

**IN THE HIGH COURT OF JUDICATURE AT PATNA**  
**Civil Writ Jurisdiction Case No.10477 of 2018**

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Bharat Mahto, son of late Jagdish Mahto, Resident of Village - Matihani, P.S.-  
Mohanpur, District-Gaya.

... .. Petitioner/s

Versus

1. The State of Bihar
2. The District Magistrate, Gaya
3. The Sub-Divisional Officer, Sherghati, P.S.-Sherghati, District-Gaya
4. The Circle Officer, Mohanpur, P.S.-Mohanpur, District-Gaya

... .. Respondent/s

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**Appearance :**

For the Petitioner/s : Mr. Gajendra Nath Ojha, Adv.  
For the Respondent/s : Mr. Wasi Ahmad Khan -SC-25

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

**ORAL JUDGMENT**

**Date : 21-06-2018**

Heard learned counsels for the petitioner and the respondents.

The present Writ application has been filed for a direction to the respondent authorities, particularly, Respondent No.4, the Circle Officer, Mohanpur to get the encroachment removed from the public land appertaining to Khata No.133, Plot Nos. 379 and 387, situated in Village - Itwan, P.S.-Mohanpur, District -Gaya as the same has been encroached upon by several persons.

This writ application has been registered on 23.05.2018, but no counter affidavit has been filed, moreover, in view of the nature of order this Court intends to pass, there is no need of adjourning the matter any further.



It is submitted by learned counsel for the petitioner that the land in question is recorded in the revenue record as 'Anabad Sarv Sadharan' and is being used as public road, but the same has been encroached upon by several persons. The petitioner represented before the Respondent No.2, the District Magistrate, Gaya and Respondent No.4, the Circle Officer, Mohanpur for getting the encroachment removed. On the direction of the Circle Officer, the Circle Amin measured the land in question in presence of the Halka Karamchari and submitted the report dated 31.07.2014, as contained in Annexure-1, suggesting encroachment over the land in question. The Halka Karmchari and the Circle Inspector also submitted the report on 26.09.2014, as contained in Annexure-2, requesting for direction by the Circle Officer for getting the encroachment removed. Subsequently, the petitioner submitted a representation dated 28.02.2018, before the Respondent No.4, the Circle Officer, Mohanpur and a copy of the said representation was transmitted to the Respondent No.2, the District Magistrate, Gaya, as contained in Annexures – 3 and 4 respectively. But till date neither any encroachment proceeding has been initiated, nor the encroachment has been removed from the land in question.



It is submitted by learned AC to SC-25 that, at present, he is not having any instruction whether any encroachment proceeding has been initiated or not, but if it has not been initiated, then a proper proceeding under the provisions of the Bihar Public Land Encroachment Act, 1956 (hereinafter referred to as 'the Act') will be initiated forthwith and the same will be taken to its logical conclusion within a time frame.

The sine qua non for initiating a proceeding for removal of encroachment is prescribed under Section 3 of the Act which stipulates 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 by issuing notice.

In the present case, the petitioner claims to have submitted representation before the Respondent No.4, the Circle Officer, Mohanpur on 28.02.2018, and a copy of the said representation was also transmitted to the Respondent No.2, the District Magistrate, Gaya, which gets reflected from the Annexures- 3 and 4, respectively, but there is nothing on record to suggest that any proceeding has been initiated till date.



In the circumstances, the Respondent No.4, Circle Officer, Mohanpur 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 not already 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 the petitioner in accordance with the provisions of the Act.

The Writ application is, accordingly, disposed of.

**(Dinesh Kumar Singh, J)**

Ashwini/-

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