

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.22451 of 2014

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Ashok Kumar Singh, S/O Late Yugal Kishore Singh, Resident of Village-
Tari, P.S.- Raghunathpur, District- Siwan.

... .. Petitioner/s

Versus

1. The State of Bihar through the Collector cum District Magistrate, Siwan,
District- Siwan.
2. The Sub-Division Officer at Siwan.
3. The Circle Officer Raghunathpur, District- Siwan.
4. The Superintendent of Police, Siwan.
5. The S.D.P.O. at Siwan.
6. The Officer In Charge Raghunathpur, District- Siwan.
7. LakhiChand Baitha Son of Late Bhajan Baitha
8. Shakhichand Baitha Son of Late Bhajan Baitha
9. Laddu Baitha Son of Late Bhajan Baitha
10. Jagat Baitha Son of Late Bhajan Baitha
11. Hira Baitha Son of Lakhichand Baitha
12. Raj Kumar Baitha Son of Sakichand Baitha
13. Shivji Baitha Son of Laddu Baitha
14. Sunil Baitha @ Mithun Baitha Son of Late Gyani Baitha.
15. Anil Baitha Son of Late Gyani Baitha.
16. Dharmendra Baitha Son of Late Gyani Baitha.
17. Prem Baitha Son of Late Sajan Baitha
18. Surendra Baitha Son of Prem All respondent No.7 to 18 are resident of
village- Tari, P.S.- Raghunathpur, District- Siwan.

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Vitesh Kumar Singh, Adv.
For the State	:	Mr. Pankaj Kumar Singh, AC to GA-9

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CORAM: HONOURABLE MR. JUSTICE DINESH KUMAR SINGH
ORAL ORDER

2 07-09-
2017

Heard Mr. Vitesh Kumar Singh, learned Counsel
appearing on behalf of the petitioner and Mr. Pankaj Kumar



Singh learned AC to GP-9, appearing on behalf of the respondent – State.

The present Writ application has been filed for a direction to the respondent authorities to get the encroachment removed from the public land/road, appertaining to Khata No. 445, Survey Plot No.2301, measuring an area 8 katha 7 dhurs, which has been encroached upon by the private respondents. Prayer has also been made to conduct an enquiry against the respondent authorities concerned, who inspite of having received complaint in this regard, have not taken any action.

Since the Writ application was filed in 2014 and till date no counter affidavit has been filed, this Court is not inclined to adjourn the matter any further.

The nature of order this Court intends to pass, does not require issuance of notice to private respondent nos. 7 to 18.

It is submitted by learned Counsel appearing on behalf of the petitioner that the land/road is known as Tari-Chainpur, which connects Chapra-Raghunathpur Main road and the same passes through the land appertaining to Khata No.445, Survey Plot No. 2301, measuring an area 8 katha 7 dhurs. The said land is recorded in the survey Khatian as 'Gairmajarua Malik, Parti Kadim' which has been subsequently amalgamated with the



existing road and thereafter, the road was constructed by the Public Works Department, Government of Bihar. The house of the petitioner is situated in the east side of the land/road in question, appertaining to Khata No. 415, Survey No. 2298, measuring an area 5 katha 8 dhurs. The private respondents initially made encroachment over the flank of the road and consequently, ingress and egress of the petitioner has been blocked. On an application, submitted by the petitioner, a proceeding under Sections 147 and 107 of the Cr.P.C. was initiated, but till date, the encroachment has not been removed from the land in question. However, respondent no.2, the Sub-Divisional Officer, Siwan called for a report from respondent no. 3, the Circle Officer, Raghunathpur, who submitted a report dated 08.08.2011, as contained in Annexure-5, which reflects that the land appertaining to Khata No.415, Survey No.2298 is recorded as 'Wakas Malik' in the name of Yugal Kishore Singh. The report also suggests that the land is being used as public land and the same has been encroached upon by the private respondents. Similar is the report of the Officer In-charge, Raghunathpur police station, as contained in Annexure -6, but till date, no action has been taken for removal of the encroachment from the land in question.



Learned AC to GP-9, appearing on behalf of the respondent - State submits that the report of the Circle Officer as well as the Officer In-charge, Raghunathpur police station, as contained in Annexures 5 and 6, respectively, does not reflect whether the land in question is recorded in Khatiyani as a public land or not. However, this much is clear that the land is being used as public road.

Public land is defined under sub-Section (3) of Section 2 of the Bihar Public Land Encroachment Act (hereinafter called as 'the Act'), which reads as under :-

“Public land” means any land [managed by or] vested in the Union of India or the State of Bihar, or in any local authority [or statutory body], [public undertaking] educational institution recognized by the Government or by any University established under any law for the time being in force, Railway Company or Gram Panchayat established under Section 3 of the Bihar Panchayat Raj Act, 1947 (Bihar Act VII of 1948) and includes any land over which the public or the community has got a right or user, such as right of way, burials, cremation, pasturage or irrigation.”

The above definition of public land includes any land vested in Union of India or to the State or to any local authority or to any public undertaking or to any educational institution or to any railway company or to the Gram Panchayat and includes any land over which, the public or the community has got right of user, such as right of way, burials, cremation, pasturage or



irrigation. Even if a land is not recorded in the revenue records as a public land, but if it is being used for the public purposes then, it can be treated as a public land.

The *sine qua non* for initiation of proceeding under the Act is that it should appear to the Collector under the Act, either on application made by any person or upon information received from any source that any person has made or is responsible for the continuance of any encroachment upon any public land.

No doubt, in the present case, it appears that the encroachment has been made on the land in question and it was certainly brought within the knowledge of the respondent no.2, the Sub-Divisional Officer, Siwan and respondent no. 3, the Circle Officer, Raghunathpur that public land has been encroached upon, but none have initiated a proceeding under the Act and have failed to discharge the quasi-judicial function delegated to them under the Act.

In the circumstances, respondent no. 3, the Circle Officer, Raghunathpur, is expected to examine the records, if need be make spot inspection thereafter if it appears to him that any encroachment has been made on the public land/road in question, then he will initiate a proceeding under the Act forthwith and will take such



proceeding to its logical conclusion, within a period of three months, after giving due opportunity of hearing to all the affected persons in accordance with the provisions of the Act.

The Writ application is, accordingly, disposed of.

(Dinesh Kumar Singh, J)

Ashwini/-

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