

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.13900 of 2016

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Shrish Kumar Suman, Son of late Kaushlendra Mandal, Resident of Bhidaha ,
Post & Police Station- Medani Chauki (Suryagarha), District Lakhisarai.

... .. Petitioner

Versus

1. The State of Bihar through the Secretary, Department of Land Reforms, Government of Bihar, Patna.
2. The District Magistrate, Lakhisarai.
3. The Superintendent of Police Lakhisarai.
4. The Deputy Superintendent of Police, Lakhisarai.
5. The Sub Divisional Officer, Lakhisarai.
6. The Circle Officer, Suryagarha , Lakhisarai.
7. Ramotar Ram Son of Jagnath Ram
8. Bhushan Ram Son of Ramotar Ram
9. Shivnandan Rajak, Son of Narsingh Rajak
10. Upendra Rajak, Son of Narayan Rajak, Respondent No. 7 to 10 are Resident of Milki, Police Station- Medani Chauki (Suryagarha in the district of Lakhisarai.

... .. Respondents

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Appearance :

For the Petitioner/s : Mr. Anil Kumar Singh
For the Respondent/s : Mr. Rishi Raj Sinha-SC19

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CORAM: HONOURABLE MR. JUSTICE DINESH KUMAR SINGH
ORAL JUDGMENT

Date : 03-04-2018

Heard Mr. Anil Kumar Singh, learned counsel for the petitioner and Mr. Birendra Prasad Singh, learned AC to SC-19 for the respondent-State.

The present writ application was registered on 20.08.2016, and thereafter today a counter affidavit has been filed on behalf of respondent no.3, the Superintendent of Police, Lakhisarai, though, reply to the contentions raised in the writ application ought to have been given by respondent nos. 2 and 5, the District Magistrate, Lakhisarai and the Circle Officer,



Suryagarha, respectively, but the same has not been filed till date, 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 also not inclined to issue notice to private respondent nos. 7 to 10

The present writ application has been filed with a prayer for a direction to respondent authorities to get the encroachment removed from the public road/land, appertaining to Khata No. 240, Plot No. 301, Thana No. 55, situated in Mauja Salarpur, District Lakhisarai.

It is submitted by learned counsel for the petitioner that the land in question is recorded in the Khatian as a public road, but the same has been encroached upon by private respondent nos. 7 to 10. A public petition was submitted before respondent no.5, the Sub-Divisional Officer, Lakhisarai on 30.06.2008, as contained in Annexure-1, for initiating a proceeding under Section 133 of the Cr. P.C., for removal of encroachment from the land/road in question, which was forwarded to respondent no.6, the Circle Officer, Suryagarha, vide Letter No. 1807, dated 04.07.2008, as contained in Annexure-2, for needful and necessary action. Consequently, a public petition was also submitted before respondent no.6, the Circle Officer, Suryagarha, as contained in



Annexure-3 for removal of encroachment from the land in question. Consequently, Encroachment Case No. 01 of 2009-10 was initiated and notices were issued to the private respondent nos. 7 to 10, vide Letter No. 184, dated 12.06.2009, as contained in Annexure-3 and 4, for their appearance and for measurement of the land in question. Subsequently, measurement of the land in question was done on 24.06.2009 and a report was submitted by the Circle Amin to respondent no.6, the Circle Officer, Suryagarha to the effect that the land in question is a public land and the same has been encroached upon by private respondent nos. 7 to 10, whereupon, again notices were issued to private respondent nos. 7 to 10, on 29.03.2012, as contained in Annexure-6, under the signature of respondent no.6, the Circle Officer, Suryagarha directing them to remove the encroachment from the land in question, failing which they would have to appear before respondent no.6, the Circle Officer, Suryagarha on 12.04.2012 to bring the evidence in support of their claim, but till date neither the encroachment has been removed from the land in question, nor the proceeding of Encroachment Case No. 01 of 2009-10 has been taken to its logical conclusion. Hence, the present writ application.

Learned AC to SC-19 submits that from the counter affidavit filed on behalf of respondent no.3, the Superintendent of



Police, Lakhisarai, it appears that the report of the Circle Amin suggests that the land in question is a public land and the same has been encroached upon by private respondent nos. 7 to 10, who are landless persons. However, he is not having any instruction with regard to present stage of proceeding of Encroachment Case No. 01 of 2009-10, but if it is pending, then it will be disposed of within a time frame.

Having heard learned counsel for the petitioner, it does not appear from the materials on record that the proceeding of Encroachment Case No. 01 of 2009-10, initiated under the Bihar Public Land Encroachment Act, 1956 (hereinafter referred to as 'the Act'), has been taken to its logical conclusion in last nine years, which suggests the callous manner in which, respondent no.6, the Circle Officer, Suryagarha is discharging his quasi judicial function, which further reflects the lack of administrative control of respondent no.2, the District Magistrate, Lakhisarai over his subordinate administrative officer.

For initiating a proceeding under Section 3 of the Act, the *sine qua non* 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 the continuance of encroachment over the public



land. Undoubtedly, the proceeding, being Encroachment Case No. 01 of 2009-10 has been initiated, but there is nothing on record to suggest that the same has been taken to its logical conclusion. Though, under the Act, there is no time limit fixed for conclusion of such proceeding, but it does not mean that the Collector, under the Act will initiate a proceeding and sit tight over the matter for nine years. Removal of encroachment from the public land is always an emergent situation and in the circumstances, when respondent no.5, the Sub-Divisional Officer, Lakhisarai directed respondent no.6, the Circle Officer, Suryagarha, vide Letter No. 184, dated 12.06.2009, as contained in Annexure-3, to get the encroachment removed from the land in question, there was no occasion for respondent no.6, the Circle Officer, Suryagarha to initiate a proceeding under the Act and keep such proceeding pending since the last nine years.

In the circumstances, it is expected from respondent no.2, the District Magistrate, Lakhisarai to ascertain the number of such proceedings pending in the entire district of Lakhisarai and try to get them concluded forthwith in accordance with the provisions of the Act.

It is expected from respondent no.6, the Circle Officer, Suryagarha to take the proceeding of Encroachment Case No. 01



of 2009-10 to its logical conclusion within a period of three months, if the same has not been concluded till date, after giving due opportunity of hearing to all affected persons including private respondent nos. 7 to 10, in accordance with the provisions of the Act.

Accordingly, with the above observations and directions, the present writ application is disposed of.

(Dinesh Kumar Singh, J)

Amrendra/-

AFR/NAFR	
CAV DATE	
Uploading Date	09.04.2018
Transmission Date	

