

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.10312 of 2016

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Kedar Singh, S/o-Late Banshropan Singh, R/o Village - Harnahi, P.O. - P.S.
Jamhor, District - Aurangabad (Bihar).

... .. Petitioner/s

Versus

1. The State of Bihar, through Chief Secretary, Old Secretariat, Govt. of Bihar, Patna.
2. The District Magistrate, Aurangabad (Bihar).
3. The Superintendent of Police, Aurangabad (Bihar).
4. S.D.O., Aurangabad (Bihar).
5. Circle Officer, Barun, Aurangabad (Bihar).
6. S.H.O., P.S. - Jamhor, Aurangabad (Bihar).
7. Suraj Singh, S/o Late Baldev Singh, Byas Singh S/o Jagdev Singh
8. Mahendra Singh, S/o Shiv Bhajan Singh
9. Rajendra Singh, S/o Shiv Bhajan Singh
10. Tapeswar Singh, S/o Late Suryadev Singh
11. Prabhu Singh, S/o Late Harkhori Singh
12. Uday Pratap Singh, S/o Bhola Nath Singh
13. Sukhdeo Singh, S/o late Jeetu Singh
14. Ramji Singh, S/o Sitaram Singh
15. Sukhdeo Singh, S/o Late Raghunandan Singh All 7 to 15 are Village - Harnahi, P.S. - Jamhor, District - Aurangabad (Bihar).

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr. Lal Bahadur Singh
For the Respondent/s : Mr. Alok Ranjan, AC to AAG-5.

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CORAM: HONOURABLE MR. JUSTICE DINESH KUMAR SINGH
ORAL ORDER

2 07-11-2017 Heard Mr. Lal Bahadur Singh, learned counsel for the petitioner and Mr. Alok Ranjan, learned AC to AAG-5 for the respondent-State.

Since the present writ application was registered on 28.06.2016, but till date no counter affidavit has been filed, hence, this Court is not inclined to adjourn the matter any



further.

The nature of order this Court intends to pass, does not require issuance of notice to private respondent nos. 7 to 15.

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. 21, Plot No. 193, which is recorded in the Khatiya as Gairmajarua Malik (nature of land is pond) and Khata No. 22 Plot No. 178, which is recorded in the Khatiyan as Gairmajarua Aam (nature of land is water channel) which has been encroached upon by private respondent nos. 7 to 15, as a result of which, drainage of the entire area has been choked.

It is submitted by learned counsel for the petitioner that the public land has been encroached upon by private respondent nos. 7 to 15, concerning which, a complaint was made before the Gram Panchayat leading to initiation of Misc Case No. 01 of 2012 and after hearing both the parties, the Gram Panchayat, vide order dated 09.06.2012, as contained in Annexure-1, directed the private respondents to remove the obstruction so that area could be cleared from water logging. Private respondents filed Appeal No.1/2012 before Gram Kachahari, but the same was dismissed vide order dated 12.12.2012, as contained



in Annexure-2. The said order was challenged before learned Sub-Judge, 1st, Aurangabad vide Misc. Appeal No. 02 of 2013, but the said appeal was also dismissed vide order dated 16.05.2016.

It is further submitted that respondent no.5, the Circle Officer, Barun enquired the matter and submitted his report dated 21.01.2014, as contained in Annexure-3, that private respondent nos. 7 to 15 have encroached upon the land in question. Thereafter, Revenue Karmchari, also enquired the matter and submitted his report to the effect that private respondent nos. 7 to 15 have encroached upon the land in question, but till date neither any encroachment proceeding has been initiated, nor the encroachment has been removed. Hence, the present writ application.

Learned AC to AAG-5 submits that at present he is having no instruction, whether any proceeding has been initiated under the Bihar Public Land Encroachment Act, (hereinafter referred to as 'the Act'), or the encroachment has been removed or not.

Considering the rival submissions of the parties, this Court is of the view that for initiation of proceeding under Section 3 of the Act, it should appear to the Collector from an application made by any person or upon information received from any



sources that any person has made or is responsible for the continuance of any encroachment upon any public land. In the present case, it appears from the statement made in para 8 of the petition to the effect that respondent no.5, the Circle Officer, Barun made an enquiry and submitted his report that private respondent nos. 7 to 15 have encroached upon the land in question, and that respondent no.5, the Circle Officer, Barun is having knowledge about the encroachment, but there is nothing on record to suggest that any proceeding has been initiated under the Act.

In the circumstances, the petitioner is permitted to submit detailed representation before respondent no.5, the Circle Officer, Barun within a period of four weeks from the date of receipt/production of a copy of this order, when respondent no.5, the Circle Officer, Barun will examine the record and if need arises, will make spot verification and if it appears to him that the public land has been encroached upon, then he will initiate a proceeding under the Act forthwith, if the same has already not been initiated, and take such proceeding to its logical conclusion within a period of three months from its initiation, after giving due opportunity of hearing to all affected persons, in accordance with the provisions of law.



Accordingly, with the above observation and direction, the
present writ application is disposed of.

(Dinesh Kumar Singh, J)

Amrendra/-

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