

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.1246 of 2017

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1. Sheo Jee Sah, Son of Late Dukhi Sah,
 2. Bidya Prasad, Son of Late Kanhaiya Sah,
 3. Binod Prasad, Son of Late Ramswarath Sah,
- All are the Resident of Village- Sareya Tola, Turkaulia, Post Office- Sareya Bazar, Gram Panchayat East Sareya, Anchal Paharpur, Police Station Paharpur, Sub-Division Areraj, District East Champaran.

.... Petitioner/s

Versus

1. The State of Bihar.
2. The District Magistrate, East Champaran at Motihari.
3. The Sub-Divisional Officer, Sub-Division Areraj East Champaran.
4. The Circle Officer, Anchal Paharpur, District- East Champaran.
5. The Officer-in-Charge Police Station Paharpur, East Champaran.
6. Mishrilal Paswan, Son of Late Lalmuni Paswan,
7. Kailash Paswan, Son of Late Lalmuni Paswan,
8. Kamlesh Paswan, Son of Late Lalmuni Paswan,
9. Arjun Paswan, Son of Late Lalmuni Paswan,
10. Gorakh Paswan, Son of Dashrath Paswan,
11. Byas Paswan, Son of Dashrath Paswan,
12. Bharat Paswan, Son of Dashrath Paswan,
13. Krishna Paswan, Son of Dashrath Paswan, All are the ResidentS of Village Sareya Tola, Turkaulia, Post Office- Sareya Bazar, Gram Panchayat East Sareya, Anchal Paharpur, Police Station Paharpur, Sub-Division Areraj, District East Champaran.

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Lalan Kumar Verma, Adv.
For the Respondent/s : Mr. Rishi Raj Sinha, SC-19
Ms. Archana Prasad, AC to SC-19

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CORAM: HONOURABLE MR. JUSTICE DINESH KUMAR SINGH

ORAL JUDGMENT

Date: 01-08-2017

Heard Mr. Lalan Kumar Verma, learned Counsel
appearing on behalf of the petitioner and Ms. Archana Prasad, learned
AC to SC-19, appearing on behalf of Respondent Nos. 1 to 5.

The present writ application has been filed for a direction



to the respondent authorities to take a decision on the representation of the petitioner dated 28.06.2016 submitted before Respondent No.4, the Circle Officer, Paharpur, as contained in Annexure-1, whereby, the prayer has been made for getting the encroachment removed from the Gairmajarua Aam land pertaining to Plot No. 7433, measuring an area 10 decimals, situated at Village-Saraiya Tola, Circle –Paharpur, District –East Champaran, which is being used by public at large as road.

It is submitted by learned Counsel appearing on behalf of the petitioner that the land in question is a public road, which is being used by local people as well as by the petitioners, since the petitioner's residential house is situated adjacent to the public road of the land in question, but the same has been encroached upon by respondents 2nd set i.e. Respondent Nos. 6 to 13. The petitioner submitted representation before Respondent No.4, the Circle Officer, Paharpur on 28.06.2016, as contained in Annexure-1 giving specific detail with regard to the public land which has been encroached upon by respondent 2nd set. Thereafter, the petitioner submitted representation dated 18.07.2016, before Respondent No.3, the Sub-Divisional Officer, Areraj East Champaran, as contained in Annexure-2. Ultimately, when neither Respondent No.3, the Sub-Divisional Officer, Areraj East Champaran nor Respondent No.4, the Circle



Officer, Paharpur considered the representation of the petitioner, the petitioner submitted a representation on 20.08.2016, before Respondent No.2, the District Magistrate, East Champaran at Motihari, as contained in Annexure-3, for redressal of his grievances. The District Magistrate also did not bother to redress the grievance of the petitioner. Hence, the writ application.

Even though, the writ application was filed on 25.01.2017, but the counter affidavit has not been filed till date and as such, this Court is not inclined to adjourn the matter any further. However, in view of the relief prayed for, this Court intends to pass such order which does not require issuance of notice to the private respondents.

Having heard Counsels for the parties, this Court is of the view that the pre-condition for initiation of proceeding under Section 3 of the Bihar Public Land Encroachment Act (hereinafter referred to as 'the Act') is an application made to the Collector by any person or upon information received from any source that any person has made or is responsible for the continuance of any encroachment upon any public land.

This is not disputed by learned Counsel appearing on behalf of the respondent-State, that the petitioner submitted representations before Respondent No.2, the District Magistrate,



Gopalganj, Respondent No.3, the Sub-Divisional Officer, Areraj and Respondent No.4, the Circle Officer, Paharpur on 20.08.2016, 18.07.2016 and 28.06.2016, respectively, as contained in Annexures 1 to 3, hence, the respondent authorities were in knowledge of the fact that the encroachment has been made on public road by respondent 2nd set, but there is nothing on record to suggest that any action has been taken by the respondent State.

In the circumstances, the writ application is disposed of with a direction to Respondent No.4, the Circle Officer, Paharpur, to dispose of the representation dated 28.06.2016, as contained in Annexure-1, if it has already not been disposed of, within a period of four weeks. *Prima facie*, if it is found that there is encroachment on the public road, then appropriate proceeding be initiated under the provisions of the Act, if it is already not initiated and the same should be taken 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.

(Dinesh Kumar Singh, J)

Ashwini/-

AFR/NAFR	
CAV DATE	
Uploading Date	
Transmission Date	

