

**IN THE HIGH COURT OF JUDICATURE AT PATNA**  
**Civil Writ Jurisdiction Case No.11017 of 2017**

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Shesh Nath Bhagat

.... .... Petitioner/s

Versus

The State of Bihar & Ors

.... .... Respondent/s

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**Appearance :**

For the Petitioner/s :

For the Respondent/s :

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**CORAM: HONOURABLE MR. JUSTICE DINESH KUMAR SINGH**  
**ORAL ORDER**

3      14-09-2017      This matter has been listed under the heading ‘To Be Mentioned’ at the instance of the learned Counsel for the petitioner, since in the order dated 22.08.2017, paragraph no.3 has wrongly been incorporated.

In the circumstances, let paragraph no.3 of the order dated 22.08.2017 passed in CWJC No. 11017 of 2017 be deleted and rest of the order remain the same, which is reproduced hereinbelow :-

“Heard learned counsels for the parties.

The present writ application has been filed for a direction to the respondent authorities to get the encroachment removed from the land appertaining to Khata No. 182, Plot No. 510, which is used as public path, situated in village- Satsa, Circle – Kochas, in the District of Rohtas.

In view of the nature of order this Court intends to pass, this Court is not inclined to issue notice to the private respondent nos. 5 to 8.

It is submitted by learned counsel for the petitioner that the land in question is a public rasta and the same has been encroached upon by



respondent nos. 5 to 8. The villagers submitted a public petition before the respondent no. 3, the Circle Officer, Kochas on 5.6.2015. Consequently, a report was called for from the Halka Karmchari, who submitted the report to the Circle Officer on 27.8.2015, as contained in Annexure 1 to the effect that the land in question is a public path, but at the time of enquiry, the encroachment was removed, though subsequently, the encroachment has resurfaced. Thereafter, the petitioner and others represented before the Circle Officer, Kochas who vide letter no. 851 dated 30.12.2015 recommended to the S.D.O., Sasaram to initiate a proceeding under Section 144 of the Cr.P.C. Subsequently, the Circle Officer, vide letter no. 852 dated 30.12.2015, as contained in Annexure 3, recommended to the S.D.O., Sasaram to initiate a proceeding under Section 107 of the Cr.P.C. Consequently, the S.D.O., Sasaram passed order dated 29.3.2016 in a proceeding under Section 144 of the Cr.P.C. in Case No. 21 of 2016 and the said proceeding was directed to be converted into a proceeding under Section 133 of the Cr.P.C. but till date, the encroachment has not been removed. It is further submitted that respondent no. 3, the Circle Officer, Kochas was aware about the encroachment made on the public path, but since no action was taken, hence the present writ application.

It is submitted by learned counsel for the respondent State that he is having no instruction whether the encroachment proceeding has been initiated or whether the encroachment has been removed from the land in question or not.

Considering the rival submissions of the parties, this Court is of the view that for initiating a proceeding under the Bihar Public Land Encroachment Act (hereinafter referred to as 'the Act'), it should appear to the Collector under the Act from an application made by any person or upon the information received from any source that any person has made or is responsible for the continuation of encroachment upon any public land. No doubt, in the present case, Respondent no. 3, the Circle Officer, Kochas, after getting the enquiry



done through the Halka Karmchari and after verifying the records, came to the conclusion that the public path has been encroached upon. Though the said encroachment was removed for the time being but he failed to initiate a proceeding.

In the circumstances, respondent no. 3, the Circle Officer, Kochas is directed to examine the records and if it appears to him being Collector under the Act that there is an encroachment on the land in question, then he will forthwith initiate an encroachment proceeding and will take it to its logical conclusion within a period of three months from the date of receipt/production of a copy of this order, after giving due notice to all affected persons including respondent nos. 5 to 8, in accordance with the provisions of the Act.

This writ application is, accordingly, disposed of.”

Let order dated 22.08.2017 be off-loaded from the website as well as from the internal server of the Patna High Court and modified order be uploaded, accordingly, forthwith.

The Registry is directed to issue certified copy of this order in place of order dated 22.08.2017 passed in CWJC No. 11017 of 2017.

**(Dinesh Kumar Singh, J)**

Ashwini/-

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