

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.13389 of 2017

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Shyam Shankar Jha, Son of Late Subodh Narayan Jha, Resident of Village-Pirojgadh, P.S.-Ghoghardiha, District-Madhubani.

... .. Petitioner/s

Versus

1. The State of Bihar
2. The Principal Secretary, Department, of Home, Government of Bihar, Patna.
3. The Divisional Commissioner, Darbhanga Division, Darbhanga.
4. the District Magistrate, Madhubani.
5. The Sub-Divisional Officer, Phulparas, District-Madhubani
6. The Circle Officer, Ghoghardiha, District-Madhubani.
7. The Superintending of Police, Madhubani.
8. The Deputy Superintendent of Police, Phulparas, District-Madhubani.
9. The S.H.O., Ghoghardiha Police Station, District-Madhubani.

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr. Pramod Mishra, Adv.
For the Respondent/s : Md. Irshad, AC to SC-1

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CORAM: HONOURABLE MR. JUSTICE DINESH KUMAR SINGH
ORAL JUDGMENT

Date : 20-08-2018

Heard learned counsel 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 raiyati land of the petitioner appertaining to Thana No. 166, Khata No.86, Plot No.423, Khata No.156, Plot No.425, situated in Village-Pirojgadh, District -Madhubani, which has been encroached upon by some private persons, or in alternative, prayer has been made for a direction to the Respondent No.5, the Sub-Divisional Officer, Phulparas to take



action in pursuance to the report of the Respondent No.6, the Circle Officer, Ghoghardiha, as incorporated in order dated 30.12.2016, passed in Encroachment Case No.7 of 2015-16.

It is submitted by learned counsel for the petitioner that in the said encroachment proceeding, Respondent No.6, the Circle Officer has come to a definite finding after getting a report from Halka Karmchari to the effect that the raiyati land of the petitioner has been encroached upon by some private persons.

It is submitted by learned AC to SC-1, relying on the counter affidavit, filed on behalf of Respondent No.3, the Divisional Commissioner, Darbhanga to the effect that since the issue relates to encroachment over the raiyati land of the petitioner, hence, the writ application is not maintainable.

This Court is of the view that the encroachment relates to a private land, of the petitioner and therefore, the provisions of Bihar Public Land Encroachment Act, 1956 will not apply in the case of the petitioner and this Court in exercise of discriminatory jurisdiction conferred under Article 226 of the Constitution of India cannot come to a conclusive finding with regard to title and possession which requires leading of evidence and such issue can only be resolved through a proper suit before



a competent Civil Court. The writ application also does not suggest the nature of proceeding pending before the Sub-Divisional Officer, Phulparas.

In the circumstances, it is expected from Respondent No.5, the Sub-Divisional Officer, Phulparas to dispose of the proceeding in accordance with law as expeditiously as possible, preferably within a period of two weeks, after the receipt/production of a copy of this order.

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

(Dinesh Kumar Singh, J)

Ashwini/-

AFR/NAFR	
CAV DATE	
Uploading Date	
Transmission Date	

