

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.19386 of 2014

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Gautam Singh, Son of Late Shukhdeo Singh, Resident of Village-Darmaha
Tola Bhusaulawa, P.O.-Rajepur, P.S.-Kaseriya, District-East Champaran.

... .. Petitioner

Versus

1. The State of Bihar.
2. The District Collector, Motihari East Champaran.
3. The Land Reforms Deputy Collector, Chakiya, East Champaran.
4. The Sub-Divisional Officer, Chakiya, East Champaran.
5. The Circle Officer Kalayanpur, East Champaran.
6. Chanchal Singh, Son of Sri Ramasish Singh, Resident of Village-Darmaha
Tola Bhusaulawa, P.O.-Rajepur, P.S.-Kaseriya, District-East Champaran

... .. Respondents

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Appearance :

For the Petitioner/s : Mr. Vijay Shankar Shrivastava, Adv.
For the Respondent/s : Mr. Kumar Alok, SC-8

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CORAM: HONOURABLE MR. JUSTICE DINESH KUMAR SINGH
ORAL ORDER

5 22-11-2017 Heard Mr. Y.V. Giri, learned Senior Counsel for the
petitioner, Mr. S. Rajbardhan, for the intervenor, Chanchal
Singh and Mr. Vijay Bharti, learned AC to SC-7 for the
respondent-State.

The present writ application has been filed for quashing the
notice dated 24.09.2014, issued under the signature of
respondent no.5, the Circle Officer, Kalyanpur, as contained in
Annexure-3, whereby the petitioner has been directed to remove
encroachment from the land appertaining to Plot No. 1401,



1617, 1626 and 1909, by 12.11.2014 and also directed to inform respondent no.5, the Circle Officer, Kalyanpur, as to under what circumstances, the encroachment has been made on a public land, failing which, the encroachment will be removed forcefully and the cost of the same will be realized from him. Further prayer has been made for a direction to the respondent-authorities not to demolish the residential house of the petitioner situated on the land appertaining to Tauzi No. 290, Thana No. 208, Khata No. 812, Plot No. 1617, situated in Mauza Darmaha Tola Bhusaulawa, District East Champaran.

I.A. No. 1144 of 2015

I.A. No. 1144 of 2015 has been filed on behalf of Chanchal Singh with a prayer for impleading him as respondent no.6 in the writ application, since the intervenor claims that Plot No. 1617 is recorded in the revenue records as public land/road and adjacent to the same, Plot No. 1615 is existing which is the raiyati land of the intervenor and due to encroachment made by the petitioner, the ingress and egress of the intervenor has been obstructed.

Considering the aforesaid facts, I.A. No. 1144 of 2015 is allowed.

Learned counsel for the petitioner is permitted to implead



Chanchal Singh as respondent no.6 in the writ application.

C.W.J.C. No. 19386 of 2014

Learned Senior Counsel for the petitioner submits that though the notice contemplates several plot numbers but the petitioner is only concerned with part of Plot No. 1617, measuring an area of 12 dhurs. The total area of land appertaining to Tauzi No. 290, Thana No. 208, Khata No. 812, Plot No. 1617 is 7 katha 13 dhurs, out of which 12 dhurs of land was settled and patta was issued in the year 1938 (Fasli 1345) in favour of Sheodip Singh by the Sheohar Estate namely, Raja Krishna Nandan Singh Bahadur Raj Reyasat Sheohar and Punyadeo Singh, both are the uncles of the petitioner which gets reflected from the genealogical table mentioned in paragraph no.5 of the petition which suggests that Late Gulphat Singh has five sons, namely, Sheodip Singh, Daroga Singh, Punyadeo Singh, Pitamber Singh and Shukdeo Singh. Sheodip Singh died leaving behind two sons. Daroga Singh, Punyadeo Singh and Pitamber Singh died issue-less. The petitioner is the son of Late Shukdeo Singh, who is the youngest son of late Gulphat Singh. Subsequently, in family partition held in the year 1940, the land in question fell in the share of late Shukadeo Singh, the father of the petitioner and since thereafter, the petitioner is in peaceful



possession of the land in question and the petitioner is also paying rent to the same. Consequent to issuance of patta in favour of the ancestors of the petitioner, Jamabandi bearing Jamabandi No. 157 has been created in favour of Sheodip Singh and Punyadeo Singh for the land measuring area of 12 dhurs by the State government. The residential house of the petitioner is situated on the land in question and the said land is entered in Register-II by the Circle Officer in the name of Ravi Kumar Gautam, who is the son of the petitioner. The petitioner has been granted Land Possession Certificate with regard to land in question on 19.09.2013 by the Circle Officer, as contained in Annexure-2. Hence, it is submitted that on a raiyati land, no proceeding under the Bihar Public Land Encroachment Act (hereinafter referred to as 'the Act') can be initiated. The notice dated 24.09.2014 issued under the signature of respondent no.5, the Circle Officer, Kalyanpur, as contained in Annexure-3, does not suggest that any encroachment proceeding has been initiated.

It is lastly submitted by Mr. Giri that the jamabandi being existing in the name of the son of the petitioner, has not been denied by the respondent authorities and unless Jamabandi is canceled, no proceeding can be initiated, as until the



cancellation of Jamabandi, the land can not be treated as a public land.

