

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.7773 of 2016

Bhairav Yadav, Son of Late Bhujangi Yadav, Resident of Village- Jagatpur,
Police Station- Panjwara, District- Banka.

... .. Petitioner

Versus

1. The State of Bihar through Collector, Banka.
2. The District Magistrate, Banka.
3. The Sub-Divisional Magistrate, Banka.
4. The Circle Officer, Banka.
5. The Officer in charge, Panjwara, Block- Dhoriya, District- Banka.
6. Bishan Thakur.
7. Kishan Thakur. Both Sons of Late Pooran Thakur. Both are Resident of Village- Jagatpur, Post and Police Station- Paanjwara, District- Banka.

... .. Respondents

Appearance :

For the Petitioner/s	:	Mr. Ashutosh Kumar, Adv. Mr. Rajendra Prasad Sah, Adv.
For the Respondent/s	:	Mr. Nawal Kishor Singh, AC to GP-26.

CORAM: HONOURABLE MR. JUSTICE DINESH KUMAR SINGH
ORAL JUDGMENT

Date : 05-03-2018

Heard Mr. Ashutosh Kumar, learned counsel for the petitioner and Mr. Nawal Kishor Singh, learned AC to GP-26 for the respondent-State.

Though, the present writ application was registered on 30.04.2016, but till date no counter affidavit has been, hence, this Court is not inclined to adjourn the matter any further.

In view of the nature of order this Court intends to pass, this Court is not inclined to issue notice to private respondent nos. 6 and 7.

The present writ application has been filed for a direction to the respondent authorities to get the encroachment removed from



the public land/road, appertaining to Thana No. 366, Khata No. 121, Plot No. 825, situated in Mauza Jagatpur, Circle Dhoraiya, District Banka, which has been encroached upon by private respondent nos. 6 and 7. Further prayer has been made for a direction to the respondent authorities to take action against the officers who deliberately chose not to comply the orders of superior authority.

It is submitted by learned counsel for the petitioner that the land in question is a public land/road, but the same has been encroached upon by private respondent nos. 6 and 7. For removal of the encroachment from the land in question, the petitioner submitted an application before respondent no.2, the District Magistrate, Banka in Janta Darbar, as contained in Annexure-1, which was forwarded to respondent no.4, the Circle Officer, Dhoraiya, but respondent no.4, the Circle Officer, Dhoraiya did not take any action in spite of the fact that the In-charge Officer, District Public Grievances Cell, Banka strongly expressed his displeasure over the inaction by respondent no.4, the Circle Officer, Dhoraiya, vide letter no. 1400, dated 01.06.2015, as contained in Annexure-2. Subsequently, Halka Karamchari submitted a report to respondent no.4, the Circle Officer, Dhoraiya on 10.06.2015, as contained in Annexure-3, suggesting that the



land in question is a Government land, but the same has been encroached upon by private respondent nos. 6 and 7, hence he recommended for initiation of a proceeding under the Bihar Public Land Encroachment Act, 1956 (hereinafter referred to as 'the Act'). Subsequently, respondent no.2, the District Magistrate, Banka, vide Memo No. 23, dated 20.08.2015, as contained in Annexure-5, directed respondent no.4, the Circle Officer, Dhoraiya to get the encroachment removed from the land in question under the provisions of the Act, but even then respondent no.4, the Circle Officer Dhoraiya did not initiate any proceeding under the Act. Though, respondent no.4, the Circle Officer, Dhoraiya, vide memo No. 721 dated 25.08.2015, as contained in Annexure-6, issued notice to private respondent nos. 6 and 7 directing them to remove the encroachment from the land in question within a period of one week from the date of receipt of the notice. The Halka Karamchari again submitted a report to respondent no.4, the Circle Officer, Dhoraiya on 04.09.2015, as contained in Annexure-7, suggesting that the private respondent nos. 6 and 7 have encroached upon the public road. Subsequently, on 18.11.2015, respondent no.4, the Circle Officer, Dhoraiya went to the spot for verification but again he gave some time to the encroachers to remove the encroachment. Respondent no.4, the Circle Officer, Dhoraiya again issued notice



to the private respondent nos. 6 and 7, vide Memo No. 920, dated 15.12.2015, as contained in Annexure-9, directing them to remove the encroachment from the land in question within a period of three days and then vide Letter No. 949, dated 29.12.2015, as contained in Annexure-10, he requested respondent no.2, the District Magistrate, Banka to take action against private respondent nos. 6 and 7, at his level, since he felt handicapped in taking action against them and as such, Circle Officer did not take any action against the private respondent nos. 6 and 7 under the Act. Hence, the present writ application.

Learned AC to GP-23 submits that at present he is not having any instruction whether encroachment proceeding has been initiated or not or whether encroachment has been removed or not.

Having heard the learned counsels for the parties, from the material on record, it appears that no proceeding under the Act has been initiated till date. The *sine qua non* for initiating a proceeding under Section 3 of the Act is that it should appear to the Collector under the Act from an application made by any persons or upon information received from any sources that any person has made or is responsible for the continuance of the encroachment upon the public land. In the present case, twice the Halka Karamchari submitted the report to respondent no.4, the Circle Officer,



Dhoraiya suggesting that the land in question is a public land and the same has been encroached upon by private respondent nos. 6 and 7 and twice respondent no.2, the District Magistrate, Banka directed respondent no.4, the Circle Officer, Dhoraiya to initiate a proceeding under the Act, but it appears that notices have been issued to the private respondent nos. 6 and 7 without initiating any proceeding under the Act, which suggests the complete abdication of jurisdiction by respondent no.4, the Circle Officer, Dhoraiya. In such circumstances, it was also imperative on the part of respondent no.2, the District Magistrate, Banka to take action against respondent no.4, the Circle Officer, Dhoraiya, but there is nothing on record to suggest that any action has been taken against respondent no.4, the Circle Officer, Dhoraiya.

It, *prima facie*, appears that both respondent no.2, the District Magistrate, Banka and respondent no.4, the Circle Officer, Dhoraiya have failed to discharge the *quasi judicial* authority vested in their office under the Act.

In the circumstances, respondent no.4, the Circle Officer, Dhoraiya is directed to examine the Revenue Records with regard to the land in question and if need be, conduct spot verification 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 the date of its initiation, after giving due opportunity of hearing to all affected persons, including private respondent nos. 6 and 7, in accordance with the provisions of the Act.

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	22/03/2018
Transmission Date	

