

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.6140 of 2014

=====

Ram Belas Prasad Son Of Late Sheo Bachan Prasad Resident Of Village-
Betaura Pargana Goa, P.O. Satjora Bazar, P.S. Panapur, District- Saran,
Bihar

.... Petitioner/s

Versus

1. The State Of Bihar
2. S.D.M. Marhowrah, District- Saran
3. Circle Officer, Panapur, District- Saran
4. Circle Inspector, Panapur, District- Saran
5. Anchal Amin Panapur, District- Siwan
6. Sheo Kumar Pandit Son Of Late Musaheb Pandit Resident Of Village
Betaura, P.O. Satjora Bazar, P.S. Panapur, District- Saran

.... Respondent/s

=====

Appearance :

For the Petitioner/s : Mr. Kapil Deo Singh
For the Respondent/s : Mr. Ashok Priyadaeshi, G.A.4
For Respondent No.6 : Mr. Jitendra Kumar Roy,

=====

CORAM: HONOURABLE MR. JUSTICE DINESH KUMAR SINGH
ORAL ORDER

5 28-08-2017 Heard Mr. Kapil Deo Singh, learned counsel for the
petitioner, learned G.A. 13 for respondents no.1 to 5 and
Mr.Jitendra Kumar Roy for respondent no.6.

The present writ application has been filed for a
direction to respondents 1st set to get the encroachment removed,
which has been made by the respondent no.6 by constructing
brick wall and putting on asbestos sheets over 3 decimal
'Gairmajarua' land appertaining to Khata No.82, Plot No.610,
total area measuring 19 decimal, which is used as public road,
situated within the Mauza - Panapur in the District of Saran.



It is submitted by the learned counsel for the petitioner that the land in question is recorded in revenue records as 'Gairmajarua' land and the same is being used as public road but due to encroachment made by respondent no. 6, it has substantially been blocked. The petitioner submitted an application before the Respondent No.2, S.D.M., Marhowrah for removal of encroachment from the land in question, which was subsequently transmitted, vide Memo No.1252 dated 28.08.2007, to the respondent No.3, the Circle Officer, Panapur for information and needful action. Subsequently, respondent no. 3 initiated a proceeding under Bihar Public Land Encroachment Act (hereinafter referred to as the 'Act') being Encroachment Case No.3/2007-08 and sought for a report from the Halka Karmchari. Consequently, Halka karmchari submitted a report to the effect that three decimals of land in question has been encroached by the respondent no. 6 and the same is a public road. On the basis of the report of Halka Karmchari and the measurement report of Anchal Amin, the respondent No.3, the Circle Officer, Panapur came to a conclusion that three decimals of land has been encroached upon by the Respondent No.6 and accordingly, vide order dated 30.01.2008 in Encroachment Case No.3 of 2007-08 notice was issued to the Respondent No.6 and the matter was directed to be



put up on 08.02.2008. Thereafter, a fresh report was called for from the Circle Amin and Circle Inspector and Revenue Karmchari vide order dated 6.8.2009 and on 20.8.2009, the respondent no. 6 was declared as an encroacher, since he did not submit any document with regard to his claim over the land in question and it was directed for issuance of notice for removal of encroachment.

It appears that vide order dated 21.11.2014 notice was issued under the signature of the respondent no.3, the Circle Officer, Panapur to the petitioner for removal of encroachment but, till date, encroachment has not been removed, hence, the present writ application.

It is submitted by learned G.A. 13 that the final order has been passed but the encroachment could not be removed, however, the same will be removed within a time frame.

It is submitted by learned counsel for respondent no. 6 that there is nothing on record to suggest that any notice under section 3 in Form I or under section 6(2) in Form II of the Act has been issued or served upon respondent no. 6.

The counter affidavit filed on behalf of respondents reflects that the encroachment proceeding was initiated on 30.1.2008 and the matter was adjourned to 8.2.2008 but on the



next date, i.e. 6.8.2009 the order was passed and thereafter the final order was passed on third date i.e., on 20.8.2009, without ascertaining the fact that notices were actually served to respondent no. 6 or not.

This Court is not being able to appreciate the fact that, when, the respondent No.3, the Circle Officer, Panapur, vide order dated 30.01.2008 in Encroachment Case No.3 of 2007-08, as contained in Annexure-1 directed for issuance of notice to the respondent no.6 and for putting up the matter on 08.02.2008, then under such circumstances, how could a notice be issued to the respondent no.6 on the same date, i.e., on 30.01.2008, directing him for removal of encroachment by 18.02.2008. Such notice dated 30.01.2008, as contained in Annexure-3, is neither in proper format, nor is in consonance with Form I, which stipulates the form of notice under Section 3 of the Act. Such notice dated 30.01.2008, also depicts the arbitrary and unguided manner in which concerned State authorities are conducting the encroachment proceedings, without caring for the provisions and procedure, mandated under the Act.

Notices were directed to be issued vide order dated 20.8.2009 but, it appears that it was issued on 21.11.2014, as contained in Annexure C to the counter affidavit, that too is not in



a proper format. Hence, the proceeding has not been conducted in a proper manner.

Considering the rival submissions of the parties and perusing the materials on record, it appears that notices were not issued in proper format as has been directed by respondent no.3 and ultimately the respondent no. 3 took initiative for implementation of the order after filing of the present writ application. This is not in dispute that encroachment proceeding was initiated as far back as in 2007 but the same has not been taken to its logical conclusion in true sense.

In the circumstances, the order dated 20.8.2009 passed in Encroachment Case No. 3 of 2007-08 is hereby quashed. Respondent no.3, the Circle Officer, Panapur is directed to conduct the proceeding from the stage of Section 4 of the Act which prescribes to allow the respondent no. 6 to put his defence and after giving liberty of hearing under Section 5 of the Act to the petitioner and respondent no. 6 and thereafter respondent no.3, the Circle Officer, Panapur will pass final order within a period of two months from the date of receipt/production of a copy of this order. Both the petitioner and respondent no. 6 agree to appear before respondent no. 3 to submit their respective defence within a period of three weeks from the date of receipt/production of a copy of



this order.

With the aforesaid observation, this writ application stands disposed of.

(Dinesh Kumar Singh, J)

AnilKrSinha/-Anil/

U			
---	--	--	--

