

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.6019 of 2015

Vijay Kumar Singh, Son of late Surya Singh, Village-Chiutaha, P.S.-
Ramgarhwa, District-East Champaran.

... .. Petitioner/s

Versus

1. The State Of Bihar through the Collector, East Champaran at Motihari.
2. The Sub-Divisional Officer, Raxaul, District-East Champaran.
3. The Circle Officer, Ramgarhwa, District-East Champaran.
4. The Halka karmchari, Ramgarhwa, District-East Champaran.
5. The Circle Inspector, Ramgarhwa, District- East Champaran.
6. Paras Singh, Son of late Shiv Pd. Singh.
7. Bishwanath Singh, Son of late Shiv Pd. Singh.
8. Ramesh Singh, Son of late Hari Dawan Singh.
9. Brij Mohan Singh, Son of late Satyanarayan Singh.
10. Umesh Singh, Son of Sri Gorakh Singh.
11. Jawahar Pd. Son of late Mahanth Sah. All respondent nos. 6 to 11 are Resident of Village-Chiutaha, P.S.-Ramgarhwa, District-East Champaran.

... .. Respondent/s

Appearance :

For the Petitioner/s : Mr. Bishwajeet Singh
For the Respondent/s : Mr. RAJIV KUMAR SINGH

CORAM: HONOURABLE MR. JUSTICE DINESH KUMAR SINGH
ORAL ORDER

2 08-09-2017 Heard. Mr. Bishwajeet Singh, learned counsel for the petitioner and learned AC to G.P.-27 for the respondent-State.

Since, the present writ application was registered on 16.04.2015, but till date, no counter affidavit has been filed. Hence, 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 private respondent nos. 6 to 11.

The present writ application has been filed for a direction to the respondent authorities to get the encroachment removed from the public land appertaining to Thana No. 57, Plot Nos. 99, 350, 2098, 2111, 2106 and 2108, situated in Village Chiutaha, Block Ramgarhwa, District East Champaran.

It is submitted by learned counsel for the petitioner that the land in question is recorded in the Revenue Records as 'Gairmajarua' land. The land appertaining to Plot Nos. 99, 350 and 2098 are the linking road between the Village Chiutaha and Ramgarhwa but due to encroachment, the width of the road has reduced to such an extent that no vehicle can pass through the road. On the land appertaining to Plot no. 2111, there is a well, but the same has been filled up by respondent nos. 9 and 10. Plot Nos. 2106 and 2108 are 'Gairmajarua' land but the same has been encroached upon by respondent no.11.

It is further submitted that a public petition was submitted before respondent no.2 the Sub-divisional Officer, Raxaul on 23.01.2015, as contained in Annexure-1, and the same was forwarded to respondent no.3, the Circle Officer,



Ramgarhwa, but no action has been taken for removal of encroachment from the land in question. Subsequently, a public petition was submitted before respondent no.1, the District magistrate, Motihari on 19.03.2015, as contained in Annexure-2, but even then, no action has been taken for removal of the encroachment. Hence, the present writ application.

Learned AC to GP-27 submits that at present, he is not having any instruction as to whether any proceeding under the Bihar Public Land Encroachment Act, 1956 (hereinafter referred to as 'the Act') has been initiated or not, or the encroachment has been removed or not. He is also not in a position to controvert the contention raised by the counsel for the petitioner that the land in question is a public land/road.

Having heard learned counsels for the parties, this Court is of the view that *sine qua non* for initiating a proceeding under the Act is that it should appear to the Collector under the Act from an application made by any person or upon information received from any sources that any person has made or is responsible for the continuance of encroachment upon any public land.

In the present case, it appears that the representation was submitted before respondent no.2, the Sub-Divisional



Officer, Raxaul, as far back on 23.01.2015, as contained in Annexure-1 and the same was transmitted to respondent no.3, the Circle Officer, Ramgarhwa. Subsequently, respondent no.2, the Sub-Divisional Officer, Raxaul directed respondent no.3 to get the issue enquired and submit a report in that regard. It appears that in pursuance to order of respondent no.2, the land in question was measured, but the measurement report is not on record. Hence, it was within the knowledge of respondent authorities, particularly, respondent no.3, the Circle Officer, Ramgarhwa that some complain has been made with regard to encroachment on a public land, then under such circumstances, he ought to have verified the Revenue Records or should have conducted spot inspection and initiated a proceeding under the Act, if any encroachment was found. Hence, it appears that the respondent authorities have failed in discharging the quasi judicial functions, assigned to them.

In the circumstances, respondent no.3, the Circle Officer, Ramgarhwa is directed to examine the records and if required, conduct a spot inspection and if it appears to him that encroachment has been made on the public land then, he will initiate a proceeding under the Act forthwith and will take the same to its logical conclusion within a period of three months of



its initiation, after giving due opportunity to all affected persons under the provisions of the Act.

Accordingly, with the above observation and direction, the present writ application is disposed of.

(Dinesh Kumar Singh, J)

Amrendra/-

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