

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.4881 of 2017

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Dashrath Mahto S/o Late Hardev Mahto Resident of Village-Imam Nagar, P.S.-
Surgarha, (Manikpur O.P.) Dist-Lakhisarai

.... Petitioner/s

Versus

1. The State of Bihar, through the District Magistrate, Lakhisarai.
2. The District Magistrate, Lakhisarai, Dist-Lakhisarai.
3. The Deputy Collector, Land Reforms (D.C.L.R) Lakhisarai, Dist-Lakhisaria.
4. The Circle Officer, Surygarh, Dist-Lakhisarai
5. Ayodhya Rajak S/o Late Eno Rajak
6. Shashi Rajak S/o Nageshwar Rajak
7. Manoj Rajak S/o Nageshwar Rajak
8. Rameshwar Rajak S/o Late Biranchi RaJak
9. Laxmi Rajak S/o Late Biranchi RaJak Respondent No-5to9 Resident of Village-
Imam Nagar P.O.-Kawadpur, P.S.-Surygarha, (Manikpur O.P.) Dist-
Lakshisarai.

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Mahendra Thakur

For the Respondent/s : Mr. SAJID SALIM KHAN -SC25

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CORAM: HONOURABLE MR. JUSTICE DINESH KUMAR SINGH

ORAL JUDGMENT

Date: 25-07-2017

Learned counsel for the petitioner is permitted to
make necessary correction in the petition.

Heard Mr. Mahendra Thakur, learned counsel for



the petitioner and Mr. Washi Ahmad Khan, learned AC to SC-25.

The present writ application has been filed for a direction to respondent authorities to get the encroachment made by respondent nos. 5 to 9 removed over the land appertaining to Thana No. 16, Khata No. 286, Khesra No. 3344, situated in village – Imamnagar under Gram Panchayat Raj Salempur East, District – Lakhisarai, which is recorded in R.S. Khatiyani as Gairmajarua Aam, which consists of a small pond and public road, and the public road is being used by the public at large.

This Court is not inclined to issue notice to respondent nos. 5 to 9, in view of the nature of order this Court intends to pass.

It is submitted by learned counsel for the petitioner that for removal of encroachment of public land/pond, a representation was submitted on 02.06.2014, before the Circle Officer, Suryagarha, respondent no. 4, as contained in Annexure-P-1, and thereafter on 11.01.2016, as contained in Annexure-P-2, but till date neither any encroachment proceeding has been initiated nor the encroachment has been removed, hence, the present writ application.

It is submitted by learned AC to SC-25 that, at present, he is having no instruction whether any proceeding has been initiated or not nor any statement has been made with regard to nature



of land, whether it is a public land or not.

Section 3 of the Bihar Public Land Encroachment Act provides the pre-conditions for initiation of the proceedings. Section 3 reads as under:-

“3. Initiation of the proceedings-(1) if it appears to the Collector from an application made 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, the Collector may cause to be served upon such person a notice in the prescribed form requiring him to appear on a date which shall not be less than two weeks from the date of service of notice to show cause-

- (a) Why he should not be restrained from making such encroachment by issue of injunctions; or
- (b) Why such encroachment should not be removed.

(2) Under clause (a) of sub-section (1) the Collector shall have power to issue temporary injunction at any stage to restrain such encroachment till the disposal of the proceeding or till further orders or he may pass such orders as he deems proper for preventing such encroachment:

Provided that where the encroachment on



public land is in the nature of exposure of articles for sale, or opening temporary booth for vending, the Collector may without the formality of issuing a notice as required under sub-section (1) order for its immediate removal or cause it to be removed immediately and for the purpose he may use such force as is necessary in the case:

Provided further that where the encroachment on public land is of such a nature as the Collector considers its immediate removal essential for the safety of general public or for the safety of any other structure on the public land and the notice cannot be served without unnecessary delay upon the person responsible for the encroachment or his representative owing to his absence or for any other reason, he may order the removal of encroachment or if necessary cause it to be removed immediately and may use such force for the purpose as is necessary.

(3) If the person who has made or is responsible for the continuance of the encroachment is not known or cannot be found, the Collector may cause notice to be affixed in the neighbourhood of the alleged encroachment requiring any person interested in the same to show cause by the date specified in the notice why the encroachment should not be removed and it



shall not be necessary to name any person in such notice.”

The above provision suggests that a proceeding under the Bihar Public Land Encroachment Act (hereinafter called as the ‘Act’) can be initiated if it appears to the Collector from an application made by any person or upon information received from any sources that any person has made or is responsible for encroachment upon any public land. No doubt the petitioner by submitting representations on 02.06.2014 and 11.01.2016, as contained in Annexure-P-1 and P-2 respectively, brought to the notice of the Circle Officer, Suryagarha, respondent no. 4 but the slumber of the Circle Office does not seem to have been broken since the last three years.

In the circumstances, respondent no. 4, Circle Officer, Suryagarha is directed to dispose of the representations of the petitioner dated 02.06.2014 and 11.01.2016, within a period of three weeks from the date of receipt/production of a copy of this order. If he finds that the encroachment has been made on public land, then a proceeding under the Act be initiated forthwith and it should be taken to its logical conclusion, after giving due opportunity of hearing to all the affected persons, within a period of four months from the date of



initiation of such proceeding, if it has not been initiated as yet.

Accordingly, this writ application is disposed of.

(Dinesh Kumar Singh, J)

DKS/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	31.07.2017
Transmission Date	NA

