

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.3982 of 2017

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Harihar Rai, Son of Late Banarasi Rai, Resident of Village-Bakhari, Barahi, P.O. Bakhari Supain, P.S. and Anchal Raja Pakar, District vaishali.

.... Petitioner/s

Versus

1. The State of Bihar, through Principal Secretary, Revenue Department, Government of Bihar, Patna.
 2. The Collector, Vaishali.
 3. The Circle Officer, Raja Pakar District Vaishali.
 4. Sri Kailash Rai Son of Late Saryug Rai
 5. Jaglal Rai, Son of Late Ram Vriksh Rai
- Both Resident of Village-Bakhari, Barahi, P.O. Bakhari Supain, P.S. and Anchal Raja Pakar, District Vaishali

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Ashok Kumar, Advocate
For the Respondent/s : Mr. Ajay-GA-5

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CORAM: HONOURABLE THE CHIEF JUSTICE

And

HONOURABLE MR. JUSTICE SUDHIR SINGH

ORAL JUDGMENT

(Per: HONOURABLE THE CHIEF JUSTICE)

Date: 16-05-2017

Inter alia contending that there is an encroachment in the area in question, respondent nos.4 and 5 have caused encroachment into a public road and in spite of the report and observations made by the Circle Amin in Annexure-1, the encroachment is not being removed, this petition has been filed for removal of the encroachment.

We find that the matter went up to the Court of Commissioner, Tirhut Division, Muzaffarpur in a proceeding under the BLDR Appeal and the Commissioner did not interfere into the matter. Be that as it may be, it also transpires from the record that before



submitting the report or observations as are contained in Annexure-1, the Circle Amin has also not heard and considered the observations, if any, of respondent nos.4 and 5.

That being so, it is not appropriate for this Court in a public interest petition exercising writ jurisdiction under Article 226 of the Constitution to direct for removal of the encroachment in the matter based on observations and finding recorded in Annexure-1. However, the petitioner has a remedy of getting the encroachment removed by filing a statutory complaint or initiating a statutory proceeding under the Bihar Public Land Encroachment Act, 1956 i.e. by filing an application before a competent statutory authority, namely, the Circle Officer, who can after following due process of law, which includes hearing to the concerned person, adjudicate the dispute and pass an appropriate order for removal of an encroachment.

That being so, we are not inclined to interfere into the matter, instead grant liberty to the petitioner to file an appropriate application before the statutory authority under the Bihar Public Land Encroachment Act, 1956 and if such an application is filed, the statutory authority shall hear all concerned and pass a speaking order, preferably within a period of six months from the date of filing of the complaint. Needless to emphasize that we have not expressed any opinion on the merits of the allegations made by the petitioner in this



writ petition and it is exclusively for the statutory authority to deal with the matter in accordance with law.

With the aforesaid observations and directions, the writ petition stands disposed of.

(Rajendra Menon, CJ)

(Sudhir Singh, J)

Sunil/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	18.05.2017
Transmission Date	

