

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.779 of 2015

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1. Ram Kumar Agrawal Son of Late Moti Lal Agarwal r/o Vill.-
Bahadurganj, P.S.-Bahadurganj, Dist.- Kishanganj.

.... Petitioner/s

Versus

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

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Bhola Prasad, Adv.

For the Respondent/s : Mr. Ashok Kumar Choudhary, AAG-13

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CORAM: HONOURABLE MR. JUSTICE JYOTI SARAN
ORAL ORDER

2 12-03-2015 Heard Mr. Bhola Prasad learned counsel for the petitioner
and Mr. Ashok Kumar Choudhary, learned AAG 13 for the State.

The petitioner in substance questions a notice issued by the Collector under the Bihar Public Land Encroachment Act, 1956 (hereinafter referred to as 'the Act') who in the present case would be the Sub Divisional Magistrate, Kishanganj the respondent No. 3 herein, whereby the petitioner has been show caused to respond against the encroachment leveled against him relatable to a plot bearing Khata No. 314 Khesra No. 428 having an area of (6+2) X 39 square ft. falling in Ward No. 29 of Mauza Line in the District of Kishanganj which according to the respondent is a public land and stands encroached by the petitioner.

Mr. Bhola Prasad learned counsel appearing on behalf of



the petitioner with reference to the notice present at Annexure-4 submits that the petitioner is a holder of some plots of land lying in Ward No. 30 of Mauza- Line and not Ward No. 29. To support his contention Mr. Prasad has relied upon certain sale deeds present at Annexure 1 series, the municipal receipts present at Annexure 2 series and the mutation order and to submit that the encroachment charge leveled against the petitioner is upon a misappreciation of the factual position. He submits that to clarify the position, the petitioner filed an application on 4.9.2014 (Annexure-5) which was rejected by the Sub Divisional Magistrate, Kishanganj vide Annexure-6. He submits that the petitioner has filed a detailed application in the case so instituted bearing Case No. 2 of 2014-15. Mr. Prasad learned counsel appearing on behalf of the petitioner further submits that if proper measurement is carried out under the supervision of a competent authority, the facts would be clear.

The arguments of Mr. Prasad has been contested by Mr. Choudhary, learned Additional Advocate General No. 13 who submits that the writ petition is itself pre-mature since by the notice present at Annexures- 4 and 6, the Sub Divisional Magistrate has merely directed the petitioner to present his papers to support his possession.

Having heard learned counsel for the parties and taking

note of the nature of contest raised in the present writ petition, this Court is not persuaded to grant indulgence on the merits of the claim raised by the petitioner at this stage when the matter is pending adjudication before the Sub Divisional Magistrate. The writ petition is thus disposed of with a liberty to the petitioner to raise all issues as raised in the writ petition with supportive documents by filing a detailed response before the Sub Divisional Magistrate, Kishanganj in Encroachment Case No. 2 of 2014-15 and which shall be considered and disposed of by the Sub Divisional Magistrate in accordance with law and after giving an opportunity of hearing to the petitioner. The Sub Divisional Magistrate would also carry out measurement of the area allegedly encroached by the petitioner after notice and in presence of the petitioner, so as to ascertain the extent of encroachment made by him.

The petitioner would appear before the Sub Divisional Magistrate along with his detailed response on/or before 23.3.2015 along with a copy of this order and who shall proceed to dispose of the matter in the light of the stipulations made hereinabove.

The writ petition stands disposed of with the direction aforementioned.

(Jyoti Saran, J)

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