

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No 17591 of 2017

=====

Hiralal Prasad S/o late Nathuni Prasad Resident of Village- Khadda,
Kunjalahi, P.S. Nautan, District- West Champaran.

... .. Petitioner/s

Versus

1. The State of Bihar, through the Collector-cum-District Magistrate, West Champaran at Bettiah.
2. The Collector-cum-District Magistrate, West Champaran at Bettiah.
3. The Sub-Divisional Officer, Bettiah Sadar, Bettiah, Distt.- West Champaran.
4. The Circle Officer (Anchal Adhikari), Nautan Block, Nautan, District- West Champaran.
5. The Officer-in-Charge, Nautan Police Station, Nautan, Distt.- West Champaran.
6. Surendra Prasad S/o Kailash Prasad Resident of Village- Kunjalahi, Panchayat- Khadda, P.S. Nautan, Distt. West Champaran.

... .. Respondent/s

=====

Appearance :

For the Petitioner/s : Mr Sanjeev Kumar, Advocate
For the Respondent/s : Mr Rishi Raj Sinha, SC 19

=====

CORAM: HONOURABLE DR JUSTICE RAVI RANJAN
and
HONOURABLE MR JUSTICE MADHURESH PRASAD

ORAL JUDGMENT

(Per: HONOURABLE DR JUSTICE RAVI RANJAN)

Date : 04-10-2018

Heard learned counsel for the parties.

2 The writ petitioner is aggrieved by the notice issued under Form II in connection with sub-section (2) of Section 6 of the Bihar Public Land Encroachment Act, 1956 (for brevity, *the Act*). It is submitted that notice is not under Form II as it is nowhere stated that final order has been passed holding him encroacher.



3 It appears that a notice under Section 3 of the Act was issued vide Annexure 1 with respect to Khesra No 3247 appertaining to Khata No 3 of Mouza – *Khadda*, District – West Champaran. Though it is contended that no case number was stated in the notice, however, since the petitioner had already appeared in the matter and filed his reply which is appended as Annexure 2, that submission would be of no consequence now. Further, it is contended that even the notice issued vide Annexure 3 is not in the Format of Form II which is mandatorily required as legislature has come up with a particular format under which notice is required to be issued which has been appended as Appendix I to the Act.

4 From perusal of the notice, we are also of the view that other things are alright but it is not stated with respect to any final order having been passed declaring the writ petitioner encroacher. Though it is stated that noticee happens to be an encroacher but there is no reference of any order.

5 In such a situation, we are left with no option but to quash Annexure 3. Accordingly, Annexure 3 is quashed.

6 However, the authorities would be at liberty to issue fresh notice if a final order has already been passed under Section 6 of the Act fixing the time for removal of encroachment.



7 We make it clear that none of the orders passed by the encroachment authorities have been considered on merit by this Court. Only the notice has been quashed on technical ground with liberty to issue fresh notice.

8 It is further made clear that the option of preferring an appeal, which is available under the Act, would be always available to the writ petitioner. In such a situation, the appellate authority would be required to consider the appeal in accordance with law, if preferred.

9 The writ petition stands allowed to the extent indicated above.

(Dr Ravi Ranjan, J)

(Madhuresh Prasad, J)

M.E.H./-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	25.10.2018
Transmission Date	NA

