

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.1425 of 2017

=====

Amit Kumar Gupta, Son of Late Kapildeo Prasad Gupta, resident of Mohalla
- Dahiyawan Kinara Dih, Chapra, P.O. and P.S. Chapra, District - Saran at
Chapra

... .. Petitioner/s

Versus

1. The State Of Bihar
2. The Commissioner, Saran Division at Chapra
3. The Collector, Saran at Chapra
4. The Superintendent of Police, Saran at Chapra
5. The D.C.L.R., Chapra, District Saran at Chapra
6. The Officer - In - Charge, Town Police Station, Chapra, District - Saran at
Chapra
7. The Circle Officer, Chapra, District-Saran at Chapra
8. Sri Bholai Rai, Son of Late Yadu Rai,
9. Sri Dhurander Rai, Son of Uma Rai,
Both residents of Mohalla - Dahiyawan Kinara Dih, Chapra, P.O. and P.S.
Chapra, District - Saran at Chapra
10. Sanjay Kumar Singh S/o Narendra Kumar Singh R/o Nagina Singh Gali,
Chapra, P.S. Chapra Town, District- Saran.

... .. Respondent/s

=====

Appearance :

For the Petitioner/s	:	Mr. Shashi Shekar Dvivedi, Sr. Adv. Mr. Parth Gaurav, Adv. Mr. Subhash Kumar Mishra, Adv. Mr. Anshu Raj Singh, Adv. Ms. Shambhavi Shankar, Adv.
For the State	:	Mr. Nutan Sahay, AC to AAG-12
For the Respondent No. 9	:	Mr. Jagannath Singh, Adv. Mr. Rakesh Kumar, Adv.

=====

CORAM: HONOURABLE MR. JUSTICE MOHIT KUMAR SHAH

ORAL JUDGMENT

Date : 15-11-2019

The instant writ petition was initially filed for
quashing the notice dated 29.07.2016, as
contained in Annexure-1, issued by the Circle
Officer, Chapra, respondent no.6, whereby the



petitioner was directed to remove the encroachment by 09.08.2016, from the land appertaining to Municipal Plot No. 7789 situated at Dahiyawan Mohalla in Chapra District and in the event of non-compliance thereof, it was directed that the encroachment will be removed by force and the cost of the removal of encroachment shall be realized from the petitioner. The petitioner has also prayed for getting the land of the petitioner, being Municipal Plot No. 7778, measured by Amin with the help of authentic map of the locality and to fix pillar around the said land at the cost of the petitioner and further to restrain the private respondent as well as any other person from forcibly entering into or encroaching upon the land of the petitioner.

2. Subsequently, I.A. No. 2749 of 2017 was filed for impleading some of the officials as party respondents and for issuance of directions to the respondents to reconstruct the demolished structure situated on the raiyati land of the petitioner appertaining to Plot No. 7778 or to pay



compensation to the tune of Rs. 10 lacs. The detail of the reliefs claimed in I.A. No. 2749 of 2017 by the petitioner has been mentioned in paragraph no. 14 to the Interlocutory Application.

3. I.A. No. 2967 of 2017 has been filed for impleading Sanjay Kumar Singh as party respondent and for quashing the orders dated 06.10.2016, 09.01.2017, 07.03.2017 and 06.04.2017, as contained in Annexures- 7, 8, 10 and 18. Though, on perusal of order dated 06.10.2016, passed by Sub-divisional Officer, Chapra, as contained in Annexure-7, it would be evident that vide the said order, the proceeding was closed/dropped in the absence of any interest being shown by the Circle Officer for disposal of the complaint of the petitioner as he failed to transmit the required report. So far as order dated 09.01.2017, as contained in Annexure-8, is concerned, the same has been passed by the Additional Collector (Public Grievance Redressal)-cum-First Appellate Authority, Saran, whereby it has been noted that Encroachment Proceeding no.



02/2016-17 had been initiated and notices were issued to the encroachers, however, the encroachment proceeding had been initiated without ascertaining as to whether there has been any encroachment or not, nonetheless, the said proceeding has finally been concluded with a direction to public Authority to depute one Amin and steps be taken for removal of encroachment.

4. Orders dated 07.03.2017 and 06.04.2017 (as contained in Annexure-10 and 18 respectively) have been passed by the District Magistrate-cum-Second Appellate Authority, saran, Chapra, wherein even though it has been appreciated that Title Suit No. 123/1984 and First Appeal No. 61/1999 concerning Plot No. 7778 have been decided in favour of the present petitioner, yet a direction has been passed for removal of encroachment and the proceeding has been concluded vide order dated 06.04.2017. The petitioner has further prayed to direct the respondent authorities to not disturb the possession of the petitioner over his land



appertaining to Plot No. 7778. The relief claimed by the petitioner in I.A. No. 2967 of 2017 has been mentioned in paragraph nos. 12 and 13 to the Interlocutory Application.

