

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.1995 of 2015

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1. Gajadhar Prasad Singh son of Late Newa Lal Pd. Singh, resident of Mo. North Hajipur Ward No- 13, (Khagaria), P.S. - Chitragupta Nagar District- Khagaria.
 2. Kamal Kumar
 3. Bimal Kumar both sons of Late Awadh Bihari Gupta, residents of Gupta Market, Rajendra Chowk (Khagaria) P.S and district- Khagaria.

.... Petitioner/s

Versus

1. The State of Bihar
2. The Collector, Khagaria.
3. The Sub Divisional Officer, Khagaria
4. The Circle Officer, Khagaria, District- Khagaria.

.... Respondent/s

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Appearance:

For the Petitioner/s : Mr. Dronacharya, Advocate
For the Respondent/s : Mr. Sheo Shankar Pd., SC-10

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CORAM: HONOURABLE MR. JUSTICE JYOTI SARAN

ORAL JUDGMENT

Date: 04-05-2015

Heard Mr. Dronacharya, learned counsel appearing on behalf of the petitioners and Mr. Shiv Shankar Prasad, learned Standing Counsel No. 10 for the State.

The three petitioners have questioned a notice issued by the Circle Officer, Khagaria in purported exercise of power as a 'Collector' under the Bihar Public Land Encroachment Act, 1956 (hereinafter referred to as 'the Act') whereby vide notice dated 16.11.2014 they have been directed to appear and file show cause as against the charge of encroachment. Altogether 91 persons inclusive of these petitioners have been charged with encroachment on public



land which is in the nature of public road. Insofar as the present writ petition is concerned, petitioners have been charged with encroachment on Plot No. 685 to the extent of one dhur, insofar as petitioner no. 1 is concerned, on plot no. 671 to the extent of 2 dhurs insofar as petitioner no. 2 is concerned and on plot no. 674 to the extent of two dhurs insofar as petitioner no. 3 is concerned.

According to Mr. Dronacharya, the petitioners responding to the charges have filed their reply to the show cause before the Circle Officer, a copy of which is placed at Annexure-B to the counter affidavit filed today on behalf of the Circle Officer and according to the Circle Officer the show cause reply is not satisfactory.

Mr. Dronacharya, learned counsel appearing on behalf of the petitioners with reference to an enquiry of the Additional Collector, Khagaria dated 22.6.1997 stated that whereas the width of the public road is only 40 feet and the construction of these petitioners are beyond the said width but yet on a complete misappreciation of the factual position that the Circle Officer has got a demarcation done behind the back of the petitioners in respect of the houses and which is factually incorrect.

This matter was earlier heard by this Court on 2.4.2015 when this Court taking note of the complaint of the petitioners had directed a filing of the counter affidavit and until further orders the



proceedings in Encroachment Case No. 3 of 2014-15 had been stayed. The matter was again heard on 1.5.2015 when it was complained that the Circle Officer, Khagaria was not abiding by interim order and had got the houses demarcated. This Court considering the seriousness of the matter had directed an explanation from the Circle Officer and which has since been filed today and in paragraph-10 and 11, it is stated that further proceedings in Encroachment Case has been stayed in the light of the orders passed by this Court.

Mr. Dronacharya also submits that nothing further has happened though the houses have been demarcated without informing the petitioners.

The proceedings initiated under 'the Act' are not an empty formality and though it is in a nature of a summary proceeding but the procedure to be followed, is clear. The obligation cast upon the Circle Officer while acting as a 'Collector' under the Act stands well elucidated and the Circle Officer would be well advised not to surpass the same. Section 5 of the Act casts an obligation upon the Circle Officer to provide a hearing to the alleged encroachers before passing a final order under Section 6. The legislature having provided a procedure to be followed by the Circle Officer, he is required to work within the parameters of 'the Act'.

Since the matter is yet pending for final decision at the level

of the Circle Officer, this Court would not express any opinion on the merit of the case. Suffice it to say that a fresh measurement needs to be carried out by the Circle Officer after issuing advance notice to these petitioners as well as other encroachers and who should be provided with the measurement report and also given reasonable opportunity to rebut the same. The Circle Officer may thereafter pass a final order after giving opportunity of hearing to the petitioners but until such time that the statutory procedure to be followed, is completed, the Circle Officer would restrain himself from carrying out any demolition.

The writ petition is disposed of with the direction aforementioned.

(Jyoti Saran, J)

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