

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.6427 of 2018

=====

Md. Tanzir Alias Tanzir Alam, Son of Md. Afaque, 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, Adv.
For the Respondent/s : Mr. Mazid Mehboob Khan, AC to AAG-12

=====

CORAM: HONOURABLE MR. JUSTICE DINESH KUMAR SINGH
ORAL JUDGMENT

Date : 03-08-2018

Heard Mr. Najmul Hoda, learned counsel for the petitioner and Mr. Mazid Mehboob Khan, AC to AAG-12 for the respondent-State.

The present writ application has been filed for quashing of the Notice dated 04.01.2018, issued under the signature of Respondent No.3, the Circle Officer, Kishanganj, as contained in Annexure-4, whereby, the petitioner has been directed to submit his show cause on 24.01.2018 at 11.00 A.M. in the office of Respondent No.3, the Circle Officer with regard to encroachment made over the land, appertaining to Thana No.144(57), Khata No.254, Plot No.543, situated in Mauza - Khagra, District - Kishanganj. Further prayer has been made for quashing of the Notice dated 24.02.2018, issued under Section



6(2) of the Bihar Public Land Encroachment Act, 1956 (hereinafter referred to as 'the Act') under the signature of Respondent No. 3, the Circle Officer, Kishanganj, as contained in Annexure-5, whereby, the petitioner has been directed in Encroachment Case No.293 of 2017-18 to remove the encroachment from the land in question by 12.03.2018, failing which, the same will be removed by deployment of force and the cost of removal of such encroachment will be realized by the petitioner.

It is submitted by learned counsel for the petitioner that earlier also, encroachment proceedings were initiated against the vendor of the said land Baleshwar Das, being Encroachment Case Nos.29 of 1991-92 and 02 of 2000-01, but the same were dropped. It is further submitted that without passing any final order under Section 6(1) of the Act, a notice under Section 6(2) of the Act has been issued in Form-I, instead of Form-II. Moreover, the impugned notice, as contained in Annexure-4, does not bear any encroachment case number.

Learned counsel for the petitioner has brought the attention of this Court to the order dated 25.07.2018, passed in CWJC No. 7225 of 2018, wherein, the Circle Officer, Kishanganj, in pursuance to the order of this Court appeared and



conceded that in Encroachment Case No. 299 of 2017-18, no final order has been passed, though a notice under Section 6(2) of the Act has been issued. On that ground,, the impugned notices, as contained in Annexures 2 and 3 were quashed. However, the Circle Officer was given liberty to proceed with the matter from the stage of issuance of notice under Section 3 of the Act.

Though a counter affidavit has been filed on behalf of Respondent Nos. 2 and 3, the District Magistrate, Kishanganj and the Circle Officer, Kishanganj respectively, stating therein that the land in question is recorded in the municipal survey as “Anabad Bihar Sarkar”, hence, the notice under Section 6(2) was issued. This Court feels that Mr. Rishi Raj Sinha, learned SC-19 has failed to satisfy this Court whether any final order has been passed under Section 6(1) of the Act, before issuing the impugned notice under Section 6(2) of the Act.

It is well settled legal principle that when a statute provides for a particular procedure, for doing a thing in a particular manner, then it has to be done in that particular manner and not in any other manner at all. The aforesaid legal proposition is based on the legal maxim “*Expressio unius est exclusio alterius*”



In this regard, a useful reference may be made to the case of Selvi J. Jayalalithaa Vs. State of Karnataka & Ors., (2014) 1 PLJR (SC) 531. Paragraph no. 29 of the judgment reads as :

“29. We find force in the submissions advanced by the learned Attorney General that this Court generally should not pass any order in exercise of its extraordinary power under Article 142 of the Constitution to do complete justice if such order violates any statutory provisions. We do not intend to say that it would be illegal to extend the term of the Special Judge, but that it is a matter within the jurisdiction of the State in accordance with the relevant law.

There is yet an uncontroverted legal principle that when the statute provides for a particular procedure, the authority has to follow the same and cannot be permitted to act in contravention of the same. In other words, where a statute requires to do a certain thing in a certain way, the thing must be done in that way and not contrary to it at all, are impliedly and necessarily forbidden. The aforesaid settle legal proposition is based on a legal maxim “Expressio unius est exclusio alterius”, meaning thereby that if a



statute provides for a thing to be done in a particular way, then it has to be done in that manner and in no other manner and following any other course is not permissible.

In *State of Uttar Pradesh vs. Singhara Singh & Ors.*, AIR 1964 SC 358, this court held as under:-

“8. The rule adopted in *Taylor vs. Taylor*, (1876) 1 Ch D 426 is well recognised and is founded on sound principle. Its result is that if a statute has conferred a power to do an act and has laid down the method in which that power has to be exercised, it necessarily prohibits the doing of the act in any other manner than that which has been prescribed. The principle behind the rule is that if this were not so, the statutory provision might as well not have been enacted.” [See also: *Accountant General, State of Madhya Pradesh vs. S.K. Dubey & Anr.**, (2012)4 SCC 578]”

The Bihar Public Land Encroachment Act, 1956 provides that a proceeding can be initiated under Section 3 of the Act, if it appears to the Collector under the Act from an application made by any person or upon information received



from any sources that any person has made or is responsible for the continuance of any encroachment upon any public land.

Section 4 of the Act provides that any person on whom a notice is served under Section 3 or any person interested in the encroachment may appear before the Collector and raise any defence which he could have raised if he was a defendant in a properly framed suit for the removal of the encroachment.

Section 5 of the Act provides that if the person on whom notice has been served under Section 3 or any other person interested in the encroachment, fails to appear and show cause on the date specified in the notice, or any other date to which the hearing may be adjourned, the matter shall be heard, ex parte.

Section 6(1) of the Act prescribes passing of the final order by the Collector under the Act and thereafter notice under Section 6(2) of the Act has to be issued.

Under Rules of the Bihar Public Land Encroachment Act, Rule 3 mandates that notice under Section 6(2) has to be issued in Form-II.

From perusal of materials available on record, it appears that prescribed procedure has not been followed,



moreover, there is nothing on record to suggest that any final order has been passed by the Collector under the Act under Section 6(1) of the Act,

In the circumstances, the notices, as contained in Annexures 4 and 5 are hereby quashed.

However, the Respondent No.3, the Circle Officer, Kishanganj will be at liberty to proceed with the matter from the stage of issuance of notice under Section 3 of the Act and take the proceeding of Encroachment Case No.293 of 2017-18 to its logical conclusion within a period of three months, by giving due opportunity of hearing to all affected persons including, the petitioner in accordance with the provisions of the Act.

The writ application is accordingly disposed of.

(Dinesh Kumar Singh, J)

Ashwini/-

AFR/NAFR	
CAV DATE	
Uploading Date	
Transmission Date	

