

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.18050 of 2017

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Bidyabhushan Mishra, Son of Shri Matiwari Mishra, Resident of Village+PO-
Belahi Khas, P.S.- Kateya, District- Gopalganj.

... .. Petitioner/s

Versus

1. The State of Bihar through Principal Secretary, Department of Revenue and Land Reforms, Government of Bihar, Patna.
2. The Collector-cum-District Magistrate, Gopalganj.
3. The Deputy Collector Land Reforms, Hathwa, District- Gopalganj.
4. The Sub Divisional Officer, Hathwa, District- Gopalganj.
5. The Circle Officer, Kateya, District- Gopalganj.
6. The Station House Officer, Kateya, District- Gopalganj.
7. Hrishikesh Mishra, Son of Late Umapati Mishra, R/o Belhi Khas, P.S.- Kateya, District- Gopalganj.

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Mrigank Mauli, Adv. Mr. Prince Kumar Mishra, Adv.
For the Respondent/s	:	Mr. Rishi Raj Sinha-SC19
For Respondent No.7	:	Mr. Nityanand Mishra, Adv.

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CORAM: HONOURABLE MR. JUSTICE DINESH KUMAR SINGH
ORAL ORDER

2 04-01-2018 Heard Mr. Mrigank Mauli, learned Counsel appearing on behalf of the petitioner and Mr. Rishi Raj Sinha, learned SC-19 appearing on behalf of respondent nos.1 to 6.

Learned Counsel for the petitioner is permitted to implead Rishikesh Mishra as respondent no.7.

Since Nityanand Mishra learned Counsel is appearing on



behalf of respondent no.7 Rishikesh Mishra, there is no need for issuance of notice upon Rishikesh Mishra.

The present Writ application has been filed for quashing of the notice dated 16.11.2017, issued under the signature of respondent no.5, the Circle Officer, Kateya, as contained in Annexure-P2, whereby, the petitioner has been directed to remove the encroachment from the land appertaining to Khata No.238, Plot No.1049, measuring an area 5 katha 18 dhur, situated in Village-Belahi Khas, P.S.-Kateya.

It is submitted by learned Counsel for the petitioner that the purport of the said notice suggests, that it has been issued under Section 6(2) of the Bihar Public Land Encroachment Act, 1956 (hereinafter referred to as 'the Act'), but there is nothing on record to show that either any proceeding was initiated or any notice was given to the petitioner under section 3 of the Act, or the petitioner was given an opportunity of defence or hearing under Sections 4 and 5 of the Act. Though purport of the notice suggests that it has been issued under Section 6(2) of the Act, but it is not in Form-II. The impugned notice as contained in Annexure-P2 is not only contrary to the provisions of the Act as it does not bear any proceeding number, but also contrary to the order of this Court dated 12.10.2017, passed in CWJC No.



18453 of 2016, as contained in Annexure-P3.

It is submitted by Mr. Rishi Raj Sinha, learned SC-19 appearing on behalf of respondent-State that *prima facie* it does not appear that the notice contains any proceeding number, but it appears that it has been issued in pursuance to the order of this Court dated 12.10.2017, passed in CWJC No. 18453 of 2016.

Learned Counsel appearing on behalf of respondent no.7 submits that the notice has been issued in pursuance to the order of this Court that encroachment proceeding was initiated in 2016 itself, but the same was not brought to the notice of this Court, though the earlier Writ application being CWJC No. 18453 of 2013 was preferred by the present respondent no.7, wherein, the petitioner of the present Writ application was respondent no.12. It is further submitted that in a proceeding under Section 133 of the Cr. P.C. being Case No.446 of 1989, the SDM, Hathua vide order dated 28.07.1989 directed the Circle Officer, Kateya to get the land measured and remove the encroachment from the land in question.

Considering the rival submissions of the parties, it is relevant to address the factual detail which got initiated with the filing of CWJC No. 18453 of 2016, preferred by respondent no.7, in which petitioner was respondent no.12. The said Writ



application was filed by respondent no.7, for a direction to respondent authorities to get the encroachment removed from the land appertaining to Khata No. 238, R.S. Plot No.1049, Thana No. 141, situated in Village-Belhi Khas, P.S.-Kateya, District-Gopalganj since the said land is recorded in revenue record as 'Gairmajarua Malik Parti Kadeem' and the same is being used as public road, but the same has been encroached upon by the petitioner of the present Writ application and others.

Considering the rival submissions of the parties, this Court vide order dated 12.10.2017, passed in CWJC No. 18453 of 2016, directed respondent no.5, the Circle Officer, Kateya, to examine the records and if it appears to him that public land has been encroached upon, then to initiate the proceeding under the Act forthwith and will take such proceeding to its logical conclusion within a period of three months thereafter, after giving due opportunity of hearing to all affected persons, including private respondent nos. 12 to 14, in accordance with the provisions of the Act.

This Court also elaborated the legal provision that the notice under Section 6(2) of the Act in Form II can only be issued after passing of a final order under Section 6(1) of the Act. The impugned notice dated 16.11.2017, as contained in



Annexure-P2 has been issued subsequent to order of this Court, but it appears that the Circle Officer, Kateya, either could not understand the purport of the order of this Court, or he is unable to understand the purport of the order of this Court, as the impugned order does not suggest that any proceeding has been initiated under Section 3 of the Act, or any final order has been passed under Section 6(1) of the Act, which shows the incompetence of the Circle Officer since the impugned notice *prima facie* reflects that it has been issued without initiating a proceeding as it does not contain any proceeding number/case number or without passing any final order under section 6(1) of the Act. Hence, the impugned notice dated 16.11.2017 is set aside.

The respondent no.5, Circle Officer, Kateya, is directed to initiate a proceeding as per the directions of this Court given vide order dated 12.10.2017, passed in CWJC No. 18453 of 2016, if it has not been initiated till date and take such proceeding to its logical conclusion as per the provisions of the Act as discussed above.

Let a copy of this order be transmitted to the respondent no.2, the District Magistrate, Gopalganj, so that he is acknowledged about the manner in which the Circle Officer,



Kateya is exercising the *quasi judicial* function in derogation to the direction of this Court.

The Writ application is, accordingly, disposed of the with the observation and direction aforementioned.

(Dinesh Kumar Singh, J)

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