

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.18554 of 2011

1. Turant Jha Son Of Late Surat Jha Resident Of Village- Khajura Post-Banke Via-Madhepur, District-Madhubani.

2. Lakshmi Jha Son Of Late Surat Jha Resident Of Village-Khajura Post-Banka Via-Madhepur, District-Madhubani.

.... Petitioners

Versus

1. The State Of Bihar

2. The Collector, Madhubani

3. The Additional Collector, Madhubani.

4. The Deputy Collector, Land Reforms, Jhaniharpur, Madhubani.

5. The Anchal Adhikari, Madhepur, District-Madhubani.

6. The Circle Officer, Madhepur, District-Madhubani.

7. Mishri Lal Mukhia S/o Late Buni Mukhia, resident of Village Khajura, P.S. Madhepur, District Madhubani

.... Respondent/s

Appearance :

For the Petitioners : M/s Kalikant Jha, Manish Jha and Ratan Kumar Kumar, Advocates

For the State : Mr. Vijay Bharti, AC to SC 26

For the Respondent No. 7 : Mr. Suraj Narain Yadav, Advocate

CORAM: HONOURABLE DR. JUSTICE RAVI RANJAN

ORAL JUDGMENT

Date: 03-09-2015

Heard the parties.

Petitioners are aggrieved by Annexure 2 which is a notice issued under Section 6(e) of the Bihar Public Land Encroachment Act, 1956 directing him to vacate the land concerned and after removal of encroachment from Plot nos. 3135, 3159 and

599.

Learned counsel appearing for the petitioners has submitted that the order is ex parte as they have not been given reasonable opportunity. It is pointed out that even after the stay of the Annexure 2 vide order dated 7.3.2012 another identical notice has been issued vide Annexure 19 appended with supplementary affidavit filed by the petitioners under the similar provision for identical purpose.

Learned counsel appearing for the State has submitted that the same was issued by mistake and apology has been tendered in the concerned contempt case by the Circle Officer.

Learned counsel appearing for the newly added respondent has submitted that it would be apparent from Annexure I/2 that in fact Ajay Kumar Jha son of petitioner no. 2 had appeared in the case and submitted Xerox copies of several documents. However, the petitioners deliberately did not appear. From perusal of the ordersheet which has been appended as Annexure D to the counter affidavit filed on behalf of the State it is apparent that notices were issued and served upon the petitioners and they did not appear and, thereafter, final order dated 26.8.2011 was passed. Learned counsel points out that on 9.7.2011 it is stated that though there is service report, the opposite parties, i.e. the petitioners in this case were

absent and on the next very date final order has been passed, thus, it appears that the reasonable opportunity was not given.

This Court would not agree to such submission having been made on behalf of the petitioners as it was the duty of the petitioners to appear and place their respective cases before the Circle Officer. However, it is also admitted position that the son of the petitioner no. 2 appeared in the matter and file certain documents but not a single document has been considered by the Circle Officer concerned while passing final order dated 26.8.2011.

Thus, in my considered view the order impugned cannot be sustained in its present form. Accordingly, the same is quashed and set aside and the notice contained in Annexures 2 and 19 are also as a consequence thereof are quashed.

The matter is remitted back to the Circle Officer, Madhepur, District Madhubani who shall consider the matter afresh and pass a reasoned order after granting reasonable opportunity to these petitioners as well as other concerned persons including the newly added respondent. The petitioners and private respondent would be required to appear before the Circle Officer along with their written statements and documents, if any, on 5th of October, 2015. Thereafter, the concerned Circle Officer would fix the date and hear the parties and taken final decision in the matter within four weeks.

It is made clear that this Court has not formed any opinion with respect to the merit of the cases of respective parties.

This writ application stands allowed to the extent as indicated above.

(Dr. Ravi Ranjan, J)

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