

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.6289 of 2016

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Alimuddin, Son of Late Zainul Aabedin, Resident of Village-Sandali, P.O. & P.S.-Barauli, District-Gopalganj.

... .. Petitioner/s

Versus

1. The State of Bihar
2. The District Magistrate, Gopalganj.
3. The Sub-Divisional Magistrate, Gopalganj.
4. The Circle Officer, Barauli.
5. The Executive Officer, Nagar Panchayat, Barauli.

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr. Arun Kumar Prasad, Adv.
For the Respondent/s : Mr. Amit Kumar Jha, AC to AAG-4

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CORAM: HONOURABLE MR. JUSTICE DINESH KUMAR SINGH
ORAL ORDER

2 26-02-2018 Heard learned Counsels for the petitioner and the respondent-State.

Though the Writ application was registered on 05.04.2016, but no counter affidavit has been filed till date, this Court is not inclined to adjourn the matter any further.

The present Writ application has been filed for the relief as stipulated in paragraph no.1 of the Writ application :-

“That this Writ application is being filed for the following reliefs :-

(i) (A) For implementation of order passed by the District Magistrate, Gopalganj, contained in Memo No.3282 dt. 12/12/2015 regarding removal of encroachment.

(B) For issuance of appropriate writ



directing the respondents especially the respondent no.4 to remove the encroachment from the Khesra No.589, Thana No.255(Public road) of Village-Sandali, Ward No.19 of Barauli Nagar Panchayat, which in the report of the Anchal Amin has been found to be encroached by the several persons.

(ii) For constructing the P.C.C. Road under Mukhya Mantri Urban Development Scheme after removing the encroachment from the public road.

(iii) For any other reliefs sought for which this Hon'ble Court deem fit and proper.”

It is submitted by learned Counsel for the petitioner that the land appertaining to Plot No.589, Thana No.255, situated in Village-Sandali, Ward No.19, District -Gopalganj is a public road and the same has been encroached upon by some of the persons, as a result, the construction of PCC road under the Chief Minister Urban Development Scheme has been obstructed. A public representation dated 24.04.2015, as contained in Annexure-1 has been submitted before the respondent no.5, the Executive Officer, Barauli. Subsequently, the respondent no.3, the Circle Officer, Barauli called for a



report from the Halka Karmchari and the Anchal Amin. In compliance to the same, the Halka Karmachari and the Anchal Amin submitted the report on 02.07.2017 suggesting encroachment made by certain persons, as contained in Annexure-2. On the report of the Executive Officer, Barauli vide letter no.687, dated 02.12.2015, respondent no.2, the District Magistrate, Gopalganj directed the Circle Officer to remove the encroachment from the land in question, as contained in Annexure-3, but till date 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 at present he is not having any instruction whether any proceeding under the provisions of the Bihar Public Land Encroachment Act (hereinafter called as 'the Act') has been initiated or not, but he submits that if it has not been initiated, it will be initiated forthwith and the same will be taken to its logical conclusion within a time frame.

The *sine qua non* to initiate a proceeding against public land encroachment is prescribed in Section 3 of 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. There is nothing on record to suggest that any proceeding has been initiated. However, the report of Halka Karmachari, as contained in Annexure-2 as well as the direction of the District Magistrate, as contained in Annexure-3 suggest that the construction of road and the drainage has been obstructed due to the encroachment made by certain persons. This Court is dismayed to find that the report was submitted by the Anchal Amin and Halka Karmachari as far as back as on 02.12.2017, but till date the slumber of the Circle Officer has not been broken.

In the circumstances, it is expected from the respondent no.4, the Circle Officer, Barauli to examine the revenue records and if need be make spot verification and if he finds that public road/land 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, if it has not already been initiated. It is further expected from the respondent no.4, the Circle Officer, Barauli to take such proceeding to its logical conclusion within a period of three months, by giving due opportunity of hearing to all affected persons under the Act.



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

(Dinesh Kumar Singh, J)

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