

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.6584 of 2017

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Awadhesh Singh, Son of Late Rishidev Singh, Resident of Mohalla-Sri Krishna Nagar, Motihari, Police-Town, Motihari in the District of East Champaran.

... .. Petitioner/s

Versus

1. The State of Bihar, through the Principal Secretary, Department, of Revenue and Land Reforms, Government of Bihar, Patna.
 2. The Principal Secretary, Department, of Revenue and Land Reforms, Government of Bihar, Patna.
 3. The District Magistrate-cum-Collector, East Champaran.
 4. The Land Reforms Deputy Collector, Sadar Motihari in the District of East Champaran.
 5. The Circle Officer, Motihari in the district of East Champaran.
 6. Sushila Devi @ Kabutari Devi, Wife of Jai Prakash Sahni @ Barak Sahni.
 7. Jai Prakash Sahni @ Batak Sahni, Son of Dhanar Sahni.
- Both are resident of Village-Barharwakala, Police Station-Kotawa in the district of East Champaran. Presently residing at Sri Krishna Nagar, Motihari, (neat Sapahi Mai Asthan). Police Station-Sadar Motihari in the District of East Champaran.

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Sunil Kumar, Adv. Mr. Sushant Kumar, Adv.
For the Respondent/s	:	Mr. Rakesh Ranjan, AC to AAG-12

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CORAM: HONOURABLE MR. JUSTICE DINESH KUMAR SINGH
ORAL JUDGMENT

Date : 21-03-2018

Heard learned Counsels for the petitioner and the respondent-State.

Since the Writ application was registered on 29.04.2017, but no counter affidavit has been filed till date and 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 and 7.



The present Writ application has been filed for a direction to respondent nos. 4 (the Land Reforms Deputy Collector, Sadar Motihari) and respondent no.5(the Circle Officer, Motihari) to get the encroachment removed from the public land/road appertaining to Thana No.167, Plot No.830, situated at Mauza-Belbanwa (Sri Krishna Nagar), P.S.-Motihari Town, District-East Champaran which is adjacent to the ancestral land of the petitioner appertaining to Khata No. 185, Plot No.831 on which petitioner's residential house is situated.

It is submitted by learned Counsel for the petitioner that the petitioner purchased the land appertaining to Khata No. 185, Plot No.831, measuring an area 5.25 dhoors situated in Mauza-Belbanwan (Sri Krishna Nagar) in the year, 2004 through registered sale deed in the name of his wife Sushila Devi. Consequently, the petitioner constructed a residential house over the land in question. There is a 'Aam Rasta' to the North and East boundary of the land of the petitioner. The northern side of the road runs to Plot No. 830, but the same has been encroached upon by respondent nos. 6 and 7. The respondent nos. 6 and 7 are resident of Village-Barharwa Kala, P.S.-Kotwa, District-East Champaran and their actual names have been recorded in the voter list as 'Kabutari Devi' and 'Batak Sahni', but they have



changed their names as 'Sushila Devi' and 'Jai Prakash Sahni' in order to garb the public land/road. On the public request, the respondent nos. 6 and 7 declined to remove the encroachment, then a petition was filed before the respondent no.4, the Land Reforms Deputy Collector, Sadar Motihari, on 14.09.2015, as contained in Annexure-1, whereupon, the respondent no.4 called for a report from the respondent no.5, the Circle Officer, Motihari, as contained in Annexure-2. The Circle Officer, Motihari conducted an enquiry and submitted the report to the respondent no.4, vide letter no.1665, dated 26.11.2015 based on the report of the Anchal Amin to the effect that the respondent no.6 has encroached upon the land in question. Consequently, a petition was filed on 08.12.2015 before the Land Reforms Deputy Collector for initiation of a proceeding under the Bihar Public Land Encroachment Act, 1956 (hereinafter referred to as 'the Act') in view of the report of the Circle Officer. Consequently, the Land Reforms Deputy Collector transmitted the petition of the petitioner to the Circle Officer. Thereafter, the Circle Officer directed to get the encroachment removed from the public land appertaining to Plot No. 830 and to transmit the compliance report, as contained in Annexure-5. When the Circle Officer did not take initiatives either for initiation of any



proceeding or for removal of encroachment, a petition was again filed before the Land Reforms Deputy Collector, but even then the encroachment could not be removed. Thereafter, the respondent no.4 transmitted a reminder to the Circle Officer on 30.06.2016, as contained in Annexure-5. But despite all the efforts made by the petitioner, the encroachment has not been removed from the land in question. Hence, the present Writ application.

It is submitted by learned Counsel appearing on behalf of the respondent-State 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 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.

The sine qua non for initiating a proceeding 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.



In the present case, no doubt, the respondent no.4, the Land Reforms Deputy Collector, Sadar Motihari came to know about the encroachment being made on the land in question when the public petition was submitted before him on 14.09.2015, as contained in Annexure-1 and the respondent no.4 called for a report from respondent no.5, the Circle Officer, Motihari, as contained in Annexure-5. The Circle Officer came to know about the encroachment being made on the public land/road when in pursuance to the direction of respondent no.4, the Land Reforms Deputy Collector, Sadar Motihari he got the measurement done through Anchal Amin and submitted the report to the Land Reforms Deputy Collector, vide letter no.1665, dated 26.11.2015, as contained in Annexure-3. Thereafter, again the Land Reforms Deputy Collector transmitted reminder to the Circle Officer on 08.12.2015 and 30.06.2016, as contained in Annexures 5 and 7 to the Writ application. There is nothing on record to suggest that any encroachment proceeding has been initiated till date, which shows that the Circle Officer, Motihari has failed to discharge the quasi judicial function vested in his office.

In view of the discussions made above, it is expected from the respondent no.5, the Circle Officer, Motihari to examine the



revenue records and if need be make spot verification or 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. It is further expected from the respondent no.5, the Circle Officer, Motihari, to 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 and 7 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	

