

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.16895 of 2016

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1. R. K. Studio through its proprietor, Rajkumar Sharma, son of late N.D. Sharma, Age-77 years, presently at Boring Road Crossing, P.S, Sri Krishna Puri, Patna-800001,
 2. Md. Abdul Ansari alias Abdul Razzak, General Store through its proprietor Mohammad Abdul Ansari son of late Abdul Razzak, Age-about 30 years, presently at Boring Road Crossing, P.S. Sri Krishna Puri, Patna-800001,
 3. Ratna Jewelers (as mentioned in the notice) 'New Unique Jewelers' through its proprietor Gopal Ji Prasad Gupta, Age About 50 years, son of Baidnath Prasad Gupta, presently at Boring Road Crossing, P.S. Sri Krishna Puri, Patna-800001,
 4. Kameshwar Rai(Chai Dukaan) Age about 52 years, S/o Raghuvansh Rai, presently at Boring Road Crossing, P.S. Sri Krishna Puri, Patna-800001,
 5. Stainless Steel Dukaan through its proprietor Banti Kumar, Age-about 42 years son of Paras Nath Kesri, presently at Boring Road Crossing, P.S. Sri Krishna Puri, Patna-800001,
 6. Phool Mala Ki Dukaan (Jagdish Prasad) through its proprietor Jagdish Prasad, son of late Sita Ram Bhagat, Age-About 50 years, presently at Boring Road Crossing, P.S. Sri Krishna Puri, Patna-800001,

.... Petitioners

Versus

1. The State of Bihar through the Commissioner, Patna Division, Near Gandhi Maidan, Patna,
2. The Commissioner, Patna Division, Near Gandhi Maidan, Patna,
3. The District Magistrate, Collectorate, Gandhi Maidan, Patna-800001,
4. The Sub-Divisional Magistrate, Collectorate, Gandhi Maidan, Patna,
5. The Circle Officer, Sadar, Near Golghar, Patna-800001,

.... Respondents

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Appearance :

For the Petitioners : M/s Sandeep Kumar, Dayanand Singh and
Nagadeo Choubey, Advocates

For the State : Mr. Md. Khurshid Alam- AAG 12 and
Md. Naseem Mukhtar, AC to AAG 12

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CORAM: HONOURABLE DR. JUSTICE RAVI RANJAN

ORAL JUDGMENT

Date: 05-10-2016

At last, the Circle Officer, Sadar Patna, is present today as per the direction of this Court but without any explanation regarding his conduct, however, learned Additional Advocate General No. 12 submitted that last part of order could not be communicated by him inadvertently.

However, when a question was asked to the Circle Officer, Sadar, Patna as to why he could not reach this Court yesterday, then a letter was shown by learned counsel for the State which had been written by the Circle Officer addressed to the Collector, Patna that the wheel of his vehicle was punctured, thus, he could not appear before this Court. When a question was asked to him as to when he started for Patna High Court then answer was given by him that he started at 2.00 P.M.

Let the Circle Officer concerned file an affidavit explaining his conduct.

Heard the parties on merit of the case.

The original records of the case have been produced by learned Additional Advocate General 12.

It is stated by learned Additional Advocate General 12 that the petitioners were given chance for hearing but the petitioners did not appear on the dates fixed.

On this, it is submitted by learned counsel for the petitioners that the dates were never supplied to them.

Be that as it may, the petitioners have categorically stated that their shops are situated on plot nos. 141 and 142 and they have nothing to do with plot nos. 61 and 62. At the same time, the Circle Officer, who is present in Court, has submitted that in this proceeding he is not going to touch the lands of plot nos. 141 and 142 as the proceeding for encroachment has been initiated with respect to plot nos. 61 and 62 and that stands recorded in the order dated 19.07.2016/17.09.2016, however, there appears to be discrepancy in the date of the order as well as the date has been recorded as 19.07.2016/17.09.2016 and the order has been signed on 17.09.2016. Though under the order dated 24.06.2016 the next date fixed was 19.07.2016, there is no order of that date on record.

Accordingly, the District Magistrate-cum-Collector, Patna is directed to get the lands of plot nos. 141 and 142 demarcated. Similarly, measurement and demarcation of the lands of plot nos. 61 and 62 should be done scientifically under his supervision in presence of the petitioners on 16.10.2016. If encroachment is found upon plot nos. 141 and 142 then a proper proceeding should be initiated on the basis of the measurement report as learned counsel for the State has miserably failed to show from the records that there



was any scientific measurement on the basis it can be ascertained as to what is the extent of encroachment by each of the petitioners on the concerned plots. Unless it is not specified, notice is meaningless and order of removal of encroachment cannot be passed.

Accordingly, since the Circle Officer, Sadar, Patna, has not proceeded in accordance with the established procedure of law, the encroachment proceeding is set aside.

However, after the aforesaid measurement, a fresh proceeding can be initiated for removal of encroachment from the concerned plots in accordance with law as it is equally important that the encroachment should be removed from the public land. If any encroachment is found after such measurement, a proceeding for removal of the encroachment should be initiated and brought to its logical conclusion within a period of three months from the date of measurement after granting reasonable opportunity to all the concerned parties including the petitioners, who are tenants and also the landlord concerned, if required.

However, this order would be subject to the condition that all the defects pointed out by the office would be removed by the petitioners by tomorrow if they have already not removed it.

Accordingly, this application stands disposed of.

Let the matter be listed under the appropriate heading for the

purpose of explanation, which would be given by the Circle Officer concerned, on 18.10.2016.

The Circle Officer, Sadar, Patna would be required to remain present personally on the next date.

(Dr. Ravi Ranjan, J)

SC/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	09.10.2016
Transmission Date	NA