

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.18453 of 2016

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Hrishikesh Mishra, Son of Late Umapati Mishra, Resident of Village and
P.O.- Belhi Khas, P.S.- Kateya, District- Gopalganj.

... .. Petitioner/s

Versus

1. The State of Bihar through the Chief Secretary, Bihar, Patna.
2. The Principal Secretary, Department of Revenue and Land Reforms,
Government of Bihar, Old Secretariat, Patna.
3. The Divisional Commissioner, Saran Division, Saran at Chapra.
4. The Collector-cum-District Magistrate, Gopalganj, District- Gopalganj.
5. The Superintendent of Police, Gopalganj, District- Gopalganj.
6. The Deputy Collector Land Reforms, Hathua, District- Gopalganj.
7. The Sub-Divisional Officer/Magistrate, Hathua, District- Gopalganj.
8. The Sub-Divisional Police Officer, Hathua, District- Gopalganj.
9. The Block Development Officer, Kateya, District- Gopalganj.
10. The Circle Officer, Kateya, Circle- Kateya, District- Gopalganj.
11. The Officer-in-charge, P.S.- Kateya, District- Gopalganj.
12. Vidya Bhushan Mishra, Son of Shri Matiwari Mishra
13. Matiwari Mishra, Son of Late Brahmdeo Mishra
14. Chokati Tiwari, Son of Late Salik Tiwari, All are resident of village and Post-
Belhi Khas, P.S.- Kateya, District- Gopalganj.

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Nityanand Mishra
For the Respondent/s	:	Mr. RAJ KISHORE ROY- GP18

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CORAM: HONOURABLE MR. JUSTICE DINESH KUMAR SINGH
ORAL JUDGMENT

Date : 12-10-2017

Heard learned counsels for the parties.

Since the writ application was filed on 16.11.2016 and till
date no counter affidavit has been filed, 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 respondent nos.12 to 14.

The present writ application has been filed for a



direction to the respondent authorities to get the encroachment removed from the land appertaining to Khata No. 238, R.S. Plot No. 1049 measuring 5 katha 18 dhoor, Thana No. 141, situated in village Belhi Khas, P.S. Kateya in the district of Gopalganj. The said land is Gairmajarua Malik Parti Kadeem in the Khatiyani but the same is being used as public road.

It is submitted by learned counsel for the petitioner that the land in question is recorded as Gairmajarua Malik Parti Kadeem as contained in Annexure 1. The same is being used as public road but the same has been encroached upon by the private respondent nos. 12 to 14.

Though, vide notice dated 28.6.1988 issued by respondent no. 10, the Circle Officer, Kateya, respondent no. 13 was directed to remove the encroachment from the land in question but no follow-up action was taken. Thereafter, respondent no. 10, the Circle Officer, Kateya vide letter no. 875 dated 4.9.1988, as contained in Annexure 3, requested the respondent no. 7, the S.D.M., Hathua to initiate a proceeding under Section 133 of the Cr.P.C. against respondent no. 13, since after measurement by the Anchal Amin it was found that the public road has been encroached upon by respondent no.13. Consequently, a proceeding under Section 133 of the Cr.P.C. was initiated vide Case No. 446 of



1989 and the S.D.M., Hathua vide order dated 28.7.1989 directed the respondent no. 10, the Circle Officer, Kateya to get the land measured through Anchal Amin and thereafter, remove the encroachment. The said order is contained in Annexure 4 to the writ application. Though respondent no. 13 prayed for recall of the order dated 28.7.1989 before respondent no. 7, but the respondent no. 7, the S.D.M., Hathwa, vide order dated 12.11.1990, passed in Case No. 446 of 1989, refused to recall the order dated 28.7.1989 and directed the respondent no. 10 to ensure compliance of the aforesaid order dated 28.7.1989. The said order dated 12.11.1990 was challenged before the learned District Judge, Gopalganj in Cr. Revision No. 119 of 1990 but the same was dismissed vide order dated 2.9.1991, as contained in Annexure 6. Thereafter, the petitioner represented before the respondent no. 10, the Circle Officer, Kateya on 3.3.2016/ 5.3.2016 for getting the encroachment removed and consequently, on the direction of the respondent no. 10, the Circle Officer, Kateya, the Circle Amin measured the land, prepared a map (Annexure 8) and found that the land in question has been encroached upon by the private respondent nos. 12 to 14. Again, the petitioner filed representation dated 19.3.2016, as contained in Annexure 9, before respondent no. 10, the Circle Officer, Kateya for implementation of the order



