

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.13109 of 2018

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1. Sunita Kumari @ Sunita Devi, W/o- Ram Babu Sah
 2. Smt. Ram Dulari Devi, W/o- Nathuni Sah, Both are Resident of Mehsaul Toley, Bariyarpur Chauk, P.S. - Sitamarhi, District - Sitamarhi.

... .. Petitioners

Versus

1. The State of Bihar.
2. The Secretary, Rural Development Department, Govt. of Bihar, Patna.
3. The Commissioner, Tirhut Division, Muzaffarpur.
4. The District Collector, Sitamarhi.
5. The Sub-Divisional Office, Sadar, Sitamarhi.
6. The Deputy Collector, Sitamarhi.
7. The Circle Officer, Dumra, Sitamarhi.
8. Karichandra Paswan, S/o- Bhanu Paswan
9. Pachuchu Paswan, S/o- Manjhi Paswan
10. Singheshwar Paswan, S/o- Manjhi Paswan
11. Sakal Paswan, S/o- Narayan Paswan
12. Ramchandra Paswan, S/o -Narayan Paswan
13. Chhotelal Paswan, S/o- Bhuneshwar Paswan
14. Sunil Paswan, S/o Chulahi Paswan All Respondent Nos. 8 to 14 are Residents of Village - Baniyapur, P.S. Dumra, District - Sitamarhi.

... .. Respondents

Appearance :

For the Petitioner/s : Mr. Vinod Kumar
For the Respondent/s : Mr. Raj Kishore Roy - GP-18

CORAM: HONOURABLE MR. JUSTICE DINESH KUMAR SINGH
ORAL JUDGMENT

Date : 13-07-2018

Heard Mr. Vinod Kumar, learned counsel for the petitioners and Mr. Raj Kishore Roy, learned GP 18 for the respondent-State.

In view of nature of order, this Court intends to pass, this Court is neither inclined to adjourn the matter any further, nor inclined to issue notice to private Respondent Nos. 8 to 14.



The present writ application has been filed for a direction to the respondent authorities to get the encroachment removed from his raiyati land, appertaining to Khata No. 1137, Plot No. 741, situated at Mauza Bariyarpur, District Sitamarhi, which has been encroached by private Respondent Nos. 8 to 14.

It is submitted by learned counsel for the petitioners that the petitioners claim the land in question to be their purchased land, but the same has been encroached upon by private Respondent Nos. 8 to 14. Respondent No.5, the Sub-Divisional Officer, Sadar, Sitamarhi, vide order dated 19.03.2013, passed in Case No. 143 of 2009, under a proceeding under Section 145 Cr. P.C., directed Respondent No. 7, the Circle Officer, Dumra to initiate a proceeding under the Bihar Public Land Encroachment Act, 1956 (hereinafter referred to as 'the Act'). Consequently, a notice dated 03.07.2013 was issued to private Respondent Nos. 8 to 14, under Section 3 of the Act, whereby the encroachers were directed to appear on 16.07.2013 to submit their defence. But till date, encroachment has not been removed as yet.

Learned GP 18 submits that the land in question is a raiyati land of the petitioner which has been encroached upon by private Respondent Nos. 8 to 14 and the issue cannot be resolved through the present writ application.



Considering the rival submissions of the parties, this Court is of the view that the Act envisages the initiation of proceeding under Section 3 of the Act when it appears to the Collector under the Act from an application made by any person or upon information received from any sources that a person has made or is responsible for continuation of encroachment over the public land.

Public land has been defined under Section 2(3) of the Act which stipulates that public land means any land (managed by or) vested in the Union of India or the State of Bihar, or in any local authority (or statutory body), public undertaking, educational institution recognized by the Government or by any University established under any law for the time being in force, Railway Company or Gram Panchayat established under Section 3 of the Bihar Panchayat Raj Act, 1947 (Bihar Act VII of 1948), and includes any land over which the public or the community has got a right of user, such as right of way, burials, cremation, pasturage or irrigation.

This Court is dismayed to find that in a proceeding initiated under Section 145 of the Cr. P.C., Respondent No.5, the Sub-Divisional Officer, even after knowing well the fact that the land in question is a raiyati land of the petitioner, directed for



initiation of a proceeding under the Act, which suggests that how the post of Sub-Divisional Officer is manned by absolutely legally bankrupt officers.

In view of this Court, the issue with regard to encroachment made over raiyati land of the petitioner by private persons cannot be resolved through present proceeding, which can only be resolved by leading of evidence through a competent Civil Court.

Accordingly, the present writ application is disposed of with liberty to the petitioner to avail appropriate remedy.

(Dinesh Kumar Singh, J)

Amrendra/-

AFR/NAFR	
CAV DATE	
Uploading Date	
Transmission Date	

