

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.12807 of 2017

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Ram Lakhan Prasad, Son of Late Kuldip Prasad, Resident of Village -
Garjubigha Rauna, P.S.- Konch, District - Gaya (Bihar).

... .. Petitioner

Versus

1. The State of Bihar through the Secretary, Revenue Department, Bihar, Patna.
2. The Collector, Gaya.
3. Additional Collector, District - Gaya.
4. The Deputy Collector (Land Reform), Gaya.
5. The Circle Officer, Guraru, District - Gaya.
6. Shankar Manjhi, Son of Jhari Manjhi
7. Mohan Manjhi, Son of Chhedi Manjhi
8. Mahang Manjhi, Son of Aditya Manjhi
9. Shiv Manjhi, Son of Jhari Manjhi
10. Saudagar Manjhi, Son of Nathun Manjhi
11. Ramashish Prasad, Son of Late Ramvilash Mahto, All Respondent Nos. 6 to
11 are Residents of Village - Garju Bigha, P.S. - Konch, District - Gaya
(Bihar).

... .. Respondents

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Appearance :

For the Petitioner/s : Mr. Pramod Kumar Verma, 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 : 24-04-2018

Heard Mr. Alok Jha, learned counsel for the petitioner
and Mr. Sajid Salim Khan, learned SC-25 for the respondent-State.

Though, the present writ application was registered on
01.09.2017, but till date, no counter affidavit has been filed, hence
in view of the nature of order this Court intends to pass, this Court



is neither inclined to adjourn the matter any further nor inclined to issue notice to private respondent nos. 6 to 11.

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. 251, Plot No. 1847, situated at Village Rauna, P.S. Konch, District Gaya, which is a water channel (Payin), and has been encroached upon by private respondent nos. 6 to 11. Though, prayer has also been made for a direction to the respondent authorities to get the encroachment removed from the raiyati land of the petitioner, appertaining to Old Khata No. 250, New Khata No. 113, Old Plot No. 1946, New Plot No. 2532. However, learned counsel for the petitioner confines his prayer only to the extent of removal of encroachment from the public land.

It is submitted by learned counsel for the petitioner that for removal of encroachment from the public land in question, a representation was submitted by the petitioner before respondent no.5, the Circle Officer, Guraru on 28.12.2016 and 10.02.2017, as contained in Annexure-1(series), but till date, no action has been taken for removal of the encroachment from the land in question. However, representations were also submitted before respondent no.2, the District Magistrate, Gaya and Sub-Divisional Officer,



Tekari on 22.05.2017 and 23.07.2017, as contained in Annexure-4 and 5, respectively, but till date, no action has been taken for removal of the encroachment from the land in question. Hence, the present writ application.

Mr. Sajid Salim Khan, learned S.C.-25 submits that at present, he is not having any instruction whether the land in question, particularly, the water channel is a public land or not, but if it is found that the public land has been encroached upon then a proceeding under the Bihar Public Land Encroachment Act, 1956 (hereinafter referred to as 'the Act') will be initiated, if it has already not been initiated and the same will be taken to its logical conclusion within a time frame.

Having heard learned counsels for the parties, this Court is absolutely not inclined to interfere with regard to encroachment made on the raiyati land of the petitioner, as the petitioner has an alternative efficacious remedy under the law for redressal of such grievances. So far as encroachment made over public land is concerned, this Court is of the view that for initiating a proceeding under the Act, it is not required that the Collector under the Act should come to a conclusive finding that public land has been encroached upon.

For initiation of 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 information received from any sources that any person has made or is responsible for the continuance of encroachment over public land.

In the present case, it appears that representations were submitted before respondent no.5, the Circle Officer, Guraru on 28.12.2016 and 10.02.2017, as contained in Annexure-1(series), but there is nothing on record to suggest that any proceeding under the Act has been initiated till date or the encroachment has been removed from the public land in question.

In the circumstances, respondent no.5, the Circle Officer, Guraru is expected to examine the Revenue Records and if need be, conduct spot verification and conduct measurement of the land in question, whereupon if it appears to him that the land in question is a public land and the same has been encroached upon, then he will initiate a proceeding under the Act forthwith, if it has already not been initiated, and will 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, in accordance with the provisions of the Act.

It is made clear that this Court has not expressed any opinion with regard to the nature of the land in question.



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	27/04/2018
Transmission Date	

