

IN THE HIGH COURT OF JUDICATURE AT PATNA

**Letters Patent Appeal No.1967 of 2015
IN
Civil Writ Jurisdiction Case No. 7935 of 2012**

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Lallu Singh son of Sri Shiv Bachan Singh Resident of Village Biran Bigha, ps.
Dehri-on-Sone, District Rohtas(Bihar)

.... Appellant

Versus

1. The State of Bihar through the Principle Secretary, Revenue and Land Reforms Department, Government of Bihar, Patna
2. The Commissioner, Patna Division, Patna.
3. The District Magistrate, Rohtas.
4. The Additional Collector, Rohtas.
5. The Deputy Collector, Land Reforms, Dehri-on-Sone, Rohtas.
6. The Sub-Divisional Magistrate, Dehri-on-Sone, Rohtas.
7. The Circle officer, Dehri-on-Sone, Rohtas.
8. Sri Krishna Kumar Kariwal.
9. Sri Gopal Chandra Agrawal. Both respondent No. 8 and 9 are sons of late Banwarilal Agrawal Resident of Dehri, P.s Dehri ,District Rohtas.

.... Respondents

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Appearance :

For the Appellant : Mr. Manoj Kumar Singh, Advocate
For the Respondent State: Mr. Upendra Pratap Singh, AC to SC 4

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**CORAM: HONOURABLE MR. JUSTICE AJAY KUMAR TRIPATHI
and
HONOURABLE JUSTICE SMT. NILU AGRAWAL**

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE AJAY KUMAR TRIPATHI)

Date: 28-01-2017

Condonation petition, i.e. I.A. No.8754 of 2015, is
allowed. Delay of 12 days is condoned. The matter is thereafter
heard on merits.

A proceeding was initiated by the appellant against
private respondents No. 8 and 9 making a grievance that they have
encroached upon the public land and are obstructing the public
passage before the Circle Officer, who held in favour of the



appellant. The matter travelled to D.C.L.R. and thereafter before the Commissioner.

The Commissioner after going through the material and the evidence came to a considered opinion that there is a public road which is situated in plot No.393, but plot No.386, where the encroachment is being made an issue, is a private piece of property and no public passage as such exists through that plot, people have made residential houses and that plot has been developed as a residential colony. Merely because certain passage was available at a point of time, which people were using according to their convenience, it does not create a right in their favour and that passage does not become a public land or public passage for them to utilize.

On the findings including the evidence, which emerged from Annexure-3 to the writ application, the Commissioner set aside the order of the Circle Officer as well as D.C.L.R. and allowed the revision. It is this order which is challenged.

It is a desperate effort made on behalf of the appellant to get a right of way by even overriding the right of somebody's private property since the land in question is not public property, which is *sine qua non* for a proceeding under the Land Encroachment Act. The Commissioner has done no wrong by allowing application of



private respondents and setting aside the wrong finding of the Circle Officer and the D.C.L.R.

Appeal has no merit. It is dismissed.

(Ajay Kumar Tripathi, J)

(Nilu Agrawal, J)

Pawan/-

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