

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.3493 of 2016

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Subhash Pandey Son of Late Kailash Pandey, Resident of Tintanga Karari,
P.S. - Gopalpur, District - Bhagalpur.

.... Petitioner/s

Versus

1. The State of Bihar, through the Chief Secretary, Govt. of Bihar, Patna.
2. The Principal Secretary, Road Division, Government of Bihar, Old Secretariat, Patna.
3. The Commissioner, Bhagalpur Division, Bhagalpur.
4. The District Magistrate, Bhagalpur.
5. The L.R.D.C. Naugachia, District - Bhagalpur.
6. The Block Development Officer, Gopalpur, District - Bhagalpur.
7. The Circle Officer, Gopalpur, District - Bhagalpur.
8. The Mukhiya, Gram Panchayat Tintanga Karari, P.S. - Gopalpur, District - Bhagalpur.
9. Hari Mandal, Son of Late Bale Mandal,
10. Basudeo mandal, Son of Late Lale Mandal,
11. Changuri Mandal,
12. Pramod Mandal, Both Sons of Ganesh Mandal,
13. Munner Mandal,
14. Sone Lal Mandal, Both sons of Late Bale Mandal,
15. Shyamdeo Mandal(Amin), Son of Anirudh Mandal All residents of village - Tintanga Karari P.S. - Gopalpur, District - Bhagalpur.

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Surendra Kumar Mishra, Advocate
For the Respondent/s : Mr. Mehtab Alam, AC to SC-20

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CORAM: HONOURABLE MR. JUSTICE DINESH KUMAR SINGH
ORAL ORDER

02/ 04-01-2018

Heard Mr. Surendra Kumar Mishra, learned counsel for the petitioner and Mr. Mehtab Alam, learned AC to SC-20 for respondent nos. 1 to 7.

Since the Writ application was registered on 18.02.2016, but no counter affidavit has been filed by the respondent-State till date, this Court is not inclined to adjourn the



matter any further. The nature of order this Court intends to pass, does not require issuance of notice to respondent nos. 8 to 15.

The present Writ application has been filed for a direction to the respondent authorities to get the encroachment removed from the village road appertaining to Thana No. 47, Khata No. 3455, Plot No. 10116 situated in Mauza - Gopalpur, District – Bhagalpur as the same has been encroached upon by respondent nos. 9 to 14.

It is submitted by learned counsel for the petitioner that the land in question is a public road but the respondent nos. 9 to 14 in connivance with the respondent no. 15 (Circle Amin) encroached the public road which has substantially obstructed free flow of the traffic. As far back in 2013, the petitioner and other co-villagers approached to the authorities concerned and on direction dated 24.10.2013 of respondent no. 5, D.C.L.R., Naugachia, the respondent no. 7, Circle Officer, Gopalpur vide Memo No. 788 dated 29.10.2013 directed the Anchal Amin to get the land in question measured and consequently Anchal Amin submitted the report on 27.12.2013, as contained in Annexure-1, stipulating therein that the part of the public road has been encroached upon by respondent no. 9, Hari Mandal and respondent no.14, Sonelal Mandal, hence,



recommended for removal of the encroachment but even then the encroachment has not been removed. Thereafter, the petitioner filed C.W.J.C. No. 19585 of 2014 with a prayer for removing the encroachment by way of public interest litigation but the same was permitted to be withdrawn vide order dated 09.12.2015, as contained in Annexure-3 with liberty to the petitioner to approach the appropriate authority with appropriate application. Thereafter, the petitioner submitted his representation before District Magistrate, Bhagalpur, Sub-divisional Officer, Naugachia, Circle Officer, Gopalpur and SHO of Gopalpur Police Station on 23.12.2015, as contained in Annexure-4 series, for removal of the encroachment from the said public road, but till date neither any encroachment proceeding under the provisions of Bihar Public Land Encroachment Act (hereinafter referred to as the 'Act') has been initiated nor encroachment has been removed, hence, this writ application.

Learned AC to SC-20 submits that, at present, he is not having any instruction whether the land in question is a public road or not or whether any proceeding has been initiated under the Act or not. However, if it appears to the Circle Officer that the public road has been encroached upon, then a proceeding, if it has already not been initiated, will be initiated and it will be



concluded within a time frame.

Considering the rival submissions of the parties, for initiating a proceeding for removal of the encroachment from a public land/road under the Act, the only pre-condition under Section 3 of the Act is that 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 encroachment upon the public land/road. No doubt in the present case, the Circle Officer came to know about encroachment on the public road/land as far back as on 24.10.2013 when D.C.L.R., Naugacha directed to take action and consequently, on 29.10.2013 the Circle Officer, Gopalpur directed the Circle Amin to get the land measured. Thereafter, on the basis of report of Circle Amin dated 27.12.2013, as contained in Annexure-1, which reported that the public land/road has been encroached upon and thereafter in pursuance to the order of this Court, the representation was submitted by the petitioner on 23.12.2015, as contained in Annexure-4 series, but there is nothing on record to suggest that either any encroachment proceeding has been initiated, or encroachment has been removed.

In the circumstances, respondent no. 7, Circle Officer, Gopalpur is directed to examine revenue records and if



need be, conduct spot verification and thereafter, if it appears to him that the public road/land has been encroached upon then he will initiate a proceeding, if the same has already not been initiated, and take the same to its logical conclusion within a period of three months, after giving due opportunity of hearing to all affected persons, under the provisions of the Act.

Accordingly, this Writ application is disposed of.

(Dinesh Kumar Singh, J)

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