

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.18185 of 2016

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Brij Kishor Prasad, Son of Sri Basudev Prasad, Resident of Village-
Chhauradano, Police Station -Chhauradano, in the District of East Champaran

... .. Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Department of Revenue, Government of Bihar, Patna
2. The principal Secretary, Department of Revenue, Government of Bihar, Patna
3. The District Magistrate-cum-Collector, East Champaran, Motihari
4. The Sub-Divisional Magistrate, Razaul in the district of East Champaran (Motihari)
5. The Circle Officer, Chhauradano in the district of East Champaran (Motihari)
6. Karmullah Miyan, Son of Md. Khalil Miyan
7. Mohamdin Miyan, Son of Late Karamtullah Miyan
8. Ramjan Miyan, Son of Late Ismail Miyan
9. Aliullah Miyan, Son of Late maul Miyan
10. Sarfuddin Miyan, Son of Late Yakub Miyan
11. Most. Safina Khatoon, Son of Late Lal Mohammad Miyan
12. Gani Mohammad, Son of Late Fida Miyan, All respondent no. 6 to 12 are Resident of Village -Raghunathpur Police Station -Chhauradano, in the District of East Champaran

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr. Sushant Kumar, Adv.
For the Respondent/s : Mr. Sajid Salim Khan, SC-25

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CORAM: HONOURABLE MR. JUSTICE DINESH KUMAR SINGH
ORAL ORDER

2 07-12-2017 Heard Mr. Sushant Kumar, learned counsel for the

petitioner and Mr. Wasi Ahmad Khan, leaned AC to SC-25 for

the respondent-State.

Since the present writ application was registered on
08.11.2016, but till date no counter affidavit has been filed,
hence, this Court is not inclined to adjourn the matter any
further for filing counter affidavit.

The nature of order, this Court intends to pass does not



require issuance of notice to private respondent nos. 6 to 12.

The present writ application has been filed for a direction to the respondent authorities to get the encroachment removed from the land appertaining to Khata No. 73, Plot No. 513, measuring an area of 27 decimals, situated in Village Raghunathpur, Police Station Chhauradano, Sub-Division Raxaul, District East Champaran (Motihari).

It is submitted by learned counsel for the petitioner that the land in question is recorded in the Revenue Records as 'Gairmajarua Aam Land' and the same is being used as public road which is the only pathway through which the petitioner has access to his residential land, appertaining to Khata No. 19, Plot No. 422 and Khata No. 22, Plot No. 423, but the same has been encroached upon by private respondent nos. 6 to 9.

It is further submitted that proceeding under Section 133 Cr. P.C. was initiated vide Case no. 611M of 2014, wherein a report was called for by respondent no.4, the Sub-Divisional Officer, Raxaul from respondent no.5, the Circle Officer, Chhauradano who submitted the report to Sub-Divisional Officer, vide letter no. 226, dated 03.05.2014 along with the report of the Halka Karamchari as well as Circle Amin, as contained in Annexures- 1 to 3, which suggest that the land in



question is recorded in the Revenue Records as 'Gairmajarua Aam Land'. Subsequently, proceeding under Section 133 Cr. P.C. was disposed of vide order dated 11.09.2014, passed in Case No. 611M of 2014, by respondent no.4, the Sub-Divisional Officer, Raxaul, as contained in Annexure-4, directing respondent no.5, the Circle Officer, Chhauradano to take legal action. However, it was recorded by the Sub-Divisional Officer that the report of the Circle Officer does not suggest that the public road has been obstructed, but till date, the Circle Officer, Chhauradano has not taken any action. However, the petitioner also submitted a representation before respondent no.5, the Circle Officer, Chhauradano on 08.12.2014 for removal of the encroachment, but till date encroachment has not been removed from the land in question. Hence, the present writ application.

Learned AC to SC-25 submits that from the materials on record, the dispute appears to be of private nature. The order of Sub-Divisional Officer specifically reflects that the report of the Circle Officer does not suggest that any public road has been obstructed. However, he does not dispute this fact that the land appears to be recorded in the Revenue Record as 'Gairmajarua Aam land'.

Considering the rival submissions of the parties, this Court



is of the view that *sine qua non* for initiating proceeding under Section 3 of the Bihar Public Land Encroachment Act (hereinafter referred to as 'the Act') is that it should appear to the Collector under the Act, 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.

In the present case, no doubt, in the proceeding under Section 133 Cr. P.C., the Circle Officer, Chhauradano submitted the report which contains the report of the Halka Karamchhari and Circle Amin, prima facie, which reflects that the land in question is recorded in the Revenue Record as 'Gairmajarua Aam Land' and in that background, the Sub-Divisional Officer, Raxaul directed the Circle Officer, Chhauradano to take legal action in the matter and consequent to that, the representation was submitted by the petitioner before respondent no.5, the Circle Officer, Chhauradano, as contained in Annexure-5, for removal of the encroachment from the land in question, but there is nothing on record to suggest that any proceeding under the Act has been initiated.

In the circumstances, respondent no.5, the Circle Officer, Chhauradano is directed to examine the Revenue Records and if



need be, conduct spot verification, and if it appears to him that the land in question is a public land and the same has been encroached upon, then he shall initiate a proceeding under the Act forthwith, if the same has already not been initiated till date, and take such proceeding to its logical conclusion within a period of four months from its initiation, after giving due opportunity of hearing to all affected persons, in accordance with the provisions of the Act.

With the above observations and directions, the present writ application is disposed of.

(Dinesh Kumar Singh, J)

Amrendra/-

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