

**IN THE HIGH COURT OF JUDICATURE AT PATNA**  
**Civil Writ Jurisdiction Case No.15576 of 2017**

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Rakesh Kumar, Son of Late Sachitanand Mishra, Resident of Village-Nayan Chak, P.O.-Alampur Gaunpura, P.S.-Phulwarisharif, District-Patna.

... .. Petitioner/s

Versus

1. The State of Bihar
2. The District Magistrate, Patna.
3. The Circle Officer, Phulwarisharif, Patna.
4. Ajay Das, Son of Late Chandrik Das.
5. Ram Jatan Das, Son of Akshay Lal Das.
6. Nagina Das, Son of not Known,
7. Son of Nagina Das,
8. Harvinder Chaudhary, Son of not Known, Private Respondent no. 4 to 8 are Resident of Village-Nayan Chak, P.O.-Alampur Gaunpura, P.S.-Phulwarisharif, District-Patna-801505.
9. Moti Lal Rai, Son of Late Devaki Rai.
10. Dwarika Nand Rai, Son of Late Devaki Rai, Private Respondent no.9 to 10 are Resident of Village-Alampur, P.S.-Phulwarisharif, District-Patna-801505

... .. Respondent/s

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**Appearance :**

For the Petitioner/s : Mr. Dr. Kislay, Adv.  
For the Respondent/s : Mr. RISHI RAJ SINHA -SC19

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**CORAM: HONOURABLE MR. JUSTICE DINESH KUMAR SINGH**  
**ORAL JUDGMENT**

**Date : 29-03-2018**

Heard learned Counsels for the petitioner and the respondent-State.

The present Writ application has been filed for a direction to the respondent authorities to get the encroachment removed from public land/road/drainage situated at Mauza-Nayanchak, Circle Phulwarisharif, District – Patna.

Since the Writ application was registered on 31.10.2017, 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. 4 to 10.

It is submitted by learned Counsel for the petitioner that the lands appertaining to Khata No.550, Plot Nos. 5452 and 5450, Khata No. 107, Plot Nos. 5462, 5463, Khata No.873, Plot No.5458, situated at Mauza-Nayan Chak, Circle-Phulwarisharif, District- Patna are the ancestral/Khatiyani lands of the petitioner and adjacent to the land of the petitioner there is a public road/drainage which is recorded in the revenue record as 'Sarva Sadharan Government Land', but the same has been encroached upon by respondent nos. 4 to 10. As a result, the ingress and egress of the petitioner has completely been blocked. The said public land/road was also being used by the public at large.

Though one Ramawati Kumar submitted an application on 22.09.2017 before the respondent no.3, the Circle Officer, Phulwarisharif, as contained in Annexure-2, but the encroachment could not be removed. Thereafter, the petitioner transmitted an application to the respondent no.3, the Circle Officer, Phulwarisharif, the Sub-Divisional Officer, Patna and the respondent no.2, the District Magistrate, Patna through registered post on 09.10.2017, as contained in Annexure-2 series, but till date the encroachment has not been removed.



Hence, the present Writ application.

It is submitted by Mr. Rishi Raj Sinha, learned SC-19 that at present he is not having any instruction whether the land in question is a public land/road or not, but if it is a public land/road and the same has been encroached upon, then a proper proceeding under the provisions of the Act will be initiated forthwith, if it has not been initiated and the same will be taken to its logical conclusion within a time frame.

Having heard learned Counsels for the parties, the sine qua non for initiating a proceeding for removal of encroachment is prescribed under 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.

No doubt, in the present case, the respondent authorities have come to know about the encroachment being made on the application transmitted to them by the petitioner through registered post on 09.10.2017, as contained in Annexure-2 series.

In the circumstances, the respondent no.3, Circle Officer,



Phulwarishariff is directed 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 and take such proceeding to its logical conclusion within a period of three months after giving due opportunity of hearing to all affected persons including respondent nos.4 to 10 under the provisions of the Act.

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

**(Dinesh Kumar Singh, J)**

Ashwini/-

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