

**IN THE HIGH COURT
OF JUDICATURE AT PATNA**

Civil Writ Jurisdiction Case No.11521 of 2017

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Lallan Prasad @ Lallan Sah Son of Late Sudama Sah, resident of Village- Sugauli, Kanu Tola, Ward No. 15, Police Station- Sugauli, P.O.- Sugauli, District- East Champaran.

.... Petitioner/s

Versus

1. The State of Bihar
2. The Circle Officer (Anchaladhikari), Sugauli.
3. The District Magistrate, Motihari (East Champaran).
4. The Land Reforms Deputy Collector, Sadar, Motihari.
5. The Officer-in- Charge, Sugauli.
6. The Superintendent of Police, Motihari (East Champaran).
7. Sri Hari Lal Sah, son of Late Katun Sah.
8. Sri Awadh Kishore Sah, son of Hari Lal Sah.
9. Sri Manoj Sah, son of Hari Lal Sah
10. Sri Umesh Sah, son of Hari Lal Sah
11. Sri Sambhu Sah, son of Late Mahendra Sah
12. Sri Narsingh Sah, son of Late Mahendra Sah

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Abhishek Kumar, Advocate
For the Respondent/s : Mr. S.C.YADAV-GP15

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CORAM: HONOURABLE MR. JUSTICE DINESH KUMAR SINGH
ORAL JUDGMENT

Date: 20-02-2018

I.A. No.1253 of 2018 was filed for early hearing of the case. Since the matter has been taken up, the same has become infructuous.

Heard Mr. Arbind Kumar Sharma, learned counsel for the petitioner and Mr. Rakesh Kumar Srivastava, learned A.C. to G.P.15.

The present writ application has been filed for a



direction to the respondents authorities for getting the encroachment removed from the public road/land appertaining to Khata No.31, Plot No.1915 situated in village Sugauli, East Champaran.

It is submitted by learned counsel for the petitioner that the land in question is a public land but the same has been encroached upon by private respondent nos.7 to 12. Though the writ application was registered on 9th August, 2017, but no counter affidavit has been filed till date.

Though, a counter affidavit has been filed today in Court on behalf of respondent no.6, Superintendent of Police, Motihari (East Champaran), let it be kept on record.

It is submitted by learned counsel for the petitioner that the public road is situated on the land in question but the same has been encroached upon by private respondent nos.7 to 12 and for removal of the same, a public petition was submitted before the Circle Officer, Sugauli (respondent no.2) on 11.3.2015, as contained in Annexure-1. Consequently, a notice was issued to respondent nos.7 to 12 under the signature of the Circle Officer to produce the documents in support of their claim over the land in question, pursuant to which the documents were produced, and thereafter, a proper proceeding was initiated for vacating the encroachment as contained in Annexure-2.



The respondent no.2, Circle Officer vide order dated 30.5.2015 directed the Anchal Amin to measure the land in question. The Circle Amin submitted a report on 26.6.2015, as contained in Annexure-3, suggesting that Hari Lal Sah, Awadh Kishore Sah and Umesh Sah, respondent nos.7, 8 and 10 have encroached upon the land in question. In view of the report of the Anchal Amin, notice was again issued to the private respondents on 25.1.2016 to produce documents in support of their claim over the land in question, failing which a proper proceeding would be initiated. The respondent no.2, the Circle Officer, Sugauli again directed the Anchal Amin on 26.5.2017 to measure the land and directed the Officer-in-Charge, Sugauli to remove the encroachment. Subsequently, vide order dated 8.6.2017, the Circle Officer (respondent no.2) again directed the Anchal Amin to examine the status and submit a report. Thereafter, the public petition was submitted before the Superintendent of Police as contained in Annexure-8 and District Magistrate, East Champaran on 26.3.2015 as contained in Annexure-9.

A counter affidavit has been filed on behalf of respondent no.6, Superintendent of Police, East Champaran. The Superintendent of Police has intimated the Circle Officer (respondent no.2) in writing that the police force will be provided, in case any order is passed for removal of encroachment, in an encroachment



proceeding.

For initiating a proceeding under the Bihar Public Land Encroachment Act, the only precondition under Section 3 is that it should appear to the Collector under the Act from an application made by any person.

In the given circumstances, this Court is neither inclined to adjourn the matter any further for filing of counter affidavit, nor to issue notice to the respondents concerned.

The submission of the public representation on 11.3.2015 is not disputed and subsequently thereupon the respondent no.2 directed vide letter no.346 dated 30.5.2015, to the Anchal Amin to measure the land, who submitted a report on 26.6.2015. The respondent no.2, the Circle Officer was thus aware of the fact of encroachment but for reasons best known to him, there is nothing on record to suggest that any proceeding has been initiated or not, nor the learned counsel for the State is in a position to suggest so. From the records, it appears that the private respondents were noticed by the Circle Officer, but those notices as contained in Annexures 2 and 4 do not bear any encroachment case number, which could suggest that any proceeding under the Act has been initiated.

In view of the discussions made above, respondent no.2, the Circle Officer, Sugauli is expected to examine the revenue



record and, if need be, ascertain the nature of the land in question, whereupon if it appears to him that the public land has been encroached upon, then he will initiate a proceeding under the act forthwith, if the same has not been initiated till date and will take such proceeding to its logical end within a period of four months after giving notice to the affected persons including respondent nos.7 to 12, in accordance with the provisions of the Act.

Accordingly, the writ petition is disposed of.

(Dinesh Kumar Singh, J)

N.H./-

AFR/NAFR	NAFR
CAV DATE	N/A
Uploading Date	23-02-2018
Transmission Date	

