

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.7348 of 2018

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Nepal Ram, Son of Sukhari Ram, Residing at Mela Dharahara, Dharhara, P.O.
and P.S. Kateya, District- Gopalganj.

... .. Petitioner/s

Versus

1. The State of Bihar through the District Magistrate, Gopalganj.
2. The District Magistrate, Gopalganj.
3. The Superintendent of Police, Gopalganj.
4. The Circle Officer, Kateya, P.O. and P.S.- Kateya, District- Gopalganj.

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Bipin Bihari Singh, Adv. Mr. Rajesh Kumar Sharma, Adv.
For the Respondent/s	:	Mr. Sajid Salim Khan, SC-25

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CORAM: HONOURABLE MR. JUSTICE DINESH KUMAR SINGH
ORAL JUDGMENT

Date : 09-08-2018

Heard Mr. Rajesh Kumar Sharma, learned counsel for
the petitioner and Mr. Sajid Salim Khan, learned SC-25, for the
respondent-State.

The present writ application has been filed on
17.04.2018, but till date, no counter affidavit has been filed, hence
in view of the nature of order, this Court intends to pass, this Court
is not inclined to adjourn the matter.

The present writ application has been filed for a
direction to the Respondent No.2, the District Magistrate,
Gopalganj and Respondent No.4, the Circle Officer, Kateya, to get
the encroachment removed from the public land/road, appertaining
to Khata No. 281, Plot No. 1090, Thana No. 441, situated at
Mauza Dharahara Mela, Circle Kateya, District Gopalganj.



It is submitted by learned counsel for the petitioner that the land in question is a public land/road, which is being used by public at large for cremation of dead body, but some anti-social elements have encroached upon the said land by erecting structures over the said land.

For removal of the encroachment from the land in question, a public petition was submitted on 05.02.2018, before Respondent No.4, the Circle Officer, Kateya, as contained in Annexure-1, but no action was taken. Ultimately public petitions were submitted before Respondent No.2, the District Magistrate and S.D.O., Hathua, one of such petitions dated 08.02.2018 has been brought on record, as contained in Annexure-2 (series), but in spite of bringing to the notice of the respondent authorities, about the said encroachment over the land in question, neither any encroachment proceeding has been initiated nor the encroachment has been removed from the land in question till date. Hence the present writ application.

Learned SC-25 submits that at present, he is not having any instruction whether the land in question is a public land/road or not, but if the land in question is a public land/road and the same has been encroached upon then the Respondent No.4, the Circle Officer, Kateya, will initiate appropriate proceeding, under



the Bihar Public Land Encroachment Act, 1956 (hereinafter referred to as 'the Act') forthwith and will take the said proceeding to its logical conclusion within a time frame.

Having heard learned counsel for the parties, this Court is of the view that for initiation of the proceeding under Section 3 of the Act, there are two pre-conditions, firstly, it should appear to the Collector under the Act from an application made by any person and secondly, upon information received from any sources that any person has made or is responsible for the continuation of the encroachment over the public land.

In the present case, statement has been made on affidavit that a public petition has been submitted on 05.02.2018, before the Respondent No.4, the Circle Officer, Kateya, as contained in Annexure-1 and before Respondent No.2, the District Magistrate, Gopalganj, and S.D.O., Hathua, as contained in Annexure-2, but there is nothing on record to suggest that any proceeding has been initiated or encroachment has been removed from the land in question till date.

In the circumstance, the petitioner is directed to file a fresh representation before Respondent No.4, the Circle Officer, Kateya, giving the details of the land in question within a period of three weeks from the date of receipt/production of this order,



thereafter, it is expected from Respondent No.4, the Circle Officer, Kateya, to examine the Revenue Records, and if need be, conduct spot verification, whereupon, if it appears to him that the land in question is a public land/road and the same has been encroached upon, then he will initiate a proceeding forthwith, if it has already not been initiated as yet, and will take such proceeding to its logical conclusion within a period of three months from its initiation, after giving due notice to all affected persons, including the petitioner in accordance with the provisions of the Act.

With the aforementioned observation and direction, the present writ application is disposed of.

Amrendra/Deepak/-

(Dinesh Kumar Singh, J)

AFR/NAFR	
CAV DATE	
Uploading Date	14.08.2018
Transmission Date	

