

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.15608 of 2016

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Birendra Kumar Rai Son of Late Ramdev Rai Resident of Village Mangrauna, P.S. Andhratharhi, District Madhubani.

.... Petitioner/s

Versus

1. The State of Bihar.
2. The District Magistrate, Madhubani.
3. The Sub Divisional Magistrate Jhanjharpur, District Madhubani.
4. The Circle Officer, Andhratharhi, District Madhubani.
5. Sona Kant Rai Son of Late Ram Shankar Rai
6. Nirsan Rai Son of Late Munnar Rai
7. Ram Nandan Rai Son of Late Kesi Lal Rai
8. Dilip Kumar Rai Son of Late Singheshwar Rai
9. Navindra Rai Son of Late Teji Lal Rai Respondent Nos. 5 to 9 are residents of Village Mangrauna, P.S. Andhratharhi, District Madhubani.

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Manoj Kumar Jha, Advocate
For the Respondent/s : Mr. Rishi Raj Sinha, SC-19
Mr. Saurabh Kumar, AC to SC-19

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CORAM: HONOURABLE MR. JUSTICE DINESH KUMAR SINGH
ORAL JUDGMENT

Date: 29-08-2017

Heard Mr. Manoj Kumar Jha, learned counsel for the petitioner and Mr. Rishi Raj Sinha, SC-19 for respondent nos. 1 to 4.

The present Writ application has been filed for a direction to respondent nos. 1 to 4 to get the encroachment removed from the land appertaining to Khata No. 142, Plot No. 384 situated in Maza Mangrauna, District Madhubani. The land is recorded in the revisional survey as 'Gairmajarua Rasta' but the same has been



encroached upon by the private respondent nos. 5 to 9. The further prayer has been made for a direction to the authorities to dispose of the Encroachment Case No. 624 of 2013.

Since the Writ application was registered on 16.09.2013, but no counter affidavit has been filed by the respondent-State till date, 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. 5 to 9.

It is submitted by learned counsel for the petitioner that the land in question was recoded in the Cadastral survey as 'Gairmajarua Aam' with specification that the nature of land is a road, in the name of Ex-landlord Maharaja Rameshwar Singh and in the revisional survey, the same has been recorded as 'Gairmajarua Aam Bihar Sarkar'. The nature of the land has been recorded as road. The road on the land in question connects the village to main road and the same is linking the road for which the petitioner has submitted an application on 30.05.1996, before respondent no. 4, Circle Officer, Andhratharhi, with a prayer for removing the encroachment from the land in question, as contained in Annexure-2. Respondent no. 4, the Circle Officer, Andhratharhi called for a report from the Anchal Amin and the Anchal Amin submitted the report on 01.07.1996, showing seven persons as encroachers over the land in question, as contained



in Annexure-3. The report of Anchal Amin suggests that land in question is recorded as Gairmajarua Aam Bihar Sarkar and the same has been encroached upon by seven persons, but the said persons did not produce any document with regard to land in question and hence, Anchal Amin, recommended for taking action in accordance with law. Thereafter, an application was submitted by the petitioner before respondent no. 3, Sub-divisional Magistrate, Jhanjharpur. The proceeding being Encroachment Case No. 624 of 2013 was initiated, when respondent no. 3, the S.D.M. called for a report from the Circle Officer, who in turn, directed the Anchal Amin to submit the report. The report was submitted to the Circle Officer on 25.08.2013 to the effect that the land in question is Gairmajarua Aam. The nature of the land was recorded as road, but the same has been encroached upon by 14 persons and it was reported that ten persons have also constructed their houses under Indira Awas scheme; and the land has also been settled in favour of some encroachers. The wife of the petitioner filed a case before D.C.L.R. under Bihar Land Grievance Redressal Act, being B.L.D.R. Case No. 72 of 2012. It is further submitted by learned counsel for the petitioner that after filing of the case and submission of the earlier report, respondent no. 4, the C.O. maliciously allowed the people to construct houses under Indira Awas scheme and Land Encroachment Case No. 624 of 2013 was also



filed, which is still pending. Subsequently, the S.D.O. Jhanjharpur vide letter No. 169 dated 20.08.2015, as contained in Annexure-5, directed the Circle Officer, Andhratharhi to resolve the issue through reconciliation, but in spite of several representations by the petitioner to the S.D.O. and the C.O. neither the encroachment has been removed nor the proceeding of Encroachment Case No. 624 of 2013 has been disposed of and hence, the present Writ application.

Mr. Rishi Raj Sinha, SC-19 submits that, at present, he is not having any instruction whether the Encroachment Case No. 624 of 2013 has been concluded or whether the encroachment has been removed from the land in question.

Having heard the learned counsels of the parties, it appears that the land is recorded as Gairmajarua Aam Bihar Sarkar and the nature of the land is road and considering the same, it appears that the proceeding of Encroachment Case No. 624 of 2013 has been initiated. It appears from the report, as contained in Annexure-3, that the land in question during measurement made by the Anchal Amin was found to be recorded as Gairmajarua Aam Bihar Sarkar and the nature of the land is public road, encroached upon by several persons, and, since 1996, the petitioner has been pursuing the encroachment proceeding, even while his son was suffering from cancer, but till date it appears, that the proceeding could not be concluded and from



further report dated 25.08.2013, as contained in Annexure-4, it appears that instead of removing the encroachment and Circle Officer has maliciously allowed the construction of the houses under Indira Awas scheme on the land in question.

In the circumstances, if the proceeding of Encroachment Case No. 624 of 2013, has not been concluded as yet, then it is expected from the respondent authorities to take it to logical conclusion within a period of three months from the date of receipt/production of a copy of this order, after giving due opportunity of hearing to all affected persons in accordance with the provisions of the Act.

Accordingly, this Writ application is disposed of.

(Dinesh Kumar Singh, J)

DKS/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	19.09.2017
Transmission Date	NA

