

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.531 of 2018

=====

Bhukan Mahto, Son of Late Bisho Mahto, resident of Village- Hirani, P.S.-
Kusheshwar Asthan, District- Darbhanga.

... .. Petitioner/s

Versus

1. The State of Bihar through Principal Secretary, Land Reforms and Revenue Department, Patna.
 2. The Divisional Commissioner, Darbhanga.
 3. The District Magistrate, Darbhanga.
 4. The Deputy Collector, Land Reforms, Biraul, Darbhanga.
 5. The Circle Officer, Kusheshwar Asthan, Darbhanga.
 6. Hare Ram Choudhary, Son of Late Raje Choudhary
 7. Kamal Choudhary, Son of Late Bhageshwar Choudhary
 8. Jagannath Choudhary, Son of Late Indrakant Choudhary
 9. Ramanand Choudhary, Son of Late Ghune Choudhary,
- Respondent Nos. 6 to 9 are resident of Village- Hirani, P.S.- Kusheshwar Asthan, District- Darbhanga.

... .. Respondent/s

=====

Appearance :

For the Petitioner/s : Mr. Pankaj Kumar Jha, Adv.
For the Respondent/s : Mr. Raj Kishore Roy, GP18

=====

CORAM: HONOURABLE MR. JUSTICE DINESH KUMAR SINGH
ORAL JUDGMENT

Date : 16-07-2018

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 land, appertaining to Khata No.
1243(New), 01 (old), Plot No. 1686 (New), 1062(old), and
Plot No. 1687, situated in Mauza- Hirani, District- Darbhanga.

Since the Writ application was registered on
09.01.2018, 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. 6 to 9.

Learned counsel for the petitioner submits that the land in question is being used as public road by the public at large, but the same has been encroached upon by Private Respondent Nos. 6 to 9. Adjacent to the public road, residential house of the petitioner is situated. The petitioner submitted an application on 16.01.2013, before Respondent No. 4, DCLR, Biraul, as contained in Annexure-2 with a request to get the encroachment removed from the land in question. Consequently, Respondent No. 4, the DCLR, directed the Circle Officer vide Memo No. 39 dated 17.01.2013 to conduct an inquiry with regard to the encroachment in accordance with law and if he finds encroachment over the land in question, he should get it removed. In pursuance to the same, the Circle Officer called for a report from the Halka Karamchari, who submitted the report on 18.04.2013, as contained in Annexure-3 stating therein that the land in question is recorded as “Anabad Bihar Sarkar” and the same has been encroached upon by the private Respondent Nos. 6 to 9. The Halka Karamchari also recommended in the report that a proper



proceeding under the Bihar Public Land Encroachment Act, 1956 (hereinafter referred to as 'the Act') may be initiated for the removal of the encroachment from the land in question. Subsequently, the petitioner filed an application before the Respondent No. 5, the Circle Officer, Kusheshwar Asthan on 26.07.2016, as contained in Annexure-4, thereafter, before the Sub Divisional Magistrate, Biraul on 18.09.2016, as contained in Annexure-5 and also before Respondent No. 3, the District Magistrate, Darbhanga on 26.06.2017, as contained in Annexure-6, but till date, neither any encroachment proceeding has been initiated nor the encroachment has been removed from the land in question. Hence, the present writ application.

It is submitted by Mr. Raj Kishore 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 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 pre-condition 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.

No doubt, the representation was submitted before the Circle Officer as far back as on 26.07.2016, as gets reflected from Annexure-4 and also from the communication dated 17.01.2013 by the DCLR, the Circle Officer was aware about the encroachment being made over the land in question, but there is nothing on record to suggest that any proceeding has been initiated till date by Respondent No.5.

In the circumstances, the Respondent No.5, the Circle Officer, Kusheshwar Asthan, Darbhanga is expected to examine the revenue records and 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 been initiated as yet 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. 6 to 9 and the



petitioners, in accordance with the provisions of the Act.

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

(Dinesh Kumar Singh, J)

Ashwini/-

AFR/NAFR	
CAV DATE	
Uploading Date	
Transmission Date	

