

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.9355 of 2016

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Kamla Sah son of Late Ramdeo Sah Resident of Village- Nawka Semra, P.O.- Semra Bazar, P.S.- Gopalganj, District- Gopalganj.

... .. Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Department of Land Reform, Patna. null null
2. The District Magistrate, Gopalganj
3. The Sub-Divisional Officer, Gopalganj.
4. The Circle Officer, Kuchaikot, Gopalganj.
5. Brijmohan Ram son of Late Ratan Ram
6. Sudama Ram son of Late Ratan Ram
7. Ramtullah Mina @ Laddu Mian son of Late Mansahid Mian All are resident of Village- Pahadpur, P.O.- Semra Bazar, P.S.- Gopalpur, District- Gopalganj.

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr. Anirudh Kumar Verma
For the Respondent/s : Mr. SADANAND PASWAN- GP29

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CORAM: HONOURABLE MR. JUSTICE DINESH KUMAR SINGH
ORAL JUDGMENT

Date : 13-03-2018

Heard learned counsels for the petitioner and respondents

State.

Since the writ application was registered on 16.6.2016 but no counter affidavit has been filed, hence, this Court is not inclined to adjourn the matter any further. This Court is also not inclined to issue notice to private respondent nos. 5to 7 in view of the nature of the order this Court intends to pass.

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. 91, Plot No.515, situated in Mauza – Paharpur, Circle – Mirganj, District – Gopalganj.



It is submitted by learned counsel for the petitioner that the land in question is recorded in C.S. Khatiyan as Gairmajarua Aam (Chhawar) as contained in Annexure 1. The land in question is used as 'Aam Rasta'. On application of the petitioner, a proceeding under section 133 of the Code of Criminal Procedure was initiated being Case No. M 1308 of 2005. The same was disposed of vide order dated 11.6.2007 by the respondent no. 3, SDO, Gopalganj, directing the respondent no. 4, Circle Officer, Kuchaikot to make a spot inspection of the land in question and if he finds that the encroachment has been made, then the said encroachment should be removed in accordance with law. The said order has been brought on record as Annexure 2 to the writ application. But, in spite of the order passed by the respondent no. 3 in 133 Cr.P.C. proceeding no action was taken. Thereafter the petitioner sought an information under the Right to Information Act from the office of the District Magistrate, Gopalganj vide application dated 31.7.2008, as contained in Annexure 3, as to what action has been taken in pursuance to the order of the SDO. Consequently, an information was supplied that the proceeding is still pending.

Thereafter, the petitioner submitted an application before the District Public Grievance Cell requesting to take necessary action and the said application was registered as Application No. 90 of



2012 dated 7.6.2012 as contained in Annexure 4. The petitioner also submitted a representation dated 20.6.2012, as contained in Annexure 5 before the respondent no. 4, Circle Officer, Kuchaikot and also applications dated 28.6.2012 and 7.4.2016, as contained in Annexures 6 and 7 before the respondent no. 2, District Magistrate, Gopalganj but no action was taken, hence, the present writ application.

AC to G.P. 29 submits that at present he is not having any instruction, however, the respondent no. 4, Circle Officer, Kuchaikot be directed to initiate a proceeding under the Bihar Public Encroachment Act, 1956 (hereinafter referred to as the Act) if the encroachment has been made on the public land.

Having heard learned counsels for the parties, this Court is of the view that for initiating a proceeding under Section 3 of 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, representations were submitted as far back as in 2007 and the respondent no. 3, SDO, Gopalganj directed the respondent no. 4, Circle Officer, Kuchaikot to make spot verification and if he finds that public land has been



encroached upon, it should be removed in accordance with land as apart from that several representations were submitted before the Circle Officer and the District Magistrate, but it is surprising that the Circle Officer 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. 4, the Circle Officer, Kuchaikot to examine the revenue records 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 after getting the land in question measured, 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 private respondent nos. 5 to 7 in accordance with the provisions of the Act.

Accordingly, this writ application is disposed of.

(Dinesh Kumar Singh, J)

anil/-

AFR/NAFR	
CAV DATE	
Uploading Date	
Transmission Date	

