

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.11437 of 2017

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Md. Azad, Son of Md. Shoaib, Resident of Village- Vijayi, Police Station-
Ghorasahan, District- East Champaran.

... .. Petitioner

Versus

1. The State of Bihar through the Principal Secretary, Revenue Land Reforms Department, Govt. of Bihar, Patna.
2. The District Magistrate, East Champaran at Motihari.
3. The Sub Divisional Officer, Sikrahna Dhaka, East Champaran, Motihari.
4. The Dy. Collector, Land Reforms, Sikrahna, Dhaka, East Champaran, Motihari.
5. The Circle Officer, Ghorasahan, Block, East Champaran, (Motihari).
6. Sk. Bigu, son of Sk. Abdul Rahman,
7. Sk. Serajul, Son of Sk. Hadish,
8. Sk. Ezajul, Son of Sk. Hadish, Respondent nos. 6 to 8 are Resident of Village- Vijayi, Police Station- Ghorasahan, District- East Champaran.

... .. Respondents

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Appearance :

For the Petitioner/s : Mr. Dhurendra Kumar, Adv.
For the Respondent/s : Mr. S .C. Yadav, GP-15

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CORAM: HONOURABLE MR. JUSTICE DINESH KUMAR SINGH
ORAL JUDGMENT

Date : 03-04-2018

Heard Mr. Dhurendra Kumar, learned counsel for the
petitioner and Mrs. Sanghmitra Ghosh, learned AC to GP-15 for
the respondent-State.

Since the present writ application was registered on
09.08.2017, but till date no counter affidavit has been filed, 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. 6 to 8.



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. 16, Plot No. 1467, situated in Mauza Vijayi, Circle Ghorasahan, District East Champaran.

It is submitted by learned counsel for the petitioner that the land in question is a public land/drainage, but the same has been encroached upon by private respondent nos. 6 to 8. On a complaint made by the petitioner, respondent no. 3, the Sub-Divisional Officer, Sikrahna, Dhaka initiated a case being Case No. 3M of 2009, under Section 133 of the Cr. P.C. and consequently, respondent no.5, the Circle Officer, Ghorasahan, vide Letter No. 111, dated 22.02.2011, submitted a report to respondent no.3, the Sub-Divisional Officer, Sikrahna to the effect that land in question was measured by the Circle Amin, who submitted a report with trace map which suggests that private respondent nos. 6 to 8 have encroached upon the land in question. The Sarpanch, Gram Kachahari, vide Letter No.2, dated 24.10.2008, as contained in Annexure-1(series), also submitted a report for taking action under Section 133 of the Cr. P.C. Consequently, respondent no.3, the Sub-Divisional Officer, Sikrahna, vide order dated 21.10.2011, passed in Case No. 3M of



2009, as contained in Annexure-2, directed respondent no.5, the Circle Officer, Ghorasahan to get the encroachment removed from the public land in question and the Officer-In-Charge was also directed to assist the Circle Officer. Subsequently, respondent no.5, the Circle Officer, Ghorasahan, vide Letter No. 446, dated 28.07.2010, recommended respondent no.3, the Sub-Divisional Officer, Sikrahna for initiating a proceeding under Section 188 of the Cr. P.C. against the private respondent nos. 6 to 8, however, it appears from the report of the Circle Amin and Halka Karamchari submitted to respondent no.5, the Circle Officer, Ghorasahan, that for removal of encroachment from the land in question, one encroachment proceeding, being Encroachment Case No. 01 of 2008-09 was also initiated, but there is nothing on record to suggest that such proceeding has been taken to its logical conclusion. Though, respondent no.3, the Sub-Divisional Officer, Sikrahna, vide Letter No. 39, dated 16.02.2015, as contained in Annexure-5, directed respondent no.5, the Circle Officer, Ghorasahan to get the encroachment removed in pursuance to the order passed in Miscellaneous Case No. 3M of 2009 and the said order was challenged in Criminal Revision No. 95 of 2012 by the encroachers, but the same has already been dismissed. Respondent no.5, the Circle Officer, Ghorasahan, vide Letter No. 97, dated



14.02.2017, as contained in Annexure-6, intimated respondent no.3, the Sub-Divisional Officer, Sikrahna that 28.02.2017 has been fixed the date for removal of encroachment. Thereafter, the petitioner submitted an application before respondent no.2, the District Magistrate, East Champaran, as contained in Annexure-8, and the copy of the same has been given to Superintendent of Police, East Champaran, but till date neither the order passed under Section 133 Cr. P.C. proceeding has been implemented, nor the proceeding of Encroachment Case No. 01 of 2008-09 has been taken to its logical conclusion, nor the encroachment has been removed. Hence, the present writ application.

Learned AC to GP-15 submits that at present, she is not having any instruction whether the encroachment from the public land has been removed or not or whether the proceeding of Encroachment Case No. 01 of 2008-09 has been taken to its logical conclusion or not, but if such proceeding has not been taken to its logical conclusion, it will be concluded within a time frame.

Having heard learned counsel for the parties, 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, in the present case, there is specific order passed in a proceeding under Section 133 Cr. P.C., but in spite of that it appears from the material on record that the Circle Officer chose not to implement the order. Though, the report contained in Annexure-4 submitted by the Circle Amin to respondent no.5, the Circle Officer, Ghorasahan, bears the number of encroachment proceeding being Encroachment Case No. 01 of 2008-09, which suggests that some proceeding was initiated, but apart from that there is nothing on record to suggest that any proceeding was initiated under the Act.

It appears that the order dated 21.11.2011, passed by respondent no.3, the Sub-Divisional Officer, Sikrhana under Section 133 Cr. P.C., has not been implemented since last seven years, which suggests the lack of administrative control of Sub-Divisional Officer, Sikrahna over the Circle Officer and Officer-in-Charge.

In the circumstances, it is expected from respondent no.5, the Circle Officer, Ghorasahan to examine the revenue record and if need be, conduct spot verification and get the measurement of the land in question done afresh, 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 the same has already not been initiated and take such proceeding to its logical conclusion within a period of three months from its initiation after giving due opportunity of hearing to all affected persons including private respondent nos. 6 to 8, under the provisions of the Act. However, if the encroachment proceeding has already been initiated then such proceeding should also be taken to its logical conclusion within a period of three months from the date of receipt/production of a copy of this order.

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	

