

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.12275 of 2016

Md. Mohisn Alam, Son of Late Haji Mozaffer Hussain, Resident of Village-
Mallikpur, P.S. Balrampur, District- Katihar.

... .. Petitioner/s

Versus

1. The State of Bihar through Commissioner land reform, Government of Bihar, Patna.
2. The District Development Commissioner Katihar, District- Katihar.
3. The Sub Division Officer, Katihar, District- Katihar.
4. The Deputy Collector Land reforms, Katihar, District- Katihar.
5. The Circle Officer, Balrampur Block, District- Katihar.
6. The Circle Inspector, Balrampur Block, District- Katihar.
7. Md. Hasimuddin, son of Late Md. Habib.
8. Md. Sikander, son of Md. Hasimuddin,
9. Mosmat Sukhina, Wife of Late Azad Ansari.
10. Bablu Ansari, Son of Late Azad Ansari.
11. Mosmat Subera, wife of Late Shahadat Ansari.
12. Sudha Ansari, Son of Late Shahadat Ansari.
13. Shabbir Ansari, Son of Late Shahadat Ansari.
14. Shahid Ansari, Son of Late Azizul Ansari
15. Jumedin Ansari, Son of Late Azizul Ansari
16. Anjali Devi, wife of late Gozen Burman
17. Malti Devi wife of Santosh Pandit.
18. Ramzan Ansari, son of late Inayat Ansari.
19. Ibrahim Ansari, Son of Ramzan Ansari.
20. Tasebul Ansari, Son of late Inayat Ansari.
21. Wahifan Nisha, Son of late Inayat Ansari.
22. Siadul Ansari, son of late Azizul Ansari.
23. Abdul latif son of Late Fazlur Rahman.
24. Shamim Ansari son of Late Khaliq Ansari.
25. Noor Asgar, son of Late Md. Salim.
26. Md. Najim son of Kabiruddin.
27. Dr. Birendra Das, son of Late Bisheshher Das.
28. Santosh Pandit, son of Birendra Pandit.
29. Md. Manower, Son of Abdul Wahid.
30. Md. Nurain son of Md. Ishhaque.
31. Md. Kaiser son of Md. Junaid.
32. Md. Moti son of Md. Jamshed.
33. Md. Sanwar son of Abdul Wahid.
34. Md. Tahzib Son of Jamaluddin.
35. Sushil Shah, son of Late Nunulal Shah
36. Rai Chandra Shah son of Late Nem Lal Shah
37. Sushil Shah, son of Late Fanesh Shah.
38. Wali Sagar, son of late Md. Jamshed.
39. Noor Sanowar, son of Late Md. Salim.
40. Dr. Basudeo Dubey son of Late Rajendra Dubey
41. Hari Mohan Sharma @ Packka son of Late Mahadev Sharma
42. Md. Ahrar, son of Md. Ishaq.
43. Md. Mahfooz, Son of Late Maqbul Husain.



44. Md. Zubair, son of Late Abdul Hameed, All are resident of village- Lohgara,
Block Balrampur, District- Katihar.

... .. Respondent/s

Appearance :

For the Petitioner/s : Mr. Md. Helal Ahmad
For the Respondent/s : Mr. Rishi Raj Sinha, SC-19

CORAM: HONOURABLE MR. JUSTICE DINESH KUMAR SINGH
ORAL ORDER

2 07-11-2017 Heard Mr. Lal Bahadur Singh, learned counsel for the
petitioner and learned AC to SC-19 for the respondent-State.

Since the present writ application was registered on
30.07.2016, but till date no counter affidavit has been filed,
hence, this Court is not inclined to adjourn the matter any
further.

The nature of order this Court intends to pass, does not
require issuance of notice to private respondent nos. 7 to 44.

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. 08, Khata No.155, Plot
nos. 202, 205, 214, 215 and 216, which belongs to Upgraded
Middle School, Mallikpur, but the same has been encroached
upon by private respondent nos. 7 to 44, as a result of which the
construction of building of the school could not be made.

It is submitted by learned counsel for the petitioner that the
petitioner is the present Mukhiya of Lohgara Gram Panchayat.



The Upgraded Middle School, Mallikpur is situated on the land in question which was donated by Zila Parishad to the above named school for construction of school building, but the same has been encroached by the private respondent nos. 7 to 44. At present, the land appertaining to Plot Nos. 214, 215 and 216 are in the possession of the school in question, whereas Plot Nos. 202 and 205 has been encroached upon by private respondent nos. 7 to 44. Though, the funds have been sanctioned for construction of the school building over the land in question, but the same has not been made due to encroachment being made. A committee of the school in question, in a meeting dated 21.03.2015, passed a resolution for making complaint for getting the encroachment removed. The said resolutions dated 21.03.2015, has been brought on record as Annexure-1. The resolutions of the school was subsequently approved by the Panchayat Mukhiya and Panchayat Samiti on 07.04.2015, as contained in Annexure-2, and thereafter an application was submitted to respondent no.5, the Circle Officer, Balrampur for removal of the encroachment. Consequently, respondent no.5, the Circle Officer, Balrampur, vide Memo No. 322 dated 17.04.2015 directed to measure the land. Respondent no.5, the Circle Officer, Balrampur initiated Record No. 03 of 2015-16



and directed the Circle Amin to measure the land. The Circle Amin on 25.04.2015 submitted report that about 66 decimals of land of the school have been encroached by local people. Though, respondent no.5, the Circle Officer, Balrampur issued notice to the encroachers, vide order dated 30.05.2015, as contained in Annexure-3 (series), but till date neither encroachment has been removed, nor any proceeding under the Bihar Public Land Encroachment Act (hereinafter referred to as 'the Act'), has been initiated, hence, the present writ application.

Learned AC to AAG-5 submits that at present he is having no instruction, whether the land in question is public land or not, or whether any proceeding has been initiated under the Act, or the encroachment has been removed or not.

Considering the rival submissions of the parties, this Court is of the view that the public land has been defined in Section 2(3) of the Act which clearly suggest that the land of educational institution recognised by the government are treated to be public land. Section 2(3) of the Act 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 recognised 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.”

From the materials on record, it does not appear that the school in question is Government school. Moreover, specific statement has been made in petition that the land in question was donated by the Zila Parishad.

The sine qua non for initiation of proceeding under Section 3 of 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. In the present case, no doubt the resolution was passed by the School Committee and subsequently, the same was approved by the Panchayat Mukhiya and Panchayat Samiti and respondent no.5, the Circle Officer, Balrampur was intimated. Thereafter, on 25.04.2015 he conducted the measurement of the land in question, and the Circle Amin also reported that the land in question has been encroached upon, but there is nothing on record to suggest that appropriate proceeding under the Act has been initiated till date. However, it appears that in some miscellaneous proceeding, notices have been issued to certain encroachers. Hence, prima facie, it appears that respondent no.5, the Circle Officer, Balrampur has abdicated the discharge of



function entrusted to him under the Act.

In such circumstance, the petitioner is permitted to submit detailed representation before respondent no.5, the Circle Officer, Balrampur within a period of four weeks from the date of receipt/production of a copy of this order, whereupon respondent no.5, the Circle Officer, Balrampur will examine the records and if need arises, will make spot verification and if it appears to him that the public land has been encroached upon, then he will initiate a proceeding under the Act forthwith, if the same has already not been initiated, and take such proceeding to its logical conclusion within a period of three months from its initiation, after giving due opportunity of hearing to all affected persons, in accordance with the provisions of law.

Accordingly, with the above observation and direction, the present writ application is disposed of.

Amrendra/-

(Dinesh Kumar Singh, J)

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