

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.10278 of 2017

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Md. Zaved, Son of Md. Zahiruddin @ Md. Zahir, Resident of Village-
Pachahatty, P.S. Bodh Gaya, District Gaya.

.... Petitioner

Versus

1. The State of Bihar, through the Principal Secretary, Revenue and Land Reforms Government of Bihar, Patna.
2. The District Magistrate-cum-Collector, Gaya
3. Circle Officer-Cum-Anchal Adhikari, Bodh Gaya, P.S. Bodh Gaya, District-Gaya.

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Jitendra Prasad Singh, Adv.

For the Respondent/s : Mr. Rishi Raj Sinha, SC-19

Mr. Akhilesh Kumar Sinha, AC to SC-19

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CORAM: HONOURABLE MR. JUSTICE DINESH KUMAR SINGH
ORAL ORDER

2 30-08-2017 Heard Mr. Jitendra Prasad Singh, learned counsel for

the petitioner and Mr. Akhilesh Kumar Sinha, learned A.C. to
S.C.-19.

The present writ application has been filed with a prayer for quashing the undated notice issued by respondent no.3, the Circle Officer, Bodh Gaya, under form-I, in Encroachment Case No. 02 of 2017-18, under Section 3 of the Bihar Public Land Encroachment Act, 1956 (hereinafter referred to as 'the Act'), as contained in Annexure-1, whereby the petitioner was directed to be present on 08.06.2017 before the Circle Officer, Bodh Gaya to explain as to why the encroachment from the land appertaining to Thana No. 359, Khata No. 1035, Plot No. 3188 and 4633, situated in Mauza Bodh Gaya, District Gaya, being a public land, be not



removed. The petitioner is further aggrieved with the letter of the Circle Officer, Bodh Gaya, issued vide Memo No. 668 dated 12.07.2017, as contained in Annexure-3, whereby the Circle Amin, has been directed for measurement of the land appertaining to Thana No. 359, Khata No. 1035, Plot No. 3197, 3188, Khata No.812, Plot No. 3124 and to demarcate the encroachment.

It is submitted by learned counsel for the petitioner that in pursuance to the undated notice issued vide Annexure-1, the petitioner submitted an application before respondent no.3, the Circle Officer, Bodh Gaya taking the plea that Plot No. 3188 and 4622 have been carved out from Plot No. 2891 though in Cadastral Survey Khatiyan, it is recorded in the name of ancestors of the petitioner, but, in the Revisional Survey Khatiyan, the entry has been made in favour of the State of Bihar. For correction of the same, Title Suit No. 61 of 2015 has been filed, hence, it is prayed on behalf of the petitioner that till disposal of the title suit, the encroachment proceeding may be stayed.

It is further submitted that without hearing the petitioner, respondent no.3, the Circle Officer, Bodh Gaya directed vide Memo No. 668 dated 12.07.2017, as contained Annexure-3, to measure the land and to demarcate the encroachment. The Circle Officer, Bodh Gaya has neither given any opportunity of



hearing to the petitioner till date, nor has he passed any final order under Section 6(1) of the Act.

Learned A.C. to S.C.-19 does not controvert the contention raised by learned counsel for the petitioner that no final order has been passed in Encroachment Case No. 02 of 2017-18 and he is also not in position to controvert this fact that the petitioner has not been given any opportunity of hearing.

Considering the rival submissions of the parties, from perusal of the notice, as contained in Annexure-1, and the letter dated 12.07.2017, issued by respondent no.3, the Circle Officer, Bodh Gaya, as contained in Annexure-3, it appears that respondent no.3, the Circle Officer, Bodh Gaya is conducting quasi-judicial proceeding in a casual manner, as the notice, as contained in Annexure-1, issued under form-I under Section 3 of the Act, does not bear any date, whereas the letter, as contained in Annexure-3, does not stipulate that the order for measurement and demarcation of encroachment have been directed without any final order being passed under Section 6(1) of the Act in the encroachment proceeding or that the petitioner has been given opportunity of hearing.

In the circumstances, let the Memo No. 668 dated 12.07.2017, as contained in Annexure-3, so far as demarcation of



the encroachment over the land in question be kept in abeyance.

It is expected from respondent no.3, the Circle Officer, Bodh Gaya to give opportunity of hearing to all the affected persons including the petitioner and to pass final order in Encroachment Case No. 02 of 2017-18, and thereafter, to get the encroachment demarcated on the land in question. However, this order will not preclude respondent no.3, the Circle Officer, Bodh Gaya to conduct measurement of the land in question, in presence of all affected persons and Panchayat representatives, during the pendency of the encroachment proceeding.

Accordingly, the present writ application is disposed of.

(Dinesh Kumar Singh, J)

Amrendra/-

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