

**IN THE HIGH COURT OF JUDICATURE AT PATNA**  
**Civil Writ Jurisdiction Case No.17866 of 2016**

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Basudeo Bhagat Son of Late Jagnath Bhagar, Resident of Village- Phirojpur,  
P.O.- Dholahi Kaithat, P.S. Amnor, District- Saran.

... .. Petitioner/s

Versus

1. The State of Bihar through the Chief Secretary Govt. of Bihar.
2. The Collector, District- Saran.
3. The D.C.L.R. (Deputy Collector) Maraurah, Saran.
4. The Block Development Officer, Amnor, District- Saran.
5. The Circle Officer, Amnor Block, District- Saran.
6. The Officer In-charge, Amnor Police Station, Saran.
7. Raju Bhagat Son of Late Genna Bhagat @ Binod Bhagat.
8. Bihari Bhagat Son of Late Kashi Bhagat.
9. Vijat Bhagat Son of Late Kashi Bhagat. Respondent no. 7 to 9 are resident of Village Phirojpur, P.O.- Dholahi Kaithat, P.S. Amor, District- Saran.

... .. Respondent/s

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**Appearance :**

For the Petitioner/s : Mr. Raj Kumar Mishra  
For the Respondent/s : Mr. SAJID SALIM KHAN- SC25

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**CORAM: HONOURABLE MR. JUSTICE DINESH KUMAR SINGH**  
**ORAL ORDER**

2      30-01-2018

Heard learned counsels for the parties.

In view of the nature of order this Court intends to  
pass, this Court is neither inclined to adjourn the matter nor  
inclined to issue notice to respondent nos. 7 to 9.

The present writ application has been filed for a  
direction to the respondent authorities to get the encroachment  
removed from the public land appertaining to Plot No. 229,  
situated in village – Firozpur, P.S. - Amnaur in the District of  
Saran.



It is submitted by learned counsel for the petitioner that the land appertaining to Khata No. 98, Survey plot no. 241, Tauzi No. 3306, Thana No. 165, area 2 kathas 10 dhur was purchased through registered sale deed in the name of Srimati Parvati Devi, wife of Sri Narendra Bhagat, who happens to be the daughter-in-law of the petitioner. The land was purchased for residential purposes and at present, the house is under construction but the public road in question since has been encroached by respondent nos. 7 to 9, hence the ingress and egress of the villagers including the petitioner has been obstructed.

On 14.5.2008, the petitioner submitted an application as contained in Annexure 2, before the respondent no. 5, the Circle Officer, Amnour for getting encroachment from the public road removed. Consequently, on the direction of respondent no. 5, the Circle Amin got measurement done and submitted a measurement report as contained in Annexure 3 to the respondent no. 5, Circle Officer, Amnour, depicting therein that public road has been encroached from the northern side by Gena Bhagat alias Binod Bhagat, father of respondent no. 7 and from southern side by Kashinath Bhagat, father of respondent nos. 8 and 9. Consequently, respondent no. 5, the Circle Officer,



Amnour, vide notice dated 27.9.2008, 13.2.2009 and 24.11.2009, as contained in Annexure 4 series, directed the fathers of respondent nos. 7 to 9 for removal of the encroachment from the public road appertaining to Plot No. 229. On the application of the petitioner, Case No. 62 of 2013-14 was initiated under the Bihar Public Land Encroachment Act (hereinafter referred to as the Act), which was heard by the Land Reforms Deputy Collector, Marhowrah and an order dated 28.2.2013 was passed, as contained in Annexure 5, whereby it was held that the case of the petitioner is not maintainable under the Bihar land Dispute Resolution Act and, hence, the proceeding was closed with liberty to the petitioner to file application before the Circle Officer for removal of encroachment.

The petitioner, in pursuance to the order dated 28.12.2013, passed in the DCLR, submitted an application before the respondent no. 5, the Circle Officer, Amnour on 10.3.2014 as contained in Annexure 6. Subsequently, the Officer-in-charge of Amnour was requested by the respondent no. 5, the Circle Officer, Amnour vide letter dated 23.3.2015, as contained in Annexure 7 for getting the notices served upon encroachers and thereafter, respondent nos. 7 and 8 Raju Bhagat



and Bihari Bhagat were directed to remove encroachment by 6.4.2015, otherwise the encroachment will be removed by use of police force. Similar notice was issued to respondent nos. 7 and 8 on 17.7.2015 by the respondent no. 5, the Circle Officer, Amnour for getting encroachment removed by 28.7.2015 but the encroachment has not been removed. Hence, the present writ application.

It is submitted by Mr. Sajid Salim Khan, learned S.C. 25 that from the notices as contained in Annexure 4 series as well as Annexure 7 series, it appears that they have been issued under section 6(2) in Form II of the Act but neither of the notice bears any encroachment case number, which does not suggest that any proper proceeding has been initiated under the Act. However, he submits that at present, he is not having any instruction whether the encroachment has been removed or not but if the public land has been encroached upon and no proceeding has been initiated, it will be initiated forthwith and if the proceeding has already been initiated, it will be taken to its logical conclusion within a time frame.

Considering the rival submissions of the parties, this Court is of the view that for initiating a proceeding under the Act, it should appear to the Collector under the Act from an



application made by any person or upon the information received from any source that any person has made or is responsible for the continuation of encroachment upon any public land.

From the notices contained in Annexures 4 series and 7 series, it appears that prima facie it appeared to the respondent no. 5, the Circle Officer, Amnour that public road has been encroached upon which fact is further fortified by the report of the Circle Amin as contained in Annexure 3. Hence, it was desirable on the part of the respondent no. 5, the Circle Officer, Amnour to initiate proceeding but the materials and documents on record do not suggest that even a formal proceeding has been initiated.

In the circumstances, keeping in view the stand taken by learned S.C. 25, the respondent no. 5, the Circle Officer, Amnour is expected to examine the issue and if need be, make spot verification and on doing so, if it appears to him that the public land has been encroached upon, then he will initiate the proceeding under the Act within three weeks of the receipt/production of a copy of this order and will take such proceedings to its logical end within a period of three months thereafter, after giving due opportunity of hearing to all affected



persons in accordance with the provisions of the Act. If the proceeding has already been initiated but it has not been concluded then also it should be concluded within the aforesaid period.

This writ application is, accordingly, disposed of.

**(Dinesh Kumar Singh, J)**

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