

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.6853 of 2017

=====

Bishwambhar Nath Pandey, Son of Late Thag Pandey, Resident of Block Road, Narkatiyaganj, P.S.- Shikarpur, District- West Champaran, Bihar- 845455.

... .. Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Department of Revenue and Land Reforms, Govt. of Bihar, Patna.
2. The District Magistrate, West Champaran, Bettiah, Bihar.
3. The Sub-Divisional Magistrate, Narkatiaganj, District- West Champaran, Bihar.
4. The Circle Officer, Narkatiyaganj, District- West Champaran, Bihar.
5. The Executive Officer, Narkatiyaganj Nagar Parishad, Narkatiaganj, District- West Champaran, Bihar.
6. The Nagar Parishad, Narkatiaganj, District- West Champaran, Bihar.
7. Ishwar Chandra Mishra, son of Late Bindeshwari Mishra,
8. Deepak Mishra, son of Ishwar Chandra Mishra, Both are residents of Mohalla situated Behind Siddhi Vinayak Mandir, Brahm Sthan, Block Road, Narkatiaganj, P.S.- Shikarpur, District- West Champaran, Bihar- 845455.
9. The Senior Superintendent of Police, West Champaran, Bettiah, Bihar.
10. The Officer In-charge, Shikarpur Police Station, Narkatiaganj, West Champaran, Bihar.

... .. Respondent/s

=====

Appearance :

For the Petitioner/s : Mr. Shakti Suman Kumar
For the Respondent/s : Mr. Sajid Salim Khan, SC-25

=====

CORAM: HONOURABLE MR. JUSTICE DINESH KUMAR SINGH
ORAL JUDGMENT

Date : 09-04-2018

Heard Mr. Rajesh Ranjan, learned counsel for the
petitioner, Mr. Himanshu Kumar, learned counsel for respondent



nos. 5 and 6, Mr. Lokesh Kumar Singh, for respondent nos. 7 and 8 and Mr. Sajid Salim Khan, learned SC-25 for respondent nos. 1 to 4 and 9 to 10.

The present writ application has been filed for a direction to the respondent authorities to remove the boundary wall illegally constructed by respondent nos. 7 and 8, which completely blocks the access of the petitioner to the public road and further for a direction to the respondent nos. 7 and 8 to remove the other encroachment made on a public road situated in Mohalla – Brahmsthan, behind Siddhi Vinayak Mandir, Narkatiaganj, District – West Champaran.

The factual matrix of the case is that the petitioner purchased a piece of land appertaining to Khata No. 89, Plot No. 458, Thana No. 111, situated in Mauza Shikarpur through registered sale deed dated 10.03.1975. The petitioner constructed his house and in front of his house, there was a Payn (water channel), but subsequently it was filled up and the same is being used as a public pathway by the public at large and the petitioner also uses the same which also connects his house to Block Road, Narkatiaganj. The said Payn/road is situated in Mauza Shikarpur and it works as a boundary between the village Shikarpur and Barwan. Respondent no.7 purchased



a piece of land appertaining to Khata No. 39, Plot No.25, situated in Village Barwan, in the year 1968, which is situated adjacent to the other side of the road or Payn. All of a sudden, in the year 2006, respondent nos. 7 and 8 began claiming the road as a part of the purchased land and subsequently constructed a wall across the road, blocking the access of the petitioner to the road.

The petitioner approached respondent nos. 3, 5 and 6 for removal of the wall since the road was situated under the Nagar Panchayat, Narkatiaganj, which has now become Nagar Parishad. Respondent no. 5, the Executive Officer, Narkatiaganj Nagar Parishad initiated a proceeding. Consequently, a report was called for and after the measurement, the Clerk-cum-Amin, Nagar Panchayat, Narkatiaganj submitted a report dated 15.5.2006, as contained in Annexure 2 suggesting that the road is about 16 to 20 ft. but the same has been encroached by respondent no. 7 by constructing a 41 ft. long wall.

Respondent no. 5, the Executive Officer, Narkatiaganj Nagar Parishad, vide order dated 16.5.2006 issued notice to respondent no. 7 but he did not appear. Thereafter, another notice was issued vide order dated 5.9.2006 for removal of encroachment, but respondent no. 7 did not deliberately



respond. Thereafter, Respondent no. 5, the Executive Officer, Narkatiaganj Nagar Parishad directed respondent no. 3, SDM, Narkatiaganj for taking action for removal of encroachment and subsequently, vide letter dated 20.9.2006, Respondent no. 5, the Executive Officer, Narkatiaganj Nagar Parishad requested respondent no. 3 to appoint a Magistrate and deploy police force for removal of encroachment. The respondent no. 3, SDM, Narkatiaganj, vide letter dated 22.10.2006, as contained in Annexure-5 deputed the Block Development Officer, Narkatiaganj and the Executive Officer, Narkatiaganj Nagar Panchayat as Magistrate for removal of encroachment. However, the encroachment has not been removed till date.

