

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.7650 of 2017

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Jitendra Yadav, son of Bishundev Yadav, resident of Village/Mohallah-Gidha, P.O.- Songarhwa, P.S.- Phulwaria (Sripur O.P.), District- Gopalganj (Bihar).

.... Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Department of Revenue & Land Reforms, Government of Bihar, Patna.
2. The District Magistrate-cum-Collector, Gopalganj (Bihar).
3. Sub Divisional Officer, Hathua, District- Gopalganj (Bihar).
4. Circle Officer, Phulwariya, District- Gopalganj (Bihar).
5. Ramadhar Chaudhary, son of Late Jagranath Chaudhary,
6. Upendra Chaudhary, son of Swaminath Chaudhary,
7. Bhola Chaudhary, son of Late Baijnath Chaudhary, SL. No.5 to 7 are resident of Village- Gidha, P.S.- Phulwariya (Sripur), District- Gopalganj (Bihar).

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Raju Giri, Adv.
For the Respondent-State : Mr. R.K. Roy- GP-18

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CORAM: HONOURABLE MR. JUSTICE DINESH KUMAR SINGH
ORAL ORDER

2 26-07-2017 Heard Mr. Raju Giri, learned counsel appearing on behalf of the petitioner and Mr. R. K. Roy, learned GP-18 appearing on behalf of Respondent Nos. 1 to 4.

Learned Counsel appearing on behalf of the petitioner is permitted to make necessary correction in the petition.

The present writ application has been filed for a direction to Respondent No.2, the District Magistrate, Gopalganj, to get the encroachment removed, existing over the land pertaining to Khata No.185, Plot No.686, situated in Village-Gidha, Circle-



Phulwariya, District –Gopalganj, as the same has been recorded in Khatiyan as ‘Gair Mazarua Aam’ and is being used by the villagers at large.

It is submitted by learned Counsel appearing on behalf of the petitioner that the petitioner’s land is adjacent in front of public road/land and since the public land has been encroached upon by Respondent Nos. 5 to 7, hence, the petitioner’s approach to private road has substantially been impeded. The villagers submitted petitions on 19.05.2016, 10.12.2015 and 19.05.2016 before Respondent No.2, the District Magistrate, Gopalganj, but till date no action has been taken to initiate a proceeding under the Bihar Public Land Encroachment Act (hereinafter called as the ‘Act’), though, on the application of private respondents, a proceeding under section 144 of the Code of Criminal Procedure was initiated.

It is submitted by Mr. R. K. Roy, learned GP-18, appearing on behalf of Respondent Nos. 1 to 4 that presently he does not have any instructions whether the land in question is a public land/road or any proceeding under the Act has been initiated or not.

In view of nature of order this Court intends to pass, there is no requirement for issuance of notice to the private



respondents. Considering the relief prayed for, this Court is not inclined to adjourn the matter any further for filing counter affidavit.

The pre-condition for initiation of proceeding under section 3 of the Act is an application made to the Collector 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. No doubt, the Respondent No.2, the District Magistrate, Gopalganj, came to know through public petitions, dated 19.05.2016, 10.12.2015 and 19.05.2016, about the encroachment being made on public road/land by Respondent Nos. 5 to 7, but there is nothing on record to suggest that any proceeding has been initiated, which *prima facie* suggests application of *quasi judicial* functions by the respondent authorities.

Considering the rival submissions of the parties, the writ application is disposed of with a liberty to the petitioner to submit a representation with a prayer for removal of encroachment over the land in question before Respondent No.4, the Circle Officer, Phulwariya, Gopalganj, within a period of four weeks, from the date of receipt/production of a copy of this order, who will dispose of the same, upon its filing, within a period of four



weeks thereafter. If Respondent No.4, *prima facie*, comes to the conclusion that the land in question is a public land/road and the same has been encroached upon, then an appropriate proceeding be initiated under the provisions of the Act, if it has already not been 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, under the provisions of the Act.

(Dinesh Kumar Singh, J)

Ashwini/-

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