

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.4155 of 2014

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Binod Mandal, Son of Late Laxman Mandal Resident of Village : Ujhandi,
P.S. : Jamui, District : Jamui

.... Petitioner/s

Versus

1. The State of Bihar
2. The District Magistrate, Jamui
3. The District Development Commissioner, Jamui
4. The Circle Officer, Jamui

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Achal Kumar Sinha, Adv.
For the State : AC to GP-27

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CORAM: HONOURABLE MR. JUSTICE DINESH KUMAR SINGH
ORAL ORDER

2 01-07-2017 Heard learned counsel appearing on behalf of the petitioner and learned AC to GP-27 appearing on behalf of the Respondent State.

The present writ application has been filed for following reliefs as stipulated in paragraph no.1 of the writ petition which reads as:-

- (i) For issuance a writ, order or direction, particularly in the nature of writ of Mandamus, commanding and directing the respondents, particularly respondent no.4 & 2 to dispose of the representation filed by the villagers including the petitioner dated 09/07/2010 and 13/06/2013 respectively by which the villages of Mauza; Ujhandi Ward No.02 raised their grievances to remove the encroachment from Gairmajarua Aam Aahar and further not issuing



- the parwana to any Mahadalit family in respect to the aforesaid Gairmajarua Aam Aahar.
- (ii) Further, directed the concerned authority to enquire about the matter and submitted enquiry report as to whether the aforesaid land is Gairmajarua Aam Aahar and it is useful for irrigating the fertile land of about 100 acres or not ?
- (iii) Petitioner further prayed that after enquiry if it is found that the land in question is Gairmajarua Aam Ahar and it is very useful for the purpose of irrigation of more than 100 acres of land, then directed the respondent authorities to remove the encroachment from the aforesaid land immediately and not issuing the parwana to any beneficiaries in respect to the land in question.
- (iv) Any other relief or reliefs for which the Hon'ble High Court may deem fit and proper in the facts and circumstances of the case."

It is submitted by learned counsel for the petitioner that there are two Aahar (water channel) known as Jamua Aahar, pertaining to Plot Nos. 1500 to 1574 and Samda Aahar, pertaining to Plot Nos.725 to 727, situated in the Village-Ujhandi, within the District of Jamui, but the same Aahar (water channel) has illegally been encroached by several people by erecting hut and making temporary construction and thereby impeding the free flow of the water channel. It is further submitted that the petitioners and co-villagers have submitted a representation before the Respondent



No.2, the Circle Officer, Jamui, on 10/07/2010, as contained in Annexure-2, for getting the encroachment removed, and before Respondent No.2, the District Magistrate, Jamui, on 13/06/2013, as contained in Annexure-3, but till date no action has been taken.

Learned counsel for the respondent State submits that, at present, he does not have any instruction whether any action has been taken on the representation of the petitioner or not. However, he further submits that the representation of the petitioner will be disposed of, if the same has not been disposed of as yet. Moreover, if need be, then a proceeding will be initiated under the provisions of the Bihar Public Land Encroachment Act (herein after called 'the Act').

Having heard learned counsel for the parties, it is specific case of the petitioner that the water channel has been encroached and the free flow of the irrigation water has been disturbed as a result of encroachment made by several persons.

This Court is dismayed to find that the representation on behalf of the petitioner was filed before Respondent no.4, the Circle Officer, Jamui in 2010 and before the Respondent no.2, the Collector, Jamui in 2013, but no action has been taken as yet.

For initiation of proceeding by the Collector under the Act for removal of encroachment under Section 3 of the Act



the pre-condition is an application being 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 public land.

In the circumstances, the writ application is disposed of with a direction to the Respondent No.4, the Circle Officer, Jamui, to dispose of the representation of the petitioner, as contained in Annexure-2 within a period of four weeks. If *prima facie* it is found that encroachment has been made on a public road/land then proceedings should be initiated under the Act, provided such proceeding has already not been initiated and take such proceeding to its logical conclusion, after giving due opportunity of being heard to all the affected persons, under the provisions of the Act.

(Dinesh Kumar Singh, J)

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