

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.16405 of 2016

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Raghubansh Prasad Singh, Son of Sri Shivraj Singh, Resident of Village - Ekaria,
P.S. - Konch, Dist - Gaya.

.... Petitioner

Versus

1. The State of Bihar.
2. The District Magistrate cum Collector, Gaya.
3. The Sub-Divisional Public Grievance Redressal Officer, Tekari Gaya.
4. The Circle Officer, Tekari Gaya.
5. Satrudhan Kumar, Son of not known, Village - Panchanpur, P.O. - Panchanpur,
Dist - Gaya.

.... Respondents/ Opposite Parties

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Appearance :

For the Petitioner : Mr. Hemant Kumar, Advocate
For the State : Mr. Sajid Salim Khan- SC25
For the respondent no.5 : Mr. Abdul Wadood, Advocate

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CORAM: HONOURABLE DR. JUSTICE RAVI RANJAN

ORAL JUDGMENT

Date: 09-12-2016

Heard learned counsel for the petitioner, the State and
the respondent no.5.

This writ application has been filed for quashing the
notice dated 10.09.2016 contained in Annexure 2 by which the



petitioner has been directed to remove encroachment from plot nos.458 and 459 to the extent indicated in the notice and, if the same is not done, he has been threatened to be removed with the help of the administration.

Original records were called for and they have been produced. It appears that vide Annexure 5 dated 19.08.2016, the Sub-Divisional Public Redressal Officer, Tekari, District, Gaya passed an order on the complaint made by one Satrudhan Kumar, i.e., the respondent no.5 and other villagers who have not been named, directing the Circle Officer, Tekari to initiate a proceeding for removal of encroachment from plot nos.458 an area of 0.20 decimals and plot no.459 an area of 0.12 decimals which have been described as 'Bandh' and 'Nala'. It appears that it was alleged by the complainant that one Harendra Singh and Raghuwansh Singh, i.e., the petitioner, had encroached the Nala and, after filling it, they have constructed houses upon it and have dug boring also. The Circle Officer was directed to initiate an encroachment proceeding and pass speaking order and take consequential action within 21 days. It is made clear that before passing of such order, the Sub-Divisional Public Redressal Officer had not granted any opportunity to the alleged encroachers and the order has been passed only after hearing the complainant and the Anchal Adhikari. Thereafter, he had fixed



time for 21 days for such action. It further appears from the records that, since nothing was being done by the Circle Officer in the eye of the Sub-Divisional Public Redressal Officer, he was reprimanded for that. However, he was informed that the Magistrate has already been deputed for removal of encroachment. Thereafter, it appears that the encroachment proceeding team, when reached at the spot, were greeted with brick-batting for which action Sub-Divisional Public Redressal Officer has stated in the order dated 23.11.2016 that Sub-Divisional Officer, Tekari should take remedial measure. The order-sheet of the Encroachment case no.02/16-17 initiated on the basis of Annexure 5 passed by the Sub-Divisional Public Redressal Officer discloses that the Circle Officer sought report from the Anchal Amin. On 02.09.2016, he had given direction for issuance of notice upon the encroachers. The order dated 13.09.2016/14.09.2016 discloses that notice was served and the encroachers had sought 5 days time. The order dated 20.09.2016 says that encroachers have not removed the encroachment, thus, a direction was given that the same should be removed by applying force with the help of the district administration. Only notice available in the record is the notice which has been received by the petitioner contained in Annexure 2 dated 10.09.2016. However, that notice merely directs the petitioner to remove encroachment otherwise the same would be removed forcibly.



There is no notice under Section 3 of the Bihar Public Land Encroachment Act, 1956 (hereinafter referred to as “the Act”). There is no order passed under Section 6 of the Act. Annexure 2 is neither in the Form I nor in the Form II. The petitioner’s grievance is that he has purchased plot no.454 through registered deed in the year 2006 and under the garb of this encroachment proceeding he is being dispossessed from his land.

Learned counsel appearing for the respondent no.5 has submitted that one of the encroachers, namely, Harendra Singh, has already removed the encroachment. The petitioner submits that he has never stated before the authority that he would remove encroachment because he had not encroached upon plot nos.458 and 459 at all.

The proceeding drawn by the Circle Officer suffers from diverse flaws as the step appears to have been taken without adhering to the principle of natural justice or even the mandatory provisions of the Act which lays down in clear terms that, before taking a final decision in the matter, a notice is to be issued under Section 3 of the Act directing the alleged encroacher to explain as to why such encroachment should not be removed. The notice has to be granted opportunity of hearing under Section 5 of the Act and, thereafter, an order needs to be passed under Section 6. After passing



of that order under Section 6, final notice in Form II would go for removal. However, the format of notice contained in Annexure 2 does not indicate that it complies Form II also in its entirety and, as such, the proceeding against the petitioner has to be quashed.

However, in my opinion, since the petitioner himself says that he is not claiming plot nos.458 or 459 rather is claiming only plot no.454, this Court would dispose of this writ petition directing the District Magistrate, Gaya to measure and demarcate the plot no.454 in the presence of the petitioner and, thereafter, authorities may proceed to remove encroachment from plot nos.458 or 459.

Till such measurement is done, let no part of encroachment even from plot nos.458 or 459 be removed as that action has to be taken after demarcating the land of the petitioner.

The petitioner would be required to appear before the Collector along with a copy of this order on 23.12.2016. The Collector would communicate the date of measurement and demarcation of plot no.454 on the same date to the petitioner. On the date of measurement, the petitioner should remain personally present on the spot and everything should be done in his presence.

However, it is made clear that if the petitioner fails to appear before the Collector on 23.12.2016 or he again fails to remain present during the time of measurement on the date fixed by the



Collector then the Collector would be required to measure the land even in his absence and thereafter, consequential action would be taken by the authorities.

Let the records be returned to the learned counsel for the State.

(Dr. Ravi Ranjan, J)

Sanjay-II/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	15.12.2016
Transmission Date	NA

