

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.15563 of 2015

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Rita Devi, W/o Ram Babu Thakur, Resident of Village- Amanpur, P.S.- Pupri,
District- Sitamarhi

.... Petitioner

Versus

1. The State of Bihar through the Principal Secretary, Road Construction
Department, Government of Bihar, Patna
2. The District Magistrate, Sitamarhi
3. The Sub-Divisional Officer, Pupri, Sitamarhi
4. The Circle Officer, Choraut, Pupri, Sitamarhi
5. Ram Anek Thakur, S/o- Ram Lau Thakur
6. Hemant Kumar @ Mintu, S/o Ram Anek Thakur
7. Ram Dev Thakur, S/o Late Ram Bujhawan Thakur
8. Lalan Thakur, S/o Late Yogendra Thakur
9. Rajeev Kumar, S/o Lalan Thakur
10. Rajneesh Kumar, S/o Lalan Thakur,
Respondent Nos. 5 to 10 are Residents of Village- Amanpur, P.S.- Pupri, Dist.-
Sitamarhi
11. Avinnash Kumar, S/o - Baliram Panday, Resident of Village- Hanuman Nagar,
P.S.- Sursand, Dist.- Sitamarhi

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Banwari Sharma, Sr. Advocate
Mr. Birendra Kumar & Mr. Bimal Kumar, Advs.
For the Respondent/s : Mr. Santosh Chandra Bhaskar, AC to GP-11

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CORAM: HONOURABLE MR. JUSTICE DINESH KUMAR SINGH
ORAL JUDGMENT
Date: 01-08-2017

Heard Mr. Banwari Sharma, learned Senior Counsel
appearing on behalf of the petitioner and Mr. Santosh Chandra
Bhaskar, learned AC to GP-11, appearing on behalf of Respondent
Nos. 1 to 4.

The nature of order this Court intends to pass, does not
require issuance of notice to the private respondents.



The present writ application has been filed for a direction to the respondent authorities to remove the encroachment existing over the land pertaining to Khata No. 3778, Plot Nos. 26157, 26158 and Khata No. 5357, Plot No.26159, carved out from Old Khata No.1137, Plot No.11756, measuring an area 1 acres 22 decimal, situated at Village- Amanpur, P.S.-Pupri, District- Sitamarhi, which is recorded as Gair Majarua Aam road, but the same has illegally been encroached upon by Respondent Nos. 5 to 11 by blocking the ingress and egress of the people residing nearby the said road.

It is submitted by learned Senior Counsel, Mr. Banwari Sharma, appearing on behalf of the petitioner that the land in question is 'Gair Majarua Aam' land and is being used by the public at large, but the same has been encroached upon by Respondent Nos. 5 to 11. On the adjacent plot of the land in question, the petitioner constructed a residential house, on the purchased land, but due to the encroachment made by the private respondents the ingress and egress of the petitioner along with public at large has also been obstructed.

Though, in the counter affidavit, filed on behalf of Respondent Nos. 2 to 4, a statement has been made at paragraph – 9 that the land in question is a public road, which has been blocked obstructing the access of the people of the locality to their residential houses, but in paragraphs 8 and 10 of the counter affidavit, it is stated



that Plot Nos.26157 and 26158 are recorded as Bhit in the name of one Ram Bhujhawan Thakur, deceased father of Respondent No.7. So far as Plot No.26159 is concerned, the same has been recorded in the revenue records as 'Gairmajarua Sarva Sadharan, but the same has not been encroached upon by any person.

It is contended by learned Sr. Counsel appearing on behalf of the petitioner that the counter affidavit does not suggest that either any proceeding under the Bihar Public Land Encroachment Act (hereinafter called as 'the Act') has been initiated or any spot verification of the land in question has been made.

It is submitted by learned AC to GP-11, appearing on behalf of Respondent Nos. 1 to 4 that out of three plots, two plots are the raiyati land of the private respondents and the only plot being Plot No.26159, which is recorded as 'Gairmajarua Sarvasadharan' land, but on the same plot, no encroachment has been found, hence, no proceeding has been initiated.

The pre-condition for initiation of proceeding under section 3 of the Act is an application made to the Collector 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, the Respondent No.2, the District Magistrate, Sitamarhi, came to know through an application, dated



26.03.2015, submitted in the ‘Janta Darbar of the District Magistrate’, about the encroachment being made on public road/land by private respondents, but there is nothing on record to suggest that any proceeding has been initiated, which *prima facie* suggests the callous manner in which the respondent authorities are discharging their *quasi judicial* functions.

A statement has been made in paragraph – 9 of the counter affidavit to the effect that the public road in question has been blocked causing obstruction in the movement of the residents of the nearby houses. Paragraph – 9 of the counter affidavit reads as under :-

“9. That it is humbly stated here that the public road in question has been blocked up to maximum extent due to entry in the name of private persons in R.S. Khatiyani and due to which egress of the general people of the vicinity including the petitioner has been blocked in view of easy access to their houses.”

The above averments made in the counter affidavit suggest that there is a road on the land in question, being used by the public at large.

Public land has been defined under sub-section (3) of Section 2 of the Act, which reads as under :-

“2(3) Public land” means any land [managed by or] vested in the Union of India or the State of Bihar, or in any local authority [or statutory body], [public undertaking] educational institution recognized



by the Government or by any University established under any law for the time being in force, Railway Company or Gram Panchayat established under, section 3 of the Bihar Panchayat Raj Act, 1947 (Bihar Act VII of 1948), and includes any land over which the public or the community has got a right or user, such as right of way, burials, cremation, pasturage or irrigation.”

The above definition suggests that the public land includes any land over which the public or the community has got a right or user, such as right of way, burials, cremation, pasturage or irrigation

In view of this Court, the averments made in paragraph no.10 of the counter affidavit does not suggest that any spot verification was made, which reads as under :-

“10. That it is relevant to state have that the plot no. 26157 and Plot No.26158 have been mentioned in R.S. Khatiyani as Raiyati land so encroachment proceeding cannot be initiated on Plot No.26157 and 26158. So far the plot No.26159 is concerned, it is stated that this plot is mentioned as Gairmajarua Sarva Sadharan and this plot is not encroachment by any persons hence no encroachment proceeding has been started on this plot.”

Considering the inconsistent statements of Respondents Nos. 2 to 4 in the counter affidavit, the writ application is disposed of, with a direction to Respondent No.4, the Circle Officer, Choraut, Pupri, Sitamarhi to initiate a proceeding under section 3 of the Act, if



the petitioner files appropriate application giving factual details about the encroachment made over the public road, within a period of three weeks from the date of receipt/production of a copy of this order. It is expected from Respondent No.4, the Circle Officer, Choraut, Pupri, Sitamarhi to take such proceeding to its logical conclusion within a period of four months thereafter, after giving due opportunity of hearing to all the affected persons, under the provisions of the Act.

(Dinesh Kumar Singh, J)

Ashwini/-

AFR/NAFR	
CAV DATE	
Uploading Date	
Transmission Date	

