

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.2399 of 2017

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Ajit Kumar Singh, Son of Raghav Prasad Singh, Resident of Village-Chakiya
Tola, P.O.- Chakiya, P.S.- Panapur, District- Saran.

... .. Petitioner

Versus

1. The State of Bihar through the Principal Secretary, Department of Land Reforms and Revenue.
2. The Principal Secretary, Department of Land Reforms & Revenue, Govt. of Bihar, Secretariat, Patna.
3. The Collector, Saran at Chapra.
4. The S.D.O., Marhaura Sub-Division, District- Saran.
5. The Circle Officer, Panapur Circle, District- Saran.
6. Ram Badan Singh, Son of Bhola Singh, Resident of Village- Chakiya Tola, P.O.-Chakiya, P.S.-Panapur, District-Saran.

... .. Respondents

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Appearance :

For the Petitioner/s : Mr. Nagendra Rai
For the Respondent/s : MD. Khurshid Alam- AAG12

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CORAM: HONOURABLE MR. JUSTICE DINESH KUMAR SINGH
ORAL JUDGMENT

Date : 21-03-2018

Heard Mr. Nagendra Rai, learned counsel for the petitioner
and Mr. Rakesh Ranjan, learned AC to AAG-12 for the
respondent-State.

Since the present writ application was registered on
13.02.2017, but till date no counter affidavit has been filed, hence,
this Court is not inclined to adjourn the matter any further.

In view of the nature of order this Court intends to pass, this
Court is not inclined to issue notice to private respondent no.6.



The present writ application has been filed for a direction to the respondent authorities, particularly, respondent no.5, the Circle Officer, Panapur to get the encroachment removed from the part of the public land/road, appertaining to R.S. Plot No.2, Khata No. 296, situated in Village Chakiya, District Saran, which has been encroached upon by private respondent no.6.

It is submitted by learned counsel for the petitioner that the land in question is a public land/road, which is recorded in the Revisional Survey Khatian as Gairmajarua Aam Chhawar. The Revisional Survey map has been brought on record as Annexure-1. The ancestral land of the petitioner, appertaining to R.S. Plot No. 136, is abutting to the land in question, over which residential house of the joint family of the petitioner is situated. The land of respondent no.6, appertaining to Plot No. 157 is also abutting the land/road in question, but he has also encroached upon the land/road in question by making some construction. For removal of the encroachment from the land in question, public petitions were submitted before respondent no.5, the Circle Officer, Panapur on 21.11.2013, 05.04.2014, 09.04.2014, 11.11.2014, 19.11.2014 and 21.11.2014, as contained in Annexure-2(series). Though, respondent no.5, the Circle Officer, Panapur issued notice to the private respondent no.6 on 20.05.2014 and 29.07.2015, as



contained in Annexure-3(series) directing him to remove the encroachment from the land in question by 13.02.2015, failing which the same will be removed by force and the cost of removal of encroachment will be realized from him, but till date neither any proceeding has been initiated under the provisions of the Bihar Public Land Encroachment Act, 1956 (hereinafter referred to as 'the Act') nor the encroachment has been removed from the land in question. Hence, the present writ application.

Learned AC to AAG-12, however, submits that at present, he is not having any instruction, but if the land in question is found to be a public land and the same has been encroached upon, then appropriate proceeding will be initiated under the Act, if the same has already not been initiated, and the same will be taken to its logical conclusion within a time frame.

Considering the rival submissions of the parties, this Court is of the view that the *sine qua non* for initiation of a proceeding under Section 3 of the Act is that it should appear 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 the encroachment upon any public land.



In the present case, no doubt, several representations, as contained in Annexure-2(series), were submitted before respondent no.5, the Circle Officer, Panapur as far back as in the year 2013-14 and consequently, respondent no.5, the Circle Officer, Panapur issued notice to private respondent no.6 on 20.05.2014 and 29.07.2015, as contained in Annexure-3(series) stipulating therein that private respondent no.6 has encroached upon the land in question, but there is nothing on record to suggest that any proceeding under the Act has been initiated, which suggests the complete abdication of *quasi judicial* jurisdiction by respondent no.5, the Circle Officer, Panapur.

In the circumstances, in view of the discussions made above, it is expected from respondent no.5, the Circle Officer, Panapur to examine the Revenue Record, and if need be, conduct spot verification and measurement of the land in question, whereupon, if it appears to him that the land in question is a public land and the same has been encroached upon then he will initiate a proceeding under the Act forthwith, if the same has already not been initiated, and will take such proceeding to its logical conclusion within a period of four months of its initiation, after giving due opportunity of hearing to all the affected persons



including respondent no.6, in accordance with the provisions of the Act.

Accordingly, with the above observation, the present writ application is disposed of.

(Dinesh Kumar Singh, J)

Amrendra/-

AFR/NAFR	
CAV DATE	
Uploading Date	26.03.2018
Transmission Date	