It is submitted by Mr. S. Rajbardhan, learned counsel for the intervenor that the Plot No. 1617 is recorded in the Revenue Record as public road and adjacent to said said, Plot No. 1615 is situated which is the raiyati land of the intervenor and he uses Plot No. 1617 as public road, hence the encroachment deserves to be removed and since the land in question is a public land, hence notices have rightly been issued by the Circle Officer. However, he does not controvert this fact that notice as contained in Annexure-3 does not bear any encroachment case number. He also does not controvert this fact that Jamabandi has been created on the part of Plot No. 1617 in favour of the petitioner.

Counter affidavit has been filed on behalf of respondent nos. 2 to 5 taking stand in paragraph no. 10 that the petitioner got Plot No. 1617 illegally registered in Register-II and got Jamabandi created illegally. The stand has also been taken in the counter affidavit that rent receipts are forged.

It is submitted by learned AC to SC-7 that even assuming that Jamabandi has been created in favour of the son of the petitioner, but that is only on the part of Plot No. 1617.



However, it is the stand of the respondent State that proper encroachment proceeding being Encroachment Case No. 06 of 2014-15 has been initiated and notices have been issued on 08.09.2014 and 24.09.2014 to the petitioner, which has been brought on record as Annexure- A(series) to the counter affidavit, and after considering the show cause of the petitioner, the final order was passed on 24.09.2014. Hence, the writ application has become infructuous.

Having heard learned counsel for the parties, this Court is of the view that the basic issue in the writ application is whether the notice contained in Annexure-3 to the writ application has been issued after initiation of encroachment proceeding properly under Section 3 of the Act or whether the impugned notice, as contained in Annexure-3 can be treated as a notice under Section 3(1) in Form-I or Section 6(2) in Form-II of the Act, as the notice brought on record by the respondent State, as contained in Annexure-A(series) to the counter affidavit, does not bear any encroachment case number, nor it is in a proper format, as none of the notices, either under Section 3(1) has been issued in Form-I, or under Section 6(2) has been issued in Form-II of the Act. Hence, these notices cannot be treated as a notices issued under the Act.



The specific stand of the respondent-State as stated in paragraph no.6 of the counter affidavit is that Encroachment Case No. 06 of 2014-15 was initiated and after calling for the report from the Circle Amin and Halka Karamchari, it was found that 15 persons have encroached upon the land in question and after the same, the notices were issued to the petitioner and thereafter, vide order dated 24.09.2014, the Circle Officer, Kalyanpur passed final order in Encroachment Case No. 06 of 2014-15. Paragraph no.12 of the counter affidavit reads as follows:-

“12. That thereafter the Circle Officer, Kalyanpur found that the claim of settlement of Gairmajarua Aam Land/Road as said by the petitioner is totally false and baseless. The Ex land Lord was not empowered to settle the portion of the Gairmajruwa Aam Road, as it was property of the community and society. Accordingly the Circle Officer, Kalyanpur passed his final order on 24.09.2014 in the Encroachment Case No. 06 of 2014-15 directing the petitioner and others encroachers to vacate the encroached portion of the public road.”

Annexure-A to the counter affidavit though contains the notice dated 24.09.2014, but it does not suggest that this is the final order passed under Section 6(1) of the Act. Hence, from the material on record, it does not appear that either any notice was issued under Section 6(1) of the Act or any final order was passed under Section 6(2) of the Act. However, the purport of the notice dated 08.09.2014, as contained in Annexure-A



(Series) to the counter affidavit, appears that it has been issued under Section 6(2) of the Act, though not in Form-II, whereby 13 persons excluding the petitioner were directed to remove the encroachment from the land in question.

In the circumstances, it appears that respondent-State has not brought on record any copy of notice, which substantiates the contention of learned counsel for the petitioner that no notice was ever issued to the petitioner. From submission of the parties, this fact is admitted that on 12 dhurs of the land appertaining to Plot No. 1617, the jamabandi was created in favour of the ancestors of the petitioner and subsequently, in favour of the son of the petitioner and the same has not been cancelled.

In view of this Court, a proceeding under the Act can only be initiated after cancellation of jamabandi to the extent the Jamabandi was created in favour of the petitioner. No doubt, under Section 3 of the Act, the Collector, under the Act is empowered to initiate a proceeding if it appears to him either on the application made by any person or upon information received from any source that the public land has been encroached upon. The Act provides the procedure for initiation of proceeding under Section 3 of the Act, issuance of notice



under Section 3(1) and thereafter, allowing the proposed encroachers to put their defence under Section 4 and giving opportunity of hearing to all affected persons under Section 5 and thereafter only order under Section 6(1) can be passed, but the adherence to such procedure is amiss in the present case.

Since this Court finds that though, Encroachment Case No. 06 of 2014-15 was initiated and no procedure has been followed, hence the proceeding of Encroachment Case No. 06 of 2014-15 including notice dated 24.09.2014, as contained in Annexure-3 is quashed to the stage of Section 3 of the Act.

It is made clear that this Court has not expressed any opinion with regard to nature of land incorporated in the notice as contained in Annexure-3 including Plot No. 1617, nor this Court has expressed any opinion with regard to right of the intervenor, Chanchal Singh.

The Circle Officer, Kalyanpur is directed to proceed in Encroachment Case No. 06 of 2014-15 from the stage of Section 3 of the Act and thereafter, take the same to its logical conclusion within a period of three months from the date of receipt/production of a copy of this order, after giving due opportunity of hearing to all affected person in accordance with the provisions of the Act.



Accordingly, the present writ application is allowed.

(Dinesh Kumar Singh, J)

Amrendra/-

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