

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.8291 of 2018

1. Bideshwar Choudhary, Son of Chhkauri Choudhary
2. Akalu Choudhary, Son of Munni Choudhary
3. Mukesh Choudhary, Son of Naresh Choudhary
4. Suchindra Choudhary, Son of Munni Choudhary, All resident of Village- Damodarpur, P.S. Hilsa, District- Nalanda

... .. Petitioner/s

Versus

1. The State of Bihar.
2. The District Magistrate, Nalanda at Biharsharif.
3. The Sub-Divisional Officer, Hilsa, District- Nalanda
4. The Deputy Collector of Land Reforms, Hilsa, District- Nalanda.
5. The Circle Officer, Hilsa, District- Nalanda.

... .. Respondent/s

Appearance :

For the Petitioner/s : Mr. Bhola Kumar
For the Respondent/s : Mr. Rishi Raj Sinha-SC19

CORAM: HONOURABLE MR. JUSTICE DINESH KUMAR SINGH
ORAL JUDGMENT

Date : 16-05-2018

Heard Mr. Bhola Kumar, learned counsel for the petitioner and Mrs. Archana Mishra, learned AC to SC-19.

The present writ application has been filed for quashing the undated notice issued by Respondent No.5, the Circle Officer, Hilsa, under Section 6(2) of the Bihar Public Land Encroachment Act (hereinafter referred to as 'the Act') in Encroachment Case No. 18 of 2017-18, whereby the petitioners have been directed to remove the construction from the land appertaining to Thana No. 88, Khata No. 18, Plot No. 1, situated in Mauza Chammandi, District Nalanda, by 17.03.2018, failing which the same would be



removed by deployment of police force and the cost of removal of encroachment will be realized from the petitioners.

It is submitted by learned counsel for the petitioners that on the land in question, the petitioners have constructed their residential house under the Indira Awas Scheme. The notice does not bear any date, which suggests the mechanical manner in which the Respondent no.5, the Circle Officer, Hilsa has issued notice under Section 6(2) of the Act.

Learned AC to SC-19 submits that impugned notice suggests that final order under Section 6(1) of the Act has been passed on 05.03.2018, but neither the said final order has been challenged in appeal nor the same has been brought on record. Moreover, statutory remedy of appeal is available to the petitioners.

Considering the rival submissions of the parties, it is a settled proposition of the law that the exercise of discretionary jurisdiction under Article 226 of the Constitution of India is subject to self-imposed restraint, where there is availability of efficacious alternative remedy. In the present case, the petitioners have the statutory remedy of appeal under Section 11 of the Act.

Hence, the present writ application is disposed of with liberty to the petitioners to prefer an appeal against the final order



dated 05.03.2018 passed by Respondent no.5, the Circle Officer, Hilsa in Encroachment Case No. 18 of 2017-18, along with a prayer to stay the operation of the order passed by Respondent no.5, the Circle Officer, Hilsa, within a period of three weeks from the date of receipt/production of a copy of this order.

It is expected from the Appellate Authority to dispose of such appeal, if filed, preferably within a period of sixty days of its filing.

In the meantime, the status quo with regard to the land in question as is existing today, shall be maintained for a period of six weeks from today.

(Dinesh Kumar Singh, J)

Amrendra/-

AFR/NAFR	
CAV DATE	
Uploading Date	21.05.2018
Transmission Date	

