

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.11855 of 2017

=====

Dharmdev Mahto, Son of Sri Ram Baran Mahto, Resident of Village-
Dhanukhi, P.S. + Anchal- Benipati, District- Madhubani.

... .. Petitioner/s

Versus

1. The State of Bihar through the Secretary Revenue Department Bihar, Patna.
2. The District Magistrate, Madhubani.
3. The Sub- Divisional Officer, Madhubani.
4. The D.C.L.R, Benipatti.
5. The Block Development Officer, Benipatti.
6. The Circle Officer Benipatti.
7. Amresh Prasad, Son of Late Kishori Prasad Singh
8. Siyaram Singh, Son of Late Ramashish Mahto.

... .. Respondent/s

=====

Appearance :

For the Petitioner/s : Mr. Devendra Kumar, Adv.
For the Respondent/s : Mr. Wasi Ahmad Khan, AC to SC-25

=====

CORAM: HONOURABLE MR. JUSTICE DINESH KUMAR SINGH
ORAL ORDER

2 05-12-2017 Heard Mr. Devendra Kumar, learned Counsel appearing
on behalf of the petitioner and Mr. Wasi Ahmad Khan, learned
AC to SC-25, appearing on behalf of the respondent-State.

In view of the nature of order this Court intends to pass,
this Court is not inclined to adjourn the matter, since the Writ
application was filed on 17.08.2017, but no counter affidavit has
been filed, nor is this Court inclined to issue notice to private
respondent nos. 7 and 8 namely, Amresh Prasad and Siyaram
Singh.

The present Writ application has been filed for a direction
to respondent authorities to get the encroachment removed from



the public road appertaining to Khata No. 309, situated at Resident of Village-Dhanukhi, P.S.+ Anchal- Benipatti, District-Madhubani.

It is submitted by learned Counsel appearing on behalf of the petitioner that the land in question is a public land and is being used as a public road, but the same has been encroached upon by respondent nos. 6 and 7 by constructing residential house. For removal of encroachment from the land in question a public petition was filed on 03.08.2014 before the respondent no.6, the Circle Officer, Benipatti, as contained in Annexure-1. An application dated 01.07.2017 was also filed before respondent no.3, the Sub-Divisional Officer, Benipatti, as contained in Annexure-5, whereupon, the Sub-Divisional Officer directed the Circle Officer to made enquiry and submit a report. In pursuance to the same, the Anchal Amin made spot verification and submitted the report on 10.01.2015 stipulating therein that there is a public road over the land in question, but the same has been encroached upon by respondent nos. 7 and 8, as contained in Annexure-3. Thereafter, the respondent no.6, the Circle Officer, Benipatti, issued notice vide order dated 02.12.2014 to the private respondents, as contained in Annexure-4 for removal of encroachment. In view of the report



of the Anchal Amin the petitioner filed several representations for removal of the encroachment, as contained in Annexure-6 series before the respondent authorities, but till date neither any encroachment proceeding has been initiated nor the encroachment has been removed. Hence, the present Writ application.

Learned AC to SC-25 appearing on behalf of the respondent-State submits that at present he is not having any instruction whether the proceeding under the Bihar Public Land Encroachment Act, 1959 (hereinafter referred to as 'the Act') has been initiated or not; or whether the encroachment has been removed from the land in question or not.

Having heard Counsels for the parties, this Court is of the view that the pre-condition for initiation of proceeding under Section 3 of the Act is an application made to the Collector by any person, or upon information being received from any source that any person has made or is responsible for the continuance of any encroachment upon any public land.

In the present case, it appears that from the representation filed by the petitioner, as contained in Annexure-1 dated 03.08.2014, the respondent no.6, the Circle Officer, Benipatti, came to know about the encroachment on the land in



question, thereafter the Circle Officer came to know about the encroachment on public land through the report of Anchal Amin, as contained in Annexure-3, but this Court is dismayed to find that there is nothing on record to suggest that any encroachment proceeding under the Act has been initiated till date.

In the circumstances, Respondent No.6, the Circle Officer, Benipatti, is directed to examine the record and make spot verification and if he finds that public road/land has been encroached upon then he will initiate a proceeding with regard to the land in question under the Act, if it has not already been initiated and it is expected from him to take such proceeding to its logical conclusion within a period of three months by giving due opportunity of hearing to all affected persons including respondent nos. 7 and 8 under the Act.

The Writ application is, accordingly, disposed of.

(Dinesh Kumar Singh, J)

Ashwini/-

U			
---	--	--	--

