

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.10214 of 2015

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1. Rezaullah, Son of Md. Muslim
 2. Khurshid, son of Sk. Nabi Jan.
 3. Chhote, son of Taslim@Shahebjan
 4. Habir, son of Taslim@Shahebjan
 5. Firoz, Son of Serajuddin
 6. Hashim, son of Abdul
 7. Khairun, wife of Jabir
 8. Lale, Son of Shahebjan
 9. Most. Samira, Wife of Munan
 10. Zafir, Son of late Manzoor
- All Resident of Village - Baya Bazar, Anchal - Parihar, Police Station, Parihar, District - Sitamarhi.

... .. Petitioner/s

Versus

1. The State of Bihar through Principal Secretary, land & Revenue Department , Bihar , Patna.
2. The Collector Sitamarhi.
3. The Superintendent of Police, Sitamarhi.
4. The Sub-Divisional officer, Sitamarhi.
5. The D.C.L.R Sitamarhi.
6. The Circle Officer, Anchal Parihar, District Sitamarhi.
7. The Block Development Officer, Block Parihar, District Sitamarhi.

... .. Respondent/s

Appearance :

For the Petitioner/s :

For the Respondent/s :

CORAM: HONOURABLE MR. JUSTICE DINESH KUMAR SINGH
ORAL ORDER

2 21-09-2017 None appears on behalf of the petitioners. However, Ms. Anukriti Jaipuriya, learned AC to SC-21 appears on behalf of respondent nos. 1 to 7.

The present Writ application has been filed for quashing of the notice contained in letter no.554,dated 03.07.2015, issued under the signature of respondent no. 6, the Circle Officer, Parihar, in Encroachment Case No. 12/2012-13, whereby,



thirteen persons including the petitioners were directed to remove the encroachment from the land appertaining to Plot No.1179, Khata No.768, within a period of one week, failing which the same will be vacated by deputing police force, in pursuance to the order dated 04.05.2013 passed in CWJC No.14869 of 2014. Further prayer has been made for restraining the respondent authorities from interfering in the peaceful possession and occupation of the land in question, on which the petitioner is residing since long and for granting interim stay of the operation of the order of the Circle Officer, Parihar.

The petitioners claim that they are residing over the land in question since long and the said land has been allotted to them by the ex-landlord. However, no proper settlement was made. After abolition of Zamindari, the land in question has been recorded as government land, as a result, one Rajendra Paswan, filed Public Interest Litigation through CWJC No. 14869 of 2014, with a prayer for removal of the encroachment. The said application was disposed of by a Division Bench of this Court vide order dated 04.05.2015 in following terms :-

“.....Hence, this Writ petition is disposed of, directing the Collector, Subdivisional Officer and the Block Development Officer to examine the representation submitted by the



villagers as regards the alleged encroachment into aforesaid Plot and take appropriate steps within a period of two months from today. If it is decided to evict the encroachers, the procedure prescribed under law should be followed.”

The writ petitioners further claim that they were never noticed under prescribed law and for the first time the impugned notice, as contained in Annexure-1 has been issued to them. Hence, the present Writ application.

Ms. Anukriti Jaipuriya, learned AC to SC-21 appearing on behalf of the respondent -State while relying upon the counter affidavit filed on behalf of respondent nos. 2, 5, 6 and 7 submits that Encroachment Case No.12 of 2012-13 was initiated for removal of encroachment from the land in question by respondent no.6, the Circle Officer, Parihar, wherein, the notices were issued to the encroachers. In the meantime, one Rajendra Paswan, filed Public Interest Litigation through CWJC No. 14869 of 2014 for removal of the encroachment from the land in question, wherein, the Hon'ble Court directed for removal of encroachment according to the procedure prescribed under the law and consequently the impugned notice, as contained in Annexure-1, was issued.

From the pleading of the petitioners it appears that they are residing on the government land.



Considering the pleadings of the writ petitioners in the Writ application as well as the submission made by learned Counsel for the respondent State, this Court is not inclined to quash the notice dated 03.07.2015, since it has lost its force, as vide the said notice, the petitioners and others were directed to remove the encroachment within a period of one week.

However, it is relevant to state here that respondent no.6, the Circle Officer, Parihar, who has initiated Encroachment Case No. 12 of 2012-13, is expected to take such proceeding to its logical conclusion under the Bihar Public Land Encroachment Act (hereinafter referred to as 'the Act'). Particularly, in view of the fact that the Division Bench had directed vide order dated 04.05.2015 in CWJC No. 14869 of 2014 to take appropriate steps within a period of two months, and if the authorities decided to evict the encroachers, then prescribed procedure under law must be followed.

Section 3 of the Act prescribes the procedure for initiation of proceeding and issuance of notice to the encroachers in Form-1 and after final order passed under Section 6(1) of the Act, a notice under Section 6(2) is required to be issued. But in the present case, there is nothing on record to suggest that any final order has been passed before issuance of notice.



In the circumstances, respondent no.6, the Circle Officer, Parihar, is directed to take the proceeding of Encroachment Case No.12 of 2012-13, to its logical conclusion within a period of three months, after giving due notice to all the affected persons under the provisions of the Act.

The Writ application is, accordingly, disposed of with the aforementioned direction and observation.

(Dinesh Kumar Singh, J)

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