

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.18636 of 2015

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Samrendra Nath Bhowmik, Son of Late Tara Pada Bhowmik, Resident of
Mohalla - Bari Khanjarpur, P.S. - Barari, District – Bhagalpur.

... .. Petitioner

Versus

1. The State of Bihar through Principal Secretary, Nagar Vikas Department,
Govt. of Bihar, Patna
2. The Nagar Commissioner, Nagar Nigam, Bhagalpur, District - Bhagalpur
3. The District Magistrate, Bhagalpur, District - Bhagalpur
4. The Sub - Divisional officer, Sadar Bhagalpur, District - Bhagalpur
5. The Circle officer, Sadar Bhagalpur, District Bhagalpur
6. Shri Ashish Kumar Yadav, S/o Shri Ram Ekbal Kumar Yadav, R/o village -
Bari Khanjarpur, P.S. -Barari, Ward Counsellor No. 25, Bhagalpur
7. Munna Yadav, S/o-Balram Yadav, Residing at Gurubar Jamadar Ali Lane,
Bari, Khanjarpur, P.S.- Barari, District - Bhagalpur

... .. Respondents

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Appearance :

For the Petitioner/s : Mr. Dhananjay Kumar Gupta
For the Respondent/s : Mr. GP30- RAJU GIRI

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CORAM: HONOURABLE MR. JUSTICE DINESH KUMAR SINGH
ORAL ORDER

3 08-11-2017 Learned counsel for the petitioner is permitted to make
correction with regard to address of respondent no.7.

Heard Mr. Dhananjay Kumar Gupta, learned counsel for
the petitioner and Mr. Manish Kumar, learned GP-4, for the
respondent State.

Since, the present writ application was registered on
03.12.2015, 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
required issuance of notice to private respondent nos. 6 and 7.



The present writ application has been filed for a direction to the respondent authorities to comply the request being made vide Memo No. 750, dated 06.08.2011, issued by the Sub-Divisional Officer, Sadar, Bhagalpur, as contained in Annexure-2, whereby the Municipal Commissioner, Bhagalpur Municipal Corporation was requested to get the land measured by deputing Amin and thereafter, get the encroachment removed from the public lane. However, learned counsel for the petitioner now confines his prayer to the extent of direction for initiation of an appropriate encroachment proceeding under the provisions of the Bihar Public Land Encroachment Act (hereinafter referred to as 'the Act') for removal of encroachment.

It is submitted by the learned counsel for the petitioner that the house of the petitioner is situated on the land appertaining to Holding No. 24, Khata no. 610, Plot No. 449 (K), (Kha) in between Guruwat Jamadar Lane and Navin Ganguly Road within the territorial jurisdiction of Bhagalpur Municipal Corporation. Encroachment has been made by the private respondent nos. 6 and 7 on the public road namely Guruwat Jamadar Lane. The petitioner submitted an application before respondent no.4, the Sub-Divisional Officer, Sadar, Bhagalpur, who requested respondent no.2, the Municipal Commissioner,



Bhagalpur Municipal Corporation, vide Letter No. 750 dated 06.08.2011, as contained in Annexure-2, for deputing the Amin for measurement of the land in question and getting the encroachment removed from the public road. Consequently, it appears that respondent no.2, the Municipal Commissioner, Bhagalpur Municipal Corporation directed respondent no.7, Munna Yadav to deposit the cost for breaking the PCC road, however, neither encroachment has been removed, nor any action has been taken by the respondent authorities to get the encroachment removed.

Mr. Manish Kumar, learned GP-4 submits that at present he is not having any instruction whether encroachment has been removed or not, or whether any appropriate proceeding for removal of encroachment has been initiate or not, but if this Court directs for initiation of appropriate proceeding, then the same will be concluded within a time frame.

Considering the rival submissions of the parties, this Court is of the view that the public land has been defined in Section 2(3) of the Act, whereas Section 3 of the Act stipulates the procedure for initiation of proceeding. The *sine qua non* for initiation of proceeding under Section 3 of the Act, is that 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, from perusal of Annexure-2, the letter of the Sub-Divisional Officer, Sadar, it appears that the Sub-Divisional Officer, Sadar Bhagalpur came to know that encroachment has been made on a public road and hence, he requested the Municipal Commissioner to get the road in question measured and consequently did not allow the encroachers to encroach the road in question, but surprisingly no proper proceeding has been initiated.

In circumstance, the petitioner is permitted to submit detailed representation depicting the nature of encroachment and describing the details of persons who have made encroachment on the land in question, before respondent no.5, the Circle Officer, Sadar, Bhagalpur within a period of four weeks from the date of receipt/production of a copy of this order, whereupon respondent no.5, the Circle Officer, Sadar, Bhagalpur will examine the revenue records and if need be, will conduct 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. However, it is made clear that this Court has not given any opinion with regard to encroachment made on road/public land.

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

(Dinesh Kumar Singh, J)

Amrendra/-

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