

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.13055 of 2018

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Pushpa Devi, Wife of Sudhir Kumar, Resident of Mohalla Jagdeo Path,
Bajrang Colony, Near Vaishno Villa Apartment, P.S.- Hawai Adda, District-
Patna- 800014.

... .. Petitioner

Versus

1. The State of Bihar.
2. District Magistrate, Patna.
3. Sub Divisional Magistrate, Patna Sub Division, Patna.
4. Senior Superintendent of Police, Patna.
5. Deputy Superintendent of Police, Patna.
6. Sub Divisional Lok Shikayat Niwaran Officer, Patna.
7. Officer Incharge of Hawai Adda Police Station, Patna.
8. Sanyukta Devi, Wife of Ganga Vishnu, Resident of Mohalla Jagdeo Path,
Bajrang Colony near Vaishno Villa Apartment, P.S.-Hawai Adda, District-
Patna 800014.

... .. Respondents

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Appearance :

For the Petitioner/s : Mr. Ashok Nandan Prasad
For the Respondent/s : Mr. Sheo Shankar Prasad- SC 8

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CORAM: HONOURABLE MR. JUSTICE DINESH KUMAR SINGH
ORAL JUDGMENT

Date : 13-07-2018

Heard Mr. Ashok Nandan Prasad, learned counsel for
the petitioner and learned AC to SC 8 for the respondent-State.

The present writ application has been filed for a
direction to the respondent authorities to get the encroachment
removed from the common passage used by the petitioner and
public at large.



It is submitted by learned counsel for the petitioner that the mother of the petitioner gifted her the land, appertaining to Survey Plot No. 1657, Khata No. 35, Tauzi No. 5173, situated at Mauza Khajpura, District Patna and the petitioner had made construction over it. South to the gifted land, there is a five feet wide common passage, which is used by the petitioner and public at large, but the same has been blocked by private Respondent No.8. For removal of the said blockage, the petitioner made a representation before the Sub-Divisional, Public Grievance Redressal Authority, Patna which was disposed of, vide order dated 01.09.2017, passed in Case No. 1844M of 2017, as contained in Annexure-2, with a direction to the Sub-Divisional Officer, Patna Sadar to initiate a proceeding under Section 133 Cr. P.C..

Prima facie, it appears that the dispute is with regard to private land, between the petitioner and Respondent No. 8. However, since the petitioner submits that his right of easement has been blocked and the passage in question is being used by the petitioner and public at large, hence, in view of the fact that proceeding under the Bihar Public Land Encroachment Act, 1956 (hereinafter referred to as 'the Act') cannot only be initiated with regard to land which is recorded in the Records as a public land,



but also over the land, as defined under Section 2(3) of the Act, which is vested in the Union of India or the State of Bihar, or in any local authority, educational institution recognised 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 and includes any land over which the public or the community has got a right of user, such as right of way, burials, cremation, pasturage or irrigation.

In the circumstances, it is expected from the petitioner to submit an application before the Circle Officer, Sadar Patna whereupon it is expected from the Circle Officer to examine the Revenue Records and if need be, conduct spot verification, whereupon if he finds that the passage in question is being used by the petitioner and public at large and the land in question attains the nature of public land and the same has been encroached upon, then he will initiate a proceeding under the Act, forthwith, if it has already not been initiated till date, or if no proper suit or any litigation is pending before any forum, after giving due opportunity of hearing to all affected persons, including the petitioner and private Respondent No.8, in accordance with the provisions of the Act.



Accordingly, with the above observation, the present writ application is disposed of.

(Dinesh Kumar Singh, J)

Amrendra/-

AFR/NAFR	
CAV DATE	
Uploading Date	
Transmission Date	

