

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.14434 of 2014

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1. Jagdish Prasad Mahto, S/o Ram Chalitra Mahto, Resident of Village Sahiyar Burj, P.S. Rosera, District Samastipur.

.... Petitioner/s

Versus

1. The State of Bihar through the Chief Secretary, Bihar.
2. The District Magistrate, Samastipur.
3. The Sub Divisional Officer, Rosera, District Samastipur.
4. The Circle Officer, Rosera, District Samastipur.
5. Gango Mahto
6. Ram Prakash Mahto, Both S/o Jogeshwar Mahto
7. Nunu Mahto, S/o Gango Mahto
8. Sita Ram Mahto
9. Ram Balak Mahto, Both S/o Ram Prakash Mahto
10. Jago Mahto, S/o Late Lakshmi Mahto
11. Sri Narayan Mahto, S/o Late Saryug Mahto All Respondent No. 5 to 11 are Resident of Village Sahiyar Burj, P.S. Rosera, District Samastipur.

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Shyam Bharti
Mr. Rakesh Kr. Singh
For the Respondent/s : Mr. Prashant Pratap GP 2

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CORAM: HONOURABLE MR. JUSTICE DINESH KUMAR SINGH
ORAL ORDER

2 03-08-2017 Heard learned counsels for the parties.

The present writ application has been filed for a direction to the respondent authorities to remove the encroachment from the land appertaining to Khata No. 449, Thana No. 74/2, Plot No. 584 and 586, situated in Mauza Sahiyar Burj, which is recorded in the records of right as Anabad Bihar Sarkar.

Since the writ application was filed on 22.8.2014, this Court is not inclined to issue notice to the private respondent



nos. 6 to 11, in view of the nature of order this Court intends to pass.

It is submitted that the land in question is recorded as Anabad Bihar Sarkar and the same is being used by the public at large, as road, but the same has been encroached upon by the respondent nos. 5 to 11. On the application of general public, Misc. Case No. 5 of 2012-13, was initiated by the respondent no. 4, Circle Officer, Rosera, and notices were issued to the encroachers, but the encroachment has not yet been removed. Subsequently, some of the encroachers, namely, Ram Narayan Mahto and others filed Land Dispute Redressal Case No. 675 of 2012-13, under the provisions of Bihar Land Dispute Redressal Act, 2009, for declaration of the title of the land in question, before the LRDC, Rosera, who have not been impleaded as respondent in the present proceeding. The LRDC, vide order dated 27.5.2013, dropped the proceeding on the ground that the land in question is recorded in the revenue records as Anabad Bihar Sarkar. However, till date the encroachment has not been removed, hence this Writ application.

Learned counsel for the respondent State submits that though from Annexure 1, it appears that Misc. Case No. 5 of 2012-13 was initiated, but he is not having any instruction at present



whether the encroachment has been removed or not.

The sine qua non for initiating of a proceeding under the provisions of Bihar Public Land Encroachment Act (hereinafter referred to as the 'Act') is incorporated under section 3 of the Act, which suggests that when it appears to the Collector under the Act from an application made by any person or upon information received from any source, that any person has made or is responsible for creating encroachment on any public land, then notices are issued to all affected persons.

In the present case, upon filing of an application by the villagers and by initiation of Misc. Case No. 5 of 2012-13, Respondent no.4, the Circle Officer, Rosera came to know about the encroachment on the public land. This fact further gets fortified from the order of the LRDC, as contained in Annexure 2, hence, there was no occasion for the Circle Officer to abdicate from discharging his quasi judicial function. The Notice issued vide Memo No. 1017 dated 13.10.2012, as contained in Annexure 1, does not reflect that the proceeding, vide Misc. Case No. 5 of 2012-13, was initiated under the Act.

In the circumstances, respondent no. 4, the Circle Officer, Rosera is expected to initiate a proceeding under the Act, if it has already not been initiated and if prima facie it appears to



him that encroachment has been made on a public land, then he shall take the said proceeding to its logical conclusion within a period of four months, after giving due opportunity of hearing to all the affected persons in accordance with the provisions of the Act.

Accordingly, the writ application is disposed of.

(Dinesh Kumar Singh, J)

Anil/-

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