

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.3222 of 2015

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Tarkeshwar Singh S/o Late Lakshman Singh, resident of village Bheriya,
P.S. Dehri, District Rohtas.

.... Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Department of Revenue, Bihar, Patna.
2. The District Magistrate, Rohtas at Sasaram.
3. The Sub-Divisional Officer, Dehri, District Rohtas.
4. The Anchaladhikari, Dehri, District Rohtas.
5. The Mukhiya, Gram Panchayat Mathuri, P.S. Dehri, District Rohtas.

.... Respondent/s

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Appearance:

For the Petitioner/s : Mr. Rajani Kant Singh, Advocate
For the Respondent/s : Mr. Ajit Pratap Singh, SC-15
Mr. Yogendra Kr. Singh, A.C. to SC-15

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CORAM: HONOURABLE MR. JUSTICE JYOTI SARAN
ORAL ORDER

3 06-05-2015 Heard Mr. Sudama Singh, learned counsel for the

petitioner and learned counsel for the State.

The petitioner has questioned a notice issued by the Circle Officer, Dehri in the district of Rohtas which neither bears the date nor a number nor it reflects whether it has been issued under any proceeding. A copy of such notice is placed at Annexure-3 and whereby the petitioner has been charged with encroachment over a plot bearing Khata No. 431, Khesra No. 1031 admeasuring 0.16 decimals of which the respondents intend to construct an Anganbari Centre on two decimals.

The notice was questioned by the petitioner before this

Court *inter alia* on grounds that it has been issued without drawing any properly constituted proceedings and on grounds that the land is ***Bakast*** in nature and no more remains a public land.

The petitioner also relies upon a proceeding arising from Case No. 3 of 1983-84 / 25 of 1983 which according to the petitioner has been decided in their favour. It is further contention of the petitioner that being aggrieved by the proposed action they have also filed Title Suit No. 1184 of 2014 for declaration of their right, title, interest and possession over the land in question.

It is taking note of the circumstances that the respondents were directed to file their reply and following which the Circle Officer, Dehri, District-Rohtas has responded by filing a counter affidavit but the same is silent as to the foundation on which the notice rests. Nowhere in the counter affidavit the Circle Officer has discussed whether he has registered a case under the Public Land Encroachment Act and whether he has followed the procedure provided thereunder. By simply relying upon a survey entry recording the land as '*Anabad Sarba Sadharan*' he has just tried to justify the notice.

The purported action of the Circle Officer is in the teeth of the provisions of the Bihar Public Land Encroachment Act, which cannot be upheld and the same is quashed and set aside.

This order would not preclude the Circle Officer, Dehri, District-Rohtas to proceed against the petitioner in accordance with law and by strictly following the provisions of the Bihar Public Land Encroachment Act, 1956 and any order to be passed by the Circle Officer should be after due opportunity of hearing to the petitioner.

The writ petition is allowed.

(Jyoti Saran, J)

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