

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.10197 of 2015

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Naween Kumar Sah, S/O- Puran Chandra Sah, Resideent of Rajyapal Path,
Gali No-3, Masjid Road, Laliyahi, P.O.+P.S.- Katihar, Dist- Katihar.

... .. Petitioner/s

Versus

1. State of Bihar through the District Magistrate, Katihar, District- Katihar.
2. Superintendent of Police, Katihar, District- Katihar.
3. Sub-Divisional Magistrate, Katihar, Sadar, Dist- Katihar.
4. Circle Officer, Katihar Sadar, District- Katihar.
5. S.H.O., P.S.- Katihar, Dist- Katihar.

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr. Abhay Kumar Sinha, Adv.
For the Respondent/s : Mr. Ajay Kumar, AC to GP-4

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CORAM: HONOURABLE MR. JUSTICE DINESH KUMAR SINGH
ORAL ORDER

2 21-09-2017 Heard Mr. Abhay Kumar Sinha, learned Counsel
appearing on behalf of the petitioner and Mr. Ajay Kumar,
learned AC to GP-4 appearing on behalf of the respondent
-State.

The present Writ application has been filed for a direction
to the respondent authorities to get the encroachment removed
from the land appertaining to Thana No.104, Plot No.127,
situated in District-Katihar as the said land has been gifted in
the name of the Government and is being used as a public road,
but the same has been encroached upon by one Md. Idris and
some others.

It is submitted by learned Counsel appearing on behalf of
the petitioner that the petitioner is a doctor by profession and he



filed several representations before the concerned authorities for removal of the encroachment from the land in question. The respondent no.4, the Circle Officer, Katihar after making proper verification regarding the grievance of the petitioner, directed respondent no.5, the S.H.O. of the Mirchaibari, Police Station, vide Memo No.845, dated 08.08.2009 for deputation of police force for removal of encroachment from the land in question, but in spite of request being made by him, the local police failed to provide police force.

Though a counter affidavit has been filed on behalf of respondent nos. 2 and 5, but the same does not meet the contentions raised by the petitioner in the present Writ application. However, no counter affidavit has been filed on behalf of respondent no.4, the Circle Officer, Katihar.

Learned Counsel for the petitioner has not arrayed the encroacher as party respondent.

It is submitted by learned AC to GP-4 that at present, he is not having any instruction whether the encroachment has been removed from the land in question or not. However, he is not controverting the contentions of the learned Counsel for the petitioner that the land in question is a public land.

Considering the fact that the Writ application was filed on



13.07.2015, but no counter counter affidavit has been filed on behalf of the respondent – State, this Court is not inclined to adjourn the matter any further.

From the letter issued to respondent no.5, the SHO of Mirchaibari Police Station by respondent no.4, the Circle Officer, Katihar, it appears that Circle Officer, prima facie, found encroachment over the public road and hence, he requested for deputation of police force for removal of the same from the land in question. However, from the materials available either from the pleadings in the Writ application of from the counter affidavit of respondent nos. 2 and 7 it does not appear that a proper proceeding under the Act has been initiated.

For initiation of proceeding under Section 3 of the Bihar Public Land Encroachment Act (hereinafter referred to as ‘the Act’) envisages that if it appears to the Collector, by application made 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, he will initiate a proceeding under the provisions of the Act.

In the present, case the Circle Officer is, no doubt, aware of encroachment being made on the public road/land, but surprisingly, instead of initiating a proceeding under the Act, he



simply transmitted a requisition for deputation of police force for removal of the encroachment from the land in question.

In the circumstances, respondent no.4, the Circle Officer, Katihar, is directed to examine the record and to make spot verification and if he finds that public road/land has been encroached upon, then he will initiate a proceeding with regard to the land in question under the provisions of the Act forthwith, if it has not already been initiated and will take such proceeding to its logical conclusion, within a period of three months, after giving due opportunity of hearing to all the affected persons under the provisions of the Act.

The Writ application is, accordingly, disposed of.

(Dinesh Kumar Singh, J)

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