

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.8614 of 2018

1. Surendra Prasad Singh, Son of Late Deonarayan Singh
2. Santu Kumar, Son of Madan Mohan Singh

Both are residents of village Sotichak, P.S. - Fatuha, District - Patna.

... .. Petitioner/s

Versus

1. The State of Bihar.
2. The Principal Secretary, Revenue & Land Reforms Department, Govt. of Bihar, Patna.
3. The District Magistrate, Patna.
4. The Sub-Divisional Officer, Patna.
5. The Circle Officer, Fatuha, Patna.
6. The Officer-in-Charge, Fatuha P.S., Patna.
7. Sanjay Singh Son of Late Prayag Singh
8. Sonal Kumar Son of Sanjay Singh

Both are residents of village - Sotichak, P.S. - Fatuha, District - Patna.

... .. Respondent/s

Appearance :

For the Petitioner/s : Mr. Sudhir Kumar, Adv.

For the Respondent/s : Md. Fakhruddin Ali Ahmad, AC to AAG-12

CORAM: HONOURABLE MR. JUSTICE DINESH KUMAR SINGH

ORAL JUDGMENT

Date : 16-05-2018

Heard learned counsel for the petitioners and the Respondent-State.

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 and 8.

The present Writ application has been filed for a direction to the Respondent authorities, particularly, Respondent no.5, the Circle Officer, Fatuha, to get the encroachment removed from the Government land, appertaining to Tauzi No.651, Plot No.68, Khata No.46, Thana No.43, situated at Mauza-Sotichak, Circle – Fatuha, , District – Patna, as the same has been encroached upon by Respondent nos.7 and 8. The land in question is a pokhar (pond) and the drainage water of the villagers falls in the said pond.

It is submitted by learned counsel for the petitioners that the land in question is recorded in the Khatiyān as ‘Gairmazarua Aam land’ and the nature of land is Pokhar (pond). The petitioners submitted an application on 21.04.2017, as contained in Annexure-2, before the Respondent no.5, the Circle Officer, Fatuha for removal of encroachment from the land in question, whereupon, a notice was issued to Respondent nos. 7 and 8 by the Circle Officer, Fatuha and they were directed to appear before him with relevant document on 03.05.2017, as contained in Annexure-3. But despite the notice issued to Respondent nos. 7 and 8, they did not appear. In the meantime, the Revenue Karamchari submitted the inspection report to the



Circle Officer, upon which, the Circle Officer vide Letter No.499, dated 03.07.2017, as contained in Annexure-4, requested the Officer-in-charge, Fatuha Police Station to restrain the Respondent Nos. 7 and 8 from making any construction over the land in question. The Up-mukhiya of the Gram Panchayat Raj Bali, Fatuha, vide Letter No.106, dated 07.12.2017, also requested the Circle Officer, for measurement of the land in question, as contained in Annexure-5. But till date neither any proper proceeding under the Bihar Public Land Encroachment Act, 1956 (hereinafter referred to as 'the Act') has been initiated, nor the encroachment has been removed from the land in question. Hence, the present writ application.

It is submitted by AC to AAG-12 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, the petition was submitted before the Circle Officer as far as back on 21.04.2017, as gets reflected from Annexure-2 and thereafter the notices were issued to the Respondent nos.7 and 8, but there is nothing on record to suggest that any proceeding has been initiated till date for removal of encroachment from the land in question, or the encroachment has been removed.

In the circumstances, the Respondent no.5, the Circle Officer, Fatuha is directed to examine the revenue records and if need be make spot verification, whereupon, 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, by giving due opportunity of hearing to all affected persons including Respondent nos. 7 and 8 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	

