IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.19645 of 2015

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Bhola Rai, Son of Late Gulai Rai, Resident of Village - Rupauli Khurd, Post Mahisi, Police Station - Bibhutipur, District Samastipur.

... ... Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Department of Revenue & Land Reforms, Govt. of Bihar, Patna.
2. The District Magistrate, Samastipur.
3. The Deputy Collector, Land Reforms, Rosera, Samastipur.
4. The Sub - Divisional Officer, Rosera, Samastipur.
5. The Circle Officer, Bibhutipur, District - Samastipur.
6. Leelo Singh, S/o Late Bahoran Singh, Resident of Village - Rupauli Khurd, Post - Mahisi, Police Station - bibhutipur, District - Samstipur.
7. Hemant Kumar, S/o Sri Leelo Singh, Resident of Village - Rupauli Khurd, Post - Mahisi, Police Staton - Bibhutipur, District - Samastipur.

... ... Respondent/s

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Appearance :
For the Petitioner/s : Mr. Ajay Kumar Singh, Adv.
For the State : Mr. Ramadhar Singh, GP-25

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CORAM: HONOURABLE MR. JUSTICE DINESH KUMAR SINGH

ORAL ORDER

5 23-11-2017 Heard Mr. Ajay Kumar Singh, learned Counsel appearing on behalf of the petitioner and Mr. Ramadhar Singh, learned GP-25, appearing on behalf of the respondent-State.

It appears that the matter was taken up on 29.03.2017 and on the prayer of learned GP-25, it was adjourned for two weeks enabling him to file counter affidavit. Thereafter, on similar prayer the matter was adjourned on 29.08.2017 and 17.10.2017, but till date no counter affidavit has been filed.

Learned GP-25 appearing on behalf of the respondent-State submits that in spite of best efforts, he could not get the instructions and file counter affidavit thereto.

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This Court is not inclined to adjourn the matter any further for filing of counter affidavit in view of the nature of order this Court intends to pass, nor this Court is inclined to issue notice to respondent nos. 6 and 7 namely, Leelo Singh and Hemant Kumar.

The present Writ application has been filed for a direction to the respondent authorities to get the encroachment removed from the public land appertaining to Khata No.39 Old, Plot No.952, new Khata No.213, situated in Mauza-Rupauli Khurd, Circle-Mahisi, District-Samastipur.

It is submitted by learned Counsel appearing on behalf of the petitioner that the land in question is a public land and the same has been encroached upon by respondent nos. 6 and 7 by constructing their house and poultry farm. The issue was raised in the proceeding under Section 144 of the Cr.P.C., in M.R. Case No. 305/2014, wherein, the Sub-Divisional Magistrate, Rosera, vide order dated 01.08.2014, as contained in Annexure-1, held that the land in question is ‘Gairmajarua’ government land on which the private respondents failed to show any document, hence, directed the Circle Officer to protect the government land after conducting proper enquiry, but no enquiry has been conducted. The petitioner and others submitted a public

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representation before respondent no.2, the District Magistrate, Samastipur on 03.08.2015, as contained in Annexure-2, for removal of the encroachment from the land in question. In response thereto, the I/C Deputy Collector, District Revenue Section, vide letter no.2057, dated 11.08.2015, as contained in Annexure-3, directed respondent no.5, the Circle Officer, Bibhutipur, to act in accordance with law and submit a report. Consequently, the Circle Officer after issuing notice to the private respondents directed the Circle Amin to submit physical verification report. The Circle Amin after spot verification found certain construction on the land in question and submitted a report dated 03.11.2015, as contained in Annexure-4 and requested the Circle Officer to take legal action after calling for the documents in support of their claim from the respondents. But, thereafter, no action has been taken. Hence, the Writ application.

Learned GP-25 submits that at present he is not having any instruction whether any proceeding under the provisions of Bihar Public Land Encroachment Act, 1956 (hereinafter referred to as 'the Act') has been initiated or not. However, he is not in a position to dispute this fact that the land in question is a public land, in view of the order dated 01.08.2014, passed by the Sub-

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Divisional Officer, Rosera, as contained in Annexure-1.

The sine qua non for initiation of a proceeding under 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.

No doubt, in the present case, the Circle Officer, Rosera, came to know that the land in question is a public land, as far back as on 01.08.2014 when the Sub-Divisional Officer, Rosera, passed order in 144 Cr.P.C. proceeding. The authorities were further apprised of such encroachment on public land when the public representation was submitted before the District Magistrate, on 03.08.2015 and the same was forwarded to the Circle Officer for taking needfull action, as contained in Annexure-3 and lastly on 03.11.2015 when the Circle Amin submitted measurement report before the Circle Officer stipulating therein that certain construction has been made over the land in question, but despite of above, no action has been taken till date.

In the circumstances, respondent no.5, the Circle Officer, Samastipur is directed to examine the records and conduct spot verification and if he finds that public road/land has been

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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, whereupon it is expected from him to take such proceeding to its logical conclusion within a period of three months after giving due opportunity of hearing to all affected persons under the Act.

The Writ application is, accordingly, disposed of with the direction and observation aforementioned.

(Dinesh Kumar Singh, J)

Ashwini/-

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