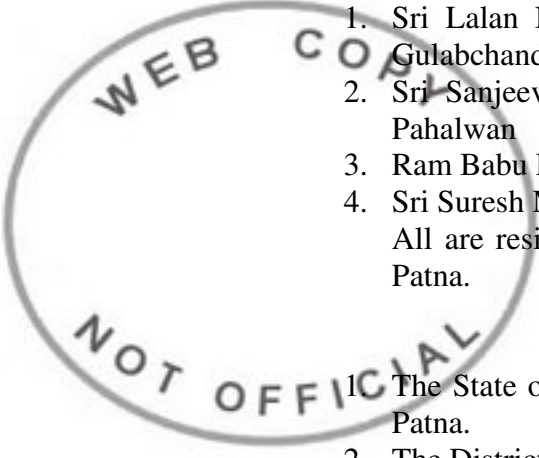


IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.5551 of 2016

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1. Sri Lalan Nat @ Lalan Pahalwan, son of Late Gulab Chand Nat @ Late Gulabchand Pahalwan
 2. Sri Sanjeev Kumar Suman @ Sanjeev Suman, son of Lalan Nat @ Lalan Pahalwan
 3. Ram Babu Paswan, son of Laldas Paswan
 4. Sri Suresh Mochi, son of Sri Chandeshwar Mochi,
All are residents of Village- Saraiya, P.O.- Rajipur, P.S.-Rani Talab, District- Patna.

.... Petitioners

Versus

1. The State of Bihar, through the Principal Secretary, Home Department, Bihar, Patna.
2. The District Magistrate, Patna.
3. The Senior Superintendent of Police, Patna.
4. The Sub- Divisional Officer, Paliganj, Patna.
5. The Sub- Divisional Police Officer, Paliganj, Patna.
6. The Circle Officer, Dulhin Bazar, Patna.
7. The Station Head Officer, Rani Talab P.S. Patna.
8. Kameshwar Ram, son of Late Dhuri Ram, Resident of Village and P.O. Rajipur, P.S.- Rani Talab, District- Patna.

.... Respondents

Appearance :

For the Petitioners : Mr. Rama Kant Singh, Advocate.
For the State : Mr. Sanjay Mandal (AC to SC-6)
For Pvt. Respondent No.8: Mr. Ambuj Nayan Choubey, Advocate.

CORAM: HONOURABLE DR. JUSTICE RAVI RANJAN

ORAL JUDGMENT

Date: 08-04-2016

Heard Parties.

Petitioners are aggrieved by the order dated 03.03.2016 passed in Misc. Case No. 17/2015-16 by the Collector-cum-District Magistrate, Patna as contained in Annexure-6, by which he has directed the Anchal Adhikari, Dulhin Bazar as well as Sub-Divisional Officer, Paliganj to ensure removal of the encroachment from the plot concerned.



It appears that the respondent no.8 has earlier approached this Court by filing C.W.J.C. No. 15011 of 2015, which was disposed of vide order dated 27.10.2015, a copy of the order has been appended as Annexure-4. The petitioners were parties but were not noticed. It appears from the order that writ petition was disposed of after hearing the petitioners and respondent State only. It is noticed in the order that, according to the petitioners, the respondent nos. 8 to 11 have encroached the land and are constructing a temple unauthorizedly. The Circle Officer by different letters had directed the persons involved to remove the same but the said structure could not be removed or shifted. Thereafter, it has been referred that the State Government has formulated the Guidelines, namely, Bihar Unauthorized Religious Structures Construction Survey and its Regularization, Reallocation and Removal Rules, 2013 (hereinafter to be referred to as “the Rules”) and Section 5 thereof empowers the State Government to remove or reallocate such unauthorized religious structures. It is also noticed that having found the action taken by the Circle Officer ineffective, the petitioners of that case, i.e, respondent no.8 in the present writ petition, filed representation before the District Magistrate ventilating the aforesaid grievance but no heed was paid compelling them to file the aforesaid writ petition. The writ application was disposed of directing the District Magistrate, Patna to consider the representation of the petitioner which should be filed

alongwith a copy of the order before him within three weeks, and take appropriate action/steps as required in law for removal/ reallocation of the structure on the land in question as quickly as possible preferably within five weeks from the date of filing of fresh representation.

