

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.18728 of 2014

=====

Vibhuti Prasad Singh, S/o Late Balmiki Singh, R/O-Village - Sikarhula,
P.O.-Koria, P.S-Birpur, District-Begusarai.

.... Petitioner/s

Versus

1. The State of Bihar.
2. The District Magistrate –cum- Collector, Begusarai.
3. The Sub-Divisional Officer, Sadar, Begusarai.
4. The Land Reforms Deputy Collector, Begusarai.
5. The Circle Officer, Birpur, Begusarai.
6. Suraj Yadav.
7. Bhuttu Yadav.
8. Durjan Yadav.
9. Maheshwar Yadav.

All respondents no.6 to 9 are sons of Late Lakshmi Yadav and
R/O village- Sikarhula, P.S. Birpur, District- Begusarai.

.... Respondent/s

=====

Appearance :

For the Petitioner/s : Mr. Shailesh Kumar

For the Respondent/s : Mr. Anjani Kumar Jha, AC to AAG-4

=====

CORAM: HONOURABLE MR. JUSTICE JYOTI SARAN
ORAL ORDER

4 27-04-2015 Heard Mr. Shailesh Kumar, learned counsel

appearing on behalf of the petitioner and Mr. Anjani Kumar Jha,

learned Assisting Counsel to Additional Advocate General No.4

for the State.

This writ petition has been filed for quashing the

notice dated 18.9.2014 of the Circle Officer, Birpur issued in

exercise of powers vested under the Bihar Public Land

Encroachment Act, 1956 (hereinafter referred to as ‘the Act’),

whereby the petitioner has been directed to remove the alleged

encroachment on a piece of land bearing plot no.226 having an

area of 7.7 katha.



It is the case of the petitioner that he purchased certain plots bearing khata no.37, plot no.213 and plot bearing khata no.34, plot no.214 having an area of one bigha in the year 1983 through different registered sale deeds executed on 7.9.1983 and is in possession thereof. It is the contention of the petitioner that he developed the land as mango orchard and a public road is passing adjacent the same which runs from Sikrahula to Saraunja on a stretch of 6 kilometer to merge in Birpur- Begusarai main road.

It is the grievance of the petitioner that in the year 2009, certain anti-social element encroached upon the land creating nuisance and being aggrieved he moved the Circle Officer under the provisions of 'the Act' by filing a petition on 25.1.2010 for removal of encroachment. Notices were issued to the encroachers by the Circle Officer on 4.2.2010 fixing the date of hearing on 11.2.2010 but no effective action was taken and thus the petitioner again filed a petition on 16.12.2010 before respondent no.5 i.e. the Circle Officer, Birpur for taking immediate action. It is the complaint of the petitioner that no order was being passed rather his application was forwarded to the Land Reforms Deputy Collector by the Circle Officer under the provisions of the Bihar Land Disputes Resolution Act, 2009 who returned the same holding that the matter was falling within



the confines of encroachment. The petitioner filed appeal bearing Appeal No.11 of 2012-13 and the date of hearing was fixed on 8.6.2012 and though certain directions were issued but the encroachment continued. It is the case of the petitioner that after running from pillar to post a measurement was carried out by the Amin finding encroachment on the public road by the private respondent but since the matter remained inconclusive that he moved in CWJC No.13921 of 2013. The writ petition was disposed of vide order passed on 20.2.2014 requiring the Circle Officer to dispose of the encroachment case within three months.

The petitioner approached the Circle Officer along with a copy of the order and when fresh notice was issued by the Circle Officer on 13.5.2014 to respondent nos.6 to 9 in Encroachment Case No.01 of 2014 requiring them to remove the encroachment. This time it was the encroachers who moved this Court in CWJC No.9354 of 2014 questioning the notice issued by the Circle Officer which was disposed of requiring the Circle Officer to dispose of the encroachment proceeding. A fresh measurement is stated to have been taken place by the Anchal Amin on the instruction of the Circle Officer confirming the encroachment by the private respondent but not being satisfied and for no apparent reason a second measurement was directed



upon by the Circle Officer, Birpur. The Amin and the Circle Officer got the land measured on 13.9.2014 and when encroachment was shown on plot nos.153 and 226 by the private respondent but the notice in question was issued to the petitioner on 18.9.2014 as well putting him in the category of encroacher even when the petitioner is holding possession on his raiyati land, the details of which are given hereinabove and which is not in the nature of a public land. He submits that the second measurement was unnecessary and has been carried out even when there was no dispute as regarding the correctness of the earlier measurement conducted by the Circle Amin on 22.8.2014. It is in these circumstances that the petitioner approached this Court complaining abuse of statutory powers by the Circle Officer, Birpur.

A short counter affidavit has been filed by the Block Development Officer, Birpur, district- Begusarai and it is specifically stated in paragraph 1 that the action of the earlier incumbent on the post of Circle Officer was doubtful and he has been put under suspension and that the deponent has been directed by the District Magistrate to take charge of the Office of the Circle Officer, Birpur. It is further stated in paragraph 4 that merely on the basis of a measurement that the notice dated 8.9.2014 and 18.3.2015 impugned at Annexures 17 and 21 were



issued by the Circle Officer. It has been fairly submitted by present incumbent on the post of Circle Officer that the application of the petitioner present at Annexure-18 clarifying the possession has not been considered by the previous incumbent. In paragraph 7 of the counter affidavit the deponent has stated that that he has assumed the charge of the post of Circle Officer, Birpur vide order of the District Magistrate dated 17.4.2015 and he will look into the entire matter and would pass appropriate order after hearing the concerned parties including the petitioner.

Having heard learned counsel for the parties and taking note of the entire facts and circumstances of the case where the author of the encroachment proceeding i.e. the petitioner himself has been brought within the category of encroachers even when his contention that the land under his possession is raiyati and has been purchased through valid sale-deeds and that he has not encroached upon any portion of the public road has gone unnoticed, I am of the opinion that the petitioner as well as the other encroachers deserve a hearing to enable them to defend themselves. The very fact that the earlier incumbent to the post of Circle Officer has been put under suspension confirms the grievance of the petitioner. The petitioner has relied upon the measurement conducted on

22.8.2014 to submit that there was no reason by the previous Circle Officer to conduct the second measurement, in absence of any infirmity in the first measurement.

In the circumstances discussed the deponent of the counter affidavit claiming to be the present incumbent to the post of Circle Officer is directed to consider the entire matter de novo and pass appropriate order in accordance with law after examining the matter in issue in extenso as well as the stand of the petitioner and the other encroachers afresh.

In the circumstances that the Encroachment Case No.1 of 2014-15 yet remains pending before the Circle Officer, the continuance of the notice impugned at Annexures 17 and 21 would be an illegality and the same are accordingly quashed. The petitioner is directed to appear along with a copy of this order before the Circle Officer, Birpur on or before 11.5.2015 when he shall proceed to dispose of the matter in the manner stipulated hereinabove.

The writ petition is allowed.

(Jyoti Saran, J)

SKPathak/-

U			
---	--	--	--