

**IN THE HIGH COURT OF JUDICATURE AT PATNA**  
**Civil Writ Jurisdiction Case No.20612 of 2013**

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Sk. Shafique Son Of Late Sk. Shahabuddin R/O Village Shinghiya- Thathaol P.S.  
Dagarua District- Purnia

.... .... Petitioner/s

Versus

1. The State Of Bihar Through District Magistrate, Purnia
2. The Sub-Divisional Magistrate, Baisi, Purnia
3. The Circle Officer, Dagarua, Purnia

.... .... Respondent/s

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**Appearance :**

For the Petitioner/s : Mr. MD. BAHAUDDIN

For the Respondent/s : Mr.

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

**Date: 27-07-2017**

Heard.

The present writ application has been filed for a direction to the respondent authorities to remove the encroachment existing over a public land appertaining to Thana No. 432, Khesra No. 457 situated in Mauza Thathaol, Circle – Dagarua, District – Purnea.

Learned AC to SC-4 was granted four weeks' time vide order dated 29.06.2017 to file counter affidavit, but the same has not been filed. Since the writ application was registered on 07.10.2013, this Court is not inclined to adjourn the matter any further.

It is submitted by learned counsel for the petitioner that the land in question is a public road and the same has been encroached upon by more than 40 persons. On a complaint made by



the villagers, the Circle Officer, Dagarua, respondent no. 3 directed the Anchal Amin to submit a report. The Circle Amin submitted the report on 22.05.2007 to Circle Officer, Dagarua, respondent no. 3 to the effect that the land appertaining to Thana No. 432, Khesra No. 457 situated in Mauza Thathol is a public road and the same has been encroached upon by several persons, hence, he recommended for removal of the encroachment by initiating a proceeding under the provisions of Bihar Public Land Encroachment Act. The report of the Circle Amin has been brought on record as Annexure-1. Consequently, the Circle Officer, Dagarua, respondent no. 3 vide Memo No. 137 dated 05.02.2007 directed the encroachers to remove the encroachment within fourteen days, consequently notice was issued on 21.02.2008 as contained in Annexure-2, but the encroachment has not been removed. It is further submitted by learned counsel for the petitioner that till date neither any encroachment proceeding has been initiated nor encroachment has been removed.

Section 3 of the Bihar Public Land Encroachment Act (hereinafter called as the 'Act') provides the mechanism for initiation of proceeding under the Act. The Collector under the Act can initiate a proceeding when it appears to him from an application made by any person or upon information received from any source to the effect that any person has made or is responsible for encroachment



upon any public land, then the Collector may issue notice to all such persons. Section 3(1) of the Act reads as under:-

“3. Initiation of the proceedings-(1) if it appears 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, 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-

- (a) Why he should not be restrained from making such encroachment by issue of injunctions; or
- (b) Why such encroachment should not be removed.

In the present case, no doubt, on the complaint of the villagers the respondent no. 3 directed Circle Amin to enquire and report and consequently, report dated 22.05.2007 was submitted before the Circle Officer, as contained in Annexure-1, stipulating therein that the land in question is a public road and the same has been encroached upon, hence he is recommended to initiate a proceeding under the Act. Consequently, it appears from Annexure-2 that notice



was issued by Circle Officer to the concerned encroachers vide Memo No. 137 dated 05.02.2017 and Memo No. 181 dated 21.02.2008, but the notice does not suggest that any proceeding was initiated.

In the said circumstances, the facts on record suggests that the Circle Officer, respondent no. 3 came to know in 2007 about the encroachment on public road, but despite ten years having passed since then, he failed to discharge his quasi judicial function by not initiating any proceeding under the Act.

In the circumstances, the respondent no. 3, Circle Officer, Dagarua is directed to look into the matter and if it appears to him that the public land has been encroached upon, then a proceeding be initiated forthwith under the Act, if, it has not been initiated as yet, and take the same to its logical conclusion within a period of three months from the date of receipt/production of a copy of this order after giving opportunity of hearing to all affected persons in accordance with the provisions of the Act.

Accordingly, this writ application is disposed of.

**(Dinesh Kumar Singh, J)**

DKS/-

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