

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.11412 of 2016

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Sakal Deo Sah Son of Late Babu Nadan Sah Resident of Village -
Bharwaliya, P.S. - Palnawa, District - East Champaran (Motihari).

... .. Petitioner/s

Versus

1. The State of Bihar through the District Magistrate, District - East Champaran, Motihari.
2. The Sub-Divisional Officer, Raxaul, District - East Champaran.
3. The Circle Officer, Raxaul, District - East Champaran.
4. The Superintendent of Police, Motihari, District - East Champaran.
5. The Officer-in-charge, Palnawa Police Station, District - East Champaran, Motihari.
6. Lal Babu Sah son of Raja Ram Sah
7. Gopal Sah and Suraj Sah Son of Late Raghunath Sah
8. Nandu Sah Son of Prasad Sah
9. Mauje Lal Sah Son of Prasad Sah
10. Jagdish Sah Son of Prasad Sah
11. Kapil Deo Sah Son of Rama Awtar Sah All respondent No. 6 to 11 are residents of Village - Bharwalia Math Tola, Police Station - Palnawa, District - East Champaran, Motihari.

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr. Ashok Kumar Gupta
For the Respondent/s : Mr. Subodh Kumar, AC to SC 26

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CORAM: HONOURABLE MR. JUSTICE DINESH KUMAR SINGH
ORAL ORDER

2 06-03-2018

Heard learned counsels for the parties.

Since the writ application was filed in 2016 but no counter affidavit has been filed, moreover, in view of the nature of the order this court intends to pass, this Court is neither inclined to adjourn the matter nor to issue notice to respondent nos. 6 to 11.

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



encroachment removed from the public road, which is recorded in the revenue records as Gairmajarua Aam land appertaining to Khata No. 89, Plot No 146, but the same has been encroached upon by respondent nos. 6 to 11.

It is submitted by learned counsel for the petitioner that the land of the petitioner appertaining to Khata No. 806 Plot Nos. 6509 and 6460 is situated north to Plot No. 146, Khata No. 89, which is a public road and recorded in the revenue records as Gairmajarua Aam but the same has been encroached upon by respondent nos. 6 to 11, as a result, the public road has been blocked and the ingress and outgress of the petitioner has been completely impeded. The petitioner filed an application before the S.D.O., Raxaul on 24.12.2014 for initiating a proceeding under Section 133 of the Cr.P.C. as contained in Annexure 1. thereafter the petitioner submitted an application on 27.8.2015 before the respondent no.1 District Magistrate, West Champaran, as contained in Annexure 2 for getting the encroachment removed from the public road. Subsequently, respondent no. 2, S.D.O., Raxaul directed the respondent no. 3, Circle Officer, Raxaul to make spot enquiry and submit a report. Consequently, respondent no. 3, the Circle Officer,



Raxaul directed the Halka Karmchari to submit a report in this regard who submitted report dated 5.1.2015, as contained in Annexure 3, to the effect that in front of the house of the petitioner there is a public road situated on the land appertaining to Khata No. 89, Plot No. 146, but the same has been encroached upon by Suraj Sah, Nandu Sah, Maujelal Sah, Jagdish Sah, Lalbabu Sah and Gopal Sah, hence, the area can be measured by the Circle Amin. Consequently, the Circle Amin conducted measurement and submitted measurement report along with sketch map to the respondent no.3, the Circle Officer, Raxaul, as contained in Annexure 4, to the effect that public road is situated on the land appertaining to Khata No. 89, Plot No. 146, south to the land of the petitioner but the public road has been encroached by seven persons namely, Lalbabu Sah, Gopal Sah, Nandu Sah, Maujelal Sah, Jagdish Sah, Ramjee Sah and Kapil Sah. Thereafter, report was submitted by the respondent no. 3, Circle Officer, Raxaul vide letter no. 924 dated 6.10.2015 to the S.D.O. as contained in Annexure 5 suggesting that the public road has been encroached upon. Consequently, the S.D.O., Raxaul vide letter no. 56 dated 7.1.2016 as contained in Annexure 6, directed the Circle



Officer, Raxaul to get the encroachment removed and submit a report but in spite of the same till date neither any encroachment proceeding under the Bihar Public Land Encroachment Act, 1956 (hereinafter referred to as the Act) has been initiated nor the encroachment has been removed.

Learned AC to SC 26 appearing for the official respondents submits that at present, he is not having any instruction whether any proceeding under the Act has been initiated or the encroachment has been removed or not but if it has not been initiated and the encroachment has not been removed from the land in question, the same will be initiated and will be taken to its logical conclusion within a time frame.

Having heard learned counsels for the parties, this Court is dismayed to find that the authorities, who are required to look into the matter and ensure that any public road is not being encroached upon, they do not do as such and act in a laid-back manner. It appears prima facie from the record, particularly, the report of the Halka Karmchari and the Circle Amin as contained in Annexures 3 and 4, coupled with the report of the Circle Officer, Raxaul submitted to S.D.O. on 6.10.2015, as contained in Annexure



5, that public road has been encroached upon but there is nothing on record that any encroachment proceeding has been initiated till date.

For initiating a proceeding under the Act, it should appear to the Collector under the Act from an application made by any person or upon an information received from any source that any person has made or is responsible for the continuation of encroachment upon any public land.

No doubt, in the present case, the respondent no. 3, Circle Officer, Raxaul came to know about the encroachment on the public land as far back as on 6.1.2015 when he acknowledged the report of the Halka Karmchari and the Circle Amin, referred to above, and intimated to the SDO about the encroachment being made on public road, but it is surprising that he failed to discharge the quasi judicial function vested in him by virtue of the provisions of the Act.

In the circumstances, it is imperative on the part of the respondent no. 3, the Circle Officer, Raxaul to examine the issue and if need be, make spot verification and on doing so, if it appears to him that the public land has



been encroached upon, then he will initiate a proceeding under the Act if it has already not been initiated, within two weeks of the receipt/production of a copy of this order and will take such proceedings to its logical end within a period of three months thereafter, after giving due opportunity of hearing to all affected persons including respondent nos.6 to 11 in accordance with the provisions of the Act.

This writ application is, accordingly, disposed of.

(Dinesh Kumar Singh, J)

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