

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.16626 of 2017

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Arun Kumar, Son of Sri Rajendra Prasad resident of Village- Naudharia, P.S.-
Buniyadganj, District- Gaya.

... .. Petitioner/s

Versus

1. The State of Bihar, through Collector, Gaya.
2. The Collector, Gaya.
3. Anchal Adhikari, Nagar Gaya, District- Gaya.
4. Nagar Commissioner, Gaya.
5. Bhola Yadav, Son of Late Munni Yadav, Resident of Village- Laxminagar,
P.S.- Rampur, District- Gaya.

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Mritunjay Prasad Singh, Adv.
For the Respondent/s	:	Mr. SAJID SALIM KHAN - SC-25

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CORAM: HONOURABLE MR. JUSTICE DINESH KUMAR SINGH

ORAL JUDGMENT

Date : 22-03-2018

Heard Mr. Mritunjay Prasad Singh, learned Counsel for the petitioner, Mr. Sajid Salim Khan, learned SC-25 for the State and Mr. Ravindra Priyadarshi, learned Counsel for respondent no.4.

The present Writ application has been filed for a direction to the respondent authorities to get the encroachment removed from the 15 ft wide road, appertaining to Thana No. 181, Khata No.90, Plot No. 308, situated at Mauza-Mustafabad, District- Gaya, which has been left by way of contribution by ex-landlord for the use of the different purchasers from the ex-landlord.

It is submitted by learned Counsel for the petitioner that



part of the Plot No. 308 was left out by the ex-landlord for the purpose of road being used by the various purchasers, the petitioner is also a purchaser of part of Plot No.308. The road in question is being used by the petitioner as well as by the other purchasers. On an application being made by the petitioner, to the respondent no.3, the Circle Officer, Nagar Gaya, and his consequential direction, the Anchal Amin submitted the report dated 24.07.2015, as contained in Annexure-2, along with sketch map, after conducting the measurement of the land in question, suggesting encroachment on the land by respondent no.5.

Learned Counsel for the respondent no.4 submits that the Writ application is not maintainable since the land/road in question is not a public road/land. It is absolutely a private dispute between the respondent no.5 and the petitioner.

Mr. Sajid Salim Khan, learned SC-25 submits that *prima facie*, it appears to be a dispute between the petitioner and respondent no.5, but in view of the report of the Anchal Amin dated 24.07.2015, as contained in Annexure-2, the respondent no.3, the Circle Officer, Nagar Gaya, may be directed to examine the issue afresh.

Having heard the Counsels for the parties it is necessary to



examine the definition of 'public land' as defined under sub-Section (3) of Section 2 of the Bihar Public Land Encroachment Act, 1956 (hereinafter called as 'the Act'), which reads as under :-

“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 recognized 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 or user, such as right of way, burials, cremation, pasturage or irrigation.”

The above definition of public land includes any land vested in Union of India or to the State of Bihar or to any local authority or to any public undertaking or to any educational institution or to any railway company or to the Gram Panchayat and includes any land over which, the public or the community has got right of user, such as right of way, burials, cremation, pasturage or irrigation. Hence, even as per the above definition of the public land, if a land is not recorded in the revenue records as a public land, or vested in the State of Bihar or the Union of India or the Statutory Authority, but if it is being used for the public purposes, such as right of way then, it can be treated as a public land.



For initiation of proceeding under the Act, the pre-condition is that it should appear to the Collector under the Act, either on application made 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, it appears that the encroachment has been made on the public land and it was certainly brought within the knowledge of the respondent no.3, the Circle Officer, Nagar Gaya that public land has been encroached upon, but no proceeding has been initiated under the Act, hence, the Circle Officer failed to discharge the quasi-judicial function delegated to him under the Act.

In the circumstances, the respondent no.3, the Circle Officer, Nagar Gaya is expected to examine the revenue records and if need be make spot verification and if he finds after getting the enquiry being made from the local people that public road/land, under the definition of the public land, as explained and quoted above, has been encroached upon, then he will initiate a proceeding forthwith with regard to the land in question in accordance with the provisions of Act and take such proceeding to its logical conclusion within a period of three



months, by giving due opportunity of hearing to all affected persons including respondent no.5 under the provisions of the Act.

The Writ application is, accordingly, disposed of with above-mentioned observation and direction.

(Dinesh Kumar Singh, J)

Ashwini/-

AFR/NAFR	
CAV DATE	
Uploading Date	
Transmission Date	

