

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.5080 of 2018

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Ajay Kumar Sharma, Son of Yogendra Narayan Sharma, Resident of
Darmaha, P.S.- Keshariya, District - East Champaran.

... .. Petitioner/s

Versus

1. The State of Bihar through the Secretary, Revenue Department, Bihar, Patna.
2. The District Magistrate, East Champaran.
3. The Superintendent of Police, East Champaran.
4. The Anchaladhikari (C.O.), Kalyanpur, East Champaran.
5. The S.D.O., Chakiya, East Champaran.
6. Deep Narayan Pandey, Son of Late Ganesh Pandey
7. Chandrika Pandey, Son of late Ganesh Pandey
8. Rajeshwar Pandey
9. Naval Pandey, All Sons of Chandrika Pandey
10. Pramod Pandey, Respondent Nos. 6 to 10 are Resident of Village-Darmaha,
P.S. - Keshariya, District-East Champaran.

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr. Umesh Chandra Verma
For the Respondent/s : Mr. Raj Kishore Roy -GP 18

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CORAM: HONOURABLE MR. JUSTICE DINESH KUMAR SINGH
ORAL JUDGMENT

Date : 26-07-2018

Learned counsel for the petitioner is permitted to make
necessary correction in the petition.

Heard Mr. Umesh Chandra Verma, learned counsel for
the petitioner, and Mr. Raj Kishore Roy, learned GP 18 for the
respondent-State.

Though, the present writ application was registered on
17.03.2018, but till no counter affidavit has been filed, hence, in



view of nature of order, this Court intends to pass, this Court is neither inclined to adjourn the matter any further, nor inclined to issue notice to private Respondent Nos. 6 to 10.

The present writ application has been filed for a direction to the respondent authorities, particularly, Respondent No.4, the Circle Officer, Kalyanpur to get the encroachment removed from the land, appertaining to Khata No. 396, Plot No. 2743, situated in Kalyanpur Circle, District East Champaran, as the same has been encroached upon by private Respondent Nos. 6 to 10.

It is submitted by learned counsel for the petitioner that the land in question is recorded in the Revenue Record as 'Gairmajarua Aam Rasta'. Adjacent to the land in question, land of the petitioner, appertaining to Khata No. 202, Plot No. 2794 is situated, but due to encroachment made over the land in question, the ingress and egress of the petitioner from his land has been blocked.

The petitioner submitted an application dated 22.06.2012, as contained in Annexure-1, before Respondent No.4, the Circle Officer, Kalyanpur for initiating the proceeding for removal of the encroachment from the land in question under Bihar Public Land Encroachment Act, 1956 (hereinafter referred to



as 'the Act'). Respondent No.4, the Circle Officer, Kalyanpur in a proceeding initiated under Section 133 Cr. P.C., submitted a report to Respondent No.5, the Sub-Divisional Officer, Chakiya to the effect that the public land has been encroached upon, however, on 31.01.2013, an application was submitted by the petitioner before Respondent No.2, the District Magistrate, East Champaran for removal of the encroachment. On the application of one Ajay Kumar Sharma, Respondent No.5, the Sub-Divisional Officer, Chakiya, vide Letter No. 624, dated 21.03.2013, as contained in Annexure-4, directed Respondent No.4, the Circle Officer, Kalyanpur to conduct an enquiry with regard to the encroachment made over the land in question. Respondent No.5, the Sub-Divisional Officer, Chakiya, vide Letter No. 126, dated 26.06.2013, as contained in Annexure-5, after dropping the proceeding under Section 133 Cr. P.C, directed Respondent No.4, the Circle Officer, Kalyanpur to initiate a proceeding under the Act, but till date, no action has been taken. In the meantime, on 03.07.2014, Halka Karamchari and Circle Inspector submitted a report to Respondent No.4, the Circle Officer, Kalyanpur, as contained in Annexure-6, to the effect that land in question has been encroached upon. The Circle Inspector also submitted the map of the land in question, as contained in Annexure-7, but till



date, neither any proceeding under the Act has been initiated, nor the encroachment has been removed from the land in question. However, Respondent No.5, the Sub-Divisional Officer, Chakiya, vide order dated 21.07.2016, as contained in Annexure-8, deputed Respondent No.4, the Circle Officer, Kalyanpur as a Magistrate to get the encroachment removed from the land in question and also requested the police authority to provide police force for the purpose of removal of encroachment from the land, but till date encroachment has not been removed from the land in question. Hence, the present writ application.

Mr. R.K. Roy, learned GP 18 submits that at present he is not having any instruction, but if the land in question is a public land and the same has been encroached upon, then appropriate proceeding under the Act will be initiated forthwith and such proceeding will be taken to its logical conclusion within a time frame.

Having heard learned counsel for the parties, this Court is of the view that for initiating a proceeding under Section 3 of the Act, the only pre-condition is that it should appear to the Collector under the Act from an application made by any persons or upon information received from any sources that any persons



has encroached upon or is responsible for the continuation of the encroachment over the public land.

In the present case, it appears that Respondent No.4, the Circle Officer, Kalyanpur and Respondent No.5, the Sub-Divisional Officer, Chakiya were *prima facie* convinced that the land in question has been encroached upon in view of the report submitted by the Halka Karamchari and Circle Inspector, but in spite of the direction of Respondent No.5, the Sub-Divisional Officer, Chakiya, as contained in Annexure-5 to initiate a proceeding under the Act, there is nothing on record to suggest that any proceeding under the Act has been initiated or the encroachment has been removed from the land in question.

In the circumstances, it is expected from Respondent No.4, the Circle Officer, Kalyanpur to examine the Revenue Records, and if need be, conduct spot verification, whereupon if it appears to him that the land in question is public land and the same has been encroached upon, then he will initiate a proceeding under the Act forthwith, if it has already not been initiated, and will take such proceeding to its logical conclusion within a period of four months from its initiation, after giving due opportunity of hearing to all affected persons, including the petitioner and private



Respondent Nos. 6 to 10, 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	
Transmission Date	

