

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.12112 of 2017

Pranay Kumar, Son of Late Braj Kishore Yadav, Resident of Village - Garhi Bishanpur, P.O.- Kiul, P.S.- Lakhisarai, District-Lakhisarai.

... .. Petitioner

Versus

1. The State of Bihar through the Principal Secretary, Department of Revenue, Govt. of Bihar, Patna.
2. The Divisional Commissioner, Lakhisarai.
3. The District Magistrate cum Collector, Lakhisarai.
4. The Superintendent of Police, Lakhisarai.
5. The Sub-Divisional Officer, Lakhisarai.
6. The S.H.O. Sadar Police Station Lakhisarai.
7. The Circle Officer, Lakhisarai.
8. Binod Yadav, Son of Baidyanath Yadav, Resident of Village-Garhi Bishanpur, P.O.- Kiul, P.S.-Lakhisarai, District-Lakhisarai.
9. Madan Yadav, Son of Brahmdeo Yadav, Resident of Village - Rehua, P.S. - Lakhisarai, District - Lakhisarai.

... .. Respondents

Appearance :

For the Petitioner/s : Mr. Rajeev Ranjan Sinha, Adv.
For the Respondent/s : MD. Khurshid Alam -AAG12

CORAM: HONOURABLE MR. JUSTICE DINESH KUMAR SINGH
ORAL ORDER

2 02-11-2017 Heard Mr. Rajeev Ranjan Sinha, learned counsel for the petitioner and Mr. Rakesh Ranjan, learned AC to AAG-12 for the respondent-State.

The nature of order this Court intends to pass, does not require issuance of notice to private respondent nos. 8 and 9.

The present writ application has been filed for a direction to the respondent authorities to get the encroachment removed from the land appertaining to Khata No. 325, Plot No. 702, situated at Village Garhi Bishanpur, P.S. Lakhisarai, District Lakhisarai, as the same is public land/road, which runs from



Musahari Tola/Mahadalit Tola to Kiul Station, but the same has been encroached upon by private respondent nos. 8 and 9.

Learned counsel for the petitioner submits that the land in question is a public land/road, but the same has been encroached upon by private respondent nos. 8 and 9, which gets reflected from Nazri Map, as contained in Annexure-1. The petitioner submitted an application before respondent no.5, the Sub-Divisional Officer, Lakhisarai for initiating a proceeding under Section 133 Cr. P.C. Subsequently, respondent no.5, the Sub-Divisional Officer, Lakhisarai, while transmitting the copy of the application filed for initiating proceeding under Section 133 Cr. P.C., as contained in Annexure-2, directed respondent no.7, the Circle Officer, Lakhisarai to take action after initiating proceeding in accordance with the law, but no proceeding has been initiated till date. However, the petitioners and other villagers also submitted a representation before local SHO and the issue of encroachment was also raised in the daily newspaper.

It is further submitted that on behalf of Sarpanch, a report dated 11.03.2014, as contained in Annexure-5, was submitted that the land in question is a public land/road and the same has been encroached upon.



It is further submitted that respondent no.7, the Circle Officer, Lakhisarai, vide letter no. 469 dated 27.04.2017, as contained in Annexure-6, intimated respondent no.5 the Sub-Divisional Officer, Lakhisarai that the width of the road in question was 6 feet, but the same has been encroached upon, hence, the width of the road in question has been reduced to 4 feet.

Learned AC to AAG-12 submits that at present he is not having any instruction with regard to the extent of actual encroachment or with regard to the nature of land, whether it is a public land or not, or whether any proceeding under the Bihar Public Land Encroachment Act (hereinafter referred to as 'the Act') has been initiated or not.

Considering the rival submission of the parties, this Court is of the view that for initiating a proceeding under the Act, 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 continuation of any encroachment over any public land. In the present case, the petitioner has never submitted any application before the Circle Officer, but vide letter no. 647, dated 20.03.2017, as contained in Annexure-2, respondent no.5,



the Sub-Divisional Officer, Lakhisarai directed respondent no.7, the Circle Officer, Lakhisarai, while transmitting the copy of application filed for initiating a proceeding under Section 133 Cr. P.C., to take action after initiating proceeding in accordance with law. Hence, respondent no.7, the Circle Officer, Lakhisarai came to know in the year 2017, that the encroachment has been made on the land in question. However, the Circle Officer earlier had also come to know in the year 2014, from the report of the Sarpanch dated 11.03.2014, as contained in Annexure-5 and from his own report, submitted after inspecting the road in question which gets reflected from Annexure-5, that encroachment has been made on the land in question, but there is nothing on record to suggest that any proceeding was initiated or not, which suggests the casual manner in which respondent no.7, the Circle Officer, Lakhisarai is discharging his quasi judicial, function.

Considering the above facts, the petitioner is permitted to file an application before respondent no.7, the Circle Officer, Lakhisarai within a period of three weeks from the date of receipt/production of a copy of this order, with a prayer for removing the encroachment from the land in question, when respondent no.7, the Circle Officer, Lakhisari, within one week



of submission of such application, will verify the revenue records and if necessary, will make a spot verification, and if it appears to him that the public land/road 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 the Act.

With the above observation, the present writ application is disposed of.

(Dinesh Kumar Singh, J)

Amrendra/-

U			
---	--	--	--

