

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.22230 of 2014

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Raj Kiran Sharma, son of late Chhedi Sharma, Resident of village-Bogain,
P.S. and Anchal-Shahkund, District –Bhagalpur.

.... Petitioner/s

Versus

1. The State of Bihar
2. The Commissioner, Bhagalpur Division, Bhagalpur
3. The D. M., Bhagalpur
4. The D.M., Banka
5. The C.O., Shahkund Anchal & P.S.-Shahkund, District- Bhagalpur
6. The C.O. Amarpur, Anchal and P.S. Amarpur, District-Banka.
7. The Executive Engineer Local Area Engineering Organization Works
Division, Banka
8. Sri Jyotish Sharma, Son of late Mahabir Sharma
9. Sri Rana Chaudhary, Son of late Dinesh Chaudhary
10. Sri Bibhash Chaudhary, son of late Anandi Chaudhary
11. Sri Radhe Shyam Chaudhary, Son of Satya Narayan Chaudhary

.... Respondent/s

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Appearance :

For the Petitioner/s : Md. Najmul Hodda, Adv.

For the Respondent/s : Mr. K. P. Yadav, GP-11

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

2 06-09-2017 Heard Mr. Najmul Hoda, learned Counsel appearing

on behalf of the petitioner and Mr. K. P. Yadav, learned GP-11

appearing on behalf of the respondent - State.

Since the Writ application was filed in 2014, 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 respondent nos. 8 to 11.

The present Writ application has been filed for a



direction to the respondent authorities to get the encroachment removed from the public road appertaining to Plot Nos. 287 and 330, in Mauja – Bogain, Circle -Shahkund, District –Bhagalpur by initiating a proceeding under the Bihar Public Land Encroachment Act (hereinafter referred to as ‘the Act’). Further prayer has been made to restrain respondent no. 7, the Executive Engineer, Local Area Engineering Organization Works Division, Banka, not to construct P.C.C. road on the private land of the petitioner, appertaining to Khata No. 6, Plot No. 285, Thana No. 291, situated in Mauja-Bogain, Circle –Shahkund, District – Bhagalpur and thereby not to disturb the possession of the petitioner over his *raiya* land.

A counter affidavit has been filed on behalf of respondent nos. 4 and 6, the District Magistrate, Banka and the Circle Officer, Amarpur, respectively, wherein, it has been stated in paragraph no. 6 that as soon as the authorities came to know about the allegation of the petitioner, respondent no.7, the Executive Engineer, Local Area Engineering Organization works Division, Banka, was directed, vide letter no.603, dated 17.06.2015, to submit a report in that regard. Subsequently, a report was submitted by the Executive Engineer, vide Letter No. 1574, dated 30.06.2015 to the effect that no construction work is



going to be carried out on the land in question by the department.

Paragraph no.6 of the counter affidavit reads as under :-

“That it is submitted that as soon as this respondent came to know about the said allegation made by the petitioner a report was called by him from Executive Engineer vide letter No.603, dated 17.06.2015, report submitted by the Executive Engineer vide letter No.1574, dated 30.06.2015 mentioning there in that no work is going to be made on that concerned land by the department, so the allegation made by the petitioner in Writ petition is false and baseless.”

However, the statement made in paragraph no.6 of the counter affidavit does not depict the specification of the land on which no construction work is going to be carried out. The counter affidavit also does not depict about the initiatives being taken for removal of encroachment from the above-mentioned public land.

It is submitted by Mr. K. P. Yadav, learned GP-11 appearing on behalf of the respondent - State that no road is being constructed on the *raiya* land of the petitioner. However, he does not have any instruction with regard to initiation of proceeding for removal of encroachment from the public road under the Act.

Having heard learned Counsels for the parties, since the counter affidavit has been filed stating therein that no road is being constructed on the *raiya* land of the petitioner, hence the



only prayer of the petitioner to be addressed is, of initiation of proceeding under the Act for removal of encroachment from the land appertaining to Plot Nos. 287 and 330, in Mauja – Bogain, Circle -Shahkund, District –Bhagalpur.

It is submitted by learned Counsel appearing on behalf of the petitioner that the petitioner filed representation dated 18.07.2014, as contained in Annexure-A, before respondent no.5, the Circle Officer, Shahkund, District-Bhagalpur for removal of the encroachment, but till date, no action has been taken in that regard.

For initiation of proceeding under the Act *sine qua non* is that it should appear 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.

In the present case, not doubt, respondent no.5, the Circle Officer, Shahkund, District-Bhagalpur came to know about the grievance of the petitioner that the public road has been encroached upon, but there is nothing on record to suggest that any proceeding has been initiated or the encroachment has been removed.

In the circumstances, the respondent no.5, the Circle



Officer, Shahkund, District-Bhagalpur, is expected to examine the record and make spot verification and if it appears to him that the land in question is public land and the same has been encroached upon, then he will initiate a proceeding under the Act forthwith and will take such proceeding to its logical conclusion within a period of three months after giving due opportunity of hearing to all affected persons according to the provisions of the Act.

Accordingly, the Writ application is disposed of.

(Dinesh Kumar Singh, J)

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