

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.6792 of 2016

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Vijay Narayan Singh, S/o Late Nand Deo Singh, R/o Village - Narayanpur, P.S. - Sakurabad under Ratni Faridpur Block, District - Jehanabad.

.... Petitioner

Versus

1. The State of Bihar through the Principal Secretary Land Reforms Department, Govt. of Bihar, Patna.
2. The Principal Secretary Land Reforms Department, Govt. of Bihar, Patna.
3. The Collector, Jehanabad, Bihar.
4. The Circle Officer, Ratni Faridpur Block, District - Jehanabad.
5. The Officer - in - Charge, Police Station - Sakurabad, District - Jehanabad.

.... Respondents

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Appearance :

For the Petitioner	:	Mr. Abhimamnu Sharma, Advocate
For the State	:	Mr. Rakesh Ranjan, A.C. to G.P. 22, Mr. Narendra Kumar Singh, A.C. to G.P. 2
For the intervener	:	Mr. Sandeep Kumar, Advocate

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CORAM: HONOURABLE DR. JUSTICE RAVI RANJAN

ORAL JUDGMENT

Date: 11-08-2016

Heard parties.

Three cases have been initiated for removal of encroachment from plot no.2477 i.e., Encroachment Case Nos. 421 / 13-14, 426 /13-14 and 428 /13-14 so far the petitioner is concerned.

It is contended on behalf of the petitioner that in all the three cases, notices have been issued under Form 6(II) of the Bihar Public Land Encroachment Act, 1956 (hereinafter referred to as “the Act”) for removal of encroachment stating that final order has been passed but the same has been done without any reasoned order



having been passed declaring him encroacher. On such assertion having been made on behalf of the petitioner, the Circle Officer, Ratni Faridpur was directed to produce the original records of the cases which have been produced. From perusal of the records, it appears that in all the cases Form 6(II) notice was issued after recording order dated 04.10.2014 simply stating in the order that records have been produced, objection has not been received and, thereafter, direction for issuance of notice has been recorded. On such order having been issued, notice under Form 6(II) was issued. From perusal of the scheme, which is available under the Act, it appears that at the first instance a notice under Section 3 is to be issued to the alleged encroacher to explain as to why he should not be directed to remove the encroachment. Such notice is issued under Form 6(I). Thereafter, objections are filed and hearing is accorded under Section 5 and final order is passed holding as to whether a person is actually encroacher or not. However, in the present case, as stated above, without passing any order holding the petitioner to be encroacher, a notice was directed to be issued and which was eventually issued under Form 6(II). Thereafter, it appears that again spot verification was done. The question would be, if the authority concerned was satisfied that the petitioner had encroached the land and passed the final order for removal of encroachment and was satisfied that the removal of



encroachment was required then where was the question of again making a spot verification etc. It appears that, thereafter, some orders have been passed. In one case, direction has been given to remove the encroachment. In another case, a decision has been taken to drop the proceeding (Case No.421/13-14) and in the third case, opinion of the DCLR has been sought regarding correctness of the Hukumnama, depending upon which the petitioner is claiming his title. It is not at all understandable at all as to how the statutory authority would seek direction or opinion of the superior authority for passing a final order in the matter. From the perusal of the entire order-sheet, it appears that the procedure provided in the statute has not been followed at all by the circle officer and, without application of mind, notices under Form 6(II) were mechanically issued and, thereafter, it appears that it is being justified by passing subsequent orders which is not the requirement under the statute.

Thus, in my view, the notices concerned are not at all sustainable in law and, as such, all the notices under Form 6(II) issued against the petitioner are quashed and set aside.

As several procedural lacuna have been found emanating out of the order-sheet, the Circle Officer would be required to grant another opportunity to the petitioner to file proper objection and consider the same in accordance with law following the procedure laid



down in the Act Section 4 whereof provides that any persons on whom notice is served under Section 3 or any person interested in the encroachment may appear before the Collector and raise any defence which he could have raised as if he was a defendant in a properly framed suit for the removal of the encroachment. Section 5 further provides that opportunity of hearing should be accorded to the alleged encroacher upon whom notices have been issued under Section 3 and, thereafter, final order is to be passed recording reasons. Thereafter, the step of issuance of notice under Form 6(II) would be required.

While doing the measurement work, he would consider the entire area of the plot no.2477 and he will not confine himself only to the portions which have been allegedly encroached by the petitioner because the entire plot no.2477 is being claimed by the State to be gair mazarua aam land. The date of measurement of the plot by the concerned Amin is hereby fixed as 27th September, 2016 and on that day, the petitioner would be required to remain present on the spot.

Let the records be returned to the Circle Officer.

The personal appearance of the Circle Officer is dispensed with.

This writ application stands allowed to the extent as indicated above.

This order would be subject to the deposit of additional two sets of court fee by the petitioner within a week, otherwise the case would again stand revived as if no order has been passed.

(Dr. Ravi Ranjan, J)

Sanjay-II/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	17.08.2016
Transmission Date	NA