

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.14430 of 2017

1. Arvind Kumar Singh, Son of Anirudh Singh.
2. Rana Digvijay Singh @ Digvijay Kumar, Son of Ram Jatan Singh,
Both are Resident of Village- Chiralia, P.S.- Kasma, Circle Office- Rafiganj, District- Aurangabad (Bihar).

... .. Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Department of Revenue & Land Reforms, Government of Bihar, Patna.
2. The Collector, Aurangabad.
3. The Sub-Divisional Officer, Aurangabad.
4. The Deputy Collector, Land Reforms, Aurangabad.
5. The Circle Officer, Rafiganj, District- Aurangabad.

... .. Respondent/s

Appearance :

For the Petitioner/s : Mr. Manoj Kumar, Adv.

For the Respondent/s : MD. KHURSHID ALAM -AAG-12

CORAM: HONOURABLE MR. JUSTICE DINESH KUMAR SINGH
ORAL JUDGMENT

Date : 13-10-2017

Heard Mr. Manoj Kumar, learned Counsel appearing on behalf of the petitioner and learned AC to AAG-12 for the respondent – State.

The present Writ application has been filed for setting aside the Notice dated 24.08.2017, issued under the signature of respondent no.5, the Circle Officer, Rafiganj, Aurangabad, under Section 6(2) of the Bihar Public Land



Encroachment Act (hereinafter referred to as 'the Act') in Form-II, whereby, the petitioner has been directed to remove the encroachment from the land appertaining to Thana No.738, Khata No. 65, Plot Nos. 207 and 212, situated in Village – Chiralia, P.S.-Kasma, C.O.- Rafiganj, District – Aurangabad, by 11.09.2017.

It is submitted by learned Counsel appearing on behalf of the petitioners that Encroachment Case No. 13 of 2012-13 was initiated by respondent no.5, the Circle Officer, Rafiganj, on 30.06.2014 with regard to the land pertaining to Khata No.65, Plot Nos.204 and 212.

The petitioners' residential house is situated on Plot No.207. The Circle Officer, Rafiganj, vide order dated 30.06.2014, directed the petitioners to remove encroachment from Plot No.207, without issuing notice to the petitioners or without conducting spot verification of the land in question in their presence. The petitioners preferred Encroachment Appeal No.75 of 2014, before the Collector of District, Aurangabad, against the order dated 18.06.2014, passed by the Circle Officer, Rafiganj, in Encroachment Case No.13 of 2012-13.

The Collector of Aurangabad District, vide order dated 09.09.2014, passed in Encroachment Appeal No.75 of



2014, directed the Circle Officer, Rafiganj, to pass specific order in records of the case. After three years of passing of the order dated 09.09.2014 by the Collector of Aurangabad District in Encroachment Appeal No.75 of 2014, the Circle Officer, Rafiganj, passed the impugned Notice under Section 6(2) of the Act in Form-II in Encroachment Case No.13 of 2012-13 directing the petitioners to remove encroachment from Plot Nos.207 and 212 by 11.09.2017, till realizing that the appeal of the petitioner is still pending and that the land in question is not a public land.

Learned AC to AAG-12, appearing on behalf of respondent nos. 1 to 5, submits that since appeal of the petitioners is pending before the Collector of the District, hence, they ought to have prayed for stay and quashing of notice before the appellate authority.

Considering the rival submission of the parties, it appears from the records, that the encroachment proceeding was initiated in pursuance to order dated 14.01.2013, passed in CWJC No.688 of 2013, but the order passed in the said Writ application has not been brought on record. However, it is submitted by the learned Counsel for the petitioners that they were not party in the said proceeding. The final order dated



30.06.2014, passed in Encroachment Case No.13 of 2012-13, has also not been brought on record, against which Encroachment Appeal No.75 of 2014 has been preferred. Though, it appears unreasonable that the Collector of the District, while hearing the appeal of the petitioners, vide order dated 09.09.2014 directed the Circle Officer, Rafiganj, to pass specific order in records.

The impugned Notice dated 24.08.2017, contained in Annexure-2 series, issued under Section 6(2) in Form -II, has been issued after three years of filing of the appeal by the petitioners, whereby, the petitioners have been directed to remove the encroachment by 11.09.2017, but it is submitted that the encroachment has not been removed. Hence, the impugned notice, has virtually lost its force. Since the appeal of the petitioners is still pending, the petitioners ought to have prayed before the appellate authority for stay of execution of the order, passed in encroachment proceeding, under Section 14 of the Act. There is nothing on record to suggest that any prayer for stay of the order of execution of order has been made before the authority. Hence, this Court is not inclined to interfere.

Moreover, the Notice dated 24.08.2017 has been challenged by filing the present Writ application on 04.10.2017



much after the stipulated time i.e., 11.09.2017.

Hence, the Writ application is disposed of with a liberty to the petitioners to file application for stay of execution of the order passed in encroachment case, within two weeks of the receipt/production of a copy of the order.

In the circumstances, it is expected from the respondent authorities to maintain *status quo* with regard to the land in question as is existing today, for a period of two weeks from the date of receipt/production of copy of this order.

Let a copy of this order be handed over to the learned AC to AAG-12 for its communication to the respondent authorities concerned.

(Dinesh Kumar Singh, J)

Ashwini/-

AFR/NAFR	
CAV DATE	
Uploading Date	
Transmission Date	

