

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.19659 of 2015

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Amit Kumar alias Bablu Son of late Mahendra Prasad Yadav, Resident of Village Mirchaibari, Barmasiya, Police Station and District Katihar.

.... Petitioner

Versus

1. The State of Bihar.
2. The District Magistrate, Katihar
3. The Sub-Divisional Magistrate, Katihar.
4. The Circle officer, Katihar , District Katihar.

.... Respondents

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Appearance :

For the Petitioner : M/s.Kamal Nayan Choubey,
Ambuj Nayan Chaubey,
Yogendra Kumar Diwedy,
Dineshwar Pandey, Advocates

For the State : Mr. D.K. Prasad- GP7

For the Intervener : Mr. Sunil Kumar, Advocate

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CORAM: HONOURABLE DR. JUSTICE RAVI RANJAN

ORAL JUDGMENT

Date: 19-02-2016

Heard the parties.

In compliance of the direction contained in the order dated 08.01.2016, counter affidavit has been filed on behalf of the respondent nos.2, 3 and 4.

The petitioner has challenged a notice dated 02.12.2015 by which he has been directed to remove the encroachment from the M.S. Khesra No.927 Ka, Kha appertaining to M.S. Khata No.1112 of Ward No.01 of an area of 0.3.15 hectare as it is a public land. A question has arisen in this case as to whether such

notice is permissible and such direction can be given under Section 3(2) of the Bihar Public Land Encroachment Act, 1956 (hereinafter referred to as "the Act") without any specific order having been passed in terms of the proviso to the Section 3(2) of the Act.

Now, in the counter affidavit, the State respondents have accepted the error committed on their part that notice should have been given first only to explain his stand as to why encroachment should not be removed but he has been wrongly directed to vacate within 72 hours without giving him reasonable opportunity.

On such stand having been taken by the State authorities itself, this Court would be inclined to dispose of this writ petition with a direction to the parties to consider the notice contained in Annexure 3 to be a notice under Section 3(1) of the Act. The petitioner would be required to submit his reply to the notice within a period of four weeks and, thereafter, the matter would be required to proceed and conclude in accordance with law strictly following the procedure laid down in the concerned statute. The Circle Officer would be required to proceed in the matter expeditiously.

I.A. No.817 of 2016 has been filed for impleadment of the intervener as respondent in this case.

However, in view of the aforesaid order having been

passed, he would be at liberty to raise his grievance before the concerned Circle Officer.

However, at the same time, the parties should maintain *status quo* as obtained today till a final decision is taken under Section 6 of the Act by the authority.

(Dr. Ravi Ranjan, J)

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