

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No. 948 of 2016

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Chandrabanshi Singh, Son of late Shital Singh, Proprietor- M/s Shiva Bricks Resident of Mauja Digha, P.S. Digha, P.O.- Digha Ghat, Town and District- Patna. Petitioner.

Versus

1. The State of Bihar through Principal Secretary, Department of Road Construction, Government of Bihar, Patna.
 2. The District Magistrate-cum-Collector, Patna.
 3. The S.D.O. Patna Sadar, Patna.
 4. The D.C.L.R., Patna Sadar, Patna.
 5. The Circle Officer, Patna. Respondents.
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Appearance :

For the Petitioner : Mr. P.K. Shahi, Sr. Adv.
: Mr. Sanjay Kumar (ASG)
For the Respondents: Mr. SC14- DR. ANSHUMAN

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CORAM: HONOURABLE DR. JUSTICE RAVI RANJAN

ORAL JUDGMENT

Date: 09-11-2016

Heard learned counsel for the petitioner and the State.

Perused the records of this case.

The petitioner, being aggrieved by the demolition of his brick-kiln by the State authorities, has approached this Court seeking restoration of possession upon his running brick-kiln and also for compensating him as he has been unlawfully dispossessed by the authorities.

The claim of the petitioner is that the brick-kiln of the petitioner was running on his raiyati land appertaining to Khata No. 708, Khesra No. 135, 136, 137, 138, 150, 151 and 162 measuring 5.31 acres situated in Village-Digha Diyara, Post-



Digha Ghat, P.S.-Digha, District-Patna.

It is contended that jambandi was running in favour of the petitioner and petitioner was also paying rent to the State of Bihar and rent receipts were being granted to the petitioner. His brick-kiln was established decades earlier and the Land Possession Certificate was also issued by the Circle Officer, Patna Sadar on 22.09.1988 (Annexure-3). However, when the rent receipts, later on, were not being granted to the petitioner, he approached this Court by filing CWJC No. 20002 of 2013 which was disposed of by a Single Judge Bench of this Court by the judgment and order dated 15.05.2014 directing the authorities to grant rent receipts to the petitioner and not to disturb possession of the petitioner. However, the State of Bihar preferred LPA No. 34 of 2015 which was allowed by a Division Bench of this Court vide judgment and order dated 15.12.2015 holding that a writ Court cannot decide a disputed question of fact as to whether the petitioner was a settlee from British Crown or not which was being disputed by the State of Bihar. Therefore, the petitioner was directed to get his title declared by the competent Civil Court. The writ petition was dismissed. However, on 07.01.2016, when the petitioner was at his brick-kiln, suddenly, respondent authorities came with the Police and JCB Machine and started demolishing the structures,



Photographs of demolition have already been appended. It is further urged that the petitioner was running brick-kiln for decades. He has appended Annexure-1 and Annexure-2 to show that competent authority had granted permission for running brick-kiln and Bihar State Pollution Control Board had also given approval for operating his brick-kiln.

Petitioner has claimed that during pendency of the writ petition also, despite the interim relief cropped in his favour directing the parties to maintain status quo as existing on 10.02.2016, the authorities have continued with the demolition work.

Counter affidavit and supplementary counter affidavit have been filed on behalf of respondent nos. 2 to 5. A counter affidavit has also been filed on behalf of respondent no. 1.

In a nut-shell, stand has been taken by the respondents that the petitioner is encroacher upon the land which are involved is part of the alignment for construction of Digha-AIIMS Elevated Road Alignment/Ganga Path. Further, the stand of the respondents is that the concerned plots are "Khasmahal" land and, thus, the Government has every right to make a construction in public interest upon it. It has been stated in the counter affidavit that a Division Bench of this Court has allowed the



appeal preferred by the State holding that disputed question of fact as to whether the petitioner's ancestors are settlees of the British Crown or not cannot be decided in a writ petition and, thus, they were given liberty to approach the Civil Court of competent jurisdiction for seeking such declaration. Thus, it is contended that since the petitioner is unauhtorizedly running a brick-kiln over the disputed plots, he has rightly been dispossessed in an encroachment proceeding. It has been urged on behalf of the State that petitioner was noticed but he did not turn up and filed any chit of paper in his support, therefore, a decision is taken to remove the encroachment.

Per contra, Mr. P.K. Shahi, learned senior counsel appearing on behalf of the petitioner has vehemently urged before this Court that no notice was served upon the petitioner. It has been urged that even if a person appears to have encroached a public land, he can only be ousted by following procedures of law laid down under Bihar Public Land Encroachment Act, 1956 (hereinafter referred to as the "Act") as well as the Rules framed under it in exercise of powers conferred by sub-section (2) of Section 20 of the Act. Since no notice was ever served upon him the entire dispossession is arbitrary exercise of the State authority.