5. At this juncture it may be relevant to state that the aforesaid I.A. No. 2749 of 2017 and I.A. No. 2967 of 2017 were allowed by this Court vide order dated 19.04.2017 and the writ petition has accordingly stood amended as also Sanjay Kumar Singh has been impleaded as respondent no.9, whereafter notices have been issued to respondent nos. 7, 8 and 9. The notice has been validly served upon respondent nos. 7 and 8 and the respondent no. 9 has appeared by filing Vakalatnama. The entire records of Encroachment Case No. 02 of 2016-17 and Case No. 517110130071600151/2A have also been received.

6. It is submitted by the learned Senior Counsel for the petitioner that in the proceeding under Bihar Right to Public Grievance Redressal Act, 2015, neither the petitioner was made a party nor



he was noticed and despite a finding being recorded to the effect that encroachment proceeding vide Encroachment Case No. 02 of 2016-17 is pending and the title of the petitioner over the land in question has been decided in favour of the petitioner by the competent Civil Court, the impugned orders have been passed. It is further submitted that in the notice dated 29.07.2016, as contained in Annexure-1 to the writ application, there is no mention about any encroachment proceeding number which suggests the mechanical manner in which the proceeding is being conducted.

7. The Brief facts of the case are that the dispute in the present case relates to Municipal Survey Plot No. 7778, called Maharani Asthan in Mohalla-Dahiyawan Dih, P.S-Chapra, District-Saran at Chapra. It is stated that the said private ancestral temple of Maa Bhagwati as well as private road situated therein are within the four corners of Plot No. 7778 and the temple in question is personal, which has been constructed



by the ancestors of the petitioner herein. It is stated that the aforesaid Plot No. 7778 is recorded in khatiyā in the name of the predecessors of the petitioner herein, namely, Bhagwat Prasad, who died living behind his only son, namely, Kapildeo Prasad, who has also died living behind three sons, namely, Vishwanath Prasad, Sheonath Prasad and Amit Kumar Gupta i.e. the petitioner of the present petition, which has been filed by the petitioner in representative capacity, i.e. on behalf of the entire family. It is submitted that the said plot in question is having an area of 8 katha 7 dhur. It is also stated that a title suit bearing Title Suit No. 123 of 1984 was filed by the predecessor of the petitioner for eviction of a tenant, namely, Smt. Bhagia Devi and in the said title suit, the question of title of the suit property was also raised by the defendant therein, however, ultimately, the suit was decreed in favour of the predecessor of the petitioner by the learned 6th Subordinate Judge, Chapra vide judgment and decree dated 23.06.1999. Yet another title suit bearing Title Suit No. 108 of 1977 was filed before



the learned court of 1st Munsif, Chapra, which was also decided in favour of late Bhagwat Prasad on 14.12.1981 and the appeal filed against the said judgment bearing Title Appeal No. 14 of 1982 has also stood dismissed by a judgment dated 05.03.1983 passed by the learned District Judge, Chapra and the second appeal filed against the said judgment dated 05.03.1983 bearing Second Appeal No. 121 of 1983 has also stood dismissed on 25.09.2012.

8. It is the further case of the petitioner that in the year 2011, respondent no. 7 herein i.e. Bhola Rai, who had purchased land contingent towards east of the aforesaid Plot No. 7778 of the petitioner herein, had started claiming a portion of the said Plot No. 7778 as road and had alleged closure of road by means of a boundary wall and further, he had started claiming the temple to be a public temple. This led to filing of Bihar Land Dispute Resolution Case No. 87 of 2011 by the petitioner before the D.C.L.R., Chapra wherein, after issuance of notice to the respondent no. 7 and upon perusal



of the documents, papers as well as the judgments and decrees of the learned civil court, the said case was allowed by the learned D.C.L.R., Chapra by an order dated 30.06.2012 passed in BLDR Case No. 87 of 2011. The said order dated 30.06.2012 was appealed against by the respondent no. 7 before the learned Commissioner, Saran Division, Chapra, which was numbered as BLDR Appeal No. 191 of 2012, however, the same was also dismissed by an order dated 25.04.2016. Thereafter, the respondent no. 7 in collusion with the respondent no. 8 and others had demolished the boundary wall of the aforesaid plot of the petitioner on 04.07.2016, whereafter the petitioner had filed a complaint before the local police on 05.07.2016, however, no action was taken. Thereafter, the respondent no. 8 is alleged to have filed a complaint before the local police on 02.07.2016, alleging encroachment by the petitioner herein as also an application was filed before the Circle Officer, whereupon an Amin was deputed and he appears to have taken some



measurement on the basis of fabricated and forged map produced by the said private respondents, whereafter the private respondents started demolishing the boundary wall of the aforesaid plot of the petitioner herein. Subsequently, a notice dated 19.07.2016 under the pen and signature of the Circle Officer Sadar, Chapra was served on the petitioner to remove the encroachment made over 10 feet wide road situated adjacent to khesra no. 7789. The petitioner had then replied to the same by filing a detailed petition dated 08.08.2016.

