

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.8001 of 2018

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Kanhaiyya Bhagat, Son of Late Rampreet Bhagat, Resident of Raghumathpur
Chamdagodam, North Gali No. 03, P.S. - Motihari, District - East Champaran.

... .. Petitioner

Versus

1. The State of Bihar through the Secretary, Revenue Department, Bihar, Patna.
2. The District Magistrate, East Champaran.
3. The S.D.O., Sadar Motihari, District, East Champaran.
4. The Anchaladhikari (C.O.), Turkauliya, East Champaran.

... .. Respondents

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Appearance :

For the Petitioner/s : Mr. Umesh Chandra Verma, Adv.
For the Respondent/s : Mr. Rishi Raj Sinha, SC-19

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CORAM: HONOURABLE MR. JUSTICE DINESH KUMAR SINGH
ORAL JUDGMENT

Date : 11-05-2018

Heard Mrs. Rashmi Jha, learned counsel for the
petitioner and Mr. Saurabh Kumar, learned AC to SC-19 for the
Respondent-State.

Though, the present writ application was registered on
24.04.2018, but in view of the nature of order, this Court intends to
pass, this Court is not inclined to adjourn the matter any further.

The present writ application has been filed for a
direction to the Respondent authorities, particularly Respondent
nos. 3 and 4, the Sub-Divisional Officer, Sadar Motihari and the
Circle Officer, Turkauliya, respectively, to get the encroachment
removed from the 12 Feet wide road which connects the
residential house of the petitioner, appertaining to Plot No. 564,



Khata No. 32, situated in Village Raghunathpur Chamdagodam, P.S. Motihari, District East Champaran, to the main road.

It is submitted by learned counsel for the petitioner that the residential house of the petitioner is situated on the land, appertaining to Plot No. 564, Khata No. 32 and there is a 12 feet wide road, which connects the residential house of the petitioner to the main road. The sale deed executed in favour of the petitioner also suggests that there is 12 feet wide road extending from Plot No. 564, Khata No. 32 to the main road. For removal of the encroachment from the land/road in question, the petitioner transmitted an application through registered cover to Respondent no.3, the Sub-Divisional Officer, Sadar Motihari and Respondent no.4, the Circle Officer, Turkauliya on 29.09.2015, as contained in Annexure-1(series), but till date, neither the encroachment proceeding under the Bihar Public Land Encroachment Act, 1956 (hereinafter referred to as 'the Act') has been initiated, nor the encroachment from the land/road in question has been removed. Hence, the present writ application.

Learned AC to SC-19 submits that the description of the land/road in question, particularly plot and khata number, has not been mentioned nor the persons who have made encroachment over the land in question, have been arrayed as party respondents.



Having heard learned counsels for the parties, from perusal of the pleading made in the writ application, it does not appear that the petitioner has brought any document on record to suggest that the land in question is a public land, nor the detailed description of the said public land has been mentioned. However, for initiating a proceeding under Section 3 of the Act, the only precondition is that it should appear to the Collector under the Act from an application made by any person or upon information received from any source, that any persons has made or is responsible for the continuance of the encroachment over the public land.

The 'public land' has been defined under Section 2(3) of the Act, which includes any land vested in 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 Panchayat Raj Act and it includes any law over which the public or the community has got a right of user, such as right of way, burials, cremation, pasturage or irrigation. Section 2(3) of the Act reads as follows:-

“2(3) “public land” means any land (managed by or) vested in the Union of India or the State of Bihar, or in any local authority (or statutory body), (public undertaking) 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 (Bihar Act VII of 1948), 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 present case, there is nothing on record to suggest that the land/road in question is recorded in the revenue record as public road, nor it has been pleaded by the petitioner in the writ application that the same is being used by public at large.

However, there is a specific pleading of the petitioner that the residential house of the petitioner is connected to the main road through the road in question and this is not in dispute that the petitioner transmitted a representation through registered post to Respondent nos. 3 and 4, the Sub-Divisional Officer, Sadar Motihari and the Circle Officer, Turkauliya, respectively, but there is nothing on record to suggest that either Respondent no.3, or Respondent no.4 took any effort to verify whether the road in question is a public road or not.

In the circumstances, it is expected from the petitioner to submit an application before Respondent no.4, the Circle Officer, Turkauliya within a period of three weeks from the date of receipt/production of a copy of this order, whereupon Respondent no.4, the Circle Officer, Turkauliya will verify the Revenue Record, and if need be, conduct spot verification or get the



measurement done, whereupon if it appears to him that the land/road in question is a public land then he will initiate a proceeding under the Act forthwith, if it has already not been initiated, and take such proceeding to its logical conclusion within a period of three months from its initiation, after giving due opportunity of hearing to all affected persons including the petitioner, in accordance with the provisions of law.

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

(Dinesh Kumar Singh, J)

Amrendra/-

AFR/NAFR	
CAV DATE	
Uploading Date	
Transmission Date	