Learned counsel for the petitioner has placed reliance upon several decisions rendered in **Amar Nah Pandey & Ors. vs. the State of Bihar & Ors. [1992(2) PLJR 854]**, **Niagree Builders & Developers vs. Ayodhya Singh & Ors. [2001(2) PLJR 587]**, **Ajay Kumar & Anr. vs. Devendra Rai & Ors. [2010 (2) PLJR 518]**, **Bijay Kumar Sinha vs. the State of Bihar [2014(3) PLJR 798]**, **Ranjan Bharti & Ors. vs. the State of Bihar [2011 (4) PLJR 504]** and also in **Kusum Devi & Ors. vs. the State of Bihar & Anr. [2015 (2) PLJR 796]** to impress upon this Court that if there is a *bona fide* dispute of title then Government cannot take unilateral decision in its favour and oust the party from the concerned land in a summary proceeding under the Act.

There is no dispute that the petitioner was in possession of the plots concerned and running the brick-kiln over it under necessary permission or the license granted by the competent authority, as the learned counsel for the State has not been able to point out from his counter affidavits that there is specific denial of such fact. However, it is also a fact that the petitioner's ancestors were settlees from the British Crown has not been accepted by the Division Bench of this Court in its decision rendered in the aforesaid appeal rather it has been held that such



issue can only be decided by a competent court of civil jurisdiction. However, upon such submission of the petitioner that he has been dispossessed without notice issued in the concerned encroachment case, this Court on 02.03.2016 had directed the State authorities to produce the entire original records of Encroachment Case No. 07/2015-16 on 16.03.2016. It appears that, after perusal of the original records, the matter was posted for the next date directing the State authorities to produce the entire order-sheet of the concerned encroachment case along with the copies of notices which were served upon the petitioner along with endorsement of process server. The concerned records have been produced, it appears from the record that an encroachment case was initiated with the purpose of removal of encroachment from the alignment of the concerned Digba-AIIMS Elevated Road Alignment/Ganga Path on 19.11.2015 itself, i.e, even before passing of the order dated 15.12.2015 by the Division Bench in LPA No. 34 of 2015. The order dated 28.11.2015 shows that the petitioner has already been found to have encroached certain land by constructing brick-kiln and, thus, notices were issued upon the encroachers. It has to be understood that such notice was issued under Section 3 of the Act. In the order dated 15.12.2015 its stand recorded that the



encroachers have refused to accept the notice as the Chowkidar/Peon has made relevant endorsement. Though the notice was affixed on the concerned property, none had appeared, therefore, a decision was taken to remove the encroachment and for that purpose notice was again issued to the encroachers to remove encroachment within a week otherwise that would be removed forcibly by taking help of the District Administration. The matter was kept on 24.12.2015. In the order dated 24.12.2015, it is again stated that none had received the notices and, as such, the same was affixed on the property. Since the drive was for the purpose of construction of the concerned scheme, the encroachment was required to be removed in public interest. 07.01.2016 was fixed as date for removal of such encroachment. In the order dated 11.01.2016, it has been recorded that the encroachment has forcibly been removed.

The petitioner has not filed any title suit for declaration of their title after the decision having been rendered by the Division Bench in LPA No. 34 of 2015 but this is also admitted that he was still in possession of the land. Thus, in my considered opinion, he could only have been removed from the land concerned after following proper procedure which the State respondents claim that they have done but the petitioner is to be



blamed as he did not appear in the proceeding. On appraisal of rival claims, following questions would arise for determination:-

- (i) Whether the notices were properly issued under Sections 3 and 6 of the Act.
- (ii) Whether the notices were properly served upon the petitioner.

Since both the issues are intertwined, they have been taken up together for consideration. From the scheme under the Act it is apparent the notice has to be issued first under Section 3 of the Act asking the alleged encroacher to explain as to why the encroachment made by him should not be removed fixing the date of hearing. The relevant provision is extracted and quoted below for better appreciation:-

“3. Initiation of the proceedings-(1) If it appears to the Collector from an application made by any person or upon information received from any sources that any person has made or is responsible for the continuance of any encroachment upon any public land, the Collector may cause to be served upon such person a notice in the prescribed form requiring him to appear on a date which shall not be less than two weeks from the date of service of notice to show cause-

(a) Why he should not be restrained from making



such encroachment by issue of injunctions; or

(b) Why such encroachment should not be removed.

(2) xxx xxx xxxx xxx

(3) xxx xxx xxx xxxx

It is apparent from the above provision of law that notice in prescribed form has to be served upon the encroacher requiring him to appear on a date which shall not be less than two weeks from the date of service of notice. It is nobody's case that the petitioner was making over construction at the relevant point of time, therefore, Section 3(1)(a) would not be relevant for the present purpose. What would be relevant would be Section 3(1)(b).

