

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.23 of 2018

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Prahlad Raut @ Prahlad Kumar, son of Late Kishun Raut, Resident of
Mohallah- Middle Market of Hisua, P.S.- Hisua, District- Nawada (Bihar).

... .. Petitioner/s

Versus

1. The State of Bihar through the Secretary General Administrative Department,
Bihar, Patna.
2. The District Magistrate, Nawada.
3. The S.D.O., Nawada.
4. The District Development Commissioner, Nawada.
5. B.D.O., Hisua.
6. C.O. Hisua.
7. The Executive Officer, Nagar Panchayat/ Awash Department, Hisua, Nawada.
8. Jamir Miyan, son of Late Bacsu Miyan.
9. Bahid Miyan, son of Late Dhuni Miyan.
10. Jahir Miyan, son of Late Karun Miyan.

Respondent No. 8 to 10 Resident of Village Hisua, P.S.- Hisua, District-
Nawada.

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr. Devendra Kumar, Adv.
For the Respondent/s : Mr. Saroj Kumar Sharma, AC to AAG-3

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CORAM: HONOURABLE MR. JUSTICE DINESH KUMAR SINGH

ORAL JUDGMENT

Date : 20-04-2018

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 land appertaining to revenue P.S. No. 69, Khata Nos. 890, Plot No.2158 and 2645, situated at Ward No.13, P.S.-Hisua, District -Nawada. The land in question is recorded in the revenue record as 'Anabad Sarva Sadharan', but the same has been encroached upon by the private respondent nos. 8 to 10.

Since the Writ application was registered on 02.01.2018, 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.8 to 10.

It is submitted by learned counsel for the petitioner that the land in question is recorded in the revenue record as 'Anabad Sarva Sadharan' and a part of the said land, there is a drainage and a water channel, but the same has been encroached upon. One Laxmi Devi, submitted a representation before the respondent no. 6, the Circle Officer, Hisua. In pursuance to the same, the Circle Officer called for a report from the revenue Karmachari vide Memo No. 1490, dated 25.10.2016. Subsequently, the revenue Karmachari submitted the report on



31.10.2016, as contained in Annexure-2, suggesting that the drainage has been constructed over the land in question, but the actual encroachment can be ascertained by getting the measurement done by the Anchal Amin. Subsequently, on the direction of the Circle Officer, the Anchal Amin submitted the report along with trace map on 26.12.2016 to the Circle Officer, as contained in Annexure-3, suggesting encroachment over the land in question. A public petition was submitted before the respondent no.2, the District Magistrate, Nawada, as contained in Annexure-4. Thereafter, on 16.10.2017, a public petition was submitted before the District Magistrate-Nawada and on 31.10.2017 a public petition was also submitted before the SDO, Nawada, Executive Officer, Nagar Panchayat, Hisua, as contained in Annexure-5 series, but till date no action has been taken. However, the Sub-Divisional Public Grievance Redressal Officer, Nawada vide order dated 03.09.2016, as contained in Annexure-1, directed the Circle Officer, Hisua to remove the encroachment from the land in question in accordance with the provisions of the Bihar Public Land Encroachment Act, 1956 (hereinafter referred to as 'the Act'). 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 learned AC to AAG-3 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 already not been initiated and the same will be taken to its logical conclusion within a time frame.

Having heard learned Counsels for the parties, the *sine qua non* for initiating a proceeding for removal of encroachment as prescribed under Section 3 of the Act is 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, in the present case, the Circle Officer came to know about the encroachment being made over the land in question through the representations submitted as well as the report submitted by the Circle Amin to the Circle Officer in 2016, as contained in Annexures-2 and 3 respectively and also from the order dated 03.09.2016, passed by the Sub-Divisional



Public Grievance Redresal Officer, Nawada, but there is nothing on record to suggest that any proceeding under the Act has been initiated.

This Court is really dismayed to find that the Circle Officer, who is the Collector under the Act has failed in discharging of his *quashi judicial* function by not taking any action till date, which does not only suggest the abdication of jurisdiction on his part, but also suggests the lack of administrative control of the District Magistrate over his subordinates.

It is expected from the respondent no.2, the District Magistrate, Nawada to take needful action against the respondent no.6, the Circle Officer, Hisua for reluctantly proceeding in the matter since about one and half years.

In view of the discussions made above, the respondent no.6, the Circle Officer, Hisua is expected to examine the revenue records and if need be make 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 already not been initiated and 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.8 to 10 under the provisions of the Act.

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

(Dinesh Kumar Singh, J)

Ashwini/-

AFR/NAFR	NAFR
CAV DATE	N.A.
Uploading Date	26.04.2018
Transmission Date	N.A.

