

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.16106 of 2017

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Arun Kumar Choudhary Son of Late Giriwar Narayan Choudhary resident of village Jotha, P.S. Dhoraiya, District - Banka.

... .. Petitioner/s

Versus

1. The State of Bihar through Secretary, Land Reforms Department, Bihar, Patna.
2. Secretary, Land Reforms Department, Bihar, Patna.
3. The Collector, Banka.
4. Circle Officer, Dhoraiya, District - Banka.
5. Halka Karamchari, Anchal Dhoraiya, District Banka.
6. Balwant Singh Son of Krishna Prasad Singh
7. Nageshwar Paswan son of Late Ganesh Paswan
8. Arvind Choudhary Son of Shiv Narayan Choudhary
9. Devendra Prasad Singh Son of Late Jagdev Prasad Singh
10. Ramsevak Prasad Singh
11. Yogendra Prasad Singh Both sons of Late Uchitlal Prasad Singh
12. Kapildev Prasad Singh
13. Tribhuvan Prasad Singh Both sons of Late Sukhdev Prasad Singh
14. Sant Kumar Singh
15. Raj Kumar Singh
16. Sitaram Singh Sl. No. 14 to 16 sons of Late Srilal Singh
17. Ram Prasad Singh
18. Mritunjay Prasad Singh Both sons of Krishna Prasad Singh
19. Rustam Prasad Singh son of Pitambar Singh
20. Kailash Prasad Singh Son of Late Bhairabh Prasad Singh Sl. No. 6 to 20 all residents of village Jotha, PO - Jotha, P.S. - Dhoraiya, District - Banka.

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr. Mritunjay Prasad Singh
For the Respondent/s : Mr. MD.KHURSHID ALAM -AAG12

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CORAM: HONOURABLE MR. JUSTICE DINESH KUMAR SINGH
ORAL JUDGMENT

Date : 13-03-2018

Heard learned counsels for the petitioner and respondents

State.

Since the writ application was registered on 7.11.2017 but no counter affidavit has been filed, hence, this Court is not inclined to adjourn the matter any further. This Court is also not inclined to



issue notice to private respondent nos. 6 to 20 in view of the nature of the order this Court intends to pass.

The present writ application has been filed for a direction to the respondent authorities to get the encroachment removed from the land appertaining to Plot Nos. 9, 85, 86,89, 112, 123,125,126,162,173,176,178,206,235,248,264,265,276,284,388, 378,386,415,528 and 672, situated in Village Jotha, P.S. - Dhoraiya, District -Banka as the same has been encroached by private respondent nos. 6 to 20 and others.

It is submitted by learned counsel for the petitioner that on the land in question public road, pond, canal (water channel) are situated which is used by public at large but the same has been encroached upon. A public petition was submitted before the respondent no. 4, Circle Officer, Dhoraiya on 6.2.2012, as contained in Annexure 1 for getting the encroachment removed. Consequently, on 8.4.2013, Rupees One Thousand was deposited as measurement cost for getting the land measured. Consequently, a Receipt no. 2680 was issued in this regard, as contained in Annexure 2. In spite of the deposit of measurement cost, measurement of the land in question was not done, thereafter, a public petition dated 8.4.2013, as contained in Annexure 3, was again submitted before the respondent no.



4, Circle Officer, Dhoraiya but still the measurement was not done. However, on the application of respondent no. 6 Balwant Singh dated 23.3.2013 a false measurement was done where it was found that substantial portion of the land in question was encroached by Ram Bilash Singh, Udaykant Singh, Dablu Choudhary and Balbant Singh, but no action was taken for removal of the encroachment. Thereafter, in 2016 the measurement was done at the behest of Kamleshwari Prasad Singh, the uncle of respondent no. 6, when it was found that encroachment has been done by Binay Kumar Singh. However, a public petition dated 26.8.2017, as contained in Annexure 4 was filed for cancellation of the measurement report, if any, which was prepared at the behest of Kamleshwari Singh, but no action was taken till date. Hence, the present writ application.

Learned AAG 12 submits that at present he is not having any instruction, however, the respondent no. 4, Circle Officer, Dhoraiya be directed to initiate a proceeding under the Bihar Public Encroachment Act, 1956 (hereinafter referred to as the Act) if the encroachment has been made on the public land.

Having heard learned counsels for the parties, this Court is of the view that for initiating a proceeding under Section 3 of the Act, it should appear to the Collector under the Act from an



application made by any person or upon an information received from any source that any person has made or is responsible for the continuation of encroachment upon any public land.

No doubt, in the present case, it appears that the first public petition was submitted before the respondent no. 4, the Circle Officer, Dhoraiya on 6.2.2012 and thereafter at the behest of several persons, at least twice the measurement was done at least on two occasions, and the encroachment, was prima facie found but even then there is nothing on record to suggest that any proceeding has been initiated under the Act till date.

In the circumstances, it is imperative on the part of the respondent no. 4, the Circle Officer, Dhoraiya to examine the revenue records and if need be, make spot verification and on doing so, if it appears to him that the public land has been encroached upon, then he will initiate a proceeding under the Act if it has already not been initiated, after getting the land in question measured, within two weeks of the receipt/production of a copy of this order and will take such proceedings to its logical conclusion, within a period of three months thereafter, after giving due opportunity of hearing to all affected persons



including private respondent nos. 6 to 20 in accordance with the provisions of the Act.

Accordingly, this writ application is disposed of.

(Dinesh Kumar Singh, J)

anil/-

AFR/NAFR	
CAV DATE	
Uploading Date	
Transmission Date	

