

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.2869 of 2018

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Rakesh Mahto, Son of Ram Vilas Mahto, Resident of Village- Ballipur
Parshuram, P.S.- Shivajinagar, District- Samastipur.

... .. Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Land Reform and Revenue Department, Government of Bihar, Patna.
2. The Commissioner, Darbhanga Division, Darbhanga.
3. The District Magistrate, Samastipur.
4. The Deputy Development Commissioner, Samastipur.
5. The Sub Divisional Officer, Rosera, District- Samastipur.
6. The Chairman, Zila Prishad, Samastipur.
7. The Executive Officer Zila Prishad, Samastipur.
8. The Circle Officer, Shivajinagar Circle, Samastipur.
9. The Revenue Clerk, Shivajinagar Circle, District- Samastipur.
10. Shital Das, Son of Late Bangali Das, Resident of Village & Post Office- Ballipur Parshuram, P.S.- Shivajinagar, District- Samastipur.
11. Upendra Das, Son of Late Parmeshwar Das, Resident of Village & Post Office- Ballipur Parshuram, P.S.- Shivajinagar, District- Samastipur.
12. Singheshwar Das, Son of Late Satyanarayan Das, Resident of Village & Post Office- Ballipur Parshuram, P.S.- Shivajinagar, District- Samastipur.
13. Ram Chandra Das, Son of Late Fudi Das, Resident of Village & Post Office- Ballipur Parshuram, P.S.- Shivajinagar, District- Samastipur.
14. Chhannu Das, Son of Late Fudi Das, Resident of Village & Post Office- Ballipur Parshuram, P.S.- Shivajinagar, District- Samastipur.
15. Kailash Das, Son of Late Ram Khelawan Das, Resident of Village & Post Office- Ballipur Parshuram, P.S.- Shivajinagar, District- Samastipur.
16. Kari Das, Son of Late Baldev Das, Resident of Village & Post Office- Ballipur Parshuram, P.S.- Shivajinagar, District- Samastipur.
17. Mahavir Das, Son of Late Baldev Das, Resident of Village & Post Office- Ballipur Parshuram, P.S.- Shivajinagar, District- Samastipur.
18. Dinesh Das, Son of Late Ram Dahin Das, Resident of Village & Post Office- Ballipur Parshuram, P.S.- Shivajinagar, District- Samastipur.
19. Bhola Das, Son of Late Ram Chandra Das, Resident of Village & Post Office- Ballipur Parshuram, P.S.- Shivajinagar, District- Samastipur.
20. Madan Jamadar, Son of Late Paltu Jamadar, Resident of Village & Post Office- Ballipur Parshuram, P.S.- Shivajinagar, District- Samastipur.
21. Pramod Mahto, Son of Late Mahindra Mahto, Resident of Village & Post Office- Ballipur Parshuram, P.S.- Shivajinagar, District- Samastipur.
22. Jeewachh Kamti, Son of Late Muneshwar Kamti, Resident of Village & Post Office- Ballipur Parshuram, P.S.- Shivajinagar, District- Samastipur.
23. Jamun Sharma, Son of Late Bhola Sharma, Resident of Village & Post Office- Ballipur Parshuram, P.S.- Shivajinagar, District- Samastipur.
24. Amal Das, Son of Late Jageshwar Das, Resident of Village & Post Office- Ballipur Parshuram, P.S.- Shivajinagar, District- Samastipur.
25. Mahendra Das, son of Late Fudi Das, Resident of Village & Post Office- Ballipur Parshuram, P.S.- Shivajinagar, District- Samastipur.

... .. Respondent/s



Appearance :

For the Petitioner/s	:	Mr. Kundan Kumar, Adv.
For the Respondent/s	:	Mr. Sajid Salim Khan, SC-25
For Zila Parishad Samastipur	:	Mr. Satya Prakash Tripathy, Adv.

