

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.25393 of 2013

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Ram Nandan Mahto, Son of Late Khewalan Mahto Resident Of Village-
Parori, P.S.- Sitamarhi, District- Sitamarhi

.... Petitioner/s

Versus

1. The State Of Bihar
2. The Collector, Sitamarhi
3. The S.D.O., Sadar, Sitamarhi
4. The Circle Officer, Dumra, Sitamarhi

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Hans Lal Kumar, Adv.

For the State :

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CORAM: HONOURABLE MR. JUSTICE DINESH KUMAR SINGH
ORAL ORDER

2 28-06-2017 Heard learned Counsel appearing on behalf of the

petitioner and learned AC to AAG-9 appearing on behalf of

respondent nos. 1 to 4.

The present application has been filed for a direction
to respondent authorities to get the encroachment removed from
the public road and pond pertaining to Thana No.286, Khata
No.17, Plot Nos.406 and 405 recorded as 'Gairmajarua
Sarvsadharan land.

It is submitted by learned counsel for the petitioner
that the land in question is used as a public road and pond, but the
same has been encroached by some of co-villagers, namely, Bihari
Purvey and others. On 10/07/2013, the petitioner filed an



application before Respondent No.2, the Collector, Sitamarhi, as contained in Annexure-2 and on 30/07/2013, before Respondent No.4, the Circle Officer, Dumra, as contained in Annexure-3, for getting the encroachment removed. Consequently, the Circle Officer directed the Anchal Amin to conduct an enquiry and submit a report. In view of the direction of Respondent No.4, the Anchal Amin conducted the spot verification, measured the land and submitted his report to the Circle Officer on 18/08/2013, stipulating therein that Plot No. 406 has been encroached by Bihari Purve, Kapileshwar Purve and Surendra Purve, who have made construction over the land in question. The report of Anchal Amin has been brought on record as Annexure-4 series, but in spite of the report of the Anchal Amin, the Circle Officer neither initiated any encroachment proceeding, nor took any step to get the encroachment removed.

It is submitted by learned AC to AAG-9, appearing on behalf of respondent nos. 1 to 4 that he does not have any instruction whether the encroachment proceeding has been initiated or not.

The present writ application is pending since last four years but no counter affidavit has been filed on behalf of the respondent-State, hence, this Court is not inclined to adjourn the



matter any further. This fact has not been disputed that the land in question is a public land.

Having heard learned counsel representing the petitioner and the respondent State, this Court is really dismayed to find that the representation for removal of the encroachment was filed before Respondent No.4, the Circle Officer, Dumra, on 30/07/2013, as contained in Annexure-3, but till date, no action has been taken by respondent State which demonstrates the callous state of affairs in discharge of *quasi judicial* function by Respondent No.4.

Section 3 of the Bihar Public Land Encroachment Act (hereinafter referred to as 'the Act') provides the method of initiation of encroachment proceeding, which stipulates that the same can be initiated, if it appears 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, the application was submitted on 30/07/2013 to Respondent No.4, the Circle Officer, Dumra and in pursuance to direction of the Respondent No.4, the Anchal Amin submitted a report on 18/08/2013, stipulating therein that encroachment has been made on public road and pond by Bihari



Purve, Kapileshwar Purve and Surendra Purve, but no proceeding under the Act has been initiated till date, though, the encroachers have not been made party respondent in the present proceeding by the petitioner.

In the circumstances, the writ application is disposed of with a direction to respondent no.4, the Circle Officer, Dumra to exercise the jurisdiction under section 3 of the Act, if prima facie, it appears that encroachment has been made on the public road or pond, and take such proceeding to its logical conclusion within a period of four months after giving due opportunity of hearing to all the affected persons in accordance with the provisions of the Act, provided such proceeding has already not been initiated.

Accordingly, the application is disposed of.

(Dinesh Kumar Singh, J)

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