

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.16428 of 2016

Saroj Devi, Wife of Late Pannu Paswan @ Shyamnandan Paswan Resident of
village - Dahibhatta, P.S. Masaurhi, Distt. - Patna

.... Petitioner

Versus

1. The State of Bihar through its Chief Secretary, Govt. of Bihar, Patna
2. The Commissioner Land Reforms Department, Bankipur, Patna Division, Patna
3. The Collector, Patna
4. The Additional Collector, Patna
5. The Deputy Collector, Patna Sadar
6. The Sub Divisional Officer, Masaurhi, Distt. Patna
7. The Block Development officer, Masaurhi, Distt. Patna
8. The Circle officer / Anchal Adhikari, Masaurhi, Distt. Patna

.... Respondents

Appearance :

For the Petitioner : Mr. Madhuri Lata, Advocate
For the State : M/s Rishi Raj Sinha, SC19 and
Avanindra Kumar Jha, AC to SC 19

CORAM: HONOURABLE DR. JUSTICE RAVI RANJAN

ORAL JUDGMENT

Date: 18-11-2016

Heard parties.

Petitioner is aggrieved by order dated 31.8.2016 passed
by Circle Officer, Masaurhi by which direction has been given to
demolish part of his house and notice to such extent was issued under
Form II vide Annexure 2. It is contended that part of the house has
already been demolished.



It is urged on behalf of petitioner that 6 decimals of land of plot no. 919 having an area of 51 decimals was transferred in the name of the husband of the petitioner in the year 1961 through a registered deed of gift and, thereafter, jamabandi was created in his name and in the Register II also the name stands entered. Till 1988-89 the rent receipts were granted by the State but, without considering the aforesaid fact, the order has been passed. Thereafter, again a notice has been issued vide Annexure 5 under Form I to show cause as to why the entire encroachments, i.e., from the remaining 6 decimals of land, which stands admittedly recorded in the name of the husband of the petitioner, should also not be removed.

The Circle Officer, Masaurhi is present with the entire original records of the case. It appears from the original records that Encroachment Case No. 1/2016-17 was initiated on 15.6.2016 on the basis of certain orders passed by the Sub Divisional Officer, Masaurhi in Misc. Case No. 952 of 2012 in compliance of some order which was passed by this Court. Thereafter, a notice was issued under Form I upon the petitioner and others. The petitioner appeared and filed her documents showing that her husband got that property vide a deed of gift executed and registered in the year 1961 itself. Not only that his name appears in Register II but rent receipts were also issued till 1988-89. Upon 6 decimal of land, the husband of the petitioner had



already constructed a house in which the petitioner is residing. Thereafter, a final order was passed on 31.8.2016 holding the petitioner has encroached upon 2.22 decimals of land of plot no. 919 of khata no. 190 and a notice was issued under Form II for removal of the same. Thereafter, a part of that house has already been demolished but part of that could not be demolished in view of the interim order passed by this Court. The matter does not end here as it appears that after holding that the petitioner has only encroached only 2.22 decimals of land, a fresh notice under Section 3 of the Bihar Public Land Encroachment Act, 1956 (hereinafter referred to as 'the Act') has been issued on 20.9.2016 on the 6 decimals of land in the same proceeding in which final order was already passed and, on which, admittedly, an old house is standing. The Circle Officer himself, who is present here, has admitted before this Court that, in Register II, the name of husband of the petitioner stands recorded.

From the original records, it appears that it is not a fact that a fresh proceeding was initiated but in the same proceeding again a notice has been issued even after a final order was passed holding that the petitioner has encroached 2.22 decimals of land beyond the 6 decimals on which old house is standing.

The impugned order dated 31.8.2016 is also a non speaking one and it is not stated as to how the Circle Officer has

come to the conclusion that 2.22 decimals of land is public or Government land and the petitioner has encroached upon that. No document etc. has been referred at all for establishing the same.

However, in view of the fact that the petitioner herself claims only six decimals of land of plot no. 919, the District Magistrate, Patna is directed to measure and demarcate 6 decimals of land for which admittedly a jamabandi is running in the name of the petitioner or her husband as has been admitted by the Circle Officer and no part of such land should be touched but the rest portion, i.e., beyond the 6 decimals upon which the house already, is found encroached, can be demolished.

In my view, until a jamabandi is running in the name of the petitioner or her husband, a fresh notice under Section 3 of the Act considering that land to be a public or Government land cannot be issued for removal of encroachment because the State itself has created jamabandi and has admittedly accepted rent and granted rent receipts.

Accordingly, the notice dated 20.9.2016, as contained in Annexure 5, is quashed and set aside as the same could not have been issued after passing the final order under Section 6 of the Act. The order dated 31.8.2016 clearly says that the petitioner has only encroached 2.22 decimals of land out of that 6 decimals, therefore,

again issuing a notice in the same proceeding for 6 decimals of land would not be proper till the said jamabandi is in existence.

The petitioner would appear before the District Magistrate, Patna on 19th December, 2016. The District Magistrate would be required to fix a date for measurement and demarcation of 6 decimals of land which the petitioner's husband has got under the deed of gift and for which a jamabandi is already running in the name of petitioner or her husband as admitted by the Circle Officer. On the fixed date, the petitioner would be required to remain present on the plot concerned and the said plot would be measured and demarcated. Thereafter, any demolition work can be started upon the area beyond the aforesaid 6 decimals.

This writ application stands allowed to the aforesaid extent.

However, let the Circle Officer Masaurhi file an affidavit to show as to under what circumstances he, after passing a final order and holding that the petitioner has encroached only 2.22 decimals of land, could have proceeded further to issue a fresh notice under Section 3 of the Act.

Put up on 25.11.2016 under the heading "For Orders" for the aforesaid purpose only.

It is made clear that since the original record is being

returned to the State, let the learned counsel for the State obtain Xerox copy of the entire original records and retain it with him. The entire original records would be required to be produced on the next date also.

(Dr. Ravi Ranjan, J)

Spd/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	22.11.2016
Transmission Date	NA