

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.13317 of 2018

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Premshila Kuvar, W/o Late Ram Ayodhya Prasad, Resident of Village -
Machhargawa Anchal - Kotawa P.S. Kotawa, District - East Champaran.

... .. Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Department of Land Reforms, Government of Bihar, Patna.
2. The District Magistrate, East Champaran, Motihari.
3. The Land Reforms Officer, Motihari, East Champaran.
4. The Sub-Divisional Officer, Motihari, East Champaran.
5. The Circle Officer, Kotawa, East Champaran, Motihari.
6. Binda Rai, Son of Late Mahendra Rai
7. Manoj Rai, Son of Binda Rai
8. Bindeshwari Rai Son of Baban Rai
9. Dipnarayan Rai, Son of Buban Rai
10. Mukesh Rai, Son of Bindeshwari Rai
11. Amit Rai, Son of Bideshwari Rai

Respondent Nos. 6 to 11 are Residents of village - Machhargawan, Anchal -
Kotawa, P.S. - Kotawa, District - East Champaran, Motihari.

... .. Respondent/s

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Appearance :

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

For the Respondent/s : Mr. Md. Khurshid Alam- AAG-12

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CORAM: HONOURABLE MR. JUSTICE DINESH KUMAR SINGH
ORAL JUDGMENT

Date : 13-07-2018

Heard learned Counsels for the petitioner and the
Respondent-State.

Learned counsel for the petitioner is permitted to
make necessary correction in the writ application.

The present Writ application has been filed for a
direction to the Respondent authorities, particularly, Respondent
No.5, the Circle Officer, Kotwa to get the encroachment
removed from the public land appertaining to Plot No.722,
Khata No.297, situated in Villalge -Machhargawan, Circle-



Kotawa, P.S.-Kotava, District-East Champaran.

It is submitted by learned counsel for the petitioner that the land in question is a public road and it has been recorded in Khatiyani as 'Gair Majarua Aam land' but the same has been encroached upon by several people, which has resulted into obstruction of smooth movement of traffic. On 25.05.2018, an application was submitted in this regard before the Respondent No.5, the Circle Officer, Kotwa, as contained in Annexure-1. Thereafter, on 05.08.2018, a representation, as contained in Annexure-2, was submitted before the DCLR, Motihari. Though the Anchal Amin submitted a report to the Circle Officer to the effect that public road in question has been encroached upon by Respondent Nos. 6 to 11, but no action has been taken, which gets reflected from Annexure-3. The petitioner also transmitted a representation to the Respondent No.2, the District Magistrate, East Champaran, Motihari, on 20.06.2018, as contained in Annexure-4, through registered post with a request to get the encroachment removed, but till date neither any encroachment proceeding has been initiated nor the encroachment has been removed. Hence, the present writ application.

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. 6 to 11.

Learned counsel for the State submits 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 Bihar Public Land Encroachment Act, 1956 (hereinafter referred to as 'the Act') will be initiated forthwith, if it has not already been initiated and the same will be taken to its logical conclusion within a time frame.

The pre-condition 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, the representation was submitted before the Circle Officer as far back as on 28.05.2018, as gets reflected from Annexure-1 and thereafter on 05.08.2018, before the DCLR and on 24.02.2018 and before the District Magistrate, on 20.06.2018 along with the report of Anchal Amin dated



24.02.2018, suggesting the encroachment being made over the land in question, 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, Kotwa is expected to examine the revenue records and if need be conduct 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 will 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.6 to 11 and the petitioner 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	

