

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.16990 of 2015

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Radhe Sahani, S/o- Late Saryug Sahani, R/o- Dagwar Toli Ward No.12, Nagar
Panchayat Rosera, P.S.- Rosera, District- Samastipur.

... .. Petitioner/s

Versus

1. The State of Bihar through the District Magistrate, Samastipur.
2. The District Magistrate, Samastipur, at Samastipur.
3. The Anchaladhikari, Rosera, District- Samastipur.
4. The District Education Officer, Samastipur.

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr. Krishna Prasad Singh

For the Respondent/s : Mr. Deepak Kumar, AC to SC 5

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CORAM: HONOURABLE MR. JUSTICE DINESH KUMAR SINGH

ORAL JUDGMENT

Date : 30-10-2017

Heard learned counsels for the parties.

Since the writ application was filed in 2015 and till date no counter affidavit has been filed, this Court is not inclined to adjourn the matter.

The present writ application has been filed for quashing the Notice dated 5.11.2014 issued vide Memo No. 1351 under the signature of respondent no.3, Circle Officer, Rosera, as contained in Annexure 4 whereby the petitioner has been directed to produce evidence on 10.11.2014 as to why he has not removed the encroachment from the land appertaining to Primary School, Kali Vedi, Rosera. The notice also stipulates that earlier notices were issued thrice but the petitioner failed to respond.

It is submitted by learned counsel for the petitioner that the land appertaining to Plot No. 5031, Thana No. 69 Tauzi No. 14718, situated in Rosera



Town in the district of Samastipur is the ancestral land of the petitioner. Primary School, Kali Vedi, Rosera was earlier running in Dagwar Toli, Rosera in the old house of Gopal Jee Lal and Govardhan Lal, but since that building got dilapidated, hence, the petitioner's father allowed the school to run in question in the courtyard of the petitioner. For some time, the rent was being paid for the same but thereafter the payment of the rent was stopped and the authorities began claiming over the land in question. The petitioner filed Eviction Suit No. 4 of 2007, plaint of which has been brought on record as Annexure 1. The Block Education Extension Officer, Rosera and the District Education Officer, Samastipur are arrayed as defendants and they have entered appearance and filed their written statement on 17.6.2014 but in order to pressurize the petitioner, the impugned notice has been issued without giving the details of the land in question or without initiating any proceeding in accordance with the provisions of Bihar Public Land Encroachment Act (hereinafter referred to as the 'Act').

Admittedly, the land in question is the raiyati land of the petitioner, hence, the provision of the Act is not applicable. It is further submitted by learned counsel for the petitioner that in pursuance to the notice, no further action has been taken.

Learned counsel for the respondents submits that simply a notice has been issued, however, he admits that the same has been issued without initiating any proceeding. Hence, the present writ application is pre-mature. Moreover, from the written statement filed on behalf of the official respondents in the said suit, it appears



that the school in question is situated on the land in question since 1937.

Considering the rival submissions of the parties, in view of the fact that the eviction suit is pending since 2007 wherein official defendants have already entered appearance and filed written statement, there was no need of issuance of such notice without initiating a proceeding under the Act. Though the impugned notice has lost its force as the petitioner was directed to produce evidence in support of his claim by 10.11.2014 itself, but since the notice appears to have been issued without initiating any proceeding and without giving details of the land in question, hence this Court declares the impugned notice as non-est and, accordingly, it stands quashed.

However, respondent no. 3, Circle Officer, Rosera is not precluded from initiating a proceeding under Section 3 of the Act if it appears to him that the land in question is a public land provided that he is not restrained by any order of the Court of competent jurisdiction, and to conclude such proceeding within a period of three months after giving due opportunity of hearing to all affected persons in accordance with the provisions of the Act.

This writ application is, accordingly, disposed of.

(Dinesh Kumar Singh, J)

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AFR/NAFR	
CAV DATE	
Uploading Date	
Transmission Date	

