

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.3530 of 2014

=====

Satya Narayan Tiwari son of Late Ram Lakhan Tiwari, resident of village-
Bichiya, P.S. Belown, District - Kaimur At Bhabhua

.... Petitioner/s

Versus

1. The State of Bihar
2. The Collector, Kaimur at Bhabhua, District - Kaimur
3. The Sub Divisional Officer, District - Kaimur at Bhabhua
4. The Circle Officer, Rampur, Distt. - Kaimur

.... Respondent/s

=====

Appearance:

For the Petitioner/s : Mr. Jitendra Kumar Pandey, Advocate
Mr. Rajesh Kumar Sinha, Advocate
For the Respondent/s : Mr. S. Raza Ahmad, AAG-9
Mr. Anisul Haque, AC to AAG-9

=====

CORAM: HONOURABLE MR. JUSTICE JYOTI SARAN
ORAL ORDER

4 23-03-2015 Heard Mr. Jitendra Kumar Pandey for the petitioner and

Mr. Anisul Haque, Assisting counsel to AAG-9 for the State.

The petitioner is aggrieved by the notice issued by the
Circle Officer, Rampur, District-Kaimur in Encroachment Case
No. 13 of 2013-14 in purported exercise of power vested under
Section 6(2) of the Bihar Public Land Encroachment Act, 1956
(hereinafter referred to as 'the Act') and the Rules framed
thereunder.

Mr. Pandey has raised a very short issue to question the
notice. He submits that the notice has been issued without giving
an opportunity of hearing to the petitioner. It is considering the



circumstances that the State was directed to respond and pursuant where to a counter affidavit has been filed enclosing a notice placed at Annexure-D to submit that though notice was issued but the petitioner has not chosen to respond and it is in these circumstances that the notice of removal was issued under Section 6(2) of the Act which is impugned at Annexure-1 to the writ petition.

I have heard learned counsel for the parties and I have perused the records. The foundation for the notice issued under Section 3 of the Act placed at Annexure-D to the counter affidavit requiring the petitioner to respond by 18.12.2013 which was followed by a notice of removal under Section 6(2) impugned at Annexure-1, is an order issued by the Collector-cum-District Magistrate, Kaimur in Miscellaneous Case No. 2 of 2007-08, a copy of this order is placed at Annexure-B to the counter affidavit. A perusal thereof manifests that the Collector-cum-District Magistrate, Kaimur finding the encroachments has directed the authorities to take steps for removal thereof and it is in view of such direction that the notice at Annexure-D followed by notice at Annexure-1, was issued.

Whereas it is contended by Mr. Pandey that the notice was never received and which has been rebutted in the counter



affidavit but there is nothing to show that the notice was served upon the petitioner. At least it has no such remark. Sections 5 and 6 of 'the Act' casts a responsibility on the Collector under 'the Act' to pass final orders after giving a reasonable opportunity of hearing to the alleged encroachers and which obligation has admittedly not been carried out. In the circumstances, the notice of removal as contained in Annexure-1 issued by the Circle Officer, Rampur, District-Kaimur in Encroachment Case No. 13 of 2013-14 cannot be upheld and is set aside.

The matter is remitted back to the Circle Officer, Rampur, District-Kaimur to pass a fresh order after giving opportunity of hearing to the petitioner. The petitioner would appear with a copy of his objection and supportive documents before the Circle Officer on or before **6.4.2015** and whereafter the Circle Officer would proceed to dispose of the matter in the manner stipulated hereinabove and after giving an opportunity of hearing to the petitioner and until such time, let no coercive steps be taken as against the petitioner pursuant to any order passed in Encroachment Case No. 13 of 2013-14.

The writ petition is allowed with the directions aforementioned.

(Jyoti Saran, J)

S.Sb/-