

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.6886 of 2013

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Raja Sah S/O Late Triveni Sah Secretary, Tanga Stand Union, R/O
Chanpatia Bazar, Police Station- Chanpatia, District- West Champaran

.... Petitioner/s

Versus

1. The State Of Bihar through District Magistrate, West Champaran,
Bettiah
2. The Circle Officer, Chanpatia, West Champaran, Bettiah

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Khatim Raja, Advocate

For the Respondent/s : Mr. Rakesh Ranjan, AC to GP-22

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**CORAM: HONOURABLE MR. JUSTICE DINESH KUMAR
SINGH
ORAL ORDER**

05/ 05-01-2018

Heard Mr. Khatim Raja, learned counsel for the
petitioner and Mr. Rakesh Ranjan, learned AC to GP-22.

The present writ application has been filed for
quashing the Notice dated 06.03.2013, as contained in Annexure-
1, issued under the signature of respondent no. 2, Circle Officer,
Chanpatia under Section 6(2) of the Bihar Public Land
Encroachment Act (hereinafter referred to as the 'Act'), whereby
petitioner has been directed to remove encroachment within
fifteen days from the land appertaining to Khata No. 833, Plot No.



1822 situated in Mauza – Tekulia/67 Chanpatia Bazar 67 near the bus stand.

It is submitted by learned counsel for the petitioner that no notice was ever issued to the petitioner nor the petitioner was heard and for the first time the notice under Section 6(2) of the Act has been issued without passing any final order under Section 6(1) of the Act. Moreover, the notice, as contained in Annexure-1, does not reflect the details of the proceeding in which the said notice has been issued. Though, Encroachment Case No. 01 of 2012-13 was initiated for removal of the encroachment from the land appertaining to Khata No. 833, Plot No. 1822 situated in Mauza Tekulia/67 Chanpatia Bazar 67 belonging to District Board, Bettiah. It is further submitted that still the hutment of the petitioner on the land has not been removed.

Learned counsel for the respondents referring to the counter affidavit filed on behalf of respondent nos. 1 and 2 drew my attention to the so called order dated 13.02.2013, whereby the Circle Officer, Chanpatia came to a finding that the public land has been encroached upon and, hence, directed for issuance of notice and adjourned the matter for 28.02.2013, as gets reflected from the order dated 13.02.2013, as contained in



Annexure-A.

Having heard the learned counsels for the parties, from perusal of the various orders passed in Encroachment Case No. 01 of 2012-13 by Circle Officer, Chanpatia brought on record, as Annexure-A to the counter affidavit, it appears that the purport of the order suggests that notice was directed to be issued under Section 3 of the Act but at no point of time any notice under Section 3 of the Act was issued to the petitioner rather notice under Section 6(2) of the Act was issued on 13.02.2013, as contained in Annexure-D to the counter affidavit and impugned notice dated 06.03.2013, as contained in Annexure-1. The material on record further reflects that no opportunity to put his defence under Section 4 of the Act or any opportunity of being heard under Section 5 of the Act was given to the petitioner. There is nothing on record to suggest that any final order was passed under Section 6(1) of the Act.

Hence, in view of the discussion made above, this Court is unable to sustain the impugned notice dated 06.03.2013 and accordingly, the impugned notice dated 06.03.2013 is, hereby, quashed. The respondent no. 2, Circle Officer, Chanpatia is directed to conclude the proceeding of Encroachment Case No. 01 of 2012-13 within a period of three months after following the



provisions under the Act. Meaning thereby, firstly all the affected persons must be given notice under Section 3 of the Act, thereafter the persons aggrieved must be given an opportunity to put their defence under Section 4 of the Act, all the affected persons must be given opportunity of hearing under Section 5 of the Act and thereafter, it is expected from the Circle Officer to pass final order under Section 6(1) of the Act and thereafter will take the proceeding to its logical conclusion within the stipulated period of three months.

Accordingly, this application is allowed.

It is made clear that the order dated 26.06.2013, whereby the operation of order of the Circle Officer, Chanpatia contained in Memo No. 169 dated 06.03.2013 was stayed, stands vacated.

(Dinesh Kumar Singh, J)

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