CORAM: HONOURABLE MR. JUSTICE DINESH KUMAR SINGH
ORAL ORDER

2 09-03-2018 Heard learned Counsels for the petitioner, Zila Parishad and the respondent-State.

This Court is neither inclined to adjourn the matter nor inclined to issue notice to respondent nos. 10 to 25 in view of the nature of order this Court intends to pass.

The present Writ application has been filed for a direction to the District Magistrate, Samastipur (respondent no.3) and the Circle Officer, Shivajinagar (respondent no.8) to conclude the proceeding of Encroachment Case No.09 of 2013-14 and to remove encroachment from the land appertaining to Khata No.1349(O), 1885 (N), Plot No.5053(O), 3347(N), situated at Village-Ballipur Parshuram, P.S.-Rosera, District - Samastipur as the same has been encroached upon by respondent nos. 10 to 25.

It is submitted by learned Counsel for the petitioner that Gram Panchayat Ballipur Raj unanimously resolved to make some plantation over the land in question, but the scheme could not be implemented since the land was encroached upon, as a result, the then Panchayat Mukhiya Poonam Devi submitted an



application to respondent no.8, the Circle Officer, Shivaji Nagar vide letter no.20, dated 20.11.2012, as contained in Annexure-1. Panchayat Mukhiya reiterated her grievance vide another letter no.8, dated 11.03.2013, as contained in Annexure-2. Consequently, a proceeding under the Bihar Public Land Encroachment Act, 1956 (hereinafter referred to as 'the Act') being Encroachment Case No.09 of 2013-14 was initiated and the measurement of the land in question was made by the Anchal Amin. The Anchal Amin submitted the report on 13.09.2013 which suggests that the government land has been encroached upon, but the encroachment has not been removed from the land in question. Though a notice under Section 6(2) of the Act in Form-II, as contained in Annexure-4 was issued, but purport of the notice suggests that it was issued under Section 3 of the Act, but it does not bear any encroachment case number. In the circumstances, the petitioner is not sure that whether the encroachment proceeding has actually been initiated, hence, the present Writ application.

It is submitted by Mr. Sajid Salim Khan, learned SC-25 appearing on behalf of the respondent-State that, at present, he is not having any instruction whether the land in question is a public land/road or not, but if encroachment has been made on



public land, then a proper proceeding under the provisions of the Act will be initiated forthwith, if it has not been initiated till date and the same will be taken to its logical conclusion within a time frame.

Having heard Counsels for the parties, this Court is of the view that the pre-condition for initiation of proceeding under Section 3 of the Act is that it should appear to the Collector under the Act on an application made to the Collector by any person or upon information received from any source that any person has made or is responsible for the continuance of any encroachment upon any public land.

No doubt, in the present case, the representation was made for removal of encroachment from the land in question as far back as on 06.05.2013, as contained in Annexure-3 and 13.09.2013, as contained in Annexure-5, but there is nothing on record to suggest that any sincere effort has been made to get the encroachment removed from the land in question. Though a notice dated 12.02.2014, as contained in Annexure-4 has been brought on record, issued to one Pramod Mahto under Section 6(2) of the Act, but it does not bear any encroachment case number.

Considering the rival submissions of the parties, it appears



that respondent no.8 has failed to discharge his *quasi judicial* function, hence, the petitioner is permitted to submit a representation before respondent no.8, the Circle Officer, Shivajinagar within a period of three weeks, whereupon, the Circle Officer will examine the revenue records and if need be make spot verification and if he finds that public road/land has been encroached upon, then he will initiate a proceeding forthwith, if it has not already been initiated. It is further expected from the respondent no.8, the Circle Officer, Shivajinagar to take such proceeding to its logical conclusion within a period of three months, by giving due opportunity of hearing to all affected persons including the respondent nos. 10 to 25 under the provisions of the Act.

The Writ application is, accordingly, disposed.

(Dinesh Kumar Singh, J)

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