

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.19016 of 2016

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1. Jawahar Sah @ Jawahar Lal Prasad, son of Late Devanand Sah alias Late Devnandan Sah
 2. Gandhi Sah Gond alias Gandhi Sah, son of Late Devanand Sah alias Late Devnandan Sah
 3. Umashankar Sah, son of Late Chhawdhari Sah
 4. Ramasare Sah, son of Late Bachchu Sah

All are of resident of Village- Bairagi Tola, Police Station-
Fulwariya, District- Gopalganj

.... Petitioners

Versus

1. The State of Bihar through the Principal Secretary, Department of Land Revenue and Land Reforms, Bihar, Patna
2. The District Magistrate, Gopalganj
3. The Sub-Divisional Officer, Hathua, District- Gopalganj
4. The Circle Officer, Fulwariya Block, District- Gopalganj

.... Respondents

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Appearance :

For the Petitioners : Mr. Baxi S. R. P. Sinha, Sr. Advocate
For the State : Mr. Raj Kishore Roy-GP18,
Ms. Bandana Singh, A.C. to G.P. 18

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CORAM: HONOURABLE DR. JUSTICE RAVI RANJAN

ORAL JUDGMENT

Date: 03-02-2017

Heard Parties.

It appears from the record that final order under
Section 6 of the Bihar Public Land Encroachment Act, 1956
(hereinafter referred to as “the Act”) was passed on 12.01.2016 but



the notices under Form II were issued on 29.12.2015 without any final order having being passed on that date.

However, since the order was passed without any final order having been passed, therefore, the entire proceeding against the petitioners is quashed and set aside. In fact, the order passed on 12.01.2016 is not a final order passed by the authority under Section 6 of the Act rather it is stated in the order that since notices under Form II were issued but the encroachers have refused to accept such notices, therefore, coercive steps are to be taken against the encroachers for removal of encroachment. It does not appear from the entire record that any order has been passed under Section 6 of the Act declaring that the petitioners are encroachers and they are required to be removed. Records also do not show that the petitioners were given any opportunity of hearing in the matter in terms of the Section 5 of the Act.

Accordingly, notices under Form II are held to be invalid but the petitioners are granted liberty to appear before the Circle Officer, who will fix the date of hearing and after hearing the petitioners, an order in accordance with law and on its own merit would be passed by him.

It goes without saying that unless final decision is taken and, thereafter, the notice is issued in Form II, no step for removal of



the petitioners can be taken by the Circle Officer.

This writ application stands disposed of.

(Dr. Ravi Ranjan, J)

Sanjay-II/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	10.02.2017
Transmission Date	NA

