

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.6286 of 2018

Vijay Prasad Sah alias Vijay Prasad Sha, son of Late Ramjeet Prasad Sah @
Ranji Sah, Resident of Mohalla-Khagra, Ward No. 32, Town, Police Station
and District-Kishanganj

... .. Petitioner/s

Versus

1. The State of Bihar
2. The District Magistrate, Kishanganj
3. The Circle Officer, Kishanganj.

... .. Respondent/s

Appearance :

For the Petitioner/s : Mr. Najmul Hoda, Advocate
For the Respondent/s : Mr. Md. Khurshid Alam, AAG-12

CORAM: HONOURABLE MR. JUSTICE JYOTI SARAN
and
HONOURABLE JUSTICE SMT. NILU AGRAWAL
ORAL JUDGMENT
(Per: HONOURABLE MR. JUSTICE JYOTI SARAN)

Date : 09-10-2018

Heard Mr. Najmul Hoda learned counsel for the
petitioner and learned counsel for the State.

2. Petitioner is aggrieved by the notice issued under
Section 6 of the Bihar Public Land Encroachment Act, 1956
(hereinafter referred to as ‘the Act’) by the Circle Officer,
Kishanganj discharging the functions as a Collector under ‘the
Act’, a copy of which is impugned at Annexure-5 to the writ
petition. The ground taken for questioning the notice is that it has
been issued without opportunity of hearing and disposal of the
matter by speaking order as mandated under Section 6 of ‘the Act’.



3. In short, the argument advanced by Mr. Hoda is that the notice under Section 6(2) of 'the Act' is not preceded by any order disposing the proceedings.

4. The second issue raised is that although a show cause was filed by the petitioner on 24.01.2018 in response to the notice issued under Section 3 of 'the Act', a copy of which is enclosed as Annexure-4 to the writ petition, but the same has been ignored.

5. A counter affidavit is on record. Paragraph 7 simply mentions that the petitioner did not respond to the notice and hence the proceeding was disposed of.

6. The rejoinder of the petitioner contesting this position was served on State counsel on 28.09.2018 but has not been contested with any response.

7. Mr. Hoda submits that it is in continuation of the statement made in the writ petition itself that the show cause reply of the petitioner has not been taken into account and since such show cause was being denied by the Circle Officer that it needed to be placed on record, which has been done by filing a rejoinder.

8. The counter affidavit does not enclose any order passed by the Collector under 'the Act' i.e. the Circle Officer, Kishanganj rather he has simply proceeded to issue a notice under



Section 6(2) of 'the Act' asking the petitioner to remove the alleged encroachment from the plot.

9. The matter relates to plot bearing Khata No. 254, Khesra No. 546 and 547 ad-measuring 30X50 ft. which according to the petitioner is recorded in the name of his father in Kishanganj Municipality, the evidence of which is at Annexure-1 and 2 to the writ petition, which is accompanied by the receipts granted by the Municipality, copy of which is at Annexure-3.

10. For the present, we shall not be examining the inter-party merits because we are satisfied that the Circle Officer, who was discharging the duties of a Collector under 'the Act', has failed to discharge the obligation as mandated under Section 6(1) of 'the Act' which requires him to pass orders after hearing the parties concerned, after taking evidence, if any, and making enquiry into the issue of alleged encroachment. There is anything on record, which would support a valid discharge by the Circle Officer, Kishanganj in the manner prescribed under Section 6(1) of 'the Act'. The stage of Section 6(2) of 'the Act' i.e. issuance of notice thereunder is to be preceded by an order disposing of the encroachment case, which discharge is not reflected from the documents on record and according to Mr. Hoda no such order was passed nor communicated to the petitioner.



11. In the circumstances discussed above, we are persuaded to allow the petition and quash the notice dated 24.02.2018 issued by the Circle Officer, Kishanganj in Case No. 307/2017-18 impugned at Annexure-5 to the writ petition, which is, accordingly, quashed. The matter is remitted back to the Circle Officer, Kishanganj for proceeding in the matter afresh and its disposal in accordance with law bearing in mind the statutory obligation present in Section 6(1) of 'the Act' which requires the proceeding to be disposed of by speaking order, after hearing the alleged encroacher and taking evidence on record.

12. The petitioner shall appear before the Circle Officer, Kishanganj along with a copy of this order on 29.10.2018, whereafter he shall proceed to dispose of the matter.

13. The writ petition is allowed.

(Jyoti Saran, J)

(Nilu Agrawal, J)

Rajesh/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	12.10.2018
Transmission Date	NA