It appears from the impugned order that the District Magistrate thereafter issued notice to the respondent no.8, i.e, the complainant and fixed a date in the matter and, thereafter, proceeded to dispose of the matter after hearing the petitioners and the State. He has noticed that the Anchal Adhikari had on earlier occasion, i.e., before the order passed in aforesaid writ petition, issued notice upon the petitioners on 5.02.2014 but they did not appear. But it is apparent from the order that after that the writ petition was filed before this Court being C.W.J.C. No. 15011 of 2015 and the aforesaid direction was given, the District Magistrate had proceeded under the aforesaid rules after noticing only the petitioner and hearing the State but surprisingly, he did not think it proper to notice the petitioners, who were noticed by the Anchal Adhikari in the earlier proceeding. In case, he was continuing with the earlier proceeding which was pending before the Circle Officer itself, then there was no requirement for issuing fresh notice to the respondent no.8 also but admittedly notice was issued to him and though the decision would have affected the petitioners, they were not noticed.



In my view, the Single Judge Bench of this Court had directed the District Magistrate to proceed in accordance with law having received the representation filed by respondent no.8 but that does not mean that he will bank upon the enquiry report or earlier views expressed by the Circle Officer and would issue notice to the complainant/petitioner/respondent no.8 and would hear the state of Bihar but not the present petitioners who are to be removed from the land concerned allegedly having encroached the same by constructing a temple.

Rule-5 of the Rules lays down as to how the State authority has to proceed for removal or relocation of the unauthorized religious structures. For better appreciation, Rule-5 is quoted as under:

5. Removal/Reallocation of the unauthorized religious structures:- (1) After the religious structures constructed on the public places having been identified, and on the basis of the discussion and consent with the foremost co-operation of the local communities there shall be made an attempt for their removal/relocation on the other places or to find out a solution regarding those structures peacefully or in any other manner alike whatsoever.

(2) In case no final solution comes out on consent, actions shall be taken on case-to-case basis in each and every such cases, by following the procedures prescribed in the Bihar Public Land Encroachment Act and other relevant laws.

(3) The actions shall be taken as early as possible under the Bihar Public Land Encroachment Act for removal of such structures of the religious institutions which are on public places for the period less than thirty years. In case the possibility of the Law and order problem arises seriously due to prevailing tension in

society during such actions being taken for removal of the unauthorized structures, such cases may be forwarded by the District Officer concerned to the Government for decision and with the approval of the Government an appropriate action may be taken. In case no decision is taken on part of the Government for immediate removal of any unauthorized structure, there shall be made an attempt to reduce those structures to that extent that there may not be any interruption in the easy and safe traffic system for common public.

(4) It shall be imperative for the District Officer concerned to obtain requisition/consent/opinion of the competent officer of the central government/Central public undertaking before Removal/relocation/regularization of the unauthorized religious structures constructed on the land under the ownership of the central government or central public undertaking.

Thus, in my view, he could not have proceeded without noticing and hearing the other side. It would have been a different matter if, even after notice, the petitioners would not have appeared as, in such case, he could have proceeded ex-parte. He himself has issued fresh notice to the respondent no.8, thus, there was no occasion to oust the petitioners from the proceeding. In my view, such decision suffers from the vice of the arbitrariness and has to be quashed and set aside.

Accordingly, this writ application succeeds. The order impugned is quashed and set aside.

However, in view of the earlier direction of this Court, the matter is again remitted back to the District Magistrate to take steps in accordance with law for removal of encroachment from the public

land following the due procedure of law and after granting reasonable opportunity to the persons who are going to be affected including the petitioners.

It is expected that entire exercise would be concluded within a period of three months from the date of receipt/ production a copy of this order.

It is made clear that if the petitioners fail to appear on the dates fixed, in such case, the District Magistrate would be at liberty to proceed ex-parte in the matter.

(Dr. Ravi Ranjan, J.)

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