

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.6634 of 2015

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Laxman Singh, s/o late Dukhi Singh, r/o village - Muzaffara Kamtaul, P.S.-
Kurhani, District- Muzaffarpur.

.... Petitioner/s

Versus

1. The State of Bihar
2. District Magistrate, Muzaffarpur.
3. Sub- Divisional Officer, Muzaffarpur.
4. Anchal Adhikari, Kurhani, Muzaffarpur.
5. S.H.O. Kurhani, P.S. - Muzaffarpur.
6. Dinesh Singh, s/o late Baldeo Singh
7. Kamli Devi, w/o Denesh Singh
8. Vicky Kumar, s/o Dinesh Singh

All are residents of village- Muzaffara, Kamtaul, P.S.- Kurhani, District-
Muzaffarpur.

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Sanjay Mandal, Adv.

For the State : Mr. Vinay Kumar Verma, AC to GA 2

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CORAM: HONOURABLE DR. JUSTICE RAVI RANJAN

ORAL JUDGMENT

Date: 05-08-2016

Heard learned counsel for the petitioner and the State.

It is contended on behalf of the petitioner that
Encroachment Case No. 09/2012-13 was initiated for removal of
encroachment from Plot No. 49, appertaining to Khata No. 278 of an
area of about 0.20 decimals of Mauza-Muzaffara Kamtaul, District-
Muzaffarpur.

It is submitted that vide Annexure-4, an order was passed
on 26.2.2013 for deputing the Anchal Nirakshak for removal of
encroachment on 2.3.2013, however, nothing has been done

thereafter.

However, from the order-sheet of the case, which has been appended as Annexure-5, it appears that on 21.11.2012, notice was issued under Form-I directing the encroachers, i.e., respondent Nos. 6-8, to show cause as to why it should not be held that they have encroached the public land which is *Gair Mazarua Aam Sarv Sadharan Sadak* and why the same should not be removed. However, on 14.12.2012, it is only stated that records have been produced, the Encroacher has not given any attendance, therefore, issued Form-2 for removal of encroachment.

In my view, the proper procedure has not been followed by the authority concerned. It is not stated whether the notices were served upon the Encroacher or not and, without such statement, Form-2 has directly been issued. Section 5 of the Bihar Public Land Encroachment Act, 1956 lays down that after issuance of notice under Form-1, opportunity of hearing should be accorded to all the concerned and interested persons if they appear, however, if they do not choose to appear then the matter should be heard ex-parte. Thus, it does not appear from the statutory provision that without recording any reason and holding the concerned persons to be encroachers for the reasons mentioned in the order, a notice under Form-2 can be issued directly for vacating the encroachers. There is no decision at all

in the copy of the order sheet which has been produced by the petitioner himself.

Learned counsel for the petitioner does not have any answer to it. Though, the writ petition has not been filed on behalf of the Encroachers rather it has been filed on behalf of the Complainant on whose application the proceeding has been initiated, once having noticed the aforesaid glaring and fatal defect in the Proceeding, this Court cannot ignore the same. Accordingly, I *ex debito justitiae* direct the Circle Officer to hear the matter once again after granting opportunity to all the concerned and interested persons including the private respondents and, thereafter, bring the Proceeding to its logical conclusion in accordance with law within a period of three months from the date of receipt/production of a copy of this order.

This disposes of the writ application.

(Dr. Ravi Ranjan, J)

S.Ali/-

AFR/NAFR	AFR
CAV DATE	N/A
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