

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.10330 of 2015

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1. Sanjeev Kumar Pathak @ Alakh Pathak son of Sri Hari Kant Pathak, resident of village- Marar, P.O.- Jitwarpur, P.S.- Rahika, District- Madhubani (Bihar)
 2. Vikash Chandra Mishra @ Vikash Mishra son of Late Dasrath Mishra resident of village and P.O.- Simri P.S.- Bisfi, Block- Bisfi, District- Madhubani (Bihar)

.... Petitioner/s

Versus

1. The State of Bihar
2. The Controller of the District, Madhubani
3. The Sub Divisional Magistrate (S.D.M.), Sadar, Madhubani
4. The Circle officer, Rahika, Madhubani

.... Respondent/s

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Appearance:

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

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CORAM: HONOURABLE MR. JUSTICE JYOTI SARAN
ORAL ORDER

2 20-08-2015

Heard the parties.

The petitioners are aggrieved by the notice dated 27.6.2015 of the Circle Officer, Rahika in the District of Madhubani whereunder the petitioners have been directed to remove the encroachment from a piece of land bearing Khata No. 508 (old), 1922 (new), Khesra No. 2800 (old), 8355(new) situated in Mauja-Jagatpur Marar in the District of Madhubani which according to the Circle Officer is in the nature of public land.

It is the contention of the petitioners that the notices were earlier issued on 28.2.2015 to the two petitioners charging

them with encroachment and when the petitioner no. 2 represented before the Circle Officer on 24.6.2015 praying for some time to file purposeful reply but on 27.6.2015 that the notice has been issued.

Mr. Jitendra Kishore Verma, learned counsel for the petitioners while questioning the notice *inter alia* on grounds that no sufficient time has been granted to the petitioner to file his reply also questions the same on grounds that it does not reflect whether any proceedings have been registered under the Bihar Public Land Encroachment Act, 1956 (hereinafter referred to as 'the Act').

Mr. Shiv Shankar Prasad, learned Standing Counsel-10 contesting the prayer made in the writ petition submits that this writ petition is premature for it is only at the stage where the Circle Officer has desired to examine the documents supporting the right of the petitioners to occupy the land that the present writ petition has been filed.

I have heard learned counsel for the parties and I have perused the records. The notices impugned at Annexure-2 series which are dated 28.2.2015 and at Annexure-5 which is dated 27.6.2015 issued by the Circle Officer, Rahika does not bear any case number although it is purportedly issued under the provisions

of 'the Act'. Annexure-4 is an application of the petitioner no. 2 filed on 24.6.2015 before the Circle Officer, Rahika praying for time to file his reply and which has admittedly been denied to him as the notice has been issued on the very next date fixed on 27.6.2015.

In the circumstances, the notice issued by the Circle Officer dated 27.6.2015 is set aside and the matter is remitted to the Circle Officer, Rahika to provide reasonable opportunity to the petitioners to establish their claim and in case the Circle Officer intends yet to proceed with the matter, he shall proceed in observance of the statutory provision of 'the Act' by registering the proceedings affording sufficient opportunity to the petitioners to adduce evidence in support of their claim as well as by giving them opportunity of hearing before passing a final order in the proceeding.

The writ petition is disposed of accordingly.

(Jyoti Saran, J)

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