

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.10584 of 2018

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1. Suman Kumar, aged about 44Years, S/o Sri Lalan Pd. Singh R/o Jalalpur, P.S.- Rupaspur, District - Patna
 2. Prabhat Kumar Sinha, aged about 75 years, S/o Late Ganesh Lal R/o-B-50, Budha Colony, P.S.- Budha Colony, District- Patna

.... Petitioner/s

Versus

1. The State of BIHAR, through the Cheif Secretary, Government of Bihar, Patna
2. The Cheif Secretary, Government of Bihar, Patna
3. The Principal Secretary, Department of Road Construction, Government of Bihar, Patna.
4. The Principal Secretary, Department of Urban Development , Government of Bihar, Patna.
5. The Secretary, Departmen of Railway, Union of India, New Delhi.
6. The General Manager, East Central Railway, Sonpur, Hajipur, Vaishali.
7. The Divisional Railway Manager, Danapur Railway Divison, Danapur, Patna.
8. The Principal Secretary, Revenue & Land Reforms, Govt. of Bihar, Patna
9. The Director, Land Acquisition, Government of Bihar, Patna.
10. The Circle Officer, Danapur, Patna

.... Respondent/s

with

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Civil Writ Jurisdiction Case No. 10901 of 2018

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1. Shushant Kumar Singh
2. Luv Kumar Singh Both sons of Suresh Prasad Singh resident of Rukanpura Bailey Road, Tilak Nagar, Near Medicine Factory, P.O. - B.V. College, District - Patna.

.... Petitioner/s

Versus

1. The State of Bihar through the Chief Secretary, Government of Bihar, Patna.
2. The Chief Secretary, Government of Bihar, Patna.
3. The Principal Secretary, Department of Road Construction, Government of Bihar, Patna.
4. The Principal Secretary, Department of Urban Development, Government of Bihar, Patna.
5. The Secretary, Department of Railway, Union of India, New Delhi.
6. The General Manager, East Central Railway, Sonpur, Hajipur, Vaishali.
7. The Divisional Railway Manager, Danapur Railway Division, Danapur, Patna.
8. The Principal Secretary, Revenue & Land Reforms, Govt. of Bihar, Patna.
9. The Director, Land Acquisition, Government of Bihar.
10. The Circle Officer, Danapur, Patna.

.... Respondent/s



with

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Civil Writ Jurisdiction Case No. 9359 of 2018

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1. Ajit Kumar Singh age about 51 Years, Son of Late Ayodhya Singh, Resident of Village- Ruakanpura, Bailey Road, Patna, Thana 18, P.S.- Rupaspur, Danapur, District- Patna.

.... Petitioner/s

Versus

1. The State of Bihar, through the Chief Secretary, Government of Bihar, Patna.
2. The Chief Secretary, Government of Bihar, Patna.
3. The Principal Secretary, Department of Road Construction, Government of Bihar, Patna.
4. The Principal Secretary, Department of Urban Development, Government of Bihar, Patna.
5. The Secretary, Department of Railway, Union of India, New Delhi.
6. The General Manager, East Central Railway, Sonpur, Hajipur, Vaishali.
7. The Divisional Railway Manager, Danapur Railway Division, Danapur, Patna.
8. The Principal Secretary, Revenue & Land Reforms, Govt. of Bihar, Patna.
9. The Director, Land Acquisition Government of Bihar.
10. The Circle Officer, Danapur, Patna.

.... Respondent/s

with

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Civil Writ Jurisdiction Case No. 17593 of 2018

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1. Baikunth Singh
2. Moti Lal Singh

Both sons of Late Ram Bihari Singh, Resident of Village- Rukunpura, Bailey Road, P.O.- B.V. College, P.S.- Rupaspur, District- Patna.

3. Rajeev Kumar, son of Late Awadhesh Kumar Singh, Resident of House No. 01, Rukunpura, Bailey Road, Shubham Nurshing Home, Ward No. 02, Rukunpura, P.S.- Rupaspur, District- Patna, B.V. College, Bihar

.... Petitioner/s

Versus

1. The State of Bihar, through the Chief Secretary, Government of Bihar, Patna.
2. The Chief Secretary, Government of Bihar, Patna.
3. The Principal Secretary, Department of Road Construction, Government of Bihar, Patna.
4. The Principal Secretary, Department of Urban Development, Government of Bihar, Patna.
5. The Secretary, Department of Railway, Union of India, New Delhi.
6. The General Manager, East Central Railway, Sonpur, Hajipur, Vaishali.
7. The Divisional Railway Manager, Danapur Railway Division, Danapur, Patna.
8. The Principal Secretary, Revenue & Land Reforms, Govt. of Bihar, Patna.
9. The Director, Land Acquisition Government of Bihar.
10. The Circle Officer, Danapur, Patna....

