

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.4832 of 2018

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Mahabir Yadav, Son of Lakhshman Yadav, R/o Village- Varuni, P.S.- Ariyari
(Kasar), District- Sheikhpura.

... .. Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Land Reforms, Government of Bihar, Patna.
2. The District Magistrate, Sheikhpura, P.S. and District- Sheikhpura.
3. The Superintendent of Police, Sheikhpura, P.S. and District- Sheikhpura.
4. The Sub- Divisional Officer, Sheikhpura, P.S. and District- Sheikhpura.
5. The Circle Officer, Ariary, P.S.- Ariyari, District- Sheikhpura.
6. Saryug Yadav, S/o- Late Gajo Yadav.
7. Harsh Narayan Yadav, S/o- Late Lutan Yadav.
8. Pramod Kumar, S/o- Late Arjun Yadav.
9. Harinandan Yadav, S/o- Late Punit Yadav.
10. Sakindra Yadav, S/o- Jago Yadav.
11. Naresh Yadav, S/o- Late Rameshwar Yadav.

All Sl.No. 6 to 11 resident of Village- Varuni, P.S.- Ariari and District- Sheikhpura.

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Dr. Anjani Pd. Singh, Adv.
For the Respondent/s	:	Mr. SAJID SALIM KHAN- SC25

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CORAM: HONOURABLE MR. JUSTICE DINESH KUMAR SINGH

ORAL JUDGMENT

Date : 23-03-2018

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

The present Writ application has been filed for a direction to the respondent authorities, particularly, the respondent no.5, the Circle Officer, Ariyari, to get the encroachment removed, which has been made by respondent nos. 6 to 11, from Gair Mazarua Aam Rasta situated over the land appertaining to Thana No.284, Khata No.39, Plot No. 334, situated in Mauza-



Varuni, P.S-Ariyari, District -Sheikhpura.

In view of the nature of order this Court intends to pass, this Court is not inclined to issue notice to the private respondents nos. 6 to 11.

It is submitted by learned Counsel for the petitioner that the land in question is public road, but the same has been encroached upon by private respondent nos. 6 to 11. The same has been recorded in the Khatian as 'Gair Majarua Aam Rasta'. An application was submitted before the respondent no.5, the Circle Officer, Ariyari. Consequently, the private respondents were noticed by the Circle Officer, vide notice dated 13.02.2014, as contained in Annexure-1. Ultimately, the Circle Officer came to the conclusion that public road has been encroached upon. Whereupon, the Circle Officer vide letter no.96 dated 20.02.2014 intimated the SHO, Kasar that six persons have not vacated the public land/road in spite of notice being given to them, which gets reflected from Annexure-2. Thereafter, the Circle Officer vide Memo No.100, dated 24.02.2014 requested the respondent no.4, the Sub-Divisional Officer, Sheikhpura for providing adequate police force along with deputation of a Magistrate for getting the encroachment removed, as contained in Annexure-3. Consequently, the Sub-



Divisional Officer, Sheikhpura vide Memo No.135, dated 03.03.2014 intimated the Circle Officer that he has been deputed as Magistrate for maintaining the law and order situated on 04.03.2014, which is the date fixed for removal of the encroachment from the land in question, as contained in Annexure-4. But in view of the Election Model Code of Conduct coming in force, the encroachment from the public land could not be removed on 04.03.2014.

Thereafter, the Circle Officer vide Memo No.249, dated 29.05.2014, as contained in Annexure-5, again requested the Sub-Divisional Officer, Sheikhpura for deployment of Magistrate and police force on 11.06.2014, which is the date fixed for removal of encroachment. Ultimately, the petitioner filed an application before the respondent no.2, the District Magistrate, Sheikhpura on 09.02.2018, who referred the matter to the District Public Grievances Redressal Cell vide Letter No. 54 dated 09.02.2018, as contained in Annexure-6. But till date the encroachment has not 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 up to date instruction. But it appears that the whole exercise has been



undertaken by the respondent no.5, the Circle Office, Ariyari and the respondent no.4, the Sub-Divisional Officer, Sheikhpura, without initiating any proceeding under the Bihar Public Land Encroachment Act, 1956 (hereinafter referred to as the 'Act'). He further submits that if the land in question 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, this Court is of the view that the pre-condition for initiation of proceeding under Section 3 of the Act is an application made to the Collector under the Act by any person or upon information received from any source that any person has made or is responsible for the continuance of any encroachment upon any public land.

In the present case, no doubt the respondent no.5, the Circle Officer, Ariyari and the respondent no.4, the Sub-Divisional Officer, Sheikhpura came to know about the encroachment being made over the public land as far back as on 13.02.2014 when a notice was issued to the encroachers vide Letter No.74, as contained in Annexure1, but from the materials



on record, it does not appear that any proceeding under the Act has been initiated.

In the circumstances, the respondent no. 5, the Circle Officer, Ariyari, is expected to examine the revenue records and if need be make spot verification and if he finds 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. 6 to 11 under 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	

