

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.4751 of 2017

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1. Sureshwar Prasad Sharma,
2. Mithileshwar Prasad Sharma,
Both sons of Late Kameshwar Prasad Sharma, resident of Village- Viman, P.S.-
Ariyari, District- Sheikhpura.

.... Petitioner/s

Versus

1. The State of Bihar.
2. The Principal Secretary, Land and Revenue Department, Government of Bihar,
Patna.
3. The District Magistrate, Sheikhpura.
4. The Sub Divisional Officer, Sheikhpura.
5. The Circle Officer, Ariyari Circle, P.S.- Ariyari, District- Sheikhpura.

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Ganpati Trivedi, Sr. Advocate
Mr. Neerad Parashar, Advocate

For the Respondent/s : Mr. MD. KHURSHID ALAM- AAG12

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CORAM: HONOURABLE MR. JUSTICE DINESH KUMAR SINGH

ORAL JUDGMENT

Date: 29-03-2017

Heard Mr. Ganpati Trivedi, learned senior counsel for the
petitioners and learned AC to AAG-12 for respondent nos. 1 to 5.

The present writ application has been filed for quashing
of the entire proceeding of Encroachment Case No. 71/2016-17,
including the special notice dated 24.03.2017, issued under the orders
of the Circle Officer, Ariyari, as contained in annexure-5, whereby 11
persons with respect to respective different plots, including the
petitioners whose name figures at Sr. No.1, with respect to plot nos.
611, 604, 599 were directed to remove the encroachment from the
public road by 29.03.2017 otherwise the encroachment was directed to
be removed by administration and the cost was directed to be realized



from the petitioners and other encroachers. The petitioners and other encroachers were further directed to be held responsible for any damage cause to their articles during such removal of encroachment by administration.

It is submitted by learned senior counsel for the petitioners that joint family house of the petitioners is constructed over plot no.610 situated in village-Viman, P.s.-Ariyari, in the District of Sheikhpura wherein the petitioners and others are residing since 1935. The plot numbers for which proceeding has been initiated and special notice, as contained in annexure-5, has been issued to the petitioners are adjacent to the land of the petitioners which are being used by them as pathway. No government agency ever claimed the lands in question, but all of a sudden, vide letter no.809 dated 16.12.2016, a notice was issued to 11 persons including the petitioners (as their names appear at Sr. No.1), by respondent no.5, the Circle Officer, Ariyari, as contained in annexure-2, directing them to produce the document on 21.01.2017 with regard to Khata No.230, 234, 239, Plot No. 611, 604, 599, 593 and 655, which is a *Gairmajarua* public road, otherwise directed to vacate the encroached public road in question. In pursuance to the same, petitioner no.1 appeared and submitted an application on 21.01.2017 before respondent no.5, the Circle Officer, Ariyari, seeking adjournment to file show cause on the ground that the



house in question, is a joint family property and other co-sharers are residing outside the village for livelihood and petitioner no.1 is involved in marriage of his daughter scheduled in the first week of February, 2017. It is further submitted that no measurement was done before issuance of notice.

So far as petitioner no.2 is concerned, after knowledge of initiation of proceeding, he transmitted a representation through speed post on 07.02.2017 to the respondent no.5, as contained in annexure-4, for giving him opportunity to represent his case, but without considering the representations of petitioners, the final special notice was issued on 24.03.2017 in Encroachment Case No.71/2016-17, as contained in annexure-5, by the Circle Officer, directing the petitioners and others to remove the encroachment from the respective land in question, by 29.03.2017, otherwise it will be removed by the administration and the cost thereof will be realized from the petitioners and others.

Learned senior counsel for the petitioners further submits that the notice dated 24.03.2017, as contained in annexure-5, appears to have been issued under Section 6(2) of the Bihar Public Land Encroachment Act (hereinafter called 'the Act'), but it does not appear that either the provisions of Sections 4 and 5 of the Act have been followed by respondent no.5, as no adequate opportunity of being



heard has been given to the petitioners nor final order under Section 6 of the Act has been passed till date.

Learned AC to AAG-12 appearing for the respondent State submits that the petitioners in spite of issuance of notice failed to appear and hence, the encroachment has been directed to be removed vide impugned notice/order dated 24.03.2017.

Having heard learned counsel for the parties, it appears that encroachment proceeding with respect to Khata No.230, 234, 239, Plot No. 611, 604, 599, 593 and 655 has been initiated, though the petitioners have been noticed vide notice dated 16.12.2017, as contained in annexure-2 and special notice dated 24.03.2017, as contained in annexure-5, with respect to encroachment being made over Plot Nos. 611, 604 and 599, but the pleadings in the writ application do not suggest that petitioners claim any right, title over the said plots. But, since, petitioners were noticed and they claim to have submitted representations seeking adjournment, hence, they ought to have been given reasonable opportunity to produce relevant documents and of being heard. Hence, *prima facie*, it appears that adequate opportunity has not been afforded to the petitioners to represent their cases.

Under the circumstances, part of the notice, with respect to the petitioners issued vide letter no. 173, as contained in annexure-



5, directing the petitioners to remove the encroachment from Plot Nos. 611, 604 and 599 by 29.03.2017, otherwise directed the encroachment to be removed by administration by 30.03.2017, is hereby quashed.

Respondent no.5, the Circle Officer, Ariyari, is directed to conclude the proceeding of Encroachment Case No.71/2016-17 within a period of six weeks in accordance with the provisions of the Act, after giving due opportunity to the petitioners and all affected persons.

It is needless to say henceforth the petitioners shall not seek any adjournment and shall appear in the encroachment proceeding on each date fixed, if they fail to appear then respondent no.5 will be at liberty to conclude the proceeding *ex parte*.

Accordingly with the above observation and direction the writ application is disposed of.

Let a copy of this order at once be communicated to respondent no.3, the District Magistrate, Sheikhpura and respondent no.5, the Circle Officer, Ariyari, Sheikhpura through FAX/E-Mail.

(Dinesh Kumar Singh, J)

Ashwini/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	29.03.2017
Transmission Date	