From perusal of the original records produced by the authorities, it appears that first notice, which has to be a notice under Section 3 in Form I, was issued on 15.12.2015. There is an endorsement on the backside copy of the notice that the petitioner, after perusing the notice and understanding the same had refused to accept, therefore, the notice was affixed upon his door. However, in the aforesaid endorsement, date of attempted service has not been stated. Even the peon, after making the endorsement, has not entered any date. The notice shows that the petitioner is required to appear on 15.12.2015 along with his



show cause and evidence in his favour and answer as to why encroachment should not be removed. The notice was dated 28.11.2015 but what would be relevant would be the date of service of notice not the date of issuance of notice as Section 3(1) of the Act lays down in clear terms that the noticee would be required to appear on the date which shall not be less than two weeks **from the date of service of notice**, therefore, the date was required to be endorsed by the peon, as to upon which date the notice was attempted to be served or was served in aforesaid manner on refusal. Unless that date is available, fixing the date of hearing would be meaningless as it cannot be presumed that the date fixed was after two weeks from the date of service of notice. That apart, there is another discrepancy as the notice dated 28.11.2015 does not appear to be in Form I which is mandatorily required to be done as Section 3 of the Act lays down that the entire description is required to be stated in the notice upon which the notice has allegedly encroached upon that is completely missing. Apart from the above, it is also required to be stated that in case if the noticee fails to appear at the time and place mentioned above, the matter will be decided in his absence. Same is the situation with the notice issued under Section 6(2) of the Act. It is required to be issued in Form II.



This notice also does not refer any plot number or any details of the land including area of encroachment which is required mandatorily. It even does not disclose that the land allegedly encroached by him has been found to be public land and an order has been passed directing him to remove the encroachment. Such endorsements are completely missing from the notice concerned. Apart from the above, there is no date given in the endorsement by the serving peon as to on which date he attempted to serve the notice which was refused and, thus, he affixed the same on the door of the noticee. Aforesaid facts raise serious doubt upon service of notice itself as the petitioner claims the same are afterthought as no time or date of service is disclosed. It has been urged that, in fact, no notice was ever served. Had it been served, there would have been no reason for him for not to appear and contest the case.

That apart Rule 2 of the Rules provided that in case the person made responsible for continuance of the encroachment cannot be traced, the notice shall be served by affixing copy thereof at a conspicuous place and the service shall also be proclaimed by beat of drum and the service of notice should be in the manner prescribed in the sub-rule, i.e., Form I and shall be attested by at least two witnesses. Similarly,



notice under Section 6(2) of the Act shall be in Form II.

In my view, the petitioner has been able to raise serious doubt in the whole procedure followed by the authorities. It appears that everything was being done in hush-hush manner. The notices even do not contain the plot numbers and other the descriptions of land encroached along with area. It is not clear at all as to on which date actually the notice was served. It is even not stated anywhere in the order-sheet also that on which date such notices were served upon the petitioner in aforesaid manner on his refusal. The notice server has also not stated his name or his designation.

In absence of the aforesaid, it is clear that the mandate of Section 3 and the relevant Rule has not been followed as the date of hearing could not have been fixed within two weeks of service of notice. In my considered opinion also, if an encroacher is to be removed then the proceeding laid down under the Act and Rule has to be followed.

Thus, in my view, the entire procedure suffers from the aforesaid fatal flaws and it appears that reasonable opportunity was never given to the petitioner to appear and state his case. As a result, the issues are decided in favour of the petitioner and against the respondents and the proceeding is held



to suffer from the vice of arbitrariness.

Accordingly, the entire proceeding including the orders dated 15.12.2015 and 24.12.2015, which have been passed without granting reasonable opportunity to the petitioner are set aside. It is held that the removal of alleged encroachment was not in conformity with the procedures laid down under the provision of the Act and the Rules, and, as such, the petitioner's dispossession has to be restored at once.

However, the authority concerned would be at liberty to issue fresh notice upon the petitioner and proceed after granting reasonable opportunity to him. It would be required to take a final decision in the matter in accordance with law after considering the reply to the show cause, if given by the petitioner. The petitioner would be required to appear on 22nd December, 2016 before the authority concerned on which date proper notice under Form I would be served upon him by the Circle Officer, Patna Sadar, Patna and, thereafter, two weeks time would have to be granted to him for filing reply. The Circle Officer would proceed to take a decision in this case in accordance with law and bring the encroachment case to its logical conclusion after granting reasonable opportunity to the petitioner following the procedures under the Act and the Rules.



This Court is refraining it from passing any order on claimed compensation as there is a cloud of doubt upon the title of the suit, however, if ultimately the petitioner is able to obtain any judgment/decreed in his favour of any competent court then the option to seek compensation in accordance with law by approaching the competent forum would remain open to him.

Accordingly, this writ application stands allowed to the extent as indicated above.

(Dr. Ravi Ranjan, J.)

Vikash/-

AFR/NAFR	AFR
CAV DATE	NA
Uploading Date	03.12.2016
Transmission Date	NA

