

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.15074 of 2015

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Rajendra Rai, Son of Madan Rai, Resident of Village and Post- Bhagwat
Parsa, P.S. and Circle Office- Phulwaria, District- Gopalganj.

... .. Petitioner/s

Versus

1. The State of Bihar.
2. The Circle Officer, Phulwaria.
3. The S.D.O. Gopalganj.
4. The District Magistrate, Gopalganj.
5. Narayan Mahto, Son of Late Ramlal Mahto, Resident of Village- Bhagwat
Parsa, P.S. and Circle Office- Phulwaria, District- Gopalganj.

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr. Sudhir Kumar Singh, Adv.
For the Respondent/s : Mr. Ranvijay Singh, AC to SC-24

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CORAM: HONOURABLE MR. JUSTICE DINESH KUMAR SINGH
ORAL ORDER

2 10-10-2017 Heard Mr. Sudhir Kumar Singh, learned Counsel appearing
on behalf of the petitioner and Mr. Ranvijay Singh, learned AC
to SC-24 appearing on behalf of the respondent – State.

Since the Writ application was filed in 2015, but no
counter affidavit has been filed till date, hence, this Court is not
inclined to adjourn the matter any further.

This Court is also not inclined to issue notice to private
respondent no.5, Narayan Mahto, in view of the nature of order
this Court intends to pass.



The present Writ application has been filed for a direction to the respondent authorities to get the encroachment removed from the public land appertaining to Khata No. 121, Plot No. 373, situated in Village-Bhagwat Parsa, after initiating a proceeding under the provisions of Bihar Public Land Encroachment Act (hereinafter referred as to 'the Act').

It is submitted by learned Counsel appearing on behalf of the petitioner that the petitioner's raiyati land pertaining to Khata No. 69, Plot No. 339, measuring an area 5 kathas 13 dhurs is situated adjacent to the public road and due to encroachment made by respondent no.5 on the road adjacent to the land of the petitioner, the petitioner's ingress and egress have been obstructed. The petitioner submitted a representation before respondent no.2 the Circle Officer, Phulwaria, on 09.07.2011, as contained in Annexure-1, with a prayer for getting the encroachment removed. Consequently, the Circle Officer called for a report from the Revenue Clerk, Circle Inspector and Anchal Amin vide order dated 09.07.2011, as contained in Annexure-2. Consequently, the Anchal Amin after conducting measurement of the land submitted the report on 21.07.2011 to the Circle Officer to the effect that the measurement of the land in question was done in presence of all



the affected persons and it was found that Plot No. 373, Khata No. 121 is 'Aam Rasta', whereas plot no.339 is the raiyati land of the petitioner. Since the encroachment has been made on the raiyati land of the petitioner, by respondent no.5, hence, the easementary right of the petitioner has been obstructed. Consequently, the Circle Officer vide notice dated 24.09.2011, directed the respondent no. 5 to get the encroachment removed from the land in question within a period of 24 hours, as contained in Annexure-4, but respondent no.5 did not remove the encroachment. Consequently, vide Memo no. 4, dated 14.04.2012, the petitioner sought an information under the Right to Information Act, in response to which he was informed that on expiry of notice period the Sub-Divisional Officer, Hathua, was requested vide letter no. 68, dated 09.02.2012, to deploy police force for getting the encroachment removed from the land in question, but till date neither appropriate proceeding under the Act has been initiated nor the encroachment has been removed.

Learned AC to SC-24 submits that at present, he is not having any instruction whether the encroachment proceeding has been concluded or encroachment has been removed or not.

The *sine qua non* to initiate a proceeding is prescribed in



Section 3 of the Act, which stipulates that if it appears 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 continuance of any encroachment upon any public land, he will initiate a proceeding under the Act.

In the present case, no doubt, the petitioner submitted an application before respondent no.2, the Circle Officer, Phulwaria, as contained in Annexure-1 and he subsequently called for a report and from the report of the Anchal Amin it reflects that encroachment was made by respondent no. 5 on public land. A notice was issued without initiating appropriate proceeding under the Act, as the notice contained in Annexure-4 does not bear any encroachment case number.

Under the circumstances respondent no.2 the Circle Officer, Phulwaria, is directed to examine the record and if it appears to him that public road has been encroached upon, then he shall initiate a proceeding forthwith under the provisions of the Act, if it has not already been initiated and take such proceeding to its logical conclusion within a period of three months after giving due notice of hearing to all affected persons.

The Writ application is, accordingly, disposed of with the



aforementioned observation and direction.

Ashwini/-

(Dinesh Kumar Singh, J)

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