

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.5078 of 2019

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1. Baliram Raut @ Baliram Yadav S/o late Mitinand Ahir @ Mitinand Yadav R/o Village-Hussepur, P.S.-Ekma, District-Saran
 2. Surya Yadav @ Suraj Yadav S/o Late Bindeshwari Yadav R/o Village-Hussepur, P.S.-Ekma, District-Saran
 3. Jamil Mian @ Jalil Main S/o late Amin Mian R/o Village-Hussepur, P.S.-Ekma, District-Saran

... .. Petitioners

Versus

1. The State of Bihar through the Collector, Saran.
2. The Circle Officer, Ekma District Saran
3. The Halka Karmchari, Ekma, District- Saran

... .. Respondents

Appearance :

For the Petitioner/s : Mr.Bishwajeet Singh.
For the Respondent/s : Mr.Rishi Raj Sinha (SC19)

CORAM: HONOURABLE MR. JUSTICE SUDHIR SINGH
ORAL ORDER

2 25-03-2019

Ref: I.A.No. 01 of 2019

This interlocutory application has been filed for some addition in the relief portion as stated in paragraph-1 of the writ application.

The petitioner is permitted to add the relief sought for in the I.A. application, in course of the day.

The interlocutory application No. 01 of 2019 stands ***allowed.***

Heard learned counsel for the petitioners and the State.

In the present writ application, the petitioners have prayed for issuance of Writ of mandamus commanding the respondent-authorities, particularly respondent No. 2, not to disturb petitioners from their respective houses situated over R.S. Plot No. 2207, Khata



No. 268, Thana No. 80, under Mauza Hussepur, for now more than 70 years, which was acquired through registered sale deeds from its rightful owner, who were settlees of Ex-landlord and the same is not public land so as to attract Public Land Encroachment Act.

The petitioners have further prayed for issuance of Writ of mandamus commanding the respondent-authorities, particularly respondent No. 2 to pass reasoned order dealing with the reply to the show cause notice, after providing appropriate opportunity of hearing to the petitioners, as the respondent No. 2 is bent upon to demolish the residential houses of the petitioners without hearing them.

The petitioners have also prayed for setting aside the notice issued under Memo No. 678 dated 27-12-2018, as contained in Annexure-4 to the writ application whereby petitioners have been directed to remove constructions from the portion of the R.S. Plot No. 2207, Khata No. 268, Thana No. 80, under Mauza Hussepur, which has been held to be a public land without prior notice and enquiry as per Sections 3 & 5 of the Act and the same was issued by Circle Officer, Ekma under Section 6 the Bihar Public Land Encroachment Act, in order to file counter affidavit in writ application.

In this writ application, the petitioners have challenged Annexure-4 to the writ application on the ground that no procedure was followed by the respondent-authority. While passing the final order i.e. Annexure-4, the respondent had not issued any notice under



Section 3 of the Bihar Public Land Encroachment Act, 1956 nor any opportunity of hearing was given to the petitioners under Section 5 of the Act. Hence the order passed, is in contravention of the provisions, as referred above.

Considering the facts and circumstances of the case, the petitioners are directed to file an appeal against the order under challenge under Section 11 of the Bihar Public Land Encroachment Act, 1956 within a period of 30 days from today. The appellate authority shall consider the application/appeal of the petitioners and pass an appropriate order in accordance with law within a period of four months from the date of filing of such appeal.

During pendency of the appeal, the status quo shall be maintained.

With the aforesaid observation/direction, this writ application stands disposed of.

(Sudhir Singh, J)

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