

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.17014 of 2017

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Rajendra Singh son of Late Ram Kuber Singh Resident of Village - Karma,
Post Office - Kudra, P.S. - Kudra, District - Kaimur at Bhabua.

.... Petitioner/s

Versus

1. The State of Bihar through the Chief Secretary, Government of Bihar, Patna.
2. The District Magistrate, Kaimur at Bhabua.
3. The Sub-Divisional Magistrate, Mohania, District - Kaimur at Bhabua.
4. The Anchaladhikari, Kudra, District Kaimur at Bhabua.
5. The Circle Officer, Kudra Block, District Kaimur at Bhabua.
6. Bipin Paswan, Son of Late Sipahi Paswan
7. Sudama Paswan, Son of Late Kashi Paswan
8. Godama Paswan, Son of Late Kashi Paswan
9. Gobardhan Paswan, Son of Late Kashi Paswan
10. Sagar Paswan son of Jagdish Paswan
11. Binod Paswan, Son of Jagdish Paswan
12. Bhuneshwar Ram, Son of Late Dukhi Ram
13. Dhina Ram, Son of Late Dukhi Ram
14. Piyan Ram, Son of Late Sri Ram
15. Jai Prakash Ram, Son of Bhagirathi Ram
16. Om Prakash Ram, Son of Bhagirathi Ram
17. Hanuman Ram, Son of Late Ramji Ram
18. Suresh Ram, Son of Late Ramji Ram
19. Ranglal Ram, Son of Late Ghurbigan Ram
20. Bashisth Ram, Son of Late Ramji Ram
21. Munna Ram, Son of Late Hari Ram
22. Kanhaiya Ram, Son of Late Ramdhari Ram
23. Rameshwar Ram, Son of Late Chau Ram
24. Madhaw Ram, Son of Late Chau Ram
25. Jhangur Ram, Son of Late Belasi ram
26. Jai Prakash Ram, Son of Baldeo Ram
27. Ram Janam Ram, Son of Babulal Ram
28. Kishan Ram, Son of Late Ram Bachan Ram
29. Kameshwar Ram, Son of Late Ram Kuber Ram
30. Bachai Ram, Son of Late Mahesh Ram
31. Kashi Paswan, Son of Murati Paswan
32. Ram Karan Ram, Son of Late Raghubir Ram
33. Dipchan Ram, Son of Late Rameshwar Ram
34. Chahal Ram, Son of Late Ram Sakal Ram
35. Kedar Ram, Son of Late Sumeshwar Ram
36. Aslam Sah, Son of Samsuddin Sah
37. Asrak Sah, Son of Late Samsudin Sah
38. Sudama Paswan, Son of Late Kashi Paswan Repondent nos. 6 to 38 are residents of village Karma , P.O. + P.S. - Kudra, District Kaimur at Bhabua.

.... Respondent/s



Appearance :

For the Petitioner/s : Mr. Rajani Kant Singh, Advocate

For the Respondent/s : Mr. Rishi Raj Sinha, SC-19

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CORAM: HONOURABLE MR. JUSTICE DINESH KUMAR SINGH
ORAL ORDER

02/ 30-11-2017

Learned counsel for the petitioner is permitted to

delete the Anchaladhikari from the array of the respondents.

Heard Mr. Rajani Kant Singh, learned counsel for the petitioner and Mr. Rishi Raj Sinha, learned Standing Counsel-19.

In view of the nature of order this Court intends to pass, issuance of notice to private respondent nos. 6 to 38 is not required.

The present Writ application has been filed for a direction to the respondent authorities to get the encroachment removed from the land appertaining to R.S. Khata No. 149, R.S. Plot No. 863 situated in Mauza – Karma, P.S. – Kudra, District – Kaimur at Bhabua, which has been encroached upon by private respondent nos. 6 to 38.

It is submitted by learned counsel for the petitioner that the land in question has been encroached upon by private respondent nos. 6 to 38 as the same is used by villagers at large for drainage and irrigation purposes. In R.S. khatian the land in question is recorded as Anabad Sarv Sadharan. The R.S.



khatiyani has been brought on record as Annexure-1. Due to the encroachment made by private respondent nos. 6 to 38, the water from the land in question used to spread out in nearby area and about 20 acres land of the petitioner and other villagers, suffered damage, due to such encroachment made by private respondent nos. 6 to 38.

Public petition was submitted before respondent no. 2, District Magistrate, Kaimur on 04.08.2011, as contained in Annexure-2, and the District Magistrate transmitted the said public petition to respondent nos. 3 and 5, i.e., Sub-divisional Officer, Mohania and Circle Officer, Kudra. Consequently, Circle Officer, Kudra called for a report from Halka Karamchari, who in response thereto, submitted his report on 30.03.2012, as contained in Annexure-3, to the effect that private respondents have encroached the land in question and petitioner and other villagers are facing hardships. Halka Karamchari further conducted spot inspection on 10.04.2017 and submitted report to the Circle Officer to the effect that the public land has been encroached upon by the private respondents. The said report has been brought on record as Annexure-4 to the writ application. In spite of submission of several representations, as contained in Annexure-5 and 6 series, before the authorities, neither any proceeding under Bihar Public



Land Encroachment Act has been initiated till date, nor the encroachment has been removed, hence, the present Writ application.

Mr. Rishi Raj Sinha, learned Standing Counsel-19 for respondent nos. 1 to 5 submits that, at present, he is not having any instruction whether any proceeding has been initiated under Bihar Public Land Encroachment Act or not, or whether encroachment has been removed or not. Though, there is a report of the Halka Karamchari on the record, but at present, he is also not having any instruction whether the nature of the land, is a public land or not. However, it is submitted that the Circle Officer, Kudra will exercise the jurisdiction under the Act within a time frame, if the encroachment has been made on a public land.

Considering the rival submissions of the parties, for initiation of a proceeding under Bihar Public Land Encroachment Act (hereinafter referred to as the 'Act') the pre-condition stipulated under Section 3 of the Act is that from an application made by any person or upon information received from any sources that any person has made or is responsible for the encroachment on a public land, the Collector under the Act, may cause to be served a public notice in the prescribed form to appear on a date which shall not be less than two weeks from the



date of service of notice to show cause-

- (a) Why he should not be restrained from making such encroachment by issue of injunctions; or
- (b) Why such encroachment should not be removed.

Hence, under Section 3 of the Act only stipulates that it is the Collector, under the Act, who has to see whether a petition has been made for initiation of the proceeding.

No doubt in the present case public petition was submitted before respondent no. 2, District Magistrate, Kaimur on 04.08.2011, as contained in Annexure-2, and thereafter on transmission of the said public petition, respondent no. 5, Circle Officer, Kudra called for a report from Halka Karamchari and thereafter Halka Karamchari submitted his report on 30.03.2012, as contained in Annexure-3, as well as on 10.04.2017, as contained in Annexure -4, giving specific names of the persons who encroached upon the public land. Thereafter, several representations, as contained in Annexure-5 and 6 series, were submitted before the authorities, but this Court is dismayed to find that there is nothing on record to suggest that any proceeding under the Act has been initiated. Hence, respondent no. 5, Circle Officer, Kudra is directed to examine the revenue records, if need



be, may inspect the land in question, whereupon if it appears to him that public land has been encroached upon, he will initiate a proceeding forthwith, if it has already not been initiated and will take the proceeding to its logical conclusion within a period of three months, after giving due notice to all affected persons including respondent nos. 6 to 38.

However, it is made clear that this Court has not expressed any opinion with regard to the nature of the land in question.

Accordingly, this Writ application is disposed of.

(Dinesh Kumar Singh, J)

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