

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.20607 of 2014

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Ram Kumar Jha Son of Umesh Jha Resident of Village - Hirni, P.S. Kusheswar
Asthan, District - Darbhanga

.... Petitioner/s

Versus

1. The State of Bihar
2. The District Magistrate, Darbhanga
3. The Sub Divisional Officer, Biroul
4. The Circle Officer, Kusheshwar Asthan

.... Respondent/s

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Appearance :

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

For the Respondent/s : Mr. Shankar Kr. Choubey, AC to AAG-8

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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. Shankar Kumar Choubey, learned AC to
AAG-8 for respondent nos. 1 to 4.

The present Writ application has been filed on
05.12.2014, but no counter affidavit has been filed till date and 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. 3, Circle Officer, Kusheshwar Asthan to
initiate a proceeding for getting the encroachment removed from the
public road passing through the land appertaining to Khata No. 1244,
Plot Nos. 531, 2923, 3005, 3376, 3611, 2708, 2706, 1660, Thana No.



233 situated in Mauza – Hirni in the district Darbhanga.

It is submitted by learned counsel for the petitioner that the public road has been encroached upon by several persons, as a result of which the movement of the villagers at large has substantially been obstructed due to the said encroachment over the land. The petitioner, along with several villagers submitted a representation on 13.02.2013 before respondent no. 4, Circle Officer, Kusheshwar Asthan for getting the encroachment removed, as contained in Annexure-1. The Executive Officer, Rural Works Department, Biraul also wrote a letter to the Circle Officer, Kusheshwar Asthaan vide letter No. 120 dated 04.02.2013, as contained in Annexure-2, requesting Circle Officer, Kusheshwar Asthan to get the encroachment removed as the construction is also being obstructed due to the encroachment over the land in question. Several representations were also transmitted to the authorities by registered post, but no action has been taken for removal of the encroachment. Hence, the present writ application.

Learned AC to AAG-8 submits that, at present, he is not having any instruction whether any proceeding has been initiated or whether the encroachment has been removed or not from the land in question.

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 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.

In the present case, no doubt, public petition was submitted before respondent no. 4, the Circle Officer, Kusheshwar Asthan on 13.02.2013, as contained in Annexure-1 and thereafter, the Circle Officer directed the Circle Amin to measure the land and thereafter, vide letter dated 04.02.2013, as contained in Annexure-2, the Executive Engineer, Rural Works Department, Biraul requested the Circle Officer, Kusheshwar Asthan to get the encroachment removed as the construction was obstructed due to the encroachment over the land in question, but even then, there is nothing on record to suggest that any proceeding under the Act has been initiated.

In the circumstances, respondent no. 4, Circle Officer, Kusheshwar Asthan is expected to examine the matter from records and if it appears that a public road has been encroached upon then he will initiate a proceeding under the Act, if it has not been initiated till date and will 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	14.09.2017
Transmission Date	NA

