

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.4302 of 2017

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Shankar Nath Pandey S/o Late Maheshwari Nath Pandey resident of Sita Lal Gali, Dev, P.S.- Dev, District - Aurangabad.

... .. Petitioner/s

Versus

1. The State of Bihar through the Commissioner, Magadh Division, Gaya, District - Gaya.
2. The District Magistrate, Aurangabad, District - Aurangabad.
3. The Superintendent of Police, Aurangabad, District - Aurangabad.
4. The SubDivisional Magistrate, Dev, District - Aurangabad.
5. The Circle Officer, Dev, District - Aurangabad.

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr. Ravindra Kumar Sinha, Adv.
For the Respondent/s : Mr. RAJ KISHORE ROY-GP18

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CORAM: HONOURABLE MR. JUSTICE DINESH KUMAR SINGH
ORAL ORDER

2 09-01-2018 Heard learned Counsels for the petitioner and the respondent-State.

Learned Counsel appearing on behalf of the petitioner is permitted to make necessary correction in the Writ application.

Since the Writ application was registered on 21.03.2017, 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 not inclined to adjourn the matter any further.

The present Writ application has been filed for a direction to respondent authorities to get the encroachment removed from Sita Lal Lane, appertaining to Khata No.347, Plot No. 3919, which runs West to Laxmi Narayan Temple in the District of



Aurangabad.

It is submitted by learned Counsel appearing on behalf of the petitioner that Sita Lal Lane which runs from West to Laxmi Narayan Temple, has been encroached upon by several persons. For removal of encroachment from the land in question, a representation was submitted before respondent no.5, the Circle Officer, Dev on 26.09.2016, as contained in Annexure-1. Besides this, several representations were also submitted before the District Magistrate, Superintendent of Police, Aurangabad and Sub-Divisional Magistrate, Dev, through registered post on 26.09.2016, as contained in Annexure-2 series and, thereafter, on 13.12.2016, as contained in Annexure-3 series, but the encroachment has not yet been removed. 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 any encroachment proceeding has been initiated or not, but he further submits that, if the encroachment has been made on a public road, then appropriate proceeding shall be initiated and will be taken to its logical conclusion within a time frame, if it has not been initiated. However, from the pleadings on record, it appears that the petitioner himself is



an encroacher.

The sine qua non for initiating a proceeding is prescribed under Section 3 of the Bihar Public Land Encroachment Act (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 respondent authorities were represented for removal of the encroachment from the land in question through representations dated 26.09.2016 and 13.12.2016, but there is nothing on record to suggest that any proceeding has been initiated under the provisions of the Act.

In the circumstances, respondent no.5, the Circle Officer, Dev is directed to examine the record and conduct spot verification and if he finds that public road/land has been encroached upon, then he will initiate a proceeding with regard to the land in question under the provisions of the Act, if it has not already been initiated and it is expected from him to take such proceeding to its logical conclusion within a period of three months, after giving due opportunity of hearing to all



affected persons under the provisions of the Act.

It is made clear that if it is found that the petitioner himself is an encroacher over the land in question, then notice shall also be issued to him, under the provisions of the Act.

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

(Dinesh Kumar Singh, J)

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