

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.8657 of 2018

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Mrityunjay Kumar Singh @ Sohan Singh @ Sohan Koomar, Son of Late Baliram Singh, resident of Village- Sirsa, Police Station- Muffasil in the district of East Champaran.

... .. Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Department of Revenue, Government of Bihar, Patna.
2. The Principal Secretary, Department of Revenue, Government of Bihar, Patna.
3. The District Magistrate-cum-Collector, East Champaran at Motihari.
4. The Land Reforms Deputy collector, Sadar Motihari, East Champaran.
5. The Circle Officer, Motihari in the District of East Champaran.
6. Manager Sahni, Son of Late Anwat Sahni.
7. Munni Sahni, Son of Late Anwat Sahni.
8. Rohit Rai Son of Radhamohan Rai.
9. Surya Sahni, Son of Late Shiv Sahni.
10. Mahesh Sahni, Son of Late Shiv Sahni.
11. Yogendra Sahni, son of Late Ram Surat Sahni.
12. Madha Sahni, son of Late Ram Surat Sahni.
13. Kishore Sahni, son of Late Ram Surat Sahni.
14. Baleshwar Sahni, son of Late Ram Dawan Sahni.
15. Bhola Sahni, son of Late Ram Dawan Sahni.
16. Ramdev Sahni, son of Late Ram Surat Sahni.
17. Rajesh Sahni, Son of Late Trigun Sahni.
18. Ram Pravesh Sahni, son of Raja Sahni.
19. Sikandar Sahni, Son of Atya Sahni.
20. Bhuta Sahni, Son of Harihar Sahni.
21. Manoj Manjhi, son of Late Ram Ayodhya Manjhi.
22. Harendra Sahni, Son of Late Ram Dawan Sahni.
23. Baleshwar Sahni, Son of Vishwanath Sahni.
24. Suresh Sahni, son of Vishwanath Sahni.



All are resident of Village- Sirsa Khap, Police Station- Muffasil in the District of East Champaran.

... .. Respondent/s

Appearance :

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

For the Respondent/s : Mr. Sajid Salim Khan- SC-25

CORAM: HONOURABLE MR. JUSTICE DINESH KUMAR SINGH
ORAL JUDGMENT

Date : 16-05-2018

Heard learned counsel for the petitioner 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.6 to 24.

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 Plot No.379, Khata No.208, situated at Mauza-Sirsa Khap, P.S.-Muffasil, District-East Champaran, as the same is used as 'Aam Rasta', but it has been encroached upon by Respondent nos. 6 to 24.

It is submitted by learned counsel for the petitioner that the land in question is being used as 'Aam Rasta' by the people at large and the adjacent to the land in question, in north side, the ancestral land of the petitioner, appertaining to Khata



No.6, Plot No.891, is situated. The petitioner got the said land through family partition in his share and adjacent to the north side of Plot No.891, Motihari-Madhubani Ghat Pitch road is passing through Khata No.208, Plot No.379, situated in Mauza-Sirsa Khap, but part of the public road/land from Khata No.208, Plot No.379 has been encroached upon by private Respondent by erecting huts, keeping cattle feeding pots and putting stake on the ground, as a result of which, the residents of the locality are facing great hardship. A public petition was filed before the Respondent no.4, the LRDC, Sadar and the Respondent no.3, the Collector, Motihari, on 15.06.2016, as contained in Annexure-1 for removal of encroachment from the land in question, whereupon, vide Letter No.296, dated 16.06.2016, the LRDC, Sadar Motihari, directed the Circle Officer, Motihari to get the matter inquired by the Halka Karmachari and get the land in question measured by the Anchal Amin. In pursuance to the said direction, measurement of the land in question was done by the Anchal Amin, who submitted the report on 11.10.2016 to the Circle Officer, as contained in Annexure-2, suggesting encroachment over the land in question. Thereafter, the Circle Officer, vide order dated 23.02.2017, directed to issue notice to the private Respondents, as contained in Annexure-3.



Thereafter, the petitioner submitted a petition before the LRDC, Sadar, whereupon, the Respondent no.4 issued reminder to the Respondent no.5 for removal of encroachment vide Letter No.275, dated 24.07.2017, but the encroachment has not been removed. Ultimately, the petitioner filed an application before the Collector, East Champaran for removal of encroachment from the land in question on 25.09.2017, whereupon, the District Magistrate, directed the Circle Officer to get the matter inquired and to remove the encroachment from the land in question. On 04.12.2017, a family member of the petitioner filed a representation before the Collector, East Champaran, as contained in Annexure-4, but neither any 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 learned AC to SC-25 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 public petition was submitted before the Circle Officer as far as back on 15.06.2016, as gets reflected from Annexure-1 and thereafter on 25.09.2017 before the Collector, East Champaran Motihari, but there is nothing on record to suggest that either any proceeding has been initiated till date or any effort has been made to get the encroachment removed from the land in question.

In the circumstances, the Respondent no.5, Circle Officer, Motihari, 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.6 to 24 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	

