

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.20606 of 2014

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Krishan Mohan Jha Son of Late Anant Mohan Jha resident of village - Madhepur,
P.S. Madhepur, District - Madhubani

.... Petitioner/s

Versus

1. The State of Bihar
2. The District Magistrate, Madhubani
3. The Sub Divisional Officer, Jhanjharpur
4. The Circle officer, Madhepur (Madhubani)

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Kaushal Kumar Jha, Advocate

For the Respondent/s : Mr. Akhilesh Kumar Sinha, AC to SC-19

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CORAM: HONOURABLE MR. JUSTICE DINESH KUMAR SINGH
ORAL JUDGMENT

Date: 04-09-2017

Heard Mr. Kaushal Kumar Jha, learned counsel
for the petitioner and Mr. Akhilesh Kumar Singh, learned AC to SC-
19 for respondent nos. 1 to 4.

The Writ application has been filed on
05.12.2014, but no counter affidavit has been filed till date, hence,
this Court is not inclined to adjourn the matter any further.

The present Writ application has been filed for a
direction to respondent no. 4, Circle Officer, Madhepur, District –
Madhubani to get the encroachment removed over public road passing
through the land appertaining to Khata No. 2714, Plot Nos. 8136,
8073, 8238, 7481, 5761, 5751, 5753, 5264, 5262, 5633, 5635, 5734
and 5727, Thana No. 257 situated in Laxmipur Chowk, Madhepura,



District – Madhubani.

It is submitted by learned counsel for the petitioner that the public road has been encroached upon by several persons. A public petition was submitted on 27.11.2012, before respondent no. 3, Sub-divisional Officer, Jhanjharpur, who directed respondent no. 4, the Circle Officer, Madhepur vide letter No. 329, to conduct an enquiry for the redressal of the grievance of the petitioner. Respondent no. 4, the Circle Officer, Madhepur directed the Circle Amin to measure the land in question and to submit a report. Circle Amin submitted a report dated 17.07.2014, as contained in Annexure-2, to the effect that the land appertaining to Plot Nos. 8073, 8238 and 7481 have been encroached upon by 119 persons, but till date, encroachment has not been removed nor any proceeding has been initiated under Bihar Public Land Encroachment Act, 1956. Hence, the present writ application.

Mr. Akhilesh Kumar Sinha, learned AC to SC-19 submits that, at present, he does not have any instruction whether any proceeding has been initiated or whether the encroachment has been removed or not from the land in question.

Having heard the learned counsels for the parties, it appears from the statement made in paragraph 1 of the petition that the public road in question runs from 13 plots, out of which, the report



of the Circle Amin suggests that he took measurement on plot nos. 8073, 8238 and 7481. It also appears that the report of the Circle Amin has been prepared on the assumption that the public road has been encroached. However, specific statement has not been made in the report that the land in question is a public road.

Considering the rival submissions of the parties, this Court is of the view that, for initiating a proceeding under Bihar Public Land Encroachment Act, 1956 (hereinafter referred to as the 'Act') the only pre-condition under Section 3 of the Act is that 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, he will initiate a proceeding under the Act.

This has not been disputed by the learned counsel for the State that as far back as on 27.11.2012, a public petition was filed before respondent no. 3, Sub-divisional Officer, Jhanjharpur that public road has been encroached upon and on the same date, the respondent no. 4, Circle officer, Madhepur was directed to conduct enquiry, hence, on 27.11.2012, the Circle Officer was having the information that the public road has been encroached upon. The report of the Circle Amin is dated 17.07.2014, when the Circle Officer came to know that 119 persons have encroached the public road in question.



This Court is dismayed to find that there is nothing on record to suggest that any proceeding has been initiated under the Act.

In the circumstances, respondent no. 4, Circle Officer, Madhepur will examine the records and if it appears that the public road has been encroached upon then he will initiate a proceeding under the Act, if it has not been initiated and take to its logical conclusion within a period of three months from the date of receipt/production of a copy of this order, after giving due opportunity of hearing to all the affected persons in accordance with the provisions of the Act.

Accordingly, this Writ application is disposed of.

(Dinesh Kumar Singh, J)

DKS/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	18.09.2017
Transmission Date	NA

