

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.20805 of 2013

=====

Ramashish Prasad, Son of Late Bhim Narayan Yadav, Resident of Village -
Bario, Police Station - Nardiganj, District - Nawada

.... Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Revenue and Land Reforms Department, Government of Bihar, Patna
2. The Principal Secretary, Revenue and Land Reforms Department, Patna
3. The Collector Cum District Magistrate, Nawada
4. The Additional Collector, Nawada
5. The Sub Divisional Officer, Nawada
6. The Circle Officer, Nardiganj, Nawada
7. Yogendra Yadav Son of Late Prayag Narain Yadav Resident of Village - Bario Under P.S. - Nardiganj (Nawada)
8. Ram Pravesh Yadav Son of Late Prayag Narain Yadav Resident of Village - Bario Under P.S. - Nardiganj (Nawada)
9. Nagina Yadav Son of Late Prayag Narain Yadav Resident of Village - Bario Under P.S. - Nardiganj (Nawada)
10. Barfi Yadav Son of Late Prayag Narain Yadav Resident of Village - Bario Under P.S. - Nardiganj (Nawada)
11. Ram Chandra Yadav Son of Late Prayag Narain Yadav Resident of Village - Bario Under P.S. - Nardiganj (Nawada)
12. Naresh Yadav Son of Late Balam Yadav Resident of Village - Bario Under P.S. - Nardiganj (Nawada)
13. Anil Yadav Son of Late Balam Yadav Resident of Village - Bario Under P.S. - Nardiganj (Nawada)
14. Yugeshwar Yadav Son of Late Nanhku Yadav Resident of Village - Bario Under P.S. - Nardiganj (Nawada)

.... Respondent/s

=====

Appearance :

For the Petitioner/s : Mr. Rabi Bhushan Prasad No. 1, Adv.
For the Respondent/s : AC to AAG-9

=====

CORAM: HONOURABLE MR. JUSTICE DINESH KUMAR SINGH

ORAL ORDER

2 11-07-2017 Heard learned counsel appearing on behalf of the petitioner and learned AC to AAG-9 appearing on behalf of the respondent State.

The present writ application has been filed for a



direction to respondent authorities for getting the encroachment removed from Plot Nos. 422 to 425, Khata No. 372, situated in village Bario, Circle Nardiganj, District-Nawada.

It is submitted by learned Counsel appearing on behalf of the petitioner that Plot Nos. 422 to 425, situated in the Village-Bario, measuring an area 5.89 acres, consist of a big pond and the same is recorded in the revenue records as Aam Gairmazarua land. On part of Plot No.422, there is building of Government Middle School Bario, but the remaining part of the said plot has been encroached by four persons namely, Yogendra Yadav (respondent no.7), Ram Pravesh yadav (respondent no.8), Nagina Yadav (respondent no.9) and Barfi Yadav (respondent no. 10). So far as part of Plot No. 425, Khata No. 3672 is concerned, the total area of the same is 1.44 acres, but the same has been encroached upon by four persons namely, Ram Chandra yadav (respondent no.11), Naresh Yadav (respondent no.12), Anil Yadav (respondent no.13) and Yugeshwar Yadav (respondent no.14) as they have constructed their houses on the said Aam Gairmazarua land. It is further submitted there was sufficient fund available for construction/extension of the school building, but the construction work could not be made due to encroachment.

On 28/07/2011, a public petition was submitted



through one, Sanjay Kumar, before the Public Grievances Cell of the Hon'ble Chief Minister, Bihar. Consequently, a report dated 01/09/2011 was submitted to the respondent no.6, the Circle Officer, Nardiganj, by the Halka Karmachari to the effect that Plot Nos. 422 and 425, Khata No.372, measuring an area 4.89 acres of land is recorded as "Pokhar Anabad Sarvasadharan" in the Survey Khatiyan. There is land around the embankment of the pond, but two sides of the pond have been encroached by several people by constructing their houses. The pond is used as a water reservoir for the cattles of the public at large.

The pond in question though, initially settled with the villagers, but subsequently, it was settled with the Fisheries Department, but it was taken by the villagers by depositing 10% more than the bid amount. Since last two years the pond in question was settled with the Villagers and thereafter the dispute has arisen. So far as, part of Plot No. 425 is concerned, the same has been encroached by Ramchandra Prasad Yadav (respondent no.11), Prayag Narayan Yadav and Munshi Yadav, Yugeshwar Yadav (respondent no.14). So far as part of part of Plot No.422 is concerned, the same has been encroached by Yogendra Prasad Yadav(respondent no.7), Ram Pravesh Yadav (respondent no.8), Nagina Yadav ((respondent no.9), Barfi Prasad Yadav(respondent



no10). The houses on the plot in question have been constructed before 28 years ago. Hence, it is prayed that the encroachment should be removed from the land in question.

Learned AC to AAG-9, appearing on behalf of the respondent State submits that he does not have any instruction whether any proceeding under the provisions of Bihar Public Land Encroachment Act (hereinafter called as the 'Act') has been initiated or not, or whether the encroachment has been removed or not.

Considering the fact that the writ application is pending before this Court since 08/10/2013 and the counter affidavit has not been filed till today, this Court is not inclined to adjourn the matter any further. Since this Court intends to pass an order, which, at present, is not going to affect the rights of private respondents, hence, notice is not being issued to private respondent nos.7 to 14.

For initiation of proceeding under section 3 of the Act, the pre-condition is 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 any encroachment upon any public land. Section 3(I) of the Act, reads as under :-

“Initiation of Proceedings :-
If it appears to the Collector 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 any encroachment upon any public land, the Collector may cause to be served upon such person a notice in the prescribed form requiring him to appear on a date which shall not be less than two weeks from the date of service of notice to show cause –

(a) why he should not be restrained from making such encroachment by issue of injunction; or

(b) why such encroachment should not be removed.”

From the materials available on record, it appears that in pursuance to a public petition, before the Public Grievances Cell of the Hon’ble Chief Minister, Bihar, on 28/07/2011, the authorities were requested to take action and consequently, a report was submitted by the Halka Karmachari on 01/09/2011, as contained in Annexure-2, which suggests that both the plots in question are recorded in Revisional survey Khatiyan as ‘Anabad Sarvasadharan’ and part of both the plots have been encroached upon by respondent nos. 7 to 14. It is, thus, very shocking that till date the State authorities have failed to discharge their *quasi judicial* function by not initiating any proceeding under the Act.

In the circumstances, let the petitioner file an appropriate representation before Respondent No.6, the Circle



Officer, Nardiganj, within a period of three weeks, from the date of receipt/production of a copy of this order, who shall dispose of the same, upon its filing, within a period of three months thereafter. If respondent no.6, *prima facie* finds that encroachment has been made on the public land then, appropriate proceeding be initiated, if already not been initiated, and be taken it to its logical conclusion, after giving due opportunity of hearing to all the affected person, in accordance with the provisions of the Act.

Accordingly, the writ application is disposed of.

(Dinesh Kumar Singh, J)

Ashwini/-

U			
---	--	--	--