passed in the proceeding under Section 133 of the Cr.P.C. and consequently, the respondent no. 10, the Circle Officer, Kateya issued notice in Form II under section 6(2) of the Bihar Public Land Encroachment Act (hereinafter referred to as the 'Act') to the private respondents to remove the encroachment by 1.4.2016 as contained in Annexure 10 series, but till date the encroachment has not been removed. Though vide Memo No. 905 dated 1.8.2016, the respondent no. 7, S.D.M., Hathua in pursuance to the request made by respondent no. 10, the Circle Officer, Kateya, deputed the Circle officer, Kateya and BDO, Kateya as Incharge Magistrate and directed the Officer Incharge, Kateya Police station for deputation of force for removal of encroachment on 9.8.2016 but till date the encroachment has not been removed.

Learned counsel for the respondent State submits that he is not having any instruction whether the encroachment has been removed or not. However, prima facie, it appears from the materials on record that in pursuance to the order passed in the proceeding under Section 133 of the Cr.P.C., notice under section 6(2) of the Act in Form II, as contained in Annexure 10 series, has been issued without passing any final order under section 6(1) of the Act.

Having heard learned counsels for the parties, particularly, the submissions of learned counsel for the petitioner



that he has not filed writ application for execution of the order passed under section 133 of the Cr.P.C., but for removal of encroachment from the public land through a proceeding under the Act. From the materials on record it does not appear that any proceeding under section 3 of the Act was ever initiated. However, though the order was passed in 133 of the Cr.P.C. proceeding whereby the respondent no. 7, the S.D.M., Hathua vide order dated 28.7.1989 passed in Misc. Case No. 446 of 1989 and again vide order dated 12.11.1990 directed the respondent no. 10, the Circle Officer, Kateya to remove the encroachment but consequently though notices were issued under the signature of respondent no. 10, the Circle Officer, Kateya, as contained in Annexure 10 series, in Form II of the Act, whereby the private respondents were directed to remove the encroachment, but it does not appear that any encroachment proceeding was initiated or any final order was passed.

For initiating a proceeding under the Act, it should appear to the Collector under the Act from an application made by any person or upon the information received from any source that any person has made or is responsible for the continuation of encroachment upon any public land.

It appears that during the proceeding under Section



133 of Cr.P.C., the respondent no. 7, the S.D.M., Hathwa came to a conclusion that public land has been encroached upon, which fact further gets confirmed from the measurement report of the Anchal Amin submitted to the respondent no. 10, the Circle Officer, Kateya, as contained in Annexure 8, which was to the effect that the land in question is public land and the same has been encroached upon. Then it was imperative upon the respondent no. 10, the Circle Officer, Kateya to initiate a proceeding under the Act and take the same to its logical conclusion.

Though under the provisions of the Act, notice under section 6(2) of the Act in Form II can only be issued after passing a final order under section 6(1) of the Act, but there is nothing on record to suggest that such order has been passed, or any proceeding has actually been initiated under the Act. The provision under section 4 of the Act has also not been complied with.

In the circumstances, respondent no. 10, the Circle Officer, Kateya is directed to examine the records and if it appears to him that the public land has been encroached upon, then he will initiate the proceeding under the Act forthwith and will take such proceedings to its logical conclusion within a period of three months thereafter, after giving due opportunity of hearing to all affected persons, including private respondent nos. 12 to 14, in



accordance with the provisions of the Act.

This writ application is, accordingly, disposed of.

(Dinesh Kumar Singh, J)

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AFR/NAFR	
CAV DATE	
Uploading Date	
Transmission Date	

