

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.8915 of 2015

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Abhimanyu Kumar, Son of Sri Arjun Pd. Singh, Resident of House of Madan Prasad Singh (Retired Engineer), Road No. 13, in front of Shiv Kali Mandir, Rajendra Nagar, Police Station - Bahadurpur, Town and District Patna.

.... Petitioner

Versus

1. The State of Bihar through the Collector, Patna.
2. The Collector, Patna.
3. The Senior Superintendent of Police, Patna.
4. The Superintendent of Police (Rural), Patna.
5. The Additional Collector, Barh, District - Patna.
6. The Circle Officer, Mokama.
7. The Officer-in-Charge, Hathidah, Police Station + District - Patna.

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Madhu Prasun

For the Respondent/s : Mr. Ashok Kumar Keshri

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CORAM: HONOURABLE MR. JUSTICE DINESH KUMAR SINGH
ORAL ORDER

2 29-08-2017 Heard learned counsel for the petitioner and learned
A.C. to A.A.G.-12 for the respondents.

The present writ application has been filed for a direction to the respondent authorities to get the encroachment removed from N.H.-80, Middle School to N.H.-31 (till the house of Suresh Singh), from the house of late Ram Manik Singh to the house of late Umesh Yadav, from the house of late Ram Ratan Singh to the house of late Ramashray Prasad Singh and from the house of Sri Ram Nandan Prasad Singh to the house of Sri Ganesh Prasad Singh.



It is submitted by learned counsel for the petitioner that the land in question is used by the residents of the area as a road, but the same has been encroached upon by the residents of the locality by constructing drainage boundary, stairs and projection (Chajja) as well as by keeping their cattle. For removal of such encroachment, a petition was filed before respondent no.6, the Circle Officer, Mokama, as contained in Annexure-1. Though, respondent no.6, the Circle Officer, Mokama assured the petitioner that the measurement of the land in question will be made on availability of the map of the area, but the same has not been done, hence, the present Writ application.

Learned A. C. to A.A.G-12, relying on the counter filed on behalf of respondent nos. 2, 5 and 6, submits that the land in question is not the public land, rather it is the raiyati land of the persons having their houses over both the sides of the lane in question and the same has been constructed by the private persons by donating/contributing the land, who are using the same as 'Rasta'. Paragraph no.7 of the counter affidavit reads as follows:-

"That it is pertinent to mention here that again the matter was enquired by C.O., Mokama and clearly found that the land in question not exist over Aam Public Land rather the same exist over the raiyati land of the person having their houses over both the sides and the lane constructed by the private people who are using the same as 'Rasta'. The



allegation regarding encroachment of Aam Public Land is being denied specifically by the respondents.”

It is further submitted that in the register-II of revenue records, the land in question is not recorded as public land.

Having heard the learned counsels for the parties, this Court is of the view that the public land has been defined in Section 2 of the Bihar Public Land Encroachment Act, 1956 (hereinafter referred to as ‘the Act’), which reads as follows:-

“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 of user, such as right of way, burials, cremation, pasturage or irrigation.”

The above description suggests that the public land means the 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 and the public land



includes any land over which the public or the community has got a right of user, such as right of way, burials, cremation, pasturage or irrigation.

Statement in para 7 of the counter affidavit is the admission of the respondent no.6, the Circle Officer, Mokama that after inspecting the site, as well as the revenue records, it is apparent that there is pathway on the land in question, though, the same has been created by the community of the local resident, hence, it cannot be said that the land in question is not a public land.

For initiating a proceeding under the Act, the precondition is that it should appear to the Collector under the Act 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, such representation was made to respondent no.6, the Circle Officer, Mokama, through a public petition on 25.06.2014, as contained in Annexure-1, hence, it was in the knowledge of the Circle Officer that public land has been encroached upon.

In the circumstances, it was imperative on the part of respondent no.6, the Circle Officer, Mokama to initiate a



proceeding under the Act.

In view of the discussions made above, the present writ application is disposed of with liberty to the petitioner to submit a fresh application before respondent no.6, the Circle Officer, Mokama and if respondent no.6 finds that the land in question is a public pathway which is used by the residents of area and the same has been encroached upon, then he should initiate a proceeding under the Act forthwith and will take the same to its logical conclusion, within a period of three months, after giving due opportunity of hearing to all the affected persons of hearing in accordance with the provisions of the Act.

(Dinesh Kumar Singh, J)

Amrendra/-

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