

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.18132 of 2016

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Kaushalya Devi, Wife of Imrit Mahto, Resident of Village-Madhubani, P.S.-
Ghorasahan, District- East Champaran

... .. Petitioner/s

Versus

1. The State of Bihar through the Secretary, Rural Development Department,
Bihar, Patna.
3. The Collector, East Champaran at Motihari
4. The Deputy Collector Land Reforms, Dhaka, East Champaran
5. The Anchaladikhari, Ghorasahan Anchal, East Champaran
6. Birendra Mahto, Son of late Shiv Narayan Mahto
7. Ramashray Mahto, Son of late Dhenukh Mahto
8. Achhelal Mahto, Son of late Hussaini Mahto
9. Lalbahadur Mahto, Son of Faguni Mahto
10. Prahlad Mahto, Son of Jitu Mahto
11. Yogi Padit, Son of Ramcharitar Padit.
12. Ramadhar Ram, Son of Khedu Ram
13. Nawal Mahto, Son of Bigani Mahto
14. Tripurari Mahto, Son of Ramji Mahto,
15. Nandu Padi, Son of Sudhan Padit

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Ms. Rashmi Jha, Adv.
For State	:	Mr. Sudhir Kr. Upadhayay, AC to GP-8

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CORAM: HONOURABLE MR. JUSTICE DINESH KUMAR SINGH
ORAL ORDER

2 18-12-2017 Heard Ms. Rashmi Jha, learned Counsel appearing on
behalf of the petitioner and Mr. Sudhir Kumar Upadhayay,
learned AC to GP-8 appearing on behalf of the respondent-State.

The present Writ application has been filed for a direction
to the respondent authorities particularly respondent no.5, the
Circle Officer, Ghorasahan, to remove the encroachment from
the 'Gairmajarua Aam, Rasta' public road appertaining to Plot
No.3447 Khata No.17, situated in Village-Madhubani, P.S.



-Ghorasahan, District- East Champaran, which has been encroached upon by private respondent nos. 6 to 15.

In view of the nature of order this Court intends to pass, this Court is neither inclined to adjourn the matter for filing of counter affidavit nor inclined to issue notice to private respondent nos. 6 to 15.

It is submitted by learned Counsel appearing on behalf of the petitioner that the land in question is recorded in the revenue records as 'Gairmajarua Aam, Rasta', but the same has been encroached upon by private respondents by constructing huts and cattle feeding pots as a result, the free flow of the road has been obstructed. One Avinash Kumar submitted an application before the respondent no.5, the Circle Officer, Ghorasahan, on 27.07.2016, as contained in Annexure-1, for removal of encroachment from 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 Counsel appearing on behalf of the respondent-State submits that at present he is not having any instruction to say whether the land in question is a public land/road or whether a proceeding has been initiated or not, but he submits that if



encroachment has been made over the public road/land and the encroachment proceeding has not been initiated till date, the same will be initiated and concluded within a time frame.

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 Bihar Public Land Encroachment Act (hereinafter referred to as 'the Act') is an application made to the Collector by any person or upon information received from any source that any person has made or is responsible for the continuance of any encroachment upon any public land, the Collector may cause to be served upon such person a notice in the prescribed form requiring him to appear on a date which shall not be less than two weeks from the date of service of notice to show cause, why he should not be restrained from making such encroachment by issue of injunctions; or why such encroachment should not be removed.

In the present case, no doubt, the representation was submitted before respondent no.5, the Circle Officer, Ghorasahan, on 27.07.2016, as contained in Annexure-1 for removal of encroachment from the land in question, which *prima facie* suggest that the respondent authorities were in knowledge of the fact that the encroachment has been made on



public road by the private respondents, but there is nothing on record to suggest that any action has been taken by the respondent State

In the circumstances, respondent no.5, the Circle Officer, Ghorasahan is directed to examine the record and, if need be conduct spot verification, whereupon, 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 provisions of 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 private respondent nos. 6 to 15 under the Act.

The Writ application is, accordingly, disposed of with the observation aforesaid.

(Dinesh Kumar Singh, J)

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