

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.22386 of 2013

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1. Shreshtha Narayan Jha Son Of Late Shiv Kant Jha Resident Of Village- Dhenga,
Police Station- Arer, Anchal- Benipatti, District- Madhubani

.... Petitioner/s

Versus

1. The State Of Bihar Through The Collector, Madhubani
2. The Additional Collector, Madhubani
3. The Sub Divisional Officer, Sadar, Madhubani
4. The Circle Officer, Kaluahi, Madhubani

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. RATANAKAR JHA

For the Respondent/s : Mr. KUNDAN BHADUR SINGH

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CORAM: HONOURABLE MR. JUSTICE DINESH KUMAR SINGH
ORAL JUDGMENT

Date: 17-07-2017

Heard learned counsel for the petitioner and AC to GP

10 for the respondent State.

The present writ application has been filed for quashing the notices dated 30.7.2013 and 16.8.2013, as contained in Annexures 3 and 4, issued by the Circle Officer, Benipatti, whereby the petitioner has been directed to remove the encroachment from 2 dhoores of land pertaining to Khata No. 437 Plot No. 1928 Thana No. 209 situated in the Mauza Dhanga in the District of Madhubani.

It is submitted by learned counsel for the petitioner that without initiating any encroachment proceeding under the Bihar



Public Land Encroachment Act (hereinafter referred to as the 'Act'), notice, contained in Annexure 3 dated 30.7.2013, was issued whereby the petitioner was asked by the Circle Officer, Benipatti to appear on 16.8.2013 at 11 A.M. to submit reply to show cause as to why the encroachment from the land in question be not removed whereas notice dated 16.8.2013 was issued by the Collector under the Act under section 6(2) of the Act in Form II whereby the petitioner was directed to remove encroachment by 5.9.2013 otherwise the same will be removed and ten times of the cost of removal of encroachment will be recovered.

Counter affidavit has been filed on behalf of respondent no. 1 but it does not stipulate that any encroachment proceeding has ever been initiated or any final order under section 6(1) of the Act has ever been passed.

The matter was adjourned at the request of learned counsel for the respondent State to seek instruction with regard to initiation of proceeding under the Act but it is submitted that despite reminders no instruction has been received.

In the rejoinder to the counter affidavit filed on behalf of respondent no. 1, specific plea has been made that without initiating any proceeding the notices as contained in Annexures 3 and 4 have



been issued which gets reflected from the fact that notices do not bear any encroachment case number. The further contention of learned counsel for the petitioner is that the land in question is not a public land.

Having heard learned counsel for the parties, a proceeding under the Act can be initiated under section 3 of the Act if it appears to the Collector under the Act from an application made by any person or upon information received from any sources that any person has made or is responsible for the continuance upon any public land. Thereafter the Collector may cause service of a notice upon such person in the prescribed form requiring him to appear on a date which shall not be less than two weeks from the date of service of notice to show cause. Section 3 of the Act reads as follows:

“[3. Initiation of the proceedings - (1) If it appears to the Collector from an application made by any person or upon information received from any sources that any person has made or is responsible for the continuance of any encroachment upon any public land, the Collector may cause to be served upon such person a notice in the prescribed form requiring him to appear on a date which shall not be less than two weeks from the date of service of notice to show cause –

- (a) Why he should not be restrained from making such encroachment by issue of injunctions; or



(b) Why such encroachment should not be removed.”

(2) Under clause (a) of sub-section (1) the Collector shall have power to issue temporary injunction at any stage to restrain such encroachment till the disposal of the proceeding or till further orders or he may pass such order as deems proper for preventing such encroachment:

Provided that where the encroachment on public land is in the nature of exposure of articles for sale, or opening temporary booth for vending, the Collector may without the formality of issuing a notice as required under sub-section (1) order for its immediate removal or cause it to be removed immediately and for the purpose he may use such force as is necessary in the case:

Provided further that where the encroachment on public land is of such a nature as the Collector considers its immediate removal essential for the safety of general public or for the safety of any other structure on the public land and the notice cannot be served without unnecessary delay upon the person responsible for the encroachment or his representative owing to his absence or for any other reason, he may order the removal of encroachment or if necessary cause it to be removed immediately and may use such force for the purpose as is necessary.

