

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.1866 of 2014

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1. Somar Bind S/O Late Bhageran Bind Resident of Village- Nehalpur, Hirdanchak Tola, P.S- Parasbigha, Distt- Jehanabad.
 2. Surendra Bind S/O Late Mohan Bind Resident of Village- Nehalpur, Hirdanchak Tola, P.S- Parasbigha, Distt- Jehanabad.
 3. Sunil Bind S/O Late Bhageran Bind Resident of Village- Nehalpur, Hirdanchak Tola, P.S- Parasbigha, Distt- Jehanabad.

.... Petitioner/s

Versus

1. The State of Bihar
2. The District Magistrate cum Collector, Jehanabad.
3. The Sub- Divisional Officer, Jehanabad.
4. The Circle Officer, Block Ratni, Fareedpur, District- Jehanabad.

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Alok Kumar Choudhary, Adv.
For the Respondent/s : Ms. Kumari Amrita, G.P.10

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CORAM: HONOURABLE MR. JUSTICE JYOTI SARAN
ORAL ORDER

6 10-08-2015 Heard Mr. Alok Kumar Choudhary, learned counsel for the petitioners and Ms. Kumari Amrita G.P.10 for the State.

The petitioners questioned the notice dated 21.5.2013 bearing Memo No.694 of the Circle Officer, Ratni, Fareedpur, District-Jehanabad whereunder directions were issued to the petitioners herein to remove their respective encroachment over Plot No. 2118 in Mauza-Nehalpur Tola- Hirdanchak in the district of Jehanabad which is recorded as Gairmazarua Aam land and is being used as Aam Rasta, a copy of the notice is impugned at Annexure-3 series to the writ petition.

Although initially when the matter was argued it was



contested by counsel for the petitioners that the orders had been passed without drawing any proceedings and without passing any final order and when this Court vide order passed on 3.7.2014 framed issues seeking a response from the respondents which has since been filed by way of supplementary counter affidavit and wherein it has been sufficiently demonstrated that a properly constituted proceedings under the provisions of the Bihar Public Land Encroachment Act, 1956 (hereinafter referred to as 'the Act') was initiated bearing Misc. Case No. 30 of 2012-13 which was subsequently converted into Encroachment Case No. 5 of 2012-13 and in which notices were served on the petitioners who also have responded thereto by filing their replies, copies of which is placed at Annexure-E series and whereafter final order has been passed on 5.5.2014 placed on record vide Annexure-I to the supplementary counter affidavit.

It is further submitted in the supplementary counter affidavit that thereafter notices have again been issued to the petitioners on 25.5.2014 requiring removal of the encroachment but the petitioners have moved this Court in the present proceedings.

I have heard Mr. Choudhary learned counsel for petitioners and learned counsel for the State.

The sum and substance of argument of Mr. Choudhary in

support of the case of the petitioners is that all of them have constructed their respective houses vide allotment made in their favour under the Indira Awas Yojana on Plot No. 2143 and since the encroachment relates to Plot No. 2118, it does not concern the petitioners.

Contesting the prayer made by the petitioners it is submitted by Ms. Kumari Amrita learned G.P.10 that although initially the scheme under the Indira Awas Yojana provided for giving finance for construction of house only but subsequently the scheme has been modified and presently even lands are being allotted to the landless along with finance but in so far as the present petitioners are concerned, they would be governed under the old scheme where finance was given to them for construction of house on their own land and the petitioners in the process have encroached on public land

With reference to the representation of the petitioners present at Annexure-E series she submits that the petitioners themselves have in fact, prayed for allotment of portion of such land which has been encroached by them in the process of construction of their houses under the Indira Awas Yojana.

Responding to the issues Mr. Choudhary has submitted that in the circumstances existing the petitioners be given liberty to

approach the Collector of the District in appeal under section 11 of 'the Act' and since it is under a Government Scheme that the houses have been constructed by the petitioners, the petitioners would be praying for condonation of the default if any.

I have heard learned counsel for the parties and I have perused the materials on record.

Although the writ petition was filed on receipt of a notice dated 21.5.2013 but the records manifests that initially a miscellaneous case was registered as against the petitioners bearing Misc. Case No. 30 of 2012-13 which was converted into Encroachment Case No. 5 of 2012-13 and whereunder the notices have been issued. The supplementary counter affidavit also manifests that the said proceedings were initiated in the light of an order passed by this Court in C.W.J.C.No.1144 of 2012. It is mentioned that a contempt application was filed for non-compliance of the order passed by this Court and in compliance whereof the final orders were passed on 5.5.2014.

Taking note of the submissions made by the counsel for the parties as well as the fact that the final order has been passed by the Circle Officer, Ratni, Fareedpur, District Jehanabad during the pendency of the writ petition which order is appealable under Section 11 of 'the Act' and as also taking into consideration that

the petitioners claim settlement of the land over which they have constructed the house under the Indira Awas Yojana, I am of the opinion that the petitioners may raise all issues as raised herein by way of appeal before the Collector.

Since the impugned order present at Annexure-I of the Supplementary counter affidavit has been passed on 5.5.2014 i.e during the pendency of the present proceedings, the same shall remain stayed for a period of four weeks from today and during which period the petitioners should file their appeal along with a petition for condonation of delay and which shall be considered and disposed of by the Collector of the district in accordance with law and after hearing the parties bearing in mind the pendency of the issue before this Court.

The writ petition is disposed of with the direction and observations aforementioned.

(Jyoti Saran, J)

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