

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.6304 of 2014

=====

Diwashchandra Jha, Son of Late Bhubneshwar Jha, Resident of Village -
Dhanga West, Post Office - Kaluahi, Police Station - Arer, District -
Madhubani.

.... Petitioner/s

Versus

1. The State of Bihar
2. The Collector, Madhubani, District - Madhubani
3. The Additional Collector, Madhubani, District - Madhubani
4. The Sub-Divisional Officer, Benipatti, District - Madhubani
5. The Circle Officer, Benipatti, District - Madhubani
6. The Station House Officer, Police Station - Arer, District - Madhubani
7. Shrestha Narayan Jha, Son of Late Shilakant Jha, Resident of Village -
Dhanga (West), Police Station - Arer, Anchal - Benipatti, District -
Madhubani
8. Shri Binay Chandra Jha, Son of Late Jainarayan Jha, Resident of Village
- Dhenga (West), Police Station - Arer, District - Madhubani.

.... Respondent/s

=====

Appearance :

For the Petitioner/s : Mr. Diwakar Yadav, Adv.

For the Respondent/s : Mr. Manoj Kumar Yadav, AC to GA10

=====

CORAM: HONOURABLE MR. JUSTICE DINESH KUMAR SINGH
ORAL ORDER

2 07-07-2017 Heard learned counsel appearing on behalf of the

petitioner and learned AC to GA-10 appearing on behalf of the

respondent State.

The present writ application has been filed for a

direction to respondent authorities to get the encroachment



removed from the public road, pertaining to C.S. Plot No. 1928, Thana No.209, situated in Mauza-Dagan, P.S.- Benipatti, in the District of Madhubani, which has been encroached by respondent 2nd set i.e. respondent nos. 7 and 8, by blocking the road in question. Further prayer has been made for a direction to the respondent authorities to take needful action in pursuance to report dated 16.11.2013, submitted by the Anchal Amin to Respondent No.5, as contained in Annexure-4.

This writ application is pending before this Court since 2014, but till date no counter affidavit has been filed, hence, in the circumstances, this Court is not inclined to adjourn the matter any further. In view of the nature of order, this Court intends to pass, there is no requirement for issuance of notice to respondent nos. 7 and 8.

It is submitted by learned counsel for the petitioner that C.S. Plot No.1928, situated in Mauza –Dagan, P.S.-Benipatti, in the District of Madhubani, is recorded as ‘rasta’ in C.S. as well as Revisional Survey of the land. The land in question is being used as ‘rasta’ by the villagers at large, but the same has been encroached by Respondent Nos. 7 and 8 (respondent 2nd Set) by blocking the path in question. The villagers, as far back as, in 2007, submitted a representation before Respondent No.5, the



Circle Officer, Benipatti, for removal of the encroachment from the land in question. Consequently, notices were issued to Respondent Nos. 7 and 8, on 25/07/2007, as contained in Annexure-1, under the signature of the Circle Officer, Benipatti. Subsequently, one Arun Safi was deputed as Magistrate by Respondent No.4, the Sub-Divisional Officer, Benipatti, and Respondent No. 5, the Circle Officer, Benipatti, for removal of the encroachment from the land in question and, consequently, he got the encroachment removed and submitted a report on 03/05/2008 to Respondent No.4, as contained in Annexure-2, but the land was again encroached by Respondent Nos. 7 and 8. Thereafter, a public petition was again filed before Respondent No.4. Consequently, notices were issued to Respondent Nos. 7 and 8 and one Diwas Chandra Jha, vide Memo No. 823, dated 12/11/2013, under the signature of Respondent No.5, the Circle Officer, Benipatti, as contained in Annexure-3, directing for their presence, as the land in question was to be measured by Anchal Amin on 14/11/2013, pertaining to Plot No.1928. In pursuance to the direction issued by Respondent No.5, the Circle Officer, the Anchal Amin measured the land in question in presence of Circle Inspector, Benipatti, Revenue Karmchari, the petitioner, the Ex-Panchayat Mukhiya of the village and other known persons and



came to the conclusion that Plot No.1928 has been encroached by Respondent Nos. 7 and 8 and one Diwas Chandra Jha as a result the road in question has been blocked. The Anchal Amin submitted his report on 16/11/2013, as contained in Annexure-4.

It is submitted by learned counsel for the petitioner that in spite of report of Anchal Amin submitted in 2013, no action has been taken by the Circle Officer, Benipatti, for removal of the encroachment. Hence, this writ petition.

Learned AC to GA-10 appearing on behalf of the respondent State submits that, at present, he does not have any instruction as to whether any encroachment proceeding has been initiated or not, or whether the encroachment has actually been removed or not.

Having heard learned counsel for the parties, this Court is dismayed to find that the public road has been blocked since 2007, but till date no regular proceeding has been initiated, which reflects casual and laid back approach of the statutory authorities like the Collector and Circle Officer, in discharging their *quasi judicial functions*. Prima facie, it appears that this is not in dispute that the public road has been encroached and then encroachers were noticed by Respondent No.5, as far back as, in 2007. Though, the encroachment was removed, but it resurfaced



again and immediately representation was made by the villagers, subsequently, notices were issued to the encroaches. Consequently, measurement was made and a report to that effect was submitted, by the Anchal Amin to respondent no.5, on 16/11/2013, as contained in Annexure-4.

From the merits of the record it appears that initially a proper proceeding was initiated for removal of the encroachment from a public road.

In the circumstances, Respondent No.5, the Circle Officer, Benipatti, is expected to verify the records and if no proceeding under the Bihar Public Land Encroachment Act (hereinafter referred to as the Act) has been initiated, then a proper proceeding be initiated and prima facie if it is found that the encroachment has been made on public land, then the proceeding should be carried out to its logical conclusion within a period of four months, after giving due opportunity of hearing to all the affected persons, under the provision of the Act.

It is made clear that the authorities under the Act are not only supposed to initiate encroachment proceeding and remove the encroachment from the public land/road but they are also required to see that encroachment does not resurface on the land in question, otherwise it will be a perpetual phenomenon of



initiating encroachment proceeding one after the other. In such a situation, the SHO concerned also has the responsibility to see that such encroachment may not resurface.

Accordingly, the writ application is disposed of.

(Dinesh Kumar Singh, J)

Ashwini/-

U			
---	--	--	--

