

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.5093 of 2016

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Ramadhar Sah, Son of Late Vishwathnath Sah, Resident of Village-
Bishunpura, Anchal - Panchdeori, P.S. Kateya, District-Gopalgang.

... .. Petitioner/s

Versus

1. The State of Bihar
2. The District Collector, Gopalgang.
3. The Sub-Divisional Officer (S.D.O.), Hathwa, Gopalgang.
4. The Circle Officer, Panchdeori District-Gopalgang
5. Bijule Chauhan, Son of Sukhari Chauhan
6. Kesav Chauhan, Son of Manager Chauhan
7. Lal Badan Chauhan, Son of Jata Shankar Chauhan
8. Ram Raj Chauhan, Son of Bunela Chauhan
9. Aash Narayan, Son of Fuleshrwar Chauhan

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr. Pritish Ranjan, Adv.
For the Respondent/s : Mr. Rishi Raj Sinha, SC-19

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CORAM: HONOURABLE MR. JUSTICE DINESH KUMAR SINGH
ORAL ORDER

2 08-01-2018 Heard learned Counsels for the petitioner and the
respondent-State.

Since the Writ application was filed on 11.03.2016, but no
counter affidavit has been filed till date and in view of the
nature of order this Court intends to pass, this Court is neither
inclined to adjourn the matter nor inclined to issue notice to
private respondent nos. 5 to 9.

The present Writ application has been filed for a direction
to respondent authorities to get the encroachment removed from
the public land/road appertaining to Khata No.145, Plot No.637,
situated in Mauja -Bishunpura, Circle Office- Panchdeori,



District-Gopalganj.

It is submitted by learned Counsel appearing on behalf of the petitioner that the land in question is recorded in the revenue record as 'Gair Majarua Aam' and is used as a public road, but the same has been encroached upon by respondent nos. 5 to 9. For removal of encroachment, the petitioner submitted one undated representation before the respondent no.2, the District Magistrate, Gopalganj, in Janta Darbar, as contained in Annexure-1, whereupon, a proceeding was initiated by the respondent no. 4, the Circle Officer, Panchdeori, and consequently, notices were issued to the encroachers on 24.04.2015 and on 13.05.2015, for their appearance on 06.05.2015, as contained in Annexure-2. Though the encroachers appeared, but they failed to remove the encroachment. Consequently, vide order dated 27.11.2015, the respondent no.4, the Circle Officer, Panchdeori fixed 09.12.2015, as the date for removal of the encroachment by resorting to use of police force. In the meantime, the Circle Officer, got the land measured. Though the petitioner submitted an application again before the respondent no.2, the District Magistrate, Gopalganj, as contained in Annexure-4, but the encroachment has not been removed. Hence, the present Writ



application.

It is submitted by learned Counsel appearing on behalf of the respondent-State that from the order dated 27.11.2015, issued by the respondent no.4, the Circle Officer, Panchdeori, it does not appear whether any encroachment proceeding was initiated or not, if the encroachment has been made on a public road, then appropriate proceeding shall be initiated and will be taken to its logical concluding within a time frame, if it has not been initiated.

The sine qua non for initiating a proceeding is prescribed under Section 3 of the Bihar Public Land Encroachment Act (hereinafter referred to as 'the Act') which stipulates that 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, he will initiate a proceeding under the Act.

No doubt, representations were made before respondent no.2, the District Magistrate, Gopalganj as well as before respondent no.4, the Circle Officer, Panchdeori for removal of the encroachment from the land in question. The order dated 27.11.2015, passed by respondent no.4, the Circle Officer,



Panchdeori, as contained in Annexure-3, does not reflect the nomenclature or the details of the proceeding, in which the same has been passed. Similarly, notice contained in Annexure-2 issued to the so called encroachers also does not reflect any encroachment case number, which *prima facie* suggests that no formal proceeding has been initiated. However, order dated 27.11.2015, contained in Annexure-3 suggests that the Circle Officer directed for removal of encroachment on 09.12.2015, but it does not reflect that any final order under Section 6(1) of the Act has been passed. The material on record suggests that the Circle Officer passed the order without following the procedure under the Act. Since the order dated 27.11.2015, passed by respondent no.4, the Circle Officer, Panchdeori, as contained in Annexure-3, lost its force and from the averment of learned Counsel for the petitioner, the encroachment has still not been removed, this Court is not inclined to interfere with the order aforesaid.

In the circumstances, respondent no.4, the Circle Officer, Panchdeori, 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, by giving due opportunity of hearing to all affected persons including respondent nos. 5 to 9 under the Act.

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

(Dinesh Kumar Singh, J)

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