. 5/69-70/ LR 20/70-71 and consequent opening of *Jamabandi* in his name as well as issuance of rent receipt in his favour. Hence, this Court finds no infirmity in the



order impugned.

Under the circumstances, this court is not inclined to interfere.

Accordingly, the writ application is disposed of.

(Dinesh Kumar Singh, J)

Ashwini/-

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

