

**IN THE HIGH COURT OF JUDICATURE AT PATNA**  
**Civil Writ Jurisdiction Case No.10272 of 2018**

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Md. Idrish Shah @ Idarish Shah, Son of Ajij Sah, Resident of village ward  
No. 2, Hanuman Nagar, Dharharawa @ Pai Dharaharawa, P.S.- Muzaffarpur,  
District- Muzaffarpur.

... .. Petitioner/s

Versus

1. The State of Bihar through Secretary of the Home Department, Patna.
2. The District Magistrate cum Collector, Muzaffarpur.
3. The Circle Officer, Circle Aurai, District- Muzaffarpur.

... .. Respondent/s

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**Appearance :**

For the Petitioner/s : Mr. Rajani Kant Pandey, Adv.

For the Respondent/s : Dr. Mankeshwar Tiwari, AC to AAG-3

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

**ORAL JUDGMENT**

**Date : 22-06-2018**

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

The present Writ application has been filed for a  
direction to the respondent authorities to get the encroachment  
removed from public road which runs from Dharharawa Chowk,  
Hanuman Temple, Block-Aurai, District Muzaffarpur to the  
house of the petitioner.

In view of the nature of order this Court intends to  
pass, this Court is not inclined to adjourn the matter any further  
for filing counter affidavit.



It is submitted by learned counsel for the petitioner that the land in question has been recorded in revisional survey as 'Anabad Sarv Sadharan' Land, but the same has been encroached upon by certain people by obstructing the free flow of the traffic. A public petitioner was submitted before the Respondent No.3, the Circle Officer, Aurai, on 29.01.2018, as contained in Anenxure-1, but no action has been taken. Subsequently, the petitioner made representation on 06.03.2018, as contained in Annexure-2 before the Respondent No.2, the District Magistrate, Muzaffarpur. But till date neither any encroachment proceeding has been initiated nor the encroachment has been removed from the land in question.

It is submitted by Mr. Mankeshwar Tiwari, AC to AAG-3 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/road 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.

Having heard learned Counsels for the parties, the sine qua non for initiating a proceeding for removal of encroachment is prescribed under Section 3 of the Bihar Public



Land Encroachment Act, 1956 (hereinafter referred to as '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.

No doubt, the public petition was submitted before the Circle Officer as far as back on 29.01.2018, as gets reflected from Annexure-1 and thereafter before the District Magistrate, Muzaffarpur on 06.03.2018, as contained in Annexure-2, but there is nothing on record to suggest that any proceeding has been initiated till date or any effort has been taken to come to the finding whether the land in question is a public land.

In the circumstances, the Respondent No.3, Circle Officer, Aurai is expected to examine the revenue records and if need be make spot verification, whereupon, if it appears to him 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 and take such proceeding to its logical conclusion within a period of three months, by giving due opportunity of hearing to all affected persons including the



petitioner in accordance with the provisions of the Act.

The Writ application is, accordingly, disposed of with the observation aforesaid.

(Dinesh Kumar Singh, J)

Ashwini/-

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