

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.6971 of 2005

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Md.Naseem Alam son of Late Abdul Gaffar, resident of Mohalla Purani Bazar, At & P.O. Narkatiaganj, P.S.Shikarpur, District West Champaran Petitioner/s

Versus

1. The State of Bihar through the District Collector, West Champaran at Bettiah
 2. The Collector, West Chamapran at Bettiah
 3. Shri Rahul Singh, IAS, District Magistrate & Collector, West Champaran at Bettiah
 4. Sub-Divisional Officer-cum-Sub-Divisional Magistrate, Narkatiaganj Sub-Division at Narkatiaganj, West Champaran
 5. Anchal Adkhikari, Narkatiaganj Anchal, At & P.O.Narkatiaganj, P.S.Shikarpur, District West Champaran
 6. Nagar Panchayat through its Executive Officer, Nagar Panchayat Narkatiaganj, At & P.O.Narkatiaganj, P.S.Shikarpur, District West Champaran
 7. Shri Bindu Kumar, Executive Officer, Nagar Panchayat at Narkatiaganj, P.O. Narkatiaganj, P.S.Shikarpur, District West Champaran
 8. Shri Krishna Paswan, President, Harijan Mukti Morcha, resident of Mohalla Purani Bazar, At & P.O. Narkatiaganj, Nagar Panchayat, Ward No.6, P.S.Shikarpur, District West Champaran
 9. Md.Sabir Ali S/o Late Adalat Khan, resident of Mohalla Purani Bazar, Narkatiaganj, Nagar Panchayat Ward No.6, At & P.O. Narkatiaganj
- Respondent/s
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Appearance :

For the Petitioner/s : Mr. Manindra Kumar, Advocate
Mr.Anurag Pandey, Advocate

For the Respondent Nos. 1 to 8 : None

For the Respondent No.9 : Mr.Satyavarat Verma, Advocate

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CORAM: HONOURABLE MR. JUSTICE BIRENDRA PRASAD VERMA

ORAL JUDGMENT

Date: 28-04-2015

Heard learned counsel appearing on behalf of the petitioner and learned counsel appearing on behalf of the respondent no.9. However, none appears on behalf of the remaining respondents including the respondent State of Bihar and its functionaries, though the names of learned counsel appearing on their behalf are printed in the daily cause list.

2. The petitioner is aggrieved by the order dated 21.08.2000 (Annexure-3) passed in Encroachment Case No.2 of 2000-2001 by the respondent Anchal Akhikari, Narkatiaganj whereby the father of the petitioner Dr. Gaffar was declared encroacher over a plot of land bearing Khata No. 6, Khesra No. 243 area 6 dhurs

recorded as gair mazarua malik land in the revenue record and it was directed that he should be given a notice for vacating the land in question. The petitioner is also aggrieved by the appellate order dated 15.04.2005 (Annexure-4) passed by the District Collector, West Champaran, Bettiah in Case No. 72 of 2000-2001 whereby the appeal preferred against the original order (Annexure-3) was dismissed and the order passed by the respondent Anchal Adhikari, Narkatiaganj was affirmed.

3. At this place, it would be relevant to mention here that earlier this writ petition was heard and finally dismissed by the judgment and order dated 16.08.2005 passed by a Bench of this Court (Coram: Barin Ghosh, J., as his Lordship then was). The petitioner being aggrieved by the aforesaid judgment and order preferred LPA No. 1056 of 2005, which was finally allowed by a Division Bench of this Court by order dated 01.07.2013 and the earlier order dated 16.08.2005 passed by the learned Single Judge was set aside and the matter was remitted back for fresh decision by the writ Court. Accordingly, the matter has been placed for consideration once again before this Court.

4. Learned counsel appearing on behalf of the petitioner submits that his father was in possession over the land in question for last several years and after death of his father, he is coming in possession over the same. It is also submitted that a double storeyed building belonging to the petitioner is standing over the land in question. According to the learned counsel, the land in question was settled by the Ex-Landlord of Bettiah Raj in favour of his father and since then the land in question was coming in his possession and after his death, the said land is in possession of the petitioner. However, despite order dated 25.07.2005 passed earlier by a Bench of this Court, the petitioner has failed to produce any document in support of his claim of such settlement of the land in question. Even after remand

by the LPA court, no document has been brought on the record by the petitioner in support of his claim for settlement of the land in question.

5. In above view of the matter, this Court could have dismissed the writ petition by holding that the petitioner is an encroacher over a piece of public land, but while going through the impugned orders as contained in Annexures- 3 and 4, this Court finds that the procedures prescribed under The Bihar Public Land Encroachment Act, 1956 (hereinafter to be referred to as “the Act”) have not been followed by the Anchal Adhikari before passing impugned order dated 21.08.2000 (Annexure-3). There is no finding either in the order passed by the respondent Anchal Adhikari or the respondent District Collector that the land in question is a public land. This Court further does not find that in view of the claim of settlement raised on behalf of the petitioner, either any evidence was recorded or an enquiry was conducted as mandated under Sections 5 of the Act.

6. Under the scheme of the Act, a proceeding is required to be initiated under Section 3 of the Act and thereafter notice is required to be issued to a person who is alleged to have encroached upon the public land. Thereafter, the person against whom such notice is issued is entitled to file his defence under Section 4 of the Act. The defence raised on behalf of such person is required to be treated as the defence raised on behalf of the defendant in a properly framed suit for removal of such encroachment. Thereafter, evidence is required to be recorded and enquiry, if any, is required to be conducted and finally the matter is required to be heard under Section 5 of the Act and only thereafter, final order is required to be passed Under Section 6 of the Act by the Collector under the Act. The order passed by the Collector under the Act is appealable in terms of Section 11 of the Act.

7. Coming to the present case, on going through the records, this Court does not find that the procedures prescribed under the law have been complied with by the respondent Anchal Adhikari before passing the final order dated 21.08.2000. The respondent District Collector while passing the impugned appellate order dated 15.04.2005 has failed to take into consideration the aforesaid aspect about non-compliance of the procedures prescribed under the Act.

8. As indicated above, except the respondent no.9, the learned counsel appearing on behalf of the remaining respondents have chosen not to appear and contest this matter when this matter is on the Board for the last several dates and their names are printed in the daily cause list. Even learned counsel appearing on behalf of the respondent no.9 has not been able to show that the procedure prescribed under the Act was followed before passing the impugned final order.

9. In above view of the matter, this Court is of the opinion that the entire matter requires re-consideration and a fresh decision from the stage of the respondent Anchal Adhikari, the Collector under the Act.

10. For the reasons recorded above, the impugned original order dated 21.08.2000 (Annexure-3) and the impugned appellate order dated 15.04.2005 (Annexure-4) are hereby set aside and the matter is remitted back to the respondent Anchal Adhikari for starting the proceeding afresh from the stage of Section 3 of the Act and thereafter, he shall proceed further strictly in accordance with law.

11. The writ petition stands allowed to the extent indicated above. However, the parties are left to bear their own costs.

(Birendra Prasad Verma, J)

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