

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.20266 of 2014

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1. Bhagwan Singh
 2. Ram Deni Singh Both sons of Late Ram Pukar Singh, Resident of Village- Bafapur Bathu, Police Station- Bhagwanpur, District- Vaishali

.... Petitioner/s

Versus

1. The State of Bihar
2. The District Magistrate, Vaishali at Hajipur
3. The Circle Officer, Vaishali at Hajipur
4. The Circle Inspector, Bhagwanpur Block, District- Vaishali
5. Moti Singh son of Late Horil Singh
6. Jai Prakash Singh son of Moti Singh
7. Prahalad Singh son of Horil Singh
8. Gita Devi wife of Moti Singh, All resident of village- Bafapur Bathu, Police Station- Bhagwanpur, District- Vaishali

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Abhay Kumar, Advocate

For the Respondent/s : Mr. Rajiv Kumar Sinha, AC to AAG-7

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CORAM: HONOURABLE MR. JUSTICE DINESH KUMAR SINGH
ORAL JUDGMENT

Date: 01-09-2017

Heard Mr. Abhay Kumar, learned counsel for the petitioner and Mr. Rajiv Kumar Sinha, learned AC to AAG-7.

Since the present Writ application has been filed on 28.11.2014, but no counter affidavit has been filed on behalf of the State-respondents 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 the respondent authorities to get the encroachment removed which is encroached upon by respondent nos. 5 to 8 from the



land appertaining to Plot No. 472, measuring an area of one decimal, situated in village Bafapur Bathu, Police Station – Bhagwanpur, District – Vaishali.

It is submitted by learned counsel for the petitioners that the petitioners' house is situated on the land appertaining to Thana No. 251, Khata No. 233, Plot Nos. 467, 471 and adjacent to east of the land appertaining to Plot No. 471 of the petitioners Plot Nos. 472, 473, 474 are situated which is recorded as Gairmajarua Bihar Sarkar. The petitioners used the said land to reach the main public road but the same has been blocked by respondent nos. 5 to 8 by making encroachment on the said land. After removal of such encroachment, the said land is also used by others as a public path. The petitioners filed Misc. Case No. R-28/2013-14, as contained in Annexure-1, before respondent no. 2, District Magistrate, Vaishali at Hajipur on 10.06.2013 but after enquiry being made, no order has been passed. The petitioners also submitted an application before respondent no. 3, Circle Officer, Bhagwanpur on 30.01.2013, for getting the encroachment removed from the land in question, but till date no action has been taken by the authorities, hence, the present writ application.

Mr. Rajiv Kumar Sinha, learned AC to AAG-7 submits that he is not having any instruction, at present, whether any



proceeding under Bihar Public Land Encroachment Act, 1956 (hereinafter referred to as the 'Act') has been initiated or whether the encroachment has been removed from the land in question or not. It is further submitted that he is having no instruction whether the land in question is public road or not.

Considering the rival submissions of the parties, for initiating a proceeding under Bihar Public Land Encroachment Act, 1956, the only pre-condition under Section 3 of the Act is that it should appear 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. In the present case, no doubt, initially Misc. Case No. 28/2013-14, was filed on behalf of the petitioners and specific statement in paragraph 5 that from Plot No. 471 adjacent to east of the land appertaining to Plot Nos. 472, 473, 474 which is recorded as Gairmajarua Bihar Sarkar. Paragraph no. 5 reads as follows:-

“यह के नया खे० नं० 471 के सटे पूरब नया खे० नं०

472, 473, 474 है जो गैर मजरूआ बिहार सरकार है।”

It is further submitted that on 30.01.2013, petitioners also represented before respondent no. 3, Circle Officer, Bhagwanpur, as contained in Annexure-2, but no action has been taken.



In the circumstances, petitioners are given liberty to submit representation before respondent no. 3, Circle Officer, Bhagwanpur describing the encroachment made on the land within three weeks from the date of receipt of the order, whereupon if it appears to the Circle Officer, Bhagwanpur that the encroachment has been made on the public land then he will initiate a proceeding forthwith and will take the same to its logical conclusion within a period of three months, after giving due opportunity of hearing to all the affected persons under 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

