

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.4770 of 2018

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Mukund Bihari Pandey, Son of Late Rambachan Pandey, Resident of
Village- Mauni, Police Station- Karagahar, District- Rohtas.

.... Petitioner/s

Versus

1. The State of Bihar principal Secretary, Revenue Department, Govt. of Bihar, Patna.
2. The District Magistrate, Rohtas, Sasaram.
3. The Additional District Magistrate, Rohtas, Sasaram.
4. The Sub Divisional Officer, Sasaram, Rohtas.
5. The Circle Officer, Sheosagar, District- Rohtas.
6. The Officer in charge, Sheosagar, Police Station, District- Rohtas.
7. Hari Ram, Son of Bansropan Ram, Resident of Village- Mauni, Police Station- Sheosagar, District- Rohtas.

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Surendra Kumar Choubey, Advocate
For the Respondent/s : Mr. Subhash Chandra Yadav -GP15

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CORAM: HONOURABLE MR. JUSTICE DINESH KUMAR SINGH
ORAL ORDER

02/ 03-04-2018

Heard Mr. Surendra Kumar Choubey, learned
counsel for the petitioner and Mrs. Sanghmitra Ghosh, learned AC
to GP-15.

In view of nature of order this Court intends to
pass, this Court is not inclined to adjourn the matter any further or
to issue notice to private respondent no. 7.

The present Writ application has been filed for a
direction to the respondent authority to get the encroachment
removed from the public land appertaining to Thana No. 357,
Khata No. 75, Plot No. 557 situated in Mauza – Mauni. In the
alternative, prayer has been made to implement the order of the



District Magistrate, Rohtas –cum- Second Appellate Authority under The Bihar Right to Public Grievance Redressal Act passed in Case No. 43211-04272, as contained in Annexure-2, whereby the respondent no. 5, Circle Officer, Sheosagar and Station House Officer, Sheosagar P.S. have been directed to remove the encroachment from the land in question and to send a report in that regard.

It is submitted by learned counsel for the petitioner that the land in question is recorded as ‘Chhawar’, which is situated on the western side of the agricultural land of the petitioner. The same is being used as a path by the public at large including the petitioner to reach their agriculture land, but the same has been encroached upon by respondent no. 7. The petitioner made a complaint on 13.12.2016 before Sub-divisional Public Grievance Redressal Officer, Rohtas and consequently, before the District Magistrate, Rohtas –cum- Second Appellate Authority which is numbered as 43211-04274. The Second Appellate Authority appreciated the fact that it was reported that on 26.04.2017, the encroachment has already been removed. But, since the encroachment resurfaced on the land in question, hence, Circle Officer, Sheosagar and Station House Officer, Sheosagar were directed, vide order dated 25.07.2017 to remove



the encroachment immediately and submit a report. Thereafter, the petitioner represented before the Circle Officer, Sheosagar on 09.09.2017, as contained in Annexure-3, respondent no. 2, District Magistrate, Rohtas, as contained in Annexure-4 and respondent no. 4, Sub-divisional Officer, Sasaram, Rohtas, as contained in Annexure-5 for implementation of the order, but till date, the encroachment has not been removed. Hence, the present writ application.

Mrs. Sanghmitra Ghosh, learned counsel for respondent nos. 1 to 6 submits that, at present, she is not having any instruction whether the land in question is a public land and the same has been encroached upon or not, but if any encroachment has been made on a public land then the Circle Officer, Sheosagar, respondent no. 5 be directed to initiate a proceeding and take the same to its logical condition within a time frame.

From the materials available on record, it does not appear that the petitioner has ever submitted any application before respondent no. 5, the Circle Officer for initiation of a proceeding under Bihar Public Land Encroachment Act, 1956 (hereinafter referred to as the 'Act'). The petitioner first approached the Public Grievance Redressal Authority under the



Bihar Right to Public Grievance Redressal Act. In view of this Court under the said Act, basically the complaint is filed by a citizen or group of citizens to a Public Grievance Redressal Officer for seeking any benefit or relief relating to any schemes, programmes or services run in the State by the State Government or in respect of failure or delay in providing such benefit or relief, or regarding any matter arising out of failure in the functioning, or violation of any law, policy, service, programme or scheme in force in the State by a public authority. The complaint has been defined under Section 2 of The Bihar Right to Public Grievance Redressal Act, 2015, which reads as under:-

“2. Definitions.- In this Act, unless the context otherwise requires,-

(a) “complaint” means any application made by a citizen or a group of citizens to a Public Grievance Redressal Officer for seeking any benefit or relief relating to any schemes, programme or services run in the State by the State Government or in respect of failure or delay in providing such benefit or relief, or regarding any matter arising out of failure in the functioning of, or violation of any



law, policy, service, programme or scheme in force in the State by a public authority but does not include grievance relating to the service matters of a public servant, whether serving or retired, or relating to any matter any Right to Information Act, 2005 (Central Act No. 22 of 2005) or services notified under the Bihar Right to Public Services Act, 2011;

- (b)
- (c)
- (d)
- (e)
- (f)
- (g)
- (i)
- (j)
- (k)
- (l)
- (m)”

In considered opinion of this Court, when there is already specific Act, i.e. Bihar Public Land Encroachment Act,



1956, which provides the mechanism for removal of encroachment from the public land, there is no occasion for the Public Grievance Redressal Authority or the Appellate Authority prescribed therein, to exercise the jurisdiction for removal of the encroachment from a public land.

For initiation of a proceeding under Bihar Public Land Encroachment Act, 1956, the only pre-condition under Section 3 of the Bihar Public Land Encroachment Act, 1956 is that if it appears to the Collector under the Act that from an application made or from the information received that any person has encroached upon a public land or is responsible for continuance of any encroachment upon any public land. No doubt on the complaint made by the petitioner, the authorities came to know about the encroachment on the alleged public land, but there is nothing on record to suggest that any verification was made by any authority, or that it was ascertained whether the land is a public land, or whether the same has been encroached upon or not. However, from the order of the District Magistrate passed under Public Grievance Redressal Act, it appears initially the encroachment was removed from the land in question, yet the encroachment resurfaced. But the material on record does not suggest that whether any proceeding was initiated for removal of



the encroachment at the initial stage. However, there are cases of exemption from initiation of proceeding or issuance of notice under Section 3 of the Act which is temporary in nature or where the encroachment on a public road is of such nature, so that the Collector under the Act considers that its immediate removal is essential for the safety of the general public or for the safety of any other structure on the public land. The order of the Collector, as contained in Annexure-2, does not suggest that the encroachment was of a temporary nature or he came to a conclusion that the removal is essential for the safety of general public or for the safety of any other structure over the public land.

In the circumstances, it is expected from the Circle Officer, Sheosagar, respondent no. 5 to examine revenue records and, if need be, make spot verification or get the land in question measured, whereupon if it appears to him that the encroachment has been made on a public land then he will initiate a proceeding and conclude the same within a period of three months from the date of receipt/production of a copy of this order, after giving due opportunity to all affected persons including respondent no. 7, but if the encroachment is absolutely temporary in nature then he may resort to the provisions incorporated under Section 3 of the Act.



Accordingly, with the aforesaid observations,
this Writ application is disposed of.

(Dinesh Kumar Singh, J)

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