

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.5568 of 2018

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Bhuneshwar Yadav @ Muneshwar Yadav, S/o Late Bulaki Yadav, Resident of Salaiyakala Tola Nawadih, P.S. Fatehpur, District- Gaya.

... .. Petitioner/s

Versus

1. The State of Bihar through its Principal Secretary, Land Reforms Department, Govt. of Bihar, Patna.
2. The Director, Department of Land Reforms, Govt. of Bihar, Patna.
3. The District Magistrate/Collector, Gaya.
4. The Sub-Divisional Officer, Sadar Gaya, Gaya.
5. The Circle Officer, Fatehpur Anchal, District- Gaya.

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr. Shambhu Sharan Singh, Adv
For the Respondent/s : Mr. Raj Kishore Roy, GP-18

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CORAM: HONOURABLE THE CHIEF JUSTICE

And

HONOURABLE MR. JUSTICE ASHUTOSH KUMAR

ORAL JUDGMENT

(Per: HONOURABLE THE CHIEF JUSTICE)

Date : 14-09-2018

1. By way of this petition under Article 226 of the Constitution of India, the petitioner has prayed for an appropriate relief in pursuance to the notice dated 15.02.2018 as well as the subsequent reminder dated 07.03.2018 issued under the signature of the



respondent No. 5, the Circle Officer, Fatehpur.

2. The case of the petitioner is that, by the impugned notice, without initiating any proceedings under the provisions of Bihar Public Land Encroachment Act, 1956 and without registering the encroachment case, on one hand petitioner is directed to remove the encroachment and simultaneously, the petitioner is also directed to produce the evidence to show that he has not made any encroachment.

2.1 It is the case on behalf of the petitioner that as such, no final order has been passed by the Circle Officer either under Section 3 and/or under Section 6 of the Bihar Public Land Encroachment Act, 1956 and the said impugned notice was issued.

3. A detailed order came to be passed by this Court on 02.08.2018 which reads as under:-

"Heard Mr. Shambhu Sharan Singh, learned counsel for the petitioner, and Mr. Raj Kishore Roy, learned GP-18, for the respondent-State.

The present writ application has been filed for quashing the notice dated 15.02.2018 as well



as its reminder dated 07.03.2018, issued under the signature of Respondent No.5, the Circle Officer, Fatehpur, as contained in Annexure- 4, and Annexure- 4A, respectively, whereby the petitioner has been directed to remove the encroachment from the land, appertaining to Revenue Thana No. 454, Khata No. 415, Plot No. 1285, situated at Mauza Salaiya Kala, Tola Nawadih. In the said notices, the petitioner was also directed to appear in the office of the Circle Officer, Fatehpur on 19.02.2018 at 11.00 A.M. to submit the documentary proof with regard to his claim over the land in question. The notice further stipulates that on non-removal of the encroachment from the land in question, the same would be removed by deployment of force and cost of such removal will be realized from the petitioner.

It is submitted by the learned counsel for the petitioner that the impugned notice does not contain any encroachment case number. The purport of first part of second part of the notice, whereby the petitioner has been directed to remove the encroachment within a period of one week, appears to have been issued under Section 6(2) of Bihar Public Land Encroachment Act, 1956 (hereinafter referred to as 'the Act'), whereas by the second part of the said paragraph the petitioner has been directed to submit the



documentary proof with regard to his claim over the land in question, appear to have been issued under Section 3 of the Act.

The learned counsel for the petitioner further submits that without passing any final order under Section 6(1) of the Act, notices under Sections 3 and 6(2) of the Act have been issued to the petitioner. Moreover, the petitioner claims his possession over the land in question by virtue of settlement made vide order passed in Case No. 18664 of 1954-55, and the residential house of the petitioner is situated over the land in question.

As prayed for by Mr. Raj Kishore Roy, learned GP-18, to file counter affidavit, list this matter after six weeks.

In the meantime, let status quo, as is existing today, with regard to the residential house of the petitioner on the land in question, be maintained."

4. No counter affidavit has been filed on behalf of the respondents. Therefore, the averments made in the petition has gone uncontroverted. Nothing is on record to show that any final order has been passed in any encroachment case. Nothing is on record whether the case has been registered as encroachment case or not and whether in any encroachment case, any final order



has been passed against the petitioner or not. Even the impugned notice can be said to be contradictory. On one hand, the petitioner is directed to remove the encroachment and simultaneously, the petitioner is also directed to produce the evidence. Both cannot go together. Only after the final order is passed in an encroachment case under Section 3 of the Bihar Public Land Encroachment Act, 1956 and thereafter further final order is passed under Section 6 of the Act in a prescribed form, then and then only the person against whom the order is passed, can be directed to remove the encroachment. As observed above that is not the case here. Under the circumstances, the impugned notice cannot be sustained for the same deserves to be set aside.

5. In view of the above, the present petition succeeds. The impugned notice dated 15.02.2018 and the subsequent communication dated 07.03.2018 are hereby quashed and set aside. However, it will be open



for the appropriate authority i.e. the Circle Officer, Fatehpur to initiate appropriate proceedings by registering the case as encroachment case under the provisions of Bihar Public Land Encroachment Act, 1956 and thereafter, it will be open for him to pass appropriate order, in accordance with law, on its own merits and after giving opportunity to the petitioner.

With this, the present petition is allowed to the aforesaid extent.

No costs.

(Mukesh R. Shah, CJ)

(Ashutosh Kumar, J)

Shageer/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	19/09/2018
Transmission Date	