It is submitted by learned SC-25 that the measurement was twice made at the behest of Nagar Parishad, Narkatiaganj by respondent no.5, the Circle Officer, Narkatiaganj and it was *prima facie* found that the wall has been constructed on the public road.

It is also contended by learned counsel for the Nagar Parishad, Narkatiaganj that the measurement was done and it was found that the boundary wall has illegally been constructed in front of the land of the petitioner.

It is submitted by learned counsel appearing on behalf of



respondent nos. 7 and 8 that in view of the inconsistency in the two earlier measurement reports, an application was submitted before the respondent no. 2, District Magistrate, West Champaran, Bettiah for conducting fresh measurement and consequently, vide letter no. 119 dated 23.01.2008, as contained in Annexure-B to the counter affidavit, the District Magistrate, West Champaran directed respondent no.5, the Circle Officer, Narkatiyaganj to get the land in question measured and consequently, the Circle Officer initiated the measurement proceeding, but the measurement could not be done since the petitioner chose not to participate in the measurement proceeding.

A statement has been made in paragraph no.7 of the counter filed on behalf of respondent nos. 7 and 8 that respondent no.7 denies construction of any boundarywall in front of the house of the petitioner, which is situated in Mauza Shikarpur. Paragraph no.7 reads as follows:-

“That it is pertinent to note here that deponent has got no concern with Mauza Shikarpur, neither any boundary wall has been constructed in Mauza Shikarpur by the deponent.”

Having heard learned counsel for the parties, this Court is of the view that the whole dispute is lingering since long as the



respondent no. 5, Circle Officer, Narkatiaganj has failed to initiate a proceeding under the Bihar Public Land Encroachment Act (hereinafter referred to as 'the Act').

For initiating a proceeding under the Act, Section 3 thereof mandates that it can be initiated if it appears to the Collector under the Act from an application made by any person or upon an information received from any source that any person has made or is responsible for the continuation of encroachment upon any public land.

No doubt, it appears from the materials on record that measurement was done and the measurement report suggested encroachment on the public road. Moreover, in view of the statement made in paragraph 7 of the counter affidavit filed on behalf of respondent nos. 7 and 8, whereby they deny the construction of any boundary wall by them on the public road, it appears that the proper course would have been to initiate an encroachment proceeding under the Act, since the public land is not only the land which is recorded in the revenue record as such, but also the land which is being used by the public at large for the purposes of right of easement. Hence, for removal of such encroachment a proceeding under the Act can be initiated and taken to its logical conclusion within a time



frame. The definition of the Public Land has been incorporated in Section 2(3) of the Act, which reads as follows:-

“2(3) Public Land means any land (managed by or vested in the Union of India or the State of Bihar, or in any local authority (or statutory body), (public undertaking) educational institution recognized by the Government or by any University established under any law for the time being in force, Railway Company or Gram Panchayat established under, section 3 of the Bihar Panchayat Raj Act, 1947 (Bihar Act VII of 1948), and includes any land over which the public or the community has got a right of user, such as right of way, burials, cremation, pasturage or irrigation.”

In the circumstances, it is expected from the respondent no. 4, the Circle Officer, Narkatiaganj to examine the issue and if need be, conduct spot verification or measurement of the land in question and on doing so, if it appears to him that the public land has been encroached upon or boundary wall has been constructed on the public road, then he will initiate a proceeding under the Act if it has already not been initiated, within two weeks of the receipt/production of a copy of this order and will take such proceedings to its logical conclusion within a period of three months, after giving due opportunity of hearing to all affected persons including respondent nos. 7 and 8 in



accordance with the provisions of the Act.

It is made clear that the present order is being passed on appearance of affected persons, it is expected from respondent no.4, the Circle Officer, Narkatiyaganj to give any undue adjournment to any person so that the proceeding would conclude within the given time frame.

With the above observations and directions, the present writ application is disposed of.

(Dinesh Kumar Singh, J)

Amrendra/-

AFR/NAFR	
CAV DATE	
Uploading Date	09.04.2018
Transmission Date	

