

**IN THE HIGH COURT OF JUDICATURE AT PATNA**  
**Civil Writ Jurisdiction Case No.2892 of 2016**

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Ram Janam Rai Son of Late Munshi Rai, Resident of Village - KHora Tola,  
P.S. - Chiraiya, District - East Champaran.

... .. Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Land Reforms, Department Govt. of Bihar, Patna.
2. The District Magistrate, East Champaran, Motihari.
3. The Land Reforms Officer Dhaka, Sikarahna, East Champaran.
4. The Sub - Divisional Officer, Dhaka, Sikarahna, East Champaran.
5. The Circle Officer, Chiraya, East Champaran.
6. Dahaur Rai, Son of Laxman Rai,
7. Hakim Rai, Son of Laxman Rai, both resident of village - Khora Tola, P.S. - Chiraya District - East Champaran.

... .. Respondent/s

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**Appearance :**

For the Petitioner/s : Mr. Rajesh Kumar  
For the Respondent/s : Mr. GA13- SMT. NAMRATA MISHRA

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

2      04-01-2018              Heard learned counsels for the parties.

In view of the nature of order this Court intends to pass,  
this Court is neither inclined to adjourn the matter for filing  
counter affidavit nor to issue notice to respondent nos. 6 and  
7.

The present writ application has been filed for a  
direction to the respondent authorities to get the  
encroachment removed from the land appertaining to Khata  
No. 17, Plot No. 628, which is a public road connecting  
village Maja Khoda to Chiraiya, but the same has been  
encroached upon by respondent nos. 6 and 7.



The petitioner submitted a complaint before the District Public Grievance Cell, East Champaran. The said complaint was transmitted to the respondent no. 5, Circle Officer, Chiraiya, who after getting the enquiry conducted by the Revenue Karmchari, came to the conclusion that the public land has been encroached upon and consequently issued notice to the encroachers vide order dated 3.5.2013 and adjourned the matter to 26.5.2013. Respondent nos. 6 and 7 were directed to produce their documents in support of their claim over the encroached land. Thereafter, vide order dated 29.10.2013, another notice was directed to be issued to the respondent nos. 6 and 7 for production of documents in support of their claim but the respondents did not produce their documents leading to issuance of third notice vide order dated 29.10.2013 for production of documents on 10.11.2013 and the fourth notice on 17.1.2014, but respondent nos. 6 and 7 did not appear, or file any document. The Circle Amin submitted a report as contained in Annexure 4, on 19.2.2015 after measurement, to the effect that eight persons have encroached the land in question including respondent nos. 6 and 7, but in spite of that the encroachment has not been removed. However, the petitioner submitted a representation



before the respondent no. 2, District Magistrate, East Champaran on 17.6.2015, as contained in Annexure 5. But despite the above, no action was taken. Hence, the present writ application.

It is submitted by AC to G.A. 9, relying upon the counter affidavit filed on behalf of respondent nos. 2 to 5, that in pursuance to the petition filed before the respondent no. 2, District Magistrate, East Champaran by the petitioner for removal of encroachment and the said petition being forwarded to the respondent no. 5, Circle Officer, Chiraiya for needful action, encroachment proceeding being Encroachment Case No. 5 of 2013-14 was initiated. Halka Karmchari made enquiry and submitted report to the effect that the land in question is Gairmajarua Aam land and portion of which has been encroached by respondents nos. 6 and 7 who had erected a wall on the land in question. Accordingly, notices as contained in Annexure – A to the counter affidavit, were issued to them under the signature of respondent no. 5, Circle Officer, Chiraiya on different dates. In response to the aforesaid notice, respondent nos. 6 and 7 filed their show cause admitting therein that they have constructed the house on account of possession over the land since long. Since



respondent nos. 6 and 7 failed to justify their claim over the land in question, hence vide order dated 23.12.2013, the respondent no. 5, the Circle Officer, Chiraiya directed for issuance of notice as contained in Annexure C to the counter affidavit for vacating the land in question. Thereafter, the respondent no. 4, S.D.O., Dhaka was requested to provide police force. However, learned counsel is not aware about the present stage of the proceeding or whether the encroachment has been removed or not.

Considering the rival submissions of the parties, this Court is of the view that for initiating a proceeding under the Bihar Public land Encroachment Act (hereinafter referred to as the 'Act'), it should appear to the Collector under the Act from an application made by any person or upon the 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, representations were submitted in 2013, the respondent no. 2 the District Magistrate, East Champaran transmitted the complaint of the petitioner in 2015 to the respondent no. 5, Circle Officer, Chiraiya and consequently notices were issued but none of



the notices or any order passed by the respondent no. 5 in regard thereto annexed with the counter affidavit, did bear any encroachment case number, which suggests the casual manner in which the proceeding has been conducted. However, the counter affidavit stipulates that the encroachment proceeding being initiated vide Encroachment Case No. 5 of 2013-14, but there is no statement that any final order has been passed under section 6(1) of the Bihar Public Land Encroachment Act (hereinafter referred to as the 'Act').

Prima facie, it appears that no proceeding in accordance with the provisions of the Act has been conducted till date. This is not in dispute that encroachment has not been removed till date and that the land in question is a public land.

In the circumstances, the respondent no. 5, the Circle Officer, Chiraiya is expected 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 the proceeding under the Act 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 in accordance



with the provisions of the Act. It is expected from the respondent no. 5 to be careful in future in conducting the proceeding relating to public land.

This writ application is, accordingly, disposed of.

**(Dinesh Kumar Singh, J)**

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