9. The learned Senior Counsel for the petitioner has further submitted that on 25.03.2017, the Respondents No. 7 and 8 along with one Sanjay Kumar Singh and the local Circle Officer, Sri Vijay Kumar Singh, came to the house of the petitioner with police force and JCB machine, whereafter they started demolishing the shop and godown of the petitioner herein situated at Plot No. 7778 as also looted costly plants of the nursery worth Rs. 10 lakhs by carrying away the same on a truck. It appears that a complaint was filed behind the back



of the petitioner before the Public Grievance Redressal Cell of Sub-Divisional Officer, Chapra to declare the personal land of the petitioner as public property, however, the said complaint was rejected by an order dated 06.10.2016, whereafter, the said Sanjay Kumar Singh had filed a first appeal before the Additional Collector, who is the appellate authority of the Public Grievance Cell and without issuance of any notice to the petitioner herein, the said case was heard, nonetheless, the appeal was rejected vide order dated 09.01.2017 with a direction to the Circle Officer to get the land in question measured to determine as to whether there is any encroachment or not. The said Sanjay Kumar Singh had then filed a second appeal before the District Collector, Saran, Chapra wherein also the petitioner was neither made a party nor any notice was issued to him, nonetheless, the District Magistrate, Saran at Chapra, vide order dated 07.03.2017, in the capacity of second appellate authority, though held that the aforesaid plot no. 7778 is the ancestral raiyati land of the petitioner



herein, however, he further illegally held that in the municipal map, there is a rasta (way/road) through the said plot in question, hence, the same should be opened forcibly, after demolishing the obstructions. It appears that thereafter, the District Magistrate, Saran at Chapra in the capacity of second appellate authority had passed a further order dated 06.04.2017 without impleading or issuing notice to the petitioner herein, whereby and whereunder further directions have been issued to demolish certain portion of the house /structures within the compound of the petitioner situated in the aforesaid Plot No. 7778.

10. The learned Senior Counsel for the petitioner has submitted that the aforesaid impugned orders dated 07.03.2017 and 06.04.2017 have been passed by the District Magistrate-cum-Second Appellate Authority, Saran at Chapra without following the due procedure of law as also de hors the existing provisions of law. It is further submitted that the authorities / appellate authorities under the Bihar Right to Public



Grievance Redressal Act, 2015 are not entitled to entertain complaint pertaining to encroachment of public land and it does not lie within their domain to issue directions for either removal or demolition of the encroachment. The learned Senior Counsel for the petitioner has also submitted that if at all any encroachment was present on the public land, the same could have only been removed by resorting to encroachment proceedings under the Bihar Public Land Encroachment Act, 1956.

11. Per contra, the learned counsel for the Respondent-State, by referring to the counter filed on behalf of the Respondent No. 6 i.e. the Circle Officer, Chapra at Saran, has submitted that earlier an Encroachment Case No. 2 of 2016-17 was initiated by the Circle Officer Sadar, Chapra on the application of one Sanjay Kumar Singh over the aforesaid Plot No. 7778, whereafter the petitioner had filed the relevant documents from which the Circle Officer, Sadar, Chapra came to the conclusion that the encroachment case is not maintainable, hence, the same was dropped by a



reasoned order dated 05.01.2017 passed in Encroachment Case No. 02 of 2016-17. It is further submitted that only with a view to comply the order passed by the District Magistrate, Saran at Chapra, as contained in earlier Memo No. 68 dated 23.02.2017, the Circle Officer, Sadar, Chapra was compelled to demolish parts of the shop / godown of the petitioner.

12. The learned counsel for the Respondent-State, by referring to the counter affidavit filed on behalf of the Additional Collector, Saran at Chapra, has submitted that the Additional Collector, Saran at Chapra has got no role to play in the instant case and as per the order of this Court, status quo is being maintained over the said Plot No. 7778.

13. The learned counsel for the State, by referring to the counter affidavit filed on behalf of the Respondent No. 3 i.e. the District Magistrate, Saran at Chapra, namely, Sri Harihar Prasad, has submitted that according to the municipal map, a road is existing almost in the middle of the