

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.12928 of 2018

Om Prakash Rai, Son of late Raj Kumar Rai, Village-Kansi, P.S.-Simri,
District-Darbhangha, Bihar.

... .. Petitioner/s

Versus

1. The District Magistrate, Darbhanga, Bihar
2. The Sub-Divisional Officer, Darbhanga Sadar, District-Darbhangha, Bihar
3. Circle Officer, Darbhanga Sadar, District-Darbhangha, Bihar

... .. Respondent/s

Appearance :

For the Petitioner/s	:	Mr. Manish Kumar No-2, Adv.
For the Respondent/s	:	Mr. Rakesh Srivastava, AC to GP-15

CORAM: HONOURABLE MR. JUSTICE DINESH KUMAR SINGH

ORAL JUDGMENT

Date : 12-07-2018

Heard learned Counsels for the petitioner and the respondent-State.

The present Writ application has been filed for quashing the Notice dated 13.03.2018, as contained in Annexure-2, issued under the signature of Respondent No.3, the Circle Officer, Darbhanga, Sadar, whereby, the petitioner has been directed to appear before the Circle Officer on 30.03.2018 and to submit his show cause as to why the encroachment made by him over the land appertaining to Khata No.1251, Plot No.2963, situated at Mohalla Kansi, P.S.-Simri, C.O. Darbhanga, Sadar, District-Darbhangha be not removed. Further prayer has been made for initiating a proper proceeding under the Bihar Public Land Encroachment Act, 1956 (hereinafter



referred to 'as the Act') for getting the encroachment removed from the land in question aforementioned.

However, learned counsel for the petitioner submits that the impugned notice may not be quashed, but a proper proceeding under the Act may be directed to be initiated.

Learned counsel for the petitioner submits that initially brother of the petitioner filed a complaint on 13.01.2018, as contained in Annexure-1, before the Sub-Divisional Public Grievance Redressal Authority, Darbhanga for getting the encroachment removed from the land in question, but as a retaliatory measure, the notice was issued by the respondent authority to the only petitioner without initiating a proper proceeding under the Act. It is further submitted that actual encroachers of the land in question have not been noticed. The impugned notice does not contain any encroachment case number which suggests that proper proceeding under the Act has not been initiated with regard to the removal of the encroachment from the land in question.

It is submitted by learned AC to GP-15 that from the impugned notice, it appears that proper proceeding under the Act has not been initiated. However, he further submits that, at present, he is not having any instruction whether the land in



question is a public land/road or not, but if it is a public land/road and the same has been encroached upon, then a proper proceeding under the provisions of the Act will be initiated forthwith, if it has not been initiated and the same will be taken to its logical conclusion within a time frame.

Having heard learned Counsels for the parties, the sine qua non for initiating a proceeding for removal of encroachment is prescribed under Section 3 of the Act which stipulates that 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 of any encroachment upon any public land, he will initiate a proceeding under the Act.

In the circumstances, this Court is constrained to quash Notice dated 13.03.2018, as contained in Annexured-2, issued under the signature of Respondent No.3, the Circle Officer, Sadar, Darbhanga.

It is expected from the Respondent No.3, the Circle Officer, Sadar, Darbhanga to examine the revenue records and if need be conduct spot verification, whereupon, if it appears to him that public road/land has been encroached upon, then he will initiate a proceeding forthwith with regard to the land in



question in accordance with the provisions of Act, if it has not already been initiated and will take such proceeding to its logical conclusion within a period of three months, by giving due opportunity of hearing to all affected persons in accordance with the provisions of the Act.

The Writ application is, accordingly, disposed of with the observation aforesaid.

(Dinesh Kumar Singh, J)

Ashwini/-

AFR/NAFR	
CAV DATE	
Uploading Date	
Transmission Date	

