

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.1497 of 2015

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Uma Shankar Singh S/o Late Satya Narain Singh, resident of Girihendra
Bus Stand, Sheikhpura, P.S. & District- Sheikhpura.

.... Petitioner/s

Versus

1. The State of Bihar.
2. The Collector, District- Sheikhpura.
3. Anchal Adhikari, Sheikhpura, District- Sheikhpura.
4. The Principal Secretary, Department of Revenue & Land Reforms
5. The S.D.O., Sheikhpura

.... Respondent/s

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Appearance:

For the Petitioner/s : Mr. Shailendra Kumar Jha, Advocate
Mr. Sanjay Kumar Jha, Advocate

For the Respondent/s : Mr. Ashok Kumar Choudhary, AAG-13
Mr. Anil Kumar Tiwary, A.C. to AAG-13

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CORAM: HONOURABLE MR. JUSTICE JYOTI SARAN
ORAL ORDER

7 06-08-2015 Heard Mr. Shailendra Kumar Jha, learned counsel

appearing for the petitioner and Mr. Ashok Kumar Choudhary,

learned Additional Advocate General No. 13.

The petitioner has questioned the proceedings arising
from Encroachment Case No. 12 of 2013-14 including the order
dated 10.09.2014 passed by the respondent no. 3 Circle Officer,
Sheikhpura, District-Sheikhpura discharging the duties of
Collector under the Bihar Public Land Encroachment Act, 1956
(hereinafter referred to as 'the Act') whereby the petitioner has
been directed to remove the encroachment from a piece of land
bearing Khata No. 108, Khesra No. 01 situated in village-



Girihinda, Circle-Sheikhpura in the district of Sheikhpura to the extent of 3.5 decimals. A copy of the order sheet in Encroachment Case No. 12 of 2013-14 including the order impugned passed on 10.9.2014 is placed at Annexure-5 to the writ petition.

A perusal of the order sheet manifests that the nature of land in question is *Gair Majarua Malik* having a character of mountain. Three persons have been charged with encroachment including this petitioner against whom allegation is of encroachment to the extent of 3.5 decimals.

The short argument advanced by Mr. Jha to contest the encroachment proceedings was relying upon a policy decision of the State Government as circulated vide Circular dated 12.05.1971 reflecting a decision of the State Government whereby it has been decided to settle the lands with the landless who are occupying portion of land which is in the nature of *Gair Majarua Malik* and where the total land in possession of such encroachers does not exceed to 2.5 acres. The circular covers the landless people belonging to the Scheduled Caste / Scheduled Tribe and Backward Classes (Annexure-A to the counter affidavit). The circular also covers the persons belonging to other categories as well to the extent of five decimals of land. It is in view of the issue so raised by the petitioner to question the encroachment proceedings that



this Court desired an opinion of the Principal Secretary, Land Reforms Department which has since been received and in paragraph-7 of the counter affidavit filed on behalf of the Principal Secretary is a complete answer on the issue which mentions that a policy decision has been taken by the Government to settle encroached land which is in the nature of *Gair Majarua Malik* with persons belonging to SC/ST & B.C. community and other landless persons having not more than 2.5 acres of land without charging any *salami*. This single statement of the Principal Secretary is sufficient to render the encroachment proceedings initiated for removal of alleged encroachment from a land which is in the nature of *Gair Majarua Malik* arising from Encroachment Case No. 12 of 2013-14 without sanction of law and unsustainable and for the same reasons, the entire proceedings arising from Encroachment Case No. 12 of 2013-14 including the order dated 10.9.2014 cannot be upheld and is accordingly set aside insofar as the petitioner is concerned.

The Principal Secretary in his counter affidavit has also mentioned at paragraph-9 that the concerned Sub-Divisional Officer has been authorized to regularize any such encroachment made by landless encroachers up to the extent of 2.5 acres.

Considering the circumstances existing as well as the



fact that the petitioner relies upon the circular dated 12.9.1971 to support his possession over the land as well as to question the encroachment proceedings and taking into consideration that he can not be occupying the land unauthorizedly that the petitioner would be well advised to file an appropriate application before the Sub-Divisional Officer, Sheikhpura or the authority concerned for consideration of his claim for settlement over the land in question and it goes without saying that any such application filed by the petitioner within four weeks of receipt of a copy of this order, would be considered and disposed of by the Sub-Divisional Officer, Sheikhpura or the authority concerned within three months from the date of receipt of the application, in accordance with law and in the light of the policy decision referred to above.

Leave is granted to the petitioner to arraign the Sub-Divisional Officer as respondent no. 5 to the present proceedings.

The writ petition is allowed with the directions aforementioned.

S.Sb/-

(Jyoti Saran, J)

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