

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.5636 of 2017

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Bhuvneshwar Jha, S/o Late Dev Narayan Jha, Resident of Village- Haralpatti, P.S.-
Ashok Paper Mill's Hayaghat, District- Darbhanga.

.... Petitioner/s

Versus

1. The State of Bihar through Principal Secretary, Revenue Department, Govt. of Bihar, Patna.
2. The Collector, Darbhanga.
3. Anchal Adhikari, Hayaghat, District- Darbhanga.

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Navesh Nandan, Adv.

For the Respondent/s : Mr. RISHI RAJ SINHA- SC19

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CORAM: HONOURABLE MR. JUSTICE DINESH KUMAR SINGH
ORAL JUDGMENT

Date: 18-05-2017

Heard learned counsel for the petitioner and learned A.C.
to S.C.-19.

The present writ application has been filed for setting aside the notice dated 3rd April, 2017, as contained in Annexure-8, issued by the Circle Officer, Hayaghat, respondent no.3 whereby the petitioner has been directed to remove the encroachment from the land in question failing which it would be removed with the help of police force.

I.A. No. 3085 of 2017 has been filed challenging the order dated 03.04.2017 passed by the Circle Officer, Hayaghat, respondent no.3 and for staying the operation of the same in Encroachment Case No. 04 of 2016-17 whereby it was declared that the land



appertaining to Thana No. 556, C.S. Khata No. 105, R.S. Khata No. 314, C.S. Plot No. 1162, R.S. Plot No. 1164, situated in Village Horal Patti, under Hayaghat Circle in the District of Darbhanga, is recorded in the revenue record as Anabad Sarva Sadharan and nature of the land has been recorded as Gairmajarua Khas, but the same has been encroached upon, hence it was directed for issuance of notice under Form-(2), as contained in Annexure-8.

Learned counsel for the petitioner submits that C.S. Plot No. 1062, measuring an area of 5 katha, 5 dhurs was khas land of the then land lord Babu Janki Raman Prasad Mishra and the same was settled in the year 1941 by the then Manager Thakur Sitaram Ji and Mithila Bihari Ji. Jamabandi No. 167 was created in the name of Dev Narayan Jha, the father of the petitioner, and subsequently the father of the petitioner constructed the house over the land in question. Dev Narayan Jha died leaving behind three sons namely Bhuvneshwar Jha, Suresh Jha and Amresh Jha. The family of the petitioner and his brothers are residing in the said house. The entire area of R.S. Plot No. 1164 is 15 decimals and the area of R.S. Plot No. 1165 is 8 decimals and both the plots have been carved out of C.S. Plot No. 1062. From the map it is clear that the lands of the petitioner are also situated in the boundary of R.S. Plot No. 1164 and the same has been recorded as house but in the remarks column it is stated that Dev



Narayan Jha, son of late Ram Prasad Jha is in illegal possession of land and in the column of name of raiyat it has been stated as Anabad Sarva Sadharan. The wrong entry made in the Khatian has been challenged in Case No. 03 of 2011 under Section 106 of the B.T. Act which is still pending. In the meantime, the Circle Officer initiated encroachment proceeding and vide order dated 15.03.2017, notice was issued to the petitioner to appear and file show cause on 03.04.2017 at 11 AM in the office of respondent no.3.

It is further submitted that notice under Section 3 in Form-I was issued on 15.03.2015 but he received the notice just few days prior to 03.04.2017 (the next date of hearing) which is clear violation of the order of this Court that notice should be served at least fifteen days prior to reply of the show cause. The petitioner submitted his show cause on 03.04.2017, just one day prior to the filing of the appeal, but in an hurried manner the final order was passed by the Circle Officer on 03.04.2017 and notice under Form-II under Section 6(2) of the Bihar Public Land Encroachment Act was issued on the same day which suggests the deliberate urgency in which the Circle Officer passed the order without considering at all, that there is dispute with regard to title of the land and that the same cannot be resolved in a summary proceeding like Public Land Encroachment Act.



Learned counsel for respondent-State submits that the petitioner has an alternative remedy of appeal.

Considering the fact that the petitioner has an alternative remedy of appeal and he was precluded from filing the same since the copy of the final order was not supplied to him, but now, since the same has been provided to him, the present writ application is disposed of with liberty to the petitioner to file appeal within a period of three weeks from the date of receipt/production of the copy of this order when the appellate authority shall consider the prayer for condonation of delay in filing the appeal in view of the fact that the petitioner was pursuing the remedy before this Court.

It is expected from the Appellate Authority to consider the question of stay of the encroachment proceeding till disposal of the appeal.

The authorities shall maintain the status quo, as existing today, with regard to the land in question for a period of three months from the date of receipt/production of the copy of this order.

(Dinesh Kumar Singh, J)

Amrendra/-

AFR/NAFR	NAFR
CAV DATE	N/A
Uploading Date	.../.../2017
Transmission Date	N/A

