

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.12303 of 2017

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Sureshwar Prasad Sharma, Son of Late Kameshwar Prasad Sharma, Resident of
Village – Viman, Police Station – Ariyari, District – Sheikhpura.

.... Petitioner.

Versus

1. The State of Bihar through the Principal Secretary, Land and Revenue Department, Govt. of Bihar, Patna.
2. The Principal Secretary, Land and Revenue Department, Govt. of Bihar, Patna.
3. The District Magistrate, Sheikhpura, Bihar.
4. The Sub-Divisional Officer, Sheikhpura, Bihar.
5. The Circle Officer, Ariyari Circle, Sheikhpura, Bihar.

.... Respondents.

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Appearance :

For the Petitioner/s : Mr. Ganpati Trivedi, Sr. Advocate
Mr. Ajay Kumar, Advocate
Mr. Madan Mohan, Advocate
Mrs. Pallavi Pandey, Advocate

For the Respondent/s : Mr. Sajid Salim Khan , SC-25

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CORAM: HONOURABLE MR. JUSTICE DINESH KUMAR SINGH

ORAL JUDGMENT

Date: 28-08-2017

Heard Mr. Ganpati Trivedi, learned Senior counsel
for the petitioner and Mr. Sajid Salim Khan, learned SC-25 for the
State-respondents.

The present Writ application has been filed for
quashing the entire proceeding of Encroachment Case No. 71 of 2016-
17, so far it relates to the petitioner, as well as the Notice dated
18.08.2017, as contained in Annexure-5, issued under the signature of
respondent no. 5, Circle Officer, Ariyari under Section 6(2) in Form-
II of the Bihar Public Land Encroachment Act, 1956 (hereinafter
referred to as the 'Act'), whereby petitioner has been directed to



remove the encroachment from the land appertaining to Khata No. 252, Plot No. 611, Khata No. 230, Plot No. 604 and Khata No. 234, Plot No. 599 by 24.08.2017, failing which, the encroachment will be removed by the administrative authority on 25.08.2017 and the cost of such removal would be realized from the petitioner.

It appears that the petitioner earlier came before this Court in C.W.J.C. No. 4751 of 2017, with similar prayer for quashing the entire proceeding of Encroachment Case No. 71 of 2016-17 including the special notice dated 24.03.2017, whereby petitioner was directed to remove the encroachment from the land in question. The said Writ application was disposed of vide order dated 29.03.2017, as contained in Annexure-3, with a direction to the Circle Officer, Ariyari to conclude the proceeding of Encroachment Case No. 71 of 2016-17 within a period of six weeks, after giving due opportunity of hearing to the petitioner and all affected persons, in accordance with the provisions of the Act. Consequently, final order has been passed by respondent no. 5, the Circle Officer, Ariyari, vide order dated 23.05.2017 and thereafter the notice under Section 6(2) in Form-II of the Act was issued on 18.08.2017, under the signature of respondent no. 5, Circle Officer, Ariyari.

It is submitted by learned counsel for the petitioner that the petitioner preferred an appeal, but the same has not been



registered till date. Statement to that effect has been made in paragraph 12 of the petition, which reads as follows:-

“That the petitioner preferred appeal before the respondent no. 2. However till date the appeal has not been even numbered.”

Moreover, the petitioner has also preferred Title Suit No. 62 of 2017 with regard to the land in question.

Mr. Sajid Salim Khan, learned SC-25 submits that in pursuance to this Court's order dated 29.03.2017 passed in C.W.J.C. No. 4751 of 2017, the final order was passed on 23.05.2017 by the Circle Officer, Ariyari in Encroachment Case No. 71 of 2016-17. The petitioner was declared as an encroacher and ultimately, notice under Section 6(2) in Form-II of the Act was issued on 18.08.2017 and consequently, the order has been substantially given effect to and major portion of the encroachment has been removed, from the land in question. However, the petitioner has stated in paragraph 12 of the petition that he has preferred an appeal against the final order, but neither any date of such filing has been mentioned in the petition nor does he have any instruction to that effect.

Considering the rival submissions of the parties, this Court is not inclined to interfere into the matter, keeping in view the fact that the final order is appealable under Section 11 of the Act.



Considering the rival submission of the parties, it is expected from the Appellate Authority that if the petitioner has already preferred an appeal, then the Appellate Authority will register it and dispose of the same, but if the appeal has not been filed till date, the petitioner is permitted to file an appeal with an application for condonation of delay, within a period of two weeks from the receipt of the present order, which will be considered by the Appellate Authority in accordance with law. The Appellate Authority may also consider passing of interim order in view of the prayer made by the petitioner. Since the petitioner has been permitted to file an appeal within a period of two weeks, the respondent no. 5, the Circle Officer, Ariyari is expected to maintain status quo with regard to the land in question, as existing today, till the Appellate Authority decides the issue of interim order.

Accordingly, this writ application is disposed of.

(Dinesh Kumar Singh, J)

DKS/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	08.09.2017
Transmission Date	NA

