

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.16253 of 2017

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Raghunath Singh, Son of Late Raj Kishore Singh, Resident of Village & P.O.-
Bici Kala, P.S.- Dinara, District- Rohtas.

... .. Petitioner/s

Versus

1. The State of Bihar through District Magistrate, Rohtas.
2. The Deputy Collector of Land Reforms, Bikramganj, Rohtas.
3. The Sub Divisional Officer, Bikramganj, Rohtas.
4. The Circle Officer, Dinana, Dist- Rohtas.
5. The SHO, Dinara, P.S., Dist- Rohtas.
6. Kishun Paswan, Son of Khushi Paswan,
7. Kedar Paswan, Son of Sri Kishun Paswan,
8. Dular Paswan, Son of Sri Kishun Paswan,
9. Dharmendra Paswan, Son of Kedar Paswan,
10. Jitendra Paswan, Son of Kedar Paswan,
11. Vikash Paswan, Son of Kedar Paswan,

All private respondents 6 to 11 are resident of Village & Post- Bici Kala, P.S.-
Dinara, Dist- Rohtas.

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr. Vijay Kumar Singh, Adv.
For the Respondent/s : Mr. R.K. Roy- GP-18

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CORAM: HONOURABLE MR. JUSTICE DINESH KUMAR SINGH

ORAL JUDGMENT

Date : 24-04-2018

Heard learned Counsel for the petitioner and learned GP
– 18 for the respondent nos. 1 to 5.

Since the Writ application was registered on
09.11.2017, but no counter affidavit has been filed till date and
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 private respondent nos.6 to 11.



The present writ application has been filed for a direction to respondent authorities to get the encroachment removed from the land, appertaining to Thana no. 27 Khata no. 230, Plot no.798, situated at Mouza – Bici kala District – Rohtas, which is a water channel (Karha) and is being used for the public purposes, but the same has been encroached upon by private respondent nos. 6 to 11. Further prayer has been made for removal of the water channel (Karha) from the land of the petitioner, appertaining to Khata no.- 219, Plot no.-797 situated at Mauza – Bici kala, District- Begusarai, which is being used as water storage since the public land used for water storage has been encroached upon by the private respondent nos. 6 to 11.

It is submitted by learned counsel for the petitioner that the land appertaining to Plot no.-798 is recorded in the revenue records as Government land and it is being used as Karha (Water channel), but the same has been encroached upon by private respondent nos. 6 to 11, as a result, the ancestral land of the petitioner, appertaining to Plot no.-796 is being used for water storage. The petitioner submitted an application before the respondent no. 5, SHO, Dinara and respondent no. 4, the Circle Officer Dinara on 27.06.2016 and 28.06.2016 respectively, as contained in Annexures- 1 and 2 with a prayer for removal of



the encroachment from the land in question, but the encroachment has not been removed. The petitioner also made a complaint before the Sub Divisional Public Grievance Redressal Officer, Bikramganj. The order dated 1.09.2016, as contained in Annexure-3, passed by the Public Grievance Redressal Officer, reflects that the Circle Officer, Dinara has reported vide Letter No.1626, dated 19.08.2016, that he has directed the Anchal Amin and the Karmachari to get the land in question measured, but the measurement of the land cannot be done since land in question is full of water. Hence, the Circle Officer was directed to get the measurement of the land in question done after removal of the water, but till date no action has been taken by the Circle Officer. Thereafter, the petitioner filed a petition before the respondent no.3, Sub Divisional Officer, Bikramganj, Rohtas on 14.07.2016, whereupon, Case No. 530 of 2016 was registered and the Sub-Divisional Officer, Bikramganj, vide order dated 06.09.2016, as contained in Annexure-4, came to a finding that there is a dispute with regard to demarcation which is only possible after getting the land measured, hence, the Circle Officer was directed to conduct the measurement of the land in question, so that the issue can be resolved. In pursuance to the same, the Anchal Amin, get the measurement of the land



in question done and submitted the report on 28.12.2016, as contained in Annexure-5, stipulating therein that the government land has been encroachment upon, but even then the Circle Officer neither initiated any proceeding under the Bihar Public Land Encroachment Act, 1956 (hereinafter referred to as 'the Act'), nor removed the encroachment from the land in question. Ultimately, the petitioner submitted a representation before the respondent no.2, the LRDC, Bikramganj, on 20.02.2017, as contained in Annexure-6, with a prayer for removal of the encroachment and for measurement of the land in question and thereafter before the respondent no.1, the District Magistrate, Rohtas on 16.08.2017, as contained in Annexure-7, but till date no action has been taken. Hence, the present writ application.

It is submitted by Mr. Raj Kishore Rai, learned GP-18 that in view of the measurement report, the District Magistrate and the Circle Officer may be directed to take appropriate action for removal of the encroachment and if need be get further measurement done of the land in question in accordance with the provisions of the Act.

Having heard learned Counsels for the parties, this Court is of the view that for initiation of proceeding under section 3 of the Act, the pre-condition is 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, it appears that the several representations were filed and twice the Sub-Divisional Officer directed the Circle Officer for removal of encroachment and for conducting the measurement of the land, once vide order passed under the Public Grievance Redressal Act, as contained in Annexure-3, and then vide order dated 06.09.2016, as contained Annexure-4, but there is nothing on record, except this fact that the Anchal Amin submitted a report to the effect that the Government land has been encroached upon, to suggest that the Circle Officer initiated any proceeding, which not only suggests that the Circle Officer deliberately abdicated to discharge his quasi judicial function under the Act, but also suggests that the District Magistrate and the Sub-Divisional Officer is not having any administrative control over their subordinates.

In the circumstances, the respondent no.1, the District Magistrate, Rohtas, is directed to take needful action against respondent no.4, the Circle Officer, Dinara for not only sitting tight over the matter for long, but also despite the direction of the Sub-Divisional Officer given in two quasi judicial



proceeding, he has taken no action till date.

The respondent no.4, Circle Officer, Dinara, is directed to examine the revenue records and if need be make spot verification or get the area in question measured and if he finds that public road/land has been encroached upon, then he will initiate a proceeding forthwith with regard to the land in question in accordance with the provisions of Act, if it has not already been initiated and take such proceeding to its logical conclusion within a period of three months, by giving due opportunity of hearing to all affected persons including respondent nos.6 to 11 in accordance with the provisions of the Act.

The Writ application is, accordingly, disposed of with the observation aforesaid.

(Dinesh Kumar Singh, J)

Ashwini/-

AFR/NAFR	
CAV DATE	
Uploading Date	29.04.2018
Transmission Date	

