

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.4592 of 2018

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1. Ajay Choubey, Son of Sri Nand Kishor @ Nand Kishor Choubey, Resident of Village – Mahathu, P.S. – Jamhor, District – Aurangabad.
 2. Mantu Choubey, Son of Late Janardan Choubey, Resident of Village – Mahathu, P.S. – Jamhor, District – Aurangabad.
 3. Chhotu Choubey, Son of Sri Gokhula Nand Choubey, Resident of Village – Mahathu, P.S. – Jamhor, District – Aurangabad.

.... Petitioners.

Versus

1. The State of Bihar through the Principal Secretary, Land Reforms and Revenue Department, Govt. of Bihar.
2. The Deputy Development Commissioner, Aurangabad.
3. The District Magistrate, District – Aurangabad.
4. The Superintendent of Police, District – Aurangabad.
5. The S.D.P.O., Daudnagar, District – Aurangabad.
6. The Sub-Divisional Officer, Daudnagar, District – Aurangabad.
7. The Circle Officer, Obara, District – Aurangabad

.... Respondents.

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Appearance :

For the Petitioners : Mr. Bijay Shankar Choubey, Advocate
For the Respondents : Mr. Arun Kumar Bhagat, AC to AAG-12

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CORAM: HONOURABLE MR. JUSTICE DINESH KUMAR SINGH
ORAL ORDER

02/ 27-03-2018

Heard Mr. Bijay Shankar Choubey, learned counsel for the petitioners and Mr. Arun Kumar Bhagat, learned AC to AAG-12.

In view of nature of order this Court intends to pass, this Court is not inclined to adjourn the matter any further.

The present Writ application has been filed for a direction to the respondent authorities to get the



encroachment removed from the land appertaining to Khata No. 139, Plot No. 945 which is recorded in the survey khatian as 'Aahar Pind' and 'Chat' (water channel), from the land appertaining to Khata No. 139, Plot No. 712 which is recorded in the survey khatian as 'Pokhar' (pond), from the land appertaining to Khata No. 138, Plot No. 936 which is recorded in the survey khatian as Gram Kutchery and further to remove encroachment from the land which is recorded in the revenue records as place for 'Holikadahan'.

It is submitted by learned counsel for the petitioners that the lands in question are public lands and are being used by the public at large but the same has been encroached upon by several persons. The lands in question are situated in Village – Mahathu, P.S. – Jamhor, Block – Obara, District – Aurangabad. Though, some of the lands were leased out in 1989 in favour of some of the persons. One Punia Devi filed Title Suit No. 178 of 2000 for declaration of right, title and interest in the suit property appertaining to Khata No. 138, Plot No. 936 an area of 16 decimals, on the ground that originally the land belonged to Hasauli Estate but was settled in favour of the plaintiff in the year 1938 whereupon the residential house was constructed and the return was filed by the plaintiff. Accordingly, it was prayed in the



said title suit for restraining the defendants from demolishing the house of the plaintiff over the suit property. On hearing the matter, the learned Court in seisin of the matter, came to a conclusive finding that the plaintiff has not brought on record any document of settlement, hence the prayer for injunction was declined which was challenged by the plaintiff in Misc. Appeal No. 16 of 2001 and the said appeal was also dismissed by the then District Judge, Aurangabad vide order dated 06.08.2002. The said appellate order was challenged in Civil Revision No. 1330 of 2013 and the same was also dismissed vide order dated 10.12.2003 by a Bench of this Court, but till date neither a proceeding for removal of encroachment has been initiated nor the encroachment has been removed.

Learned counsel for the respondents submits that he has no instruction at present. However, he is not in a position to say that the lands in question are public lands or not but if there is any encroachment on a public land, then appropriate encroachment proceeding will be initiated and the same will be concluded within a time frame.

Having heard the learned counsels for the parties, in considered opinion of this Court, the nature of a land in question cannot be adjudicated under Article 226 of the



Constitution of India and that too on the basis of disputed question of facts. However, for initiating a proceeding under Bihar Public Land Encroachment Act, 1956 (hereinafter referred to as the 'Act') there is no need to reach to a conclusive finding that a particular land is a public land. The sine quo non for initiation of the proceeding under the Act is that it should appear to the Collector under the Act from an application made by any person or from the information received from any sources that any person has made or is responsible for any encroachment upon any public land. Hence, for initiation of the proceeding it should, prima facie, appears to the Collector under the Act that land in question is a public land. It appears that a public petition was submitted before the District Magistrate, Aurangabad through registered post dated 10.08.2017 and the copy of the same was also transmitted to Circle Officer, Obara, but it does not appear from the record that any proceeding has been initiated.

In the circumstances, it is imperative on the part of the Circle Officer, Obara, respondent no. 7 to examine the revenue records, if need be make spot verification or get the land measured whereupon, if it appears to him that encroachment has been made upon a public land then he will initiate a proceeding forthwith, if the same has not been initiated as yet and take such



proceeding to its logical conclusion within a period of three months from the date of receipt/production of a copy of this order, after giving due opportunity of hearing to all affected persons in accordance with the provisions of the Act.

Accordingly, this Writ application is disposed of.

(Dinesh Kumar Singh, J)

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