

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.14706 of 2015

=====

Banai Manjhi, Son of Late Duli Manjhi, Resident of Village- Sukulwan Khurd, Ward no. 2, Gram Panchayat- Inderwa, Anchal- Thawe, Police Station- Gopalganj, District- Gopalganj.

... .. Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Revenue and Land Reforms Department, Government of Bihar, Patna
2. The Collector, Gopalganj.
3. The Anchal Adhikari, Thawe, Gopalganj.
4. Nagina Ram, Son of Late Bachcha Ram
5. Hiranman Ram, Son of Late Halkhori Ram
6. Lalbabu Ram, Son of Late Suka Ram
7. Deemli Ram, Son of Late Tukar Ram
8. Ramayan Ram, Son of Late Gula Ram Respondents no. 4 to 8 are residents of Village- Sukulwan Khurd, Gram Panchayat- Inderwa, Anchal- Thawe, Police Station- Gopalganj, District- Gopalganj

... .. Respondent/s

=====

Appearance :

For the Petitioner/s : Mr. Raghav Prasad
For the Respondent/s : AC to AAG 5

=====

CORAM: HONOURABLE MR. JUSTICE DINESH KUMAR SINGH

ORAL ORDER

2 09-10-2017

Heard learned counsels for the parties.

Since the writ application was filed in 2015 and till date no counter affidavit has been filed, 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 respondent nos.4 to 8.

The present writ application has been filed for a direction to the respondent no. 2 the Collector, Gopalganj and



respondent no. 3, the Circle officer, Thawe to pass final order in the proceeding initiated under the Bihar Public Land Encroachment Act (hereinafter referred to as the 'Act') and to get the encroachment removed from the public road appertaining to Thana No. 56, Khata No. 91, Plot No. 605, situated in village Sukulwa Khurd in the district of Gopalganj.

It is submitted by learned counsel for the petitioner that the land appertaining to Thana No. 56, Khata No. 91, Plot No. 605 is Gairmajarua aam road and adjacent to the said plot the raiyati land of the petitioner appertaining to Plot Nos. 543 and 544 are situated, but since respondent nos. 4 to 8 have encroached the public road, hence the ingress and outgress of the petitioner has been obstructed.

The petitioner submitted an application before the respondent no.2, Collector, Gopalganj on 4.4.2013, as contained in Annexure 1 describing in detail as to how the easementary right of the petitioner has been obstructed. Consequently, the Collector, Gopalganj endorsed the application to the respondent no. 3, Circle Officer, Thawe who consequently, directed the Anchal Amin and Halka Karmchari to conduct spot verification, who submitted a report, as contained in Annexure 2 along with the report dated 6.5.2013 to the respondent no. 3.



thereafter, notices were issued to private respondent nos. 4 to 8 as contained in Annexure 3 but the private respondents did not appear. Hence, the present writ application.

Learned counsel for respondent nos. 1 to 3 submits that at present, he is not having any instruction whether any encroachment proceeding has been initiated and if initiated, whether it has been concluded or not or whether the encroachment has been removed from the land in question.

Considering the rival submissions of the parties, it appears that though the prayer has been made in paragraph 1 of the writ application to conclude the encroachment proceeding but neither the writ application nor the notices as contained in Annexure 3 bears any encroachment case number, which prima facie suggests that till date no encroachment proceeding has been initiated.

The sine qua non for initiating a proceeding under the Act as stipulated in Section 3 of the Act is that it should appear to the Collector under the Act from an application made by any person or upon the information received from any source that any person has made or is responsible for the continuation of encroachment upon any public land.

No doubt, in the present case, representations



have been submitted before the District Magistrate, Gopalganj on 4.4.2013, who endorsed the same to the respondent no. 3, who then directed the Anchal Amin to make spot verification and consequently verification report was submitted stipulating therein that the land in question is a public land and the same has been encroached by private respondent nos. 4 to 8, but there is nothing on record to suggest that any encroachment proceeding has been initiated, , which reflects the casual manner in which the authorities of the State are discharging the quasi judicial function.

In the circumstances, the respondent no. 3, the Circle Officer, Thawe is expected to examine the issue and if it appears to him that the public road has been encroached upon, then he will initiate the proceeding under the Act within two weeks of the receipt/production of a copy of this order if it has already not been initiated and will take such proceedings to its logical end within a period of three months thereafter, after giving due opportunity of hearing to all affected persons in accordance with the provisions of the Act.



This writ application is, accordingly, disposed of.

(Dinesh Kumar Singh, J)

anil/-

U			
---	--	--	--

