

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.4707 of 2018

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Rajendra Prasad, Son of Late Sabhapati Prasad, Resident of Village –
Brahmchari, Post Office – Lagma, Police Station – Kahalgaon, District –
Bhagalpur.

.... Petitioner/s

Versus

1. The State of Bihar through the Collector, Bhagalpur.
2. The Collector, Bhagalpur.
3. The Additional Collector, Bhagalpur.
4. The Sub-Divisional Magistrate, Kahalgaon, Bhagalpur.
5. The Circle Officer, Kahalgaon, District – Bhagalpur.

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Manish Kumar, Advocate
For the Respondent/s : Mr. Md.Khurshid Alam -AAG12

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**CORAM: HONOURABLE MR. JUSTICE DINESH KUMAR
SINGH**

ORAL ORDER

02/ 29-03-2018

Heard Mr. Manish Kumar, learned counsel for
the petitioner and Mr. Majid Mahboob Khan, learned AC to
AAG-12.

In view of the 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 the respondent authority to get the encroachment
removed from the public road appertaining to Thana No. 304,
Khata No. 107 & 17, Plot No. 246, 248 & 249 situated at Mauza –
Brahmchari, Circle – Kahalgaon, District – Bhagalpur, as the
same has been encroached upon by certain persons.



It is submitted by learned counsel for the petitioner that the land in question is a public road and in the revenue records the land is recorded as government land but the same has been encroached upon by certain persons. It is further submitted by learned counsel for the petitioner that due to the encroachment, the ingress and egress of the public at large has been obstructed.

For removal of said encroachment an application was submitted by one Rajkishore Yadav on 10.08.2013 before the Circle Officer, Kahalgaon, respondent no. 5, as contained in Annexure-1, whereupon the Circle Officer directed for getting the measurement conducted by a personnel of Gram Kutchery, since no Amin is available in the Circle. Consequently, the measurement was done by the personnel of Gram Kutchery, namely, Brahmchari Lagma. However, the report was submitted with the signature of Panchayat Mukhiya on 19.10.2013, as contained in Annexure-2 to the Circle Officer, Kahalgaon, stipulating therein that Sikari Yadav, Bhikhari Yadav and Mahendra Yadav have constructed their house on the part of government road. But in spite of that neither any encroachment proceeding has been initiated nor the encroachment has been removed. Ultimately, a public petition was submitted before the



Sarpanch of Lagma Panchayat Kutchery on 15.07.2017, as contained in Annexure-3, but no action was taken. Hence, the present Writ application.

It is submitted by learned AC to AAG-12 that, at present, he is not having any instruction but if the land in question is found to be a public land and if the same is found to have been encroached, then an appropriate proceeding under Bihar Public Land Encroachment Act, 1956 will be initiated and the same will be taken to its logical conclusion within a time frame.

Having heard the learned counsel for the parties, Section 3 of the Bihar Public Land Encroachment Act, 1956 (hereinafter referred to as the 'Act') mandates the initiation of a proceeding, if it appears to the Collector under the Act from an application made or from the information received that any person has encroached upon a public land or is responsible for continuance of any encroachment upon any public land. No doubt in the present case, representation was submitted to the Circle Officer on 10.08.2013, who ordered for the measurement of the land in question, measurement report was submitted on 19.10.2013, as contained in Annexure-2 but the Circle Officer did not initiate any proceeding for removal of encroachment from the



public land.

Sine quo non for initiating a proceeding under the Act is that it should, prima facie, appear to the Collector under the Act that encroachment has been made on a public land. For initiation of proceeding under Section 3 of the Act it is not necessary that Collector under the Act should come to a conclusive finding that land in question is a public land. What is required is that the Collector under the Act has to verify whether the land in question comes within the definition of public land as provided under Section 2 Sub-section 3 of the Act and, whereupon, it should, prima facie, appear to him that the same has been encroached upon.

In the circumstances, the Circle Officer, Kahalgaon, respondent no. 5 is expected to verify the revenue records of land in question, and if need be make spot verification or get a fresh measurement done, whereupon if it appears to him that public land has been encroached upon then he will initiate a proceeding forthwith, if it has already not been initiated, and will take such proceeding to its logical conclusion within a period of three months from the date of receipt/production of a copy of this order after giving due notice to all affected persons under the provisions of the Act.



Accordingly, this Writ application is disposed
of.

DKS/-

(Dinesh Kumar Singh, J)

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