

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.10222 of 2018

=====

Mahesh Thakur, Son of Damodar Thakur, resident of Village- Ramdiri Nakti,
P.S.- Motihari, District- Begusarai.

... .. Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Revenue and Land Reforms Department, Government of Bihar, Patna.
2. The Collector, Begusarai, District- Begusarai.
3. The Anchal Adhikari, Motihari, Begusarai.

... .. Respondent/s

=====

Appearance :

For the Petitioner/s : Mr. Dharendra Kumar Jha, Advocate
For the Respondent/s : Mr. Rishi Raj Sinha -S.C-19

=====

CORAM: HONOURABLE THE CHIEF JUSTICE

and

HONOURABLE MR. JUSTICE ASHUTOSH KUMAR

ORAL JUDGMENT

(Per: HONOURABLE THE CHIEF JUSTICE)

Date : 14-09-2018

1. Admit. Shri Rishi Raj Sinha, learned Standing Counsel No. 19 waives service of notice of rule on behalf of the respondents. In the facts and circumstances of the case and with the consent of learned counsel appearing on behalf of the respective parties, the present petition is taken up for final



hearing today.

2. By way of this petition under Article 226 of the Constitution of India the petitioner has prayed for an appropriate writ, direction and order to quash and set aside the impugned notice bearing Memo No. 243 dated 27.03.2018 issued by the Respondent No. 3- Circle Officer, Matihani, Begusarai by which the petitioner and others are directed to remove the encroachment over the land in question.

2.1. The facts leading to the present petition in nut shell are as under:-

2.2. It appears that earlier one Ajay Kumar Thakur @ Ajay Thakur approached this Court by way of C.W.C.J. No. 22659 of 2013 against the petitioner and others directing the Circle Officer, Matihani to execute the order dated 16.12.2011, passed by the Collector-cum-District Magistrate, Begusarai in Misc. Case No. 79/2009 whereby the Circle Officer was directed to take further necessary action to get the encroachment removed from the Survey Plot No. 1093, in view of the provisions of the Bihar Public Land Encroachment Act, 1956 (hereinafter referred to as the “Act, 1956”). However, it was found that one Encroachment Case No. 1/2009-2010 was still



pending and was not concluded, the learned Single Judge found that the writ application was premature and therefore, directed the District Magistrate, Begusarai and the Circle Officer, Matihani to get the Encroachment Case No. 1/2009-10 concluded within a period of four months. The said writ petition came to be disposed of with the above direction vide order dated 28.02.2017. It appears that, however, thereafter without passing a final order, as required to be passed under Section 6 of the Act, 1956 in Encroachment Case No. 1/2009-10, the Circle Officer has issued the impugned notice in Form No. II under sub section (2) of Section 6 of the Act, 1956 and the petitioner and others are directed to remove the encroachment from the land in question. Feeling aggrieved and dissatisfied with the impugned notice, the petitioner has preferred the present writ application under Article 226 of the Constitution of India for the aforesaid relief.

3. Shri D.K. Jha, learned Advocate appearing on behalf of the petitioner, vehemently submitted that the impugned notice purported to be in Form No. II under sub section (2) of Section 6 of the Act, 1956 is absolutely illegal and contrary to the provisions of the Act, 1956.



3.1. It is submitted by Shri D.K. Jha, learned Advocate appearing on behalf of the petitioner that in the present case as such no final order has been passed by the Collector in Encroachment Case No. 1/2009-10, as required to be passed under Section 6 of the Act. It is submitted that, therefore, in absence of any further/final order passed under Section 6 of the Act, 1956, the impugned notice in Form No. II under sub section (2) of Section 6 of the Act, 1956 is absolutely illegal and arbitrary, it deserves to be quashed and set aside.

3.2. It is submitted by Shri D.K. Jha, learned counsel appearing on behalf of the petitioner that as such against the impugned notice the petitioner did prefer appeal before the Appellate Authority under Section 11 of the Act, 1956, however, as no final order has been passed in Encroachment Case No. 1/2009-10, the appeal has not been entertained.

3.3. Making above submission, it is requested to quash and set aside the impugned notice.

4. Shri Rishi Raj Sinha, learned Standing Counsel No. 19 appearing on behalf of the respondents has tried to support the impugned notice. It is submitted that as it is found that the petitioner and others have encroached the land in question,



which is a public property/public land, the authority is justified in issuing the impugned notice in Form No. II under sub section (2) of Section 6 of the Act, 1956.

