

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.528 of 2018

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1. Srikant Yadav, son of Late Rajan Yadav.
 2. Ganesh Yadav, son of Ramamurti Yadav.
 3. Kariya Yadav, son of Shri Bhagwan Yadav.
 4. Pankaj Yadav, son of Tej Narayan Yadav.
 5. Pradip Yadav, son of Bishwanath Yadav.
 6. Pappu Yadav, son of Raja Ram Yadav. All residents of Village- Bharauli, Police Station Shahpur, District Bhojpur at Ara.

.... Petitioner/s

Versus

1. The State of Bihar.
2. The District Magistrate, Bhojpur at Ara.
3. The Sub Divisional Officer, Shahpur, District Bhojpur at Ara.
4. The Circle Officer, Shahpur, District Bhojpur at Ara.
5. The Mukhia Bharauli Gram Panchayat, Police Station Shahpur, District Bhojpur at Ara.
6. Devendra Nath Pandey, S/o Late Kamta Nath Pandey, R/o + P.O.- Bharauli, P.S.- Shahpur, Dist- Bhojpur at Ara.

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Raghib Ahsan, Adv.
For the State : Ms. Sangamitra Ghosh, AC to G.P.-15
For the respondent no. 6: Mr. Ashok Kumar Singh, Sr. Adv.
: Mr. Sheojee Mishra, Adv.

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CORAM: HONOURABLE MR. JUSTICE JYOTI SARAN

and

HONOURABLE JUSTICE SMT. NILU AGRAWAL

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE JYOTI SARAN)

Date: 05-11-2018

The petitioners are aggrieved by the notice issued by the
Circle Officer in purported exercise of powers vested in him as the



Collector under the Bihar Public Land Encroachment Act, 1956 (hereinafter referred to as 'the Act') whereby after charging him of encroachment over a plot bearing Khata No. 311 Khesara No. 767 situated in Bharauli, in the District of Bhojpur at Ara he has been directed to be present before the appropriate authority on 09.12.2017.

While this matter is pending consideration before this Court that the petitioner on further gathering knowledge about a further notice issued by the Circle Officer, Shahpur District Bhojpur in Encroachment Case No. 01 of 2017-18 under Section 6 (2) of 'the Act' directing him to remove encroachment or pay the expenses, have filed an interlocutory application bearing I.A. No. 577 of 2018.

A learned Single Judge on hearing the petitioners while allowing counter affidavit to be filed, restrained the Circle Officer from taking coercive action.

Mr. Raghib Ahsan, learned Senior Counsel appears for the petitioners, the State is represented by Ms. Sanghmitra Ghosh A.C. to G.P.-15 and Mr. Ashok Kumar Singh, learned Senior Counsel appears for the private respondent through Mr. Sheojee Mishra advocate on record.

The short submission made by Mr. Raghib Ahsan, learned Senior Counsel to question the proceeding is that it is de hors the statutory provision underlying under Section 3 (1) of 'the Act' which



casts an obligation on the Collector under 'the Act' to grant not less than two weeks for filing response against the charge of encroachment but in the present case a mere nine days time have been granted to the petitioners to file their reply which is de hors 'the Act' forcing the petitioners to move this Court but before any order could be passed that a notice has been issued under Section 6 (2) of 'the Act' requiring the petitioners to remove encroachment which notice according to Mr. Ahsan, has been issued behind the back of the petitioners and without any opportunity of hearing to them.

The contention is opposed by the State Counsel as well as Mr. Ashok Kumar Singh, learned Senior Counsel appearing on behalf of the private respondent on merits and to submit that the petitioners have no document to support their title and thus the encroachment order does not suffer any infirmity. It is also submitted that the plot in question is in the nature of a public road as recorded in the survey records and thus any construction made by the petitioners thereon is an encroachment under 'the Act'.

Mr. Ahsan placing reliance on a report of by the Circle Amin, Shahpur in Encroachment Case No. 01 of 2017-18, the copies of which is enclosed in the counter affidavit of respondent no. 6 submits that there is no whisper of any encroachment in the report of the Circle Amin and in such circumstance there is no occasion for the



Circle Officer to direct him for removal of encroachment in absence of any finding to such effect.

We have heard learned counsel for the parties and we have perused the record. Even though counter affidavit is filed but the specific statement made by the petitioners in paragraph-5 of the interlocutory application that the notice for removal of alleged encroachment under Section 6(2) of 'the Act', has been issued without opportunity of hearing to these petitioners, has gone asking for there is neither any response to such statement nor the counter affidavit of the State encloses any order disposing of the encroachment case.

In such view of the matter, we are persuaded to quash the notice issued by the Circle Officer, Shahpur District-Bhojpur in Encroachment Case No. 01 of 2017-18 issued in the name of these petitioners impugned at Annexure-7 and 8 series to the Interlocutory Application No. 577 of 2018 on taking note of the specific averments made by the petitioners and that it has been issued without opportunity of hearing to the petitioners. The notices are, accordingly, quashed and set aside and the matter is remitted back to the Circle Officer, Shahpur District-Bhojpur for consideration and disposal of Encroachment Case No. 01 of 2017-18 in accordance with law and with due opportunity of hearing to the petitioners as well as the private respondent who have registered their appearance before this



Court and they are also directed to appear before the Circle Officer by virtue of the present order on 24th December, 2018 whereafter he shall proceed to dispose of the matter in accordance with law bearing note of the stipulation above.

The writ petition is allowed with the direction above.

The interlocutory application is also disposed of.

(Jyoti Saran, J)

(Nilu Agrawal, J)

Priyanka/Devendra

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	11.12.2018
Transmission Date	NA

