

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.550 of 2016

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1. Anil Ram, Son of Tulsi Ram
 2. Sushila Devi, Wife of Anil Ram
 3. Manoj Ram, Son of Tulsi Ram
 4. Shakuntala Devi, wife of Manoj Ram

All are resident of Village- Kuwar Bathuaa, P.O.- Bathuaa Bazar, District-Gopalganj.

.... Petitioners

Versus

1. The State of Bihar through the Principal Secretary, Schedule Caste and Schedule Tribe, Welfare Department, Government of Bihar, Patna
2. The Principal Secretary, General Administrative Department, Government of Bihar, Patna
3. The District Magistrate, Gopalganj.
4. The S.D.O. Gopalganj
5. The L.R.D.C., Bathuaa
6. The Circle Officer, Phulwariya
7. Navi Rasul Saiphi, son of kadir Mian, resident of village-Kuar, Bathuaa, P.S.- Phulwariya, District-Gopalganj.

.... Respondents

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Appearance :

For the Petitioner/s : Mr. Ranjeet Kumar, Advocate
Ms. Ranjeeta Singh, Advocate
For the State : Mr. Ram Vinay Pd. Singh, AC to GA-12
For the private respondent : Mr. Pravin Kumar Verma, Advocate
Lokesh Kumar Singh, Advocate

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CORAM: HONOURABLE DR. JUSTICE RAVI RANJAN

ORAL JUDGMENT

Date: 10-02-2017

Heard parties.

The petitioners' grievance is that without granting reasonable opportunity, a Notice under Form II has been issued to them for removal of alleged encroachment. A copy of the said notice stands appended as Annexure-2.

It appears that this Court vide its order dated 17.09.2015



passed in CWJC No.9571 of 2014 (Annexure-3) had directed the Circle Officer, Phulwariya to conclude the Encroachment Case No.3/2013-14 on its own merit and in accordance with law after granting reasonable opportunity to all the concerned within a period of three months from the date of receipt/production of a copy of this order. Thereafter, an order dated 30.11.2015 has been passed by the Circle Officer directing for issuance of Notice under Form II directly without taking any final decision as to whether there is any encroachment upon the concerned public land or not. Thereafter, on 12.01.2016, an order has been passed holding the petitioners and others as encroachers and straightway a direction has been given to the Officer-in-charge, Phulwariya to remain present along with the police force for removal of encroachment.

In my view, the mandate of Bihar Public Land Encroachment Act, 1956 (hereinafter referred to as 'the Act') has not been followed at all by the Circle Officer as a decision regarding existence of any encroachment is to be taken after granting reasonable opportunity of hearing under Section 5 of the Act to the alleged encroachers. Nothing has been done and a Notice under Form II has straightway been issued even before passing of any final order under Section 6 of the Act.

Accordingly, the impugned notice as contained in



Annexure-2 is quashed and set aside. The petitioners are permitted to appear before the Circle Officer along with their reply within a period of four weeks. Thereafter, they would be granted reasonable opportunity of hearing in accordance with law under Section 5 of the Act by the Circle Officer and then only final order under Section 6 of the Act would be passed by the Circle Officer.

In the meantime, let all the parties maintain *status quo* with respect to the concerned land.

However, it is made clear that all the persons who have been found encroachers including the petitioners or the private respondent etc. would have to be treated at par and no encroacher should be spared.

This disposes of the writ petition.

(Dr. Ravi Ranjan, J)

V.K. Pandey/-

AFR/NAFR	N.A.F.R.
CAV DATE	N.A.
Uploading Date	10.02.2017
Transmission Date	N.A.

