

**IN THE HIGH COURT OF JUDICATURE AT PATNA**  
**Civil Writ Jurisdiction Case No.606 of 2018**

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Surendra Prasad @ Kanchan Prasad son of Vinda Prasad Resident of Village Sabili, P.O. Khajuhati (Dighwa Dubauli), P.S. Baikunthpur, District Gopalganj.

... .. Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Revenue Dept.
2. The District Magistrate-cum-Collector, Gopalganj.
3. The Additional Collector, Gopalganj.
4. The Deputy Collector, Land Reforms, Gopalganj.
5. The Sub-Divisional Officer, Gopalganj.
6. The Circle Officer, Baikunthpur, District Gopalganj.
7. The Anchal Amin, Baikunthpur, District Gopalganj.
8. The Halka Karamchari, Dighwa Dubauli Gram Panchayat Raj, Anchal Baikunthpur, District Gopalganj.
9. Sunil Singh Son of Late Janak Singh Present Mukhia, Gram Panchayat Raj Dighwa Dubauli, Anchal Baikunthpur, District Gopalganj.

... .. Respondent/s

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**Appearance :**

For the Petitioner/s : Mr. Naresh Prasad, Adv.  
For the Respondent/s : Mr. Rishi Raj Sinha, SC-19

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

**ORAL JUDGMENT**

**Date : 12-04-2018**

Heard learned Counsels appearing on behalf of the petitioner and for the respondent State.

Since the present Writ application was registered on 10.01.2018, but no counter affidavit has been filed till date, this Court is not inclined to adjourn the matter any further. This Court is also not inclined to issue notice to private respondent No.9, Sunil Singh, in view the nature of order this Court intends to pass.



The present Writ application has been filed for a direction to the respondent authorities to get the encroachment removed from the public land appertaining to Khata No. 1707, Survey No. 3031, situated in Village- Sabili, P.O.-Khajuhati, Circle- Baikunthpur, District- Gopalganj.

It is submitted by learned Counsel for the petitioner that the land in question is recorded in the Khatian as 'Gair Majarua Aam' and on half of the portion of the land in question, people perform 'Chhath' puja and the remaining half of the portion is used as road by the people at large. The said plot ultimately connects the village to the road, but the same has been encroached upon by respondent no.9, who is Panchayat Mukhiya and his brothers.

The petitioner approached the respondent no.6, the Circle Officer, Baikunthpur, for getting the encroachment removed from the land in question. One of such representations were submitted on 11.09.2017, as contained in Annexure-2, but even then, neither the encroachment has been removed from the land in question, nor the road has been constructed. It is further submitted that since the respondent no.9 is Panchayat Mukhiya, hence, under his influence, till date, neither any encroachment proceeding has been initiated under the Bihar Public Land



Encroachment Act, 1956 (hereinafter referred to as 'the Act'), nor the encroachment has been removed. Hence, the present writ application.

Learned AC to SC-19 submits that at present, he is not having any instruction whether the land in question is a public land/road, but if it is a public road, then a proper proceeding will be initiated under the Act and such proceeding will be taken to its logical conclusion within a time frame.

Having heard learned Counsels for the parties, this Court is of the view that the Act provides the mechanism for removal of the encroachment from the public land. The public land is defined under Sub-section (3) of Section 2 of the Act, which reads as under :-

“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 or user, such as right of way, burials, cremation, pasturage or irrigation.”

The above definition of public land includes any land vested in Union of India or to the State or to any local authority or to any public undertaking or to any educational institution or



to any railway company or to the Gram Panchayat and includes any land over which, the public or the community has got right of user, such as right of way, burials, cremation, pasturage or irrigation. Even if a land is not recorded in the revenue records as a public land, but if it is being used for the public purposes then, it can be treated as a public land.

For initiation of proceeding, Section 3 of the Act mandates that the same can be initiated if it appears to the Collector under the Act, either on application made by any person or upon information received from any source that any person has made or is responsible for the continuance of any encroachment upon any public land.

No doubt, in the present case, it appears that the encroachment has been made on the land in question and it was certainly brought within the knowledge of the respondent no.6, the Circle Officer, Baikunthpur, by submitting representation dated 11.09.2017, as contained in Annexure-2, but there is nothing on record to suggest that any proceeding under the Act has been initiated for removal of the encroachment from the land in question.

In the circumstances, it is expected from the respondent no.6, the Circle Officer, Baikunthpur, 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 the land in question in accordance with the provisions of the Act, if it has not already been initiated and will take such proceeding to its logical conclusion within a period of three months, by giving due opportunity of hearing to all affected persons including respondent no.9 in accordance with 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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