.... Respondent/s



Appearance :

(In CWJC No.10584 of 2018)

For the Petitioner/s : Mr. Shama sinha, Advocate
For the State : Mr. Rakesh Ranjan, S.C. to AAG-12
For the Railway : Mr. D.K. Sinha, Senio Advocate
: Mr. Kumar Alok, Advocate

(In CWJC No.10901 of 2018)

For the Petitioner/s : Mr. Shama sinha, Advocate
For the State : Mr. Rakesh Ranjan, S.C. to AAG-12
For the Railway : Mr. D.K. Sinha, Senio Advocate
: Mr. Kumar Alok, Advocate

(In CWJC No.9359 of 2018)

For the Petitioner/s : Mr. Shama sinha, Advocate
For the State : Mr. Rakesh Ranjan, S.C. to AAG-12
For the Railway : Mr. D.K. Sinha, Senio Advocate
: Mr. Kumar Alok, Advocate

(In CWJC No.17593 of 2018)

For the Petitioner/s : Mr. Shama sinha, Advocate
For the State : Mr. Rakesh Ranjan, S.C. to AAG-12
For the Railway : Mr. D.K. Sinha, Senio Advocate
: Mr. Kumar Alok, Advocate

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CORAM: HONOURABLE THE CHIEF JUSTICE

and

HONOURABLE MR. JUSTICE ASHUTOSH KUMAR

ORAL JUDGMENT

(Per: HONOURABLE THE CHIEF JUSTICE)

Date: 17-09-2018

As common question of law and facts arise in these petitions, all these petitions are heard, decided and disposed of together by this common judgment and order.

2. In these writ petitions, under Article 226 of the Constitution of India, respective petitioners have prayed for appropriate writ/order to quash and set aside the impugned notice dated 31.3.2018 issued by the Collector under sub-section 2 of Section 6 of the Bihar Public Land Encroachment Act, 1956 (hereinafter referred to as the 'Act').



3. It is the case on behalf of the respective petitioners that they are in occupation and possession of private *raiya* land and without following due procedure under the provisions of Bihar Public Land Encroachment Act, 1956 and, more particularly, any final order in the encroachment case, the impugned notices have been issued in Form-II under sub-section 2 of Section 6 of the Act, which is absolutely illegal and arbitrary and contrary to the provisions of the Act.

4. On the other hand, it is the case on behalf of the respective respondents that the encroachment over the land in question which is sought to be removed and for which impugned notices have been issued, have been acquired for the Railways for which compensation have been paid.

5. Having heard learned counsel appearing on behalf of the respective parties and considering the material on record, it appears that without passing any final order in any encroachment case as required to be passed under Section 6 of the Bihar Public Land Encroachment Act, 1956, the impugned notices have been issued by the Collector in Form-II under sub-section 2 of Section 6 of the Act, 1956, which is not permissible. Before issuing the notice in Form-II under sub-section 2 of Section 6 of the Act, the proceedings are required to be initiated under Section 3 of the Act,



1956 and thereafter giving opportunity to the concerned person, a final order is required to be passed and only thereafter and when it is found that the final order, under Section 6 of the Act directing the encroacher to remove the encroachment found to be on common public property/land, is not complied with thereafter, the notice in Form II under sub-section 2 of Section 6 of the Act, is required to be issued.

6. As observed in above in the present case, no final order has been passed as required to be passed under Section 6 of the Act, 1956.

7. In view of the above and for the reasons stated above, all these petitions are disposed of by directing the appropriate authorities to register the case against the respective petitioners as encroachment case, under Section 3 of the Act and thereafter the Collector/Circle Officer is directed to pass an appropriate order in accordance with law and on merits, however, after giving an opportunity to the concerned persons/petitioners. The aforesaid exercise must be completed within a period of six weeks from today. Thereafter if any order is passed under Section 6 of the Act and the concerned persons/petitioners/encroachers are directed to remove the encroachment and the same is not complied with thereafter, it will be open for the Collector/Circle Officer to issue



notice under sub-section 2 of Section 6 of the Act, 1956. Till any final decision is taken as above, the concerned respondents are directed not to act upon the impugned Notice dated 31.03.2018. However, it is observed that this Court has not expressed anything on merits in favour of any of the parties.

8. With this, these petitions stand disposed of.

(Mukesh R. Shah, CJ)

(Ashutosh Kumar, J)

Brajesh/-

AFR/NAFR	
CAV DATE	
Uploading Date	
Transmission Date	