5. Heard the learned counsel appearing on behalf of the respective parties at length.

5.1. At the outset, it is required to be noted that what is challenged in the present petition is the impugned notice issued by the Circle Officer, Matihani in Form No. II under sub section (2) of Section 6 of the Act, 1956. However, it is required to be noted that there does not appear to be any final order passed by the Collector/Circle Officer in Encroachment Case No. 1/2009-10. However, it is required to be noted that earlier vide order dated 28.02.2017 the learned Single Judge specifically directed the Circle Officer to finally decide and dispose of Encroachment Case No. 1/2009-10. However, on misreading of the order passed by this Court in C.W.J.C. No. 22659 of 2013, without passing any final order in Encroachment Case No. 1/2009-10, the Circle Officer has issued the impugned notice in Form No. II under sub section (2) of Section 6 of the Act.

5.2. Considering the scheme of the Act, 1956, after



the case is registered as Encroachment Case under Section 3 of the Act, 1956, after the notice is served upon the concerned encroacher under Section 3 of the Act, a hearing is required to be given as provided under Section 5 of the Act, 1956. That thereafter, the Collector/Circle Officer is required to pass the final order under Section 6 of the Act, 1956. The Collector may, as the circumstances of the case require, pass the following order:-

“6 (1) (a) either drop the proceeding, or

(b) make the temporary injunction issued under sub-clause (a) of sub-section (1) of section 3 absolute against the person making encroachment of the public land, or

(c) if any person who together with his homestead does not own more than 5 acres of land, has encroachment up to 10 dec. of public land continuous of his agricultural holding and has used the encroached public land for agricultural purposes, the Collector shall order the settlement of such public land with such person on payment of rent and damages for the use of this land. The amount of damages and rent shall be calculated by considering the rent payable in case of similar land in the neighbourhood. Where no rent is payable the rent and damages for the



encroached public land shall be calculated on the basis of such fair rent as the Collector may deem proper, or

- (d) where the temporary encroachment on public land has been removed by the person making encroachment after some time the Collector shall order payment of damages for the use of the land during the period of encroachment. The amount of damages shall be calculated according to the prescribed procedure, or
- (e) in the cases not covered by the foregoing sub-clauses, the Collector shall direct the person making encroachment of the public land to remove the encroachment within specified period which shall not in any case be more than two weeks in case the encroachment is not removed within the specified time the crops standing or all types of structures existing on the encroached land shall be forfeited by the Collector:

Provided if any landless person encroached up to 12½ dec. of public land before the 10th October, 1955, no action shall be taken against him under this Act.”

5.3. Only after the final order is passed under Section 6 of the Act and if no order is passed under Section 6 (1)(a), 6 (1)(c) and an order is passed directing the person making



encroachment of the public land to remove the encroachment, more particularly the order passed under Section 6(1)(e) of the Act, only thereafter and if any person does not comply with the order passed by the Collector under Section 6 of the Act, a further notice in Form No. II of sub section (2) of Section 6 of the Act, 1956 can be issued. Without passing any final order as per Section 6 of the Act there is no question of issuing any notice in Form No. II under sub section (2) of Section 6 of the Act. As observed hereinabove, in the present case nothing is on record and/or even it is not the case of the respondents that any final order has been passed in Encroachment Case No. 1/2009-10. No final order in Encroachment Case No. 1/2009-10 is forthcoming.

5.4. On the contrary, on bare reading of the impugned notice it appears that the Circle Officer, Matihani has observed and considered as if while passing the order in C.W.J.C. No. 22659 of 2013 this Court has observed that the applicant and others-private respondents in the said case, have made any encroachment. The aforesaid is absolutely misreading of the order passed by this Court in C.W.J.C. No. 22659 of 2013. As observed hereinabove, the learned Single Judge disposed of the aforesaid writ petition by directing the appropriate authority to



conclude and finally dispose of Encroachment Case No. 1/2009-10.

6. In view of the above and for the reasons stated above, in absence of any final order in Encroachment Case No. 1/2009-10 under Section 6(1) of the Act, the impugned notice in Form No. II under sub section (2) of Section 6 is illegal and contrary to the provisions of the Act, 1956, more particularly Section 6 of the Act and, therefore, the same deserves to be quashed and set aside.

7. In view of the above and for the reasons stated above, the present petition succeeds. The impugned notice is hereby quashed and set aside. The Circle Officer, Matihani is hereby once again directed to finally decide and dispose of Encroachment Case No. 1/2009-10 and pass a final order under Section 6 of the Act, 1956 within a period of six weeks from today and thereafter it will be open for the Circle Officer, Matihani to issue fresh notice in Form No. II under sub section (2) of Section 6 of the Act, in case the final order passed in Encroachment Case No. 1/2009-10 is not complied with by the petitioner and/or any other encroacher. The aforesaid exercise shall be completed within a period of three months from today.



7.1. Present writ application stands allowed to the
aforesaid extent. No cost.

(Mukesh R. Shah, CJ)

(Ashutosh Kumar, J)

P.K.P./-

AFR/NAFR	AFR
CAV DATE	
Uploading Date	18.09.2018
Transmission Date	

