

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.7312 of 2015

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Shailesh Kumar, son of Laxmi Yadav, resident of Mohalla- Rajendra Nagar
(Ashok Nagar), P.S.- Chitraguptnagar, Town and District- Khagaria as well as
practicing Advocate of Khagaria Civil Court.

... .. Petitioner/s

Versus

1. The State Of Bihar
2. The Collector, Khagaria
3. The Sub-Divisional Officer, Khagaria
4. The Deputy Collector, Land Reforms, Khagaria
5. The Circle Officer, Khagaria
6. The Principal, Kosi College, Khagaria
7. The Khagaria Municipal Council, through its Executive Officer, Khagaria
P.S. and District- Khagaria

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr.Dronacharya, Advocate
For the State	:	Mr.Ajay- GA-12
For the Resp. No. 6	:	Mr. Surendra Kishore Thakur, Advocate

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CORAM: HONOURABLE MR. JUSTICE ANIL KUMAR UPADHYAY
ORAL JUDGMENT

Date : 14-05-2019

Heard learned counsel for the petitioner, learned counsel
appearing on behalf of the State and the private respondent.

2. Founding father never thought that the authorities of the
State will render the Constitutional rights of equality to a mere
farce. The Circle Officer in the instant case has acted in the
manner as if he is *imperium in imperio* and the mandate of law
hardly binds him. The kind of order the Court proposes to pass,
does not require detailed narration of facts. Undisputed premises
of fact in the instant case is that in an encroachment proceeding



notice was issued on 9.4.2015 to the petitioner. Thereafter the petitioner filed an application for grant of some time on 15.4.2015 but the Circle Officer has demolished the structure of the petitioner on 17.4.2015.

3. Mr. Dronacharya, learned counsel for the petitioner has referred to the provisions of Section 3 of the Bihar Public Land Encroachment Act (hereinafter referred to as 'the Act'). For ready reference relevant part of Section 3 of the Act is quoted below:-

“3. Initiation of the proceedings- (1) If it appears to the Collector 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, the Collector may cause to be served upon such person a notice in the prescribed form requiring him to appear on a date which shall not be less than two weeks from the date of service of notice to show cause-....”

4. The legislature in its wisdom prescribed a procedure to be followed for removal of encroachment. The provision mandates the Collector to serve notice in the prescribed form requiring the encroachers to appear on the date which shall not be less than two weeks from the date of service of notice. The emphasis is 'not less than two weeks' which is mandatory requirement. The Collector



under the Act is obliged to strictly adhere to the procedure prescribed and, in no case, he could have exercised jurisdiction to fix date before two weeks from the date of service of notice. In the instant case, as stated above, notice was issued on 9.4.2014 and as per the counsel for the petitioner, the notice was served to the petitioner on 9.4.2015 and in teeth of the statutory provision of fixing date not before less than two weeks from the date of service of notice, the Circle Officer has passed order and demolished the structure on 17.4.2015.

5. The Circle Officer has discussed many things in his order to which the Court refrain from passing any comment. The nicety of rule of law is that everyone is under the command of law. The Supreme Court time and again held out that rule of law is the basic feature of the Constitution but it appears that it is practiced only by Commissioner and privileged people and officers still practice that they are above law and the mandate of law is only a subject of convenience.

6. Mr. Ajay, learned counsel for the State submits that though Section 3 of the Act requires not less than two weeks notice period, the same should be read as 'opportunity of hearing to the petitioner' and since the petitioner had appeared on 15.4.2015, before expiry of two weeks of mandatory requirement, the notice



period of not less than two weeks shall be deemed to have been waived. The Court is unable to accept the submission advanced by Mr. Ajay.

7. On similar line Mr. Surendra Kishore Thakur, learned counsel for the private respondent argued that the petitioner has appeared and as such he cannot be allowed to raise grievance that provisions of the Act was not followed in the instant case.

8. Mr. Ajay, learned counsel for the State and Mr. Surendra Kishore Thakur, learned counsel for the private respondent submitted that writ petition is not the proper forum to entertain the present lis. The alternative remedy by way of statutory appeal is available and therefore, the present writ petition is not maintainable.

9. The Constitution Bench of the Supreme Court had occasion to decide the issue of exhausting alternative remedy in the case of **The State Of Uttar Pradesh vs Mohammad Nooh: AIR 1956 SC 86**, wherein the Apex Court has carved out three exceptions, firstly, that when the order was passed without jurisdiction, secondly, when there is violation of principles of natural justice and thirdly, infringement/violation of fundamental right. The judgment of the Apex Court is still holding the field and reiterated time and again. Similarly, Justice Suba Rao has the occasion to



underline the scope of Article 226 of the Constitution in the case of **Dwarika Nath Vs. Dwarka Nath vs Income-Tax Officer: AIR 1966 SC 81** where his Lordship had held out that Article 226 of the Constitution is couched in most comprehensive phraseology and it is designed to reach wherever injustice is found.

10. In view of the aforesaid discussions, the Court is of the view that the instant case is a glaring case of injustice and exercise of jurisdiction under Article 226 is a must to do away injustice. The alternative remedy does not disentitle the Court in the way of exercising jurisdiction. It is only self imposed restriction in exercising jurisdiction. The alternative remedy, in no way, exclude the jurisdiction of Article 226 which is held to be basic feature in view of the 7 Judges Bench decision in **L. Chandra Kumar vs Union Of India And Others: (1997) 3 SCC 261**.

11. For the reasons stated above, the Court is of the view that all the objections as to the maintainability of the writ petition is totally misconceived. It is accordingly rejected.

12. On reading mandatory provisions of Section 3, where emphasis is 'not less than two weeks' the Court is of the considered view that the law requires that not less than two weeks from the date of service of notice and as such the entire action of the Circle Officer in teeth of the mandatory requirement of the



provisions of the Act, is nullity. Such action has led the litigation in the present case remained pending since 2015 i.e. for a period of four years. This case is the offshoot of arbitrary action of the State instrumentality.

13. In the aforesaid circumstances, the Court holds and declare that the action of the respondent-Circle Officer is totally without jurisdiction and in teeth of the mandate of Section 3 of the Act and as such it is per se illegal and arbitrary. Accordingly, the order passed by the Circle Officer is hereby quashed.

14. In the facts and circumstances, when the Court noticed violation of the mandatory requirement of Section 3 of the Act and declared that the action of the Circle Officer is totally without jurisdiction then the citizen like the petitioner is entitled to be compensated for the arbitrary acts of the State instrumentality like Circle Officer. Accordingly, the Court while allowing the writ petition, directs the District Magistrate, Khagaria to pay a compensation of Rs. 5,00,000/- (five lacs only) to the petitioner within a period of thirty days from the date of receipt/production of a copy of this order. At the same time the respondents have to reconstruct the demolished structure within a period of four months.



15. With the aforesaid direction and observations, the writ petition stands allowed and disposed of.

(Anil Kumar Upadhyay, J)

spandey/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	20.05.2019
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