

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.14932 of 2018

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Gudar Yadav, son of Menchu Yadav, resident of Village- Paharia Pakaria, P.S.-
Harsidhi, District- East Champaran, Bihar.

... .. Petitioner/s

Versus

1. The State of Bihar.
2. The Principal Secretary, Revenue and Land Reforms Government of Bihar,
Old Secretariat Patna.
3. The District Magistrate, East Champaran, Bihar.
4. The Superintendent of Police, East Champaran.
5. The Sub-Divisional Officer, Areraj, East Champaran.
6. The Circle Officer, Paharpur, East Champaran.
7. The Officer In-Charge, Paharpur Police Station, P.S.- Paharpur District- East
Champaran.
8. Narayan Yadav, S/o- Nathuni Yadav
9. Rambha Devi, Wife of Narayan Yadav,
Respondent Nos. 8 and 9 are R/o Village- Bishambharpur, P.S.- Paharpur,
District- East Champaran.

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Surender Singh, Adv. Md. Kamaluddin, Adv.
For the Respondent/s	:	Mr. Raj Kishore Roy, GP-18

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CORAM: HONOURABLE MR. JUSTICE DINESH KUMAR SINGH
ORAL JUDGMENT

Date : 09-08-2018

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 the public road and its flank on the land
appertaining to Plot No.742, Khata No.76, situated at Mauza-
Bisunpur, Matiarawa, District- East Champaran.

The writ application has been registered on
28.07.2018, 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 neither inclined to adjourn the matter nor inclined to issue notice to Private Respondent Nos.8 and 9.

It is submitted by learned counsel for the petitioner that the land in question is a public land/road and its flank has been encroached upon by private Respondent Nos. 8 and 9, concerning which the Petitioner and his brother, Bindar Yadav, submitted an application, on 03.07.2010, before Respondent No.3, the Sub-Divisional Magistrate, Areraj for initiating a proceeding under Section 133 of the Cr. P.C, as contained in Annexure-2. On 02.01.2015, petitioner submitted an application before Respondent No.5, the SDO, Areraj for initiating a proceeding under Section 39 of the Cr. P.C, as contained in Annexure-3. Subsequently, after conducting an enquiry to that effect on 23.03.2015, the Paharpur Police submitted a report, as contained in Annexure-4, before the S.D.O., Areraj to the effect that encroachment has been made by the Private Respondent Nos. 8 and 9 on the land in question and hence recommended for initiation of proceeding under Section 107 of the Cr. P.C. with regard to the said encroachment from the land in question. Thereafter, again on 05.01.2015, petitioner submitted an application before the S.D.O., Areraj, for initiating a proceeding



under Section 133 of the Cr. P.C., as contained in Annexure-5. A complaint has also been made before the Sub-Divisional Public Grievance Redressal Officer, on 12.07.2016. Vide order dated 19.05.2017, the First Appellate Authority-cum-Additional Collector, Public Grievance Redressal Syustem, East Champaran, directed Respondent No.6, the Circe Officer, Paharpur to consider the case of the petitioner and redress his grievance within two weeks, as contained in Annexure-9. Thereafter, the petitioner preferred Second Appeal before the Second Appellate Authority-cum District Magistrate, East Champaran, Motihari, who vide order dated 12.04.2018, remanded the matter back to the First Appellate authority, as contained in Annexure-10. But till date, neither any encroachment proceeding has been initiated with regard to the land in question, nor the encroachment has been removed from the land in question. Hence, the present writ application.

It is submitted by Mr. R. K. Rai, learned GP-18 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 Bihar Public Land Encroachment Act, 1956 (hereinafter referred to as '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.

The sine qua non for initiating a proceeding for removal of encroachment is prescribed under Section 3 of 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.

This Court is dismayed to find that the Circle Officer, Paharpur appeared before the Additional Collector -cum-First Appellate Authority, Public Grievance Redressal System, East Champaran when he was directed to consider the case of the petitioner and to redress his grievance, which gets reflected from Annexure-9. Hence, he had adequate information with regard to the complaint of encroachment being made over the public land, but despite the direction of the First Appellate Authority, 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 or not.

In the circumstances, the petitioner is given liberty to



submit a representation before the Respondent No.6, the Circle Officer, Paharpur, giving details of the land/road from where the encroachment has been sought to be removed, within a period of two weeks from the date of receipt/production of a copy of this order, whereupon, the Respondent No.6, the Circle Officer, Paharpur is expected to examine the revenue records and if need be, to conduct 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 will take such proceeding to its logical conclusion within a period of three months, by giving due opportunity of hearing to all affected persons, including Respondent Nos.8 and 9 and the petitioner, in accordance with the provisions of the Act.

With the aforementioned observation and direction, the writ application stands disposed of.

(Dinesh Kumar Singh, J)

Ashwini/-

AFR/NAFR	
CAV DATE	
Uploading Date	
Transmission Date	

