

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.3162 of 2013

=====

Mazhar Imam @ Manzar Imam, son of Late Abdur Rasheed, resident of Mohalla-Karbigahiya, P.S.-Jakkanpur, District- Patna.

.... Petitioner

Versus

1. The State of Bihar.
2. The A.D.M., Patna.
3. The Anchal Adhikari, Patna Sadar, Patna.
4. The Chief Engineer, Department of Irrigation, (Water Resources Department), Flood Control Circle, Patna.
5. The Superintending Engineer, Punpun Flood Control Circle, Anisabad, Patna.
6. The Executive Engineer, Punpun Flood Control Circle, Patna City, Patna.]
7. The Sub-Divisional Officer, Sone Nahar (Avar Pramandal), Punpun Flood Control Office, Naubatpur, Patna.
8. The In-charge, Sub-Divisional Officer, Avar Pramandal, Irrigation Department Division No.1, Patna City, Karbigahiya Office, Patna.

.... Respondents

=====

Appearance :

For the Petitioner/s : Mr. Farooque Ahmad Khan, Advocate

For the Respondent/s : Mr. Sanjay Kumar Ojha, AC to GP-18.

=====

CORAM: HONOURABLE DR. JUSTICE RAVI RANJAN
ORAL JUDGMENT

Date: 18-09-2015

The petitioner seeks quashing of the order dated 23.01.2013, so far as this petitioner is concerned, passed in Encroachment Case No.12/2012-13 by the Anchal Adhikari, Patna Sadar, Patna as contained in Annexure-1.

It appears that in view of the application made on behalf of the Irrigation Department of the State of Bihar, the Encroachment Case No.12/2012-13 was initiated with respect to several plots including Plot No.610 in which the petitioner has been shown to have encroached upon an area measuring 720 Sq.ft. After declaring the petitioner and others are encroachers, they have been directed to

vacate the land of the Irrigation Department within two weeks, otherwise, they have been threatened to be forcibly evicted from the land. Vide order dated 25.02.2013 passed in this case, the respondent was directed not to take consequential steps for forcible eviction of the petitioner during the pendency of the writ application.

It appears from perusal of the impugned order that the concerned land was leased in favour of one Karim Bux, the predecessor-in-interest of the petitioner, on 6.12.1915 for the purpose of residence for which rent was to be charged and, in view of that, the name of his predecessor-in-interest, namely, Karim Bux was entered in the survey *Khatiyani* who had constructed house over that. The petitioner and his family members claim to be residing in the house constructed over the land and are paying rent to the Department concerned. The Circle Officer has noticed that the petitioner has produced settlement agreement, municipal survey *Khatiyani*, holding tax receipt and letter no.317 dated 12.12.1988. The case of the petitioner has been considered and finding has been recorded holding that though the name of Gulab Khan stands entered with respect to Plot No.610 in the municipal survey record and since the petitioner himself says that the land was settled in the year 1915 which was subsequently entered in favour of the aforesaid Gulab Khan in municipal survey record and predecessor-in-interest of the petitioner has been shown as occupier in the year 1933 and since he being the

successor-in-interest is paying rent to the Department, the aforesaid fact goes to show that title of the land is with the Irrigation Department and, therefore, it has been held that the petitioner cannot reside there against the will of the title holder and after declaring him as encroacher, he has been further directed to vacate the land.

Learned counsel for the petitioner raises a question in this writ application that when admittedly the Plot No.610 was settled with his predecessor-in-interest, namely, Karim Bux and thereafter, it was entered in the municipal survey Khatiyani in the year 1933 showing his successor-in-interest as occupier of the aforesaid plot and further that the same was settled for the purpose of construction of a house on the plot and house was built by the predecessor-in-interest in which the petitioner and his family members are continuously residing after settlement, they cannot be termed as encroacher and even if the Department wants to vacate them, the forum would not be the authority under Bihar Public Land Encroachment Act (hereinafter referred to as "the Act"). The petitioner has given his genealogical table also in paragraph 6 of the writ application showing that Karim Bux was his predecessor-in-interest, which has not been denied by the respondents. The petitioner has placed reliance upon a decision of this Court in the case of *Dr. Tribhuwan Singh Vs. The State of Bihar & Ors. reported in 2004 (1) PLJR 778* holding that even if he is termed as trespasser, a proceeding cannot be initiated for his removal under

the provisions of the Act.

In the present case also, it has not been stated by the respondents in its counter affidavit that after expiry of period of settlement, any notice was given to the petitioner to vacate the land. Even if it is assumed that such notice was given and, thereafter, the petitioner is occupying the premises unauthorizedly, in my considered opinion, the petitioner cannot be evicted from the premises under the provisions of the Act. The respondents have also not questioned the fact of petitioner being successor-in-interest of the settlee. It does not appear from the impugned order of the Circle Officer that such issue was ever raised before him and it has been discussed and decided.

In such a situation, the order of Circle Officer, so far as the petitioner is concerned, cannot be sustained in law and accordingly, the same is quashed and set aside to that extent only. However, the respondents would be at liberty to initiate a proceeding before any competent forum for getting the land vacated. If raised, such issue would have to be decided on its own merit and in accordance with law by the concerned competent forum.

Accordingly, this writ application stands allowed.

(Dr. Ravi Ranjan, J)

V.K. Pandey/-

U			
---	--	--	--