

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.13394 of 2017

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Ratneshwar Prasad Ratna, Son of late Rameshwar Prasad, Resident of Village- Laukahi Bazar, Atari, P.S.- Laukahi, District- Madhubani.

... .. Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Revenue Department, Government of Bihar, Patna.
 2. The District Magistrate, Madhubani.
 3. The Superintendent of Police, Madhubani.
 4. The Sub Divisional Officer, Fulparas, District- Madhubani.
 5. Circle Officer, Laukahi, District- Madhubani.
 6. Officer-in-Charge, Laukahi Police Station, District- Madhubani.
 7. Ras Bihari Yadav, Son of Kharkhan Yadav
 8. Manohar Yadav, Son of Ras Bihari Yadav
 9. Teju Yadav, Son of Janak Yadav
 10. Laxman Yadav, Son of Gangai Yadav
 11. Gopal Sah, Son of Dasrath Sah
 12. Jitendra Yadav @ Kailu Yadav, Son of Tej Narayan Yadav
- Respondent Nos. 7 to 12 are resident of Village- Atari, Near Atari Nahar Chauk, P.O. & P.S. - Laukahi, District- Madhubani.

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr. Binod Kumar Sinha, Adv.
For the Respondent/s : Md. Khurshid Alam- AAG-12

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CORAM: HONOURABLE MR. JUSTICE DINESH KUMAR SINGH

ORAL JUDGMENT

Date : 11-04-2018

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 the public road, appertaining to Plot Nos.624 and 625, Khata No.58, situated at Village -Atari, near Atari Nahar Chauk, P.S.- Laukahi, District – Madhubani, as the same has



been encroached upon by respondent nos. 7 to 12.

Since the Writ application was registered on 11.09.2017, 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.7 to 12.

It is submitted by learned Counsel for the petitioner that the land in question is the embankment of Koshi canal and the same is being used by the petitioner and the public at large. The petitioner's residential house is situated over the part of the said land in question. Adjacent to the land of the petitioner, there is a public road, which is being used by the petitioner and the public at large, but the same has been encroached by respondent nos.7 to 12. It is further submitted by learned Counsel for the petitioner that adjacent north to house of the petitioner, there is one Public School, but due to the encroachment, the students, staffs of the school and the public at large are facing difficulties. The petitioner submitted representations dated 22.05.2014 and 22.06.2015 to the respondent no.5, the Circle Officer, Laukahi, as contained in Annexure-2 series, for removal of encroachment from the land in question. Thereafter, the petitioner submitted an application before the respondent no.4, the S.D.O., Fulparas,



under Sections 133 of the Criminal Procedure Code. In pursuance to the same, the SDO called for a report from the Circle Officer, Laukahi on 22.06.2015, as contained in Annexure-3, but no action has been taken. The petitioner also moved before the Public Grievance Redressal, Fulparas by submitting representations dated 05.07.2016 and 09.12.2016, as contained in Annexure-4 series. In pursuance to the same, the Public Grievance Redressal Officer, vide report dated 09.02.2017, directed the Circle Officer, to take appropriate action, as is contained in Annexure-5, but till date, neither appropriate action with regard to the removal of encroachment has been taken nor the encroachment has been removed from the land in question.

It is submitted by learned counsel for the respondent-State that, at present, he is not having any instruction, whether the land in question is a public land/road or not, but he submits that if it is a public land/road and if the same has been encroached upon, then a proper proceeding under the provisions of the Bihar Public Lane Encroachment Act, 1956 (hereinafter referred to as '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, several representations were submitted before the Circle Officer, as far back as on 22.05.2014 and 22.06.2015, as gets reflected from Annexure-2 series and also before the respondent no.4, the SDO, Fulparas, on 22.06.2015, as contained in Annexure-3, and thereafter, on 05.07.2016 and 09.12.2016 before the Public Grievance Redressal Officer, Fulparas, as contained in Annexure-4 series, but there is nothing on record to suggest that any proceeding has been initiated till date or any effort has been taken to arrive at a finding whether the land in question is a public land. The inaction of the respondent authorities, particularly, the respondent no.5, the Circle Officer, Laukahi is nothing but complete abdication of *quasi judicial* function. This Court in exercise of jurisdiction conferred under Article 226 of the Constitution of India cannot



direct for removal of encroachment without verifying that the land in question is a public land or not.

In the circumstances, the respondent no.5, the Circle Officer, Laukahi is directed to examine the revenue records and if need be make spot verification and if it appears to him that public road/land has been encroached upon, then he will initiate a proceeding forthwith with regard to removal of the encroachment from 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.7 to 12 under the provisions of the Act.

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

(Dinesh Kumar Singh, J)

Ashwini/-

AFR/NAFR	
CAV DATE	
Uploading Date	
Transmission Date	