(3) If the person who has made or is responsible for the continuance of the encroachment is not known or cannot be found, the Collector may cause notice to be affixed in the neighbourhood of the alleged encroachment requiring any person interested in the same to show cause by the date



specified in the notice why the encroachment should not be removed and it shall not be necessary to name any person in such notice.]”

Hence the exceptions to the condition of issuance of notice under Section 3(1) of the Act are where encroachment on public land is nature of exposure of articles for sale, or opening of temporary booth for vending or where the encroachment on public land is of such a nature as the Collector under the Act considers its immediate removal essential for the safety of the general public or for the safety of any other structure on the public land and the notice cannot be served without unnecessary delay upon such person or his representative due to his absence or any other reason.

Section 4 of the Act allows the person to put his defence in pursuance to the notice issued under section 3(1) of the Act. Section 5 of the Act provides the privilege to the noticee to be heard by the Collector under the Act. Under section 6(1) of the Act the Collector under the Act passes final order and thereafter the notice for removal of encroachment is issued under section 6(2) of the Act. Section 6 reads as follows:

“6. Final order of the Collector - (1) In all cases not covered by the provisions to sub-section 3, the Collector shall after hearing the persons concerned and taking evidence, if any under section 5 and after making such



enquiry as he deems necessary the Collector may, as the circumstances of the case require-

(a) either drop the proceeding, or

(b) make the temporary injunction issued under sub-clause (a) of sub-section (1) of section 3 absolute against the person making encroachment of the public land, or

(c) if any person who together with his homestead does not own more than 5 acres of land, has encroachment up to 10 dec. of public land continuous to his agricultural holding and has used the encroached public land for agricultural purposes, the Collector shall order the settlement of such public land with such person on payment of rent and damages for the use of this land. The amount of damages and rent shall be calculated by considering the rent payable in case of similar land in the neighbourhood. Where no rent is payable the rent and damages for the encroached public land shall be calculated on the basis of such fair rent as the Collector may deem proper, or

(d) where the temporary encroachment on public land has been removed by the person making encroachment after some time the Collector shall order payment of damages for the use of the land during the period of encroachment. The amount of damages shall be calculated according to the prescribed procedure, or



(e) in the cases not converted by the foregoing sub-clauses, the Collector shall direct the person making encroachment of the public land to remove the encroachment within specified period which shall not in any case be more than two weeks in case the encroachment is not removed within the specified time the crops standing or all types of structures existing on the encroached land shall be forfeited by the Collector:

Provided if any landless person encroached up to 12 ½ dec. of public land before the 10th October, 1955, no action shall be taken against him under this Act.

(2) If any person does not comply with the orders passed by the Collector under this section, he shall be punishable with imprisonment for a term which may extend to one year or with fine up to Rs.2,0000 or with both.”

In the present case, neither from the counter affidavit nor from the submissions made by learned counsel for the respondent State, it appears that any proceeding was initiated or any final order under section 6(1) of the Act was ever passed.

Hence, the notices contained in Annexures 3 and 4, in no way, can be sustained. Accordingly, the notices dated 30.7.2013 and 16.8.2013, as contained in Annexures 3 and 4, issued by the



Circle Officer, Benipatti, (Collector under the Act) are hereby quashed. This writ application stands allowed. However, it is made clear that this Court has not given any finding with regard to the nature of the land in question whether it is a public land or private/raiyati land of the petitioner. Allowing the present writ application will not preclude the authorities to initiate appropriate proceeding in accordance with the provisions of the Act.

(Dinesh Kumar Singh, J)

Anil/-

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

