

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.16123 of 2015

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1. Md. Rahim Bux, Son of Late Mosim, resident of village- Sasrma, P.S. Bisfi,
District- Madhubani

.... Petitioner/s

Versus

1. The State of Bihar
2. The District Magistrate, Madhubani
3. The Sub-Divisional Officer, Benipatti, Madhubani
4. The Circle Officer, Bisfi, Madhubani
5. Md. Amirul Haque @ Hakaru Son of Late Md. Waz
6. Md. Hasim, Son of Late Wasul
7. Md. Kasim son of Late Wasul
8. Akbar Hafij @ Akbar Ali, Son of Israil
9. Hasamtulla, Son of Hafiz Zabir

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Saroj Kumar

For the Respondent/s : Mr. A.C. to S.C.-20

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CORAM: HONOURABLE MR. JUSTICE DINESH KUMAR SINGH

ORAL JUDGMENT

Date: 30-03-2017

Heard learned counsel for the petitioner and learned
A.C. to S.C. 20.

Present writ application has been filed with a prayer for
a direction to the respondent authorities to remove the encroachment
made by respondent nos. 5 to 9 by constructing residential house and
toilets over the public road appertaining to Khata no. 3947, plot no.
12093, 12076 and 12088 situated in village Sasrma under the Bisfi
Block in the District of Madhubani and thereby obstructed the
outgress and ingress of the petitioner from his residential house which



is adjacent to the encroached public road.

It is submitted by the learned counsel for the petitioner that the public road in question is recorded in the revisional survey as Anabad Sarvasadharan which connects the village of the petitioner to the main road and is being used by the public at large, but the same has been encroached by respondent nos. 5 to 9 by constructing residential house and toilets.

It is further submitted that the petitioner submitted an application on 31.11.2013 in the office of S.D.O., Benipatti, respondent no.3 whereupon Sub-Divisional Officer, Benipatti respondent no.3 and Circle Officer, Bisfi respondent no.4 vide Memo No. 1148 dated 06.11.2013 and 14.11.2013, respectively, directed the Revenue Karamchari to make spot enquiry and submit a report to the respondent no.4. Consequently, Revenue Karamchari submitted a report on 11.12.2013 (as contained in Annexure-1) to respondent no.4, stipulating therein that the land in question is a public road which has been encroached by respondent nos. 5 to 9 by constructing the residential house and toilets and have thereby, obstructed the ingress and outgress of the public at large and accordingly, he recommended for measurement of the land in question by Circle Amin to ascertain the specific area encroached by the each individual, after which the process for removal of encroachment could be initiated.



Consequently, on the report of the Revenue Karmchari, the Circle Inspector, Bisfi directed the Circle Amin for measurement of the land in question and to submit a report. Subsequently, the Circle Amin submitted a report on 10.04.2014 (as contained in Annexure-3) to the Circle Officer, Bisfi, respondent no.4 to the effect that respondent nos. 5 to 9 have encroached the land in question which is public road, and he thus recommended for issuance of notice and for taking the follow up action.

Consequently, notices were issued to respondent nos. 5 to 9 but they neither appeared before the Circle Officer, Bisfi nor removed the encroachment. Thereafter, the petitioner submitted an application on 22.07.2014 (as contained in Annexure-4) before the Sub-Divisional Officer, Benipatti, respondent no.3 which was forwarded to the Circle Officer, Bisfi, respondent no.4 in order to get the encroachment removed but even then no action was taken. The petitioner then submitted a representation before the District Magistrate, Madhubani, respondent no.2 on 13.08.2013, (as contained in Annexure-4) and thereafter several representations were submitted but no action has been taken till date.

Ultimately, the petitioner filed a petition before D.C.L.R. under the Bihar Land Dispute Resolution Act, 2009 which was registered as Case No. 88 of 2014 and after perusing the report of



the Revenue Clerk and Circle Amin and upon hearing the parties, the D.C.L.R. reached to the conclusion that the land in question is a government land which has been encroached upon and hence, he directed the respondent no.4, Circle Officer, Bisfi to pass appropriate order under the provisions of the Bihar Public land Encroachment Act and in case encroachment is found over the public road in question, the same should be removed in accordance with law.

It is submitted by the learned counsel for the petitioner that in spite of the order of the D.C.L.R. passed in Case No. 88 of 2014, neither any encroachment proceeding has been initiated nor any action has been taken for removal of the encroachment.

Mr. A.C. to S.C.-20 submits that though, the writ application was registered on 07.10.2015, but there is no specific instruction whether the encroachment proceeding has been initiated or not and if initiated, then, whether the same has concluded or not or whether the encroachment has been removed or not.

Having heard learned counsels for the parties, it appears that in spite of the report of Halka Karamchari and Circle Amin, respondent nos. 2 to 4 failed to discharge their obligation under the provisions of Bihar Public Land Encroachment Act. There is nothing on record to suggest that the order dated 24.12.2014 passed by the D.C.L.R. in Case No. 88 of 2014 (as contained in Annexure-6) has



been challenged before any superior Authority/Court or not.

In the circumstances, the present writ application is disposed of with a direction to the respondent nos. 2 and 4 to look into the matter and if encroachment proceeding has not been initiated till date, then the authorities would be at liberty to initiate an encroachment proceeding within a period of four weeks, but if it has been already initiated then it should be concluded within a further period of four months after giving due opportunity to all the affected persons of being heard in accordance with the provisions of the Bihar Public Land Encroachment Act, provided the Authorities are not precluded to initiate or continue the encroachment proceeding, in view of any order passed in any collateral proceeding.

(Dinesh Kumar Singh, J)

Amrendra/-

AFR/NAFR	NAFR
CAV DATE	N/A
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