

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.10517 of 2018

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Shambhu Sah, Son of Late Beni Lal Sah @ Venilala Sah, Resident of Village
+ P.O. - Sarotar, P.S. - Dumariyaghat, District - East Champaran.

... .. Petitioner/s

Versus

1. The State of Bihar through its Principal Secretary, Revenue and Land Reforms Department, Govt. of Bihar, Patna.
2. The District Magistrate cum Collector, East Champaran at Motihari.
3. The Additional Collector, East Champaran at Motihari.
4. The Sub Divisional Officer, Chakia, District - East Champaran at Motihari.
5. The Circle Officer, Kesariya, District - East Champaran at Motihari.
6. Yogendra Paswan @ Yogendra Hajara, Son of Yodha Paswan
7. Prasad Paswan, Son of Yodha Paswan
8. Sudish Paswan @ Sudish Hajara, Son of Janak Paswan @ Janak Hajara.
9. Prabhu Paswan @ Prabhu Hajara, Son of Supan Paswan @ Sukan Hajara
10. Sattu Ram Paswan, Son of Sukhadi Paswan,
All residents of Village + P.O. - Sarottar, Police Station - Dumariyaghat,
District - East Champaran.

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr. Dharendra Kumar, Adv.

For the Respondent/s : Mr. Majid Mahboob Khan, AC to AAG-12

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CORAM: HONOURABLE MR. JUSTICE DINESH KUMAR SINGH

ORAL JUDGMENT

Date : 22-06-2018

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 Khata No.611, Plot Nos.908, 909, 949, situated in Village-Sarottar, Circle-Kesariya, District-East Champaran.

Since the Writ application was registered on 23.05.2018, 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 Respondent Nos.6 to 10.

It is submitted by learned counsel for the petitioner that the land in question is a public land, which is being used by the public at large as a road, but the same has been encroached upon by Respondent Nos. 6 to 10. On a petition, dated 04.07.2017, as contained in Annexure-2, submitted before the Respondent No.5, the Circle Officer, Kesariya, the Circle Officer directed the Circle Inspector to make spot verification and stop construction over the land in question, but no action has been taken. Thereafter, the petitioner approached the Sub-Divisional Public Grievance Redressal Officer, Chakia, on 06.10.2017, as contained in Annexure-4, but he also took no action. Thereafter, the petitioner was informed that vide order dated 22.01.2018, as contained in Annexure-5 passed by the First Appellate Authority, under Public Grievance Redressal Act West Champaran that three persons have removed the encroachment, but one person has not removed the encroachment for which necessary direction has been issued. But, thereafter, the encroachment resurfaced again, then the petitioner represented before the Respondent No.2, the District



Magistrate, East Champaran, on 23.03.2018, as contained in Annexure-6. But till date neither any encroachment proceeding has been initiated, nor encroachment has been removed.

It is submitted by learned AC to AAG-12 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 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 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.

No doubt, in the present case, a public petition was submitted before the Respondent No.5, the Circle Officer, Kesariya as far as back on 04.07.2017, as gets reflected from Annexure-2 and thereafter before the SDO and the District



Magistrate, on 22.07.2017 and 23.03.2018, but there is nothing on record to suggest that any proceeding has been initiated till date or any effort has been taken to come to the finding whether the land in question is a public land.

In the circumstances, the Respondent No.5, Circle Officer, Kesariya 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 and Respondent Nos. 6 to 10 in accordance with the provisions of the Act.

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

(Dinesh Kumar Singh, J)

Ashwini/-

AFR/NAFR	
CAV DATE	
Uploading Date	
Transmission Date	

