

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.18936 of 2017

Ataur Rahman, Son of Belal Hussain, resident of Village- Gosaipur, P.O. Siktia, P.S. Azamnagar, District- Katihar.

... .. Petitioner/s

Versus

1. The State of Bihar through the Chief Secretary, Government of Bihar, Patna.
2. The District Magistrate, Katihar.
3. The Deputy Development Commissioner Cum Chief Executive Officer, Zila Parishad, Katihar.
4. The Sub- Divisional Officer, Barsoi.
5. Circle Officer, Azamnagar, P.S. Azamnagar, District- Katihar.
6. The Divisional Public Grievance Cell Officer, Barsoi Division, District Katihar.
7. The Chairman, Zila Parishad, Katihar.
8. The Member, Zila Parishad, Azamnagar, P.S. Azamnagar, District- Katihar.
9. Shravan Bhagat.
10. Santosh Bhagat. Both sons of Dev Narain Bhagat @ Sukru Bhagat.
11. Dayamoni Devi, wife of Late Om Prakash Bhagat, Respondents No. 9, 10 and 11 are residents of Village- Gosaipur, P.O. Siktia, P.S. Azamnagar, District- Katihar.

... .. Respondent/s

Appearance :

For the Petitioner/s	:	Mr. Abdul Wadood
For the Respondent/s	:	Mr. S.C. YADAV – GP15 Mr. Rakesh Ranjan, AC to GP 15
For Zila Parishad, Katihar:		Mr. Krishna Singh

CORAM: HONOURABLE MR. JUSTICE DINESH KUMAR SINGH
ORAL JUDGMENT

Date : 13-03-2018

Heard learned counsels for the parties.

Since the writ application was registered on 19.12.2017 but no counter affidavit has been filed, hence, this Court is not inclined to adjourn the matter any further. This Court is also not inclined to issue notice to private respondent nos. 9 to 11 in view of the nature of the order this Court intends to pass.

The present writ application has been filed for a direction to the respondent authorities to get the encroachment removed from



the public land appertaining to Khata No. 88, Plot No.79, situated in Mauza – Gosaipur, Circle – Azamnagar, District – Katihar which has been encroached upon by respondent nos. 9 to 11.

It is submitted by learned counsel for the petitioner that the petitioner and his wife Bibi Zulekha Khatoon purchased a piece of raiyati land in Mauza Gosaipur appertaining to Khata No. 84, Plot No. 423, area 27.3 decimals through a registered sale deed dated 11.7.2007 and constructed a residential house over the said land. In the western side of the land of the petitioner, there exists the land of the District Board, which is the land in question, which connects the house of the petitioner to the main road and the same is being used by villagers and public at large, but the same has been encroached upon by construction of the houses by respondent nos. 9 to 11. In view of the above compelling circumstances, the petitioner submitted an application dated 23.3.2017, as contained in Annexure 3 before the District Magistrate, Katihar and its copies were transmitted to the respondent no. 3, Deputy Development Commissioner, Katihar, respondent no. 7, Chairman, Zila Parishad, Katihar, respondent no. 8, The Member, Zila Parishad, Azamnagar, respondent no. 4, SDO, Barsoi and respondent no. 5, Circle Officer, Azamnagar. On receipt of the application, the respondent no. 3, Deputy



Development Commissioner, Katihar, vide letter no. 229 dated 28.3.2017 as contained in Annexure 4, directed the respondent no. 5, Circle Officer, Azamnagar to stay the construction work and make spot inspection of the land in question. The issue of illegal construction on the public land was also published in daily Hindi newspaper 'Prabhat Khabar' on 8.4.2017, the clippings of which has been brought on record as Annexure 5.

In spite of the specific direction of the respondent no. 3, Deputy Development Commissioner, Katihar, respondent no. 5, Circle Officer, Azamnagar took no action and allowed the construction to proceed on the public land. Thereafter, the petitioner again represented before the respondent no. 3, Deputy Development Commissioner, Katihar, who again vide letter no. 424 dated 22.5.2017, as contained in Annexure 6, directed the respondent no. 5, Circle Officer, Azamnagar to stay the construction work on the public land in question but in spite of that, no action was taken by the respondent no. 5, Circle Officer, Azamnagar. Hence, perforce, the petitioner had to submit an application before the Sub Divisional Public Grievance Cell, Barsoi which was registered as Case No. 5101101600 wherein vide order dated 15.6.2017, as contained in Annexure 7, the respondent no. 5, Circle Officer, Azamnagar was directed to



conduct measurement of the land in question and if it is found that encroachment has been made on the public land, it should be removed within a month in accordance with the provision of Bihar Public land Encroachment Act, 1956 but in spite of that the respondent no. 5, Circle Officer, Azamnagar did not take any action. Hence, the present writ application.

AC to G.P. 15 and the learned counsel for the Zila Parishad, Katihar submit that at present they are not having any instruction, however, the respondent no. 5, Circle Officer, Azamnagar be directed to take necessary measures to remove the encroachment from the land in question in accordance with the provision of Bihar Public Encroachment Act, 1956 (hereinafter referred to as the Act) if the encroachment has been made on the public land.

Having heard learned counsels for the parties, this Court is dismayed to find that in spite of direction of the Sub Divisional Public Grievance Authority, as well as the DDC to the Circle Officer for removal of encroachment, there is nothing on record to suggest that any action has been taken by the respondent no. 5, Circle Officer, Azamnagar till date, which not only suggests the lack of administrative control of the respondent no. 2 District Magistrate, Katihar, respondent no. 4, SDO, Barsoi and respondent no. 3, DDC-cum-Chief Executive Officer, Zila



Parishad, Katihar over the respondent no. 5, the Circle Officer, Azamnagar, but also suggests a total abdication of quasi judicial jurisdiction under the Act.

For initiating a proceeding under Section 3 of the Act, it should appear to the Collector under the Act from an application made by any person or upon an information received from any source that any person has made or is responsible for the continuation of encroachment upon any public land.

In the circumstances, it is expected from the respondent no. 2 the District Magistrate, Katihar to look into the issue and take needful action, on the administrative side. The respondent no. 5, the Circle Officer, Azamnagar is expected to examine the revenue records and if need be, make spot verification and on doing so, if it appears to him that the public land has been encroached upon, then he will initiate a proceeding under the Act if it has already not been initiated after getting the land in question measured, within two weeks of the receipt/production of a copy of this order and will take such proceedings to its logical conclusion within a period of three months thereafter, after giving due opportunity of hearing to all affected persons including private respondent nos. 9 to 11 as well as the respondent no. 8,



Member, Zila Parishad, Azamnagar in accordance with the provisions of the Act.

Accordingly, this writ application is disposed of.

(Dinesh Kumar Singh, J)

anil/-

AFR/NAFR	
CAV DATE	
Uploading Date	
Transmission Date	

