

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.18913 of 2017

Shiv Kumar Giri, son of Late Nand Kishore Giri, Resident of Village -
Mudiyari Tola Kodar, P.O. - Bishunpurwa Bazar, P.S. - Mairwa, District -
Siwan.

... .. Petitioner/s

Versus

1. The State of Bihar through its Principal Secretary, Revenue & Land Reforms,
New Secretariat Building, Patna.
2. The District Magistrate, Siwan.
3. The Additional District Magistrate, Siwan.
4. The Sub-Divisional Magistrate, Siwan Sadar, Siwan.
5. The Circle Officer, Block - Mairwa, District - Siwan.
6. Mahendra Chaudhary S/o late Lal Mohar Chaudhary
7. Rudal Chaudhary S/o Baidyanath Chaudhary
8. Basudeo Chaudhary S/o Mahendra Chaudhary
9. Bashisth Chaudhary S/o Rudal Chaudhary
10. Pradeep Chaudhary S/o Rudal Chaudhary
11. Bishwanath Chaudhary S/o Late Briksha Chaudhary
12. Pauchan Chaudhary S/o Late Briksha Chaudhary
All Resident of Village - Mudiyari, Tola Kodara, Post - Bishunpurwa, P.S.
Mairwa, District - Siwan.
13. Chandrama Chaudhary, S/o Falgun Chaudhary, Resident of Village - Mudiyari
Tola Kodar, P.O. - Bishunpurwa Bazar, P.S. - Mairwa, District - Siwan.

... .. Respondent/s

Appearance :

For the Petitioner/s	:	Mr. Vijay Bardhan Pandey, Adv. Mr. Dhananjay Kumar Tiwary, Adv.
For the Respondent/s	:	Mr. Rishi Raj Sinha, SC-19

CORAM: HONOURABLE MR. JUSTICE DINESH KUMAR SINGH
ORAL ORDER

2 04-01-2018 Heard learned Counsels for the petitioner and the
respondent-State.

Learned Counsel for the petitioner seeks permission to
make correction in paragraph no.1 of the Writ application and
confines his prayer only to the extent of issuing a direction to
respondent no.5, the Circle Officer, Mairwa, District-Siwan, to
get the encroachment removed from the land in question under



the provision of the Bihar Public Land Encroachment Act,1956 (hereinafter referred to as the 'Act').

This Court is not inclined to adjourn the matter for issuance of notice to private respondent nos. 6 to 13 in view of the nature of order this Court intends to pass.

Though the Writ application has basically been filed for implementing the order dated 02.03.2016, passed in M. No. 1980 of 2010 by respondent no.4, the learned Sub-Divisional Magistrate, Siwan Sadar, Siwan, whereby, he directed the Circle Officer, Mairwa to remove encroachment from the land appertaining to Thana No.82, Khata No. 352, Survey No. 1946, situated in Village-Muriyari, Tola-Korara, District-Siwan.

The factual matrix of the case is that the land in question appertaining to Khata No. 352, Survey No.1946, Thana No. 82, situated in Village- Korara, P.O.-Bishunpura Bazar, P.S.- Mairwa, Circle-Mairwa, District-Siwan, is recorded in the revenue record as Gair Mazarua Aam Rasta, but the same has been encroached upon by private respondent nos. 6 to 13 as a result the petitioner's right to easement has been obstructed.

It is submitted by learned Counsel for the petitioner that petitioner Shiv Kumar Giri has his house over the adjacent land appertaining to Khata No.309, Survey No. 1914, but



encroachment has been made by the respondent Mahendra Chaudhary, Vishwanath Chaudhary, Pancham Chaudhary, Rudal Chaudhary and Chandrama Chaudhary over the land appertaining to Khata No. 352, Survey No.1946 which gets reflected from the report of the Circle Officer Mairwa, dated 24.04.2015, as contained in Annexure-3. Earlier Encroachment Case No.02 of 2005-06 was initiated for removal of the encroachment from the same land and consequently the encroachment was removed, but the encroachment has resurfaced again. A photocopy of the orders passed in Encroachment Case No. 02 of 2005-06 has been produced before this Court, which suggests that in the said proceeding only respondent nos.4, 6, 7, 12 and 13 were noticed, but respondent nos. 8, 9, 10 and 11 were not a party to the said proceeding. It is further submitted that in a proceeding initiated under Section 133 of the Cr.P.C. vide Case No.02 of 2010, respondent no.4, the Sub-Divisional Magistrate, Siwan, vide Memo No. 973, dated 13.03.2015 directed respondent no.5, the Circle Officer, Mairwa, to remove the encroachment from the land in question. Consequently, respondent no.5, the Circle Officer, Mairwa, vide letter dated 24.04.2015 submitted to the Sub-Divisional Magistrate, Siwan Sadar, intimated that the land



in question was encroached upon earlier, but in pursuance to the proceeding initiated in Encroachment Case No.2 of 2005-06 after getting the measurement done, the encroachment was removed from the land in question, but it resurfaced again by respondent no.6, 7, 12 and 13, Mahendra Chaudhary, Rudal Chaudhary, Pauchan Chaudhary and Chandrama Chaudhary respectively. The said letter also stipulates that the land in question is recorded in the revenue record as 'Gair Majarua Aam Rasta', But despite all the facts mentioned above, neither any encroachment proceeding has been initiated nor the encroachment has been removed as yet. Hence, the present Writ application.

It is submitted by Mr. Rishi Raj Sinha, learned SC-19 appearing on behalf of the respondent-State that from the materials available on record, it does not appear that the same persons were parties in the earlier encroachment proceeding or in the proceeding initiated under Section 133 of the Cr.P.C. However, he admits that from the report of the Circle Officer, as contained in Annexure-3, *prima facie*, it appears that the land in question is a public land but the same has been encroached upon. In the circumstances, if the proceeding has already not been initiated, the same will be initiated forthwith and will be



concluded within a time frame.

Considering the rival submissions of the parties, this Court is of the view that under Section 3 of the Act, the proceeding for removal of encroachment from a public land can be initiated, if it appears to the Collector under the Act from an application made by any person or upon information received from any sources that any person has made or is responsible for the continuance of any encroachment upon any public land.

No doubt, respondent no.5, the Circle Officer, Mairwa, came to know about the encroachment in pursuance to the order passed by the SDM, Siwan in a proceeding under Section 133 of the Cr. P. C. and consequently when he conducted the inquiry and came to the conclusion that public land has been encroached upon, but there is nothing on record to suggest that any proceeding under the Act has been initiated. Moreover, the Circle Officer, who is the Collector under the Act or the local SHO of the Police Station are duty bound to see that the encroachment should not resurface again, otherwise it would be an unending process.

In the circumstances, respondent no.5, the Circle Officer, Mairwa, is directed to examine the record and conduct spot verification and if he finds that public road/land has been



encroached upon then he will initiate a proceeding with regard to the land in question under the provisions of the Act, if it has not already been initiated and it is expected from him to take such proceeding to its logical conclusion within a period of three months, after giving due opportunity of hearing to all affected persons including private respondent nos. 6 to 13 under the Act.

The Circle Officer will further ensure that the encroachment will not resurface again. The exercise is being directed to be done, *de novo*, since it does not appear from the record whether the encroachment has been removed in view of the order passed in Encroachment Case No.2 of 2005-06.

The Writ application is, accordingly, disposed of with the observation aforesaid.

(Dinesh Kumar Singh, J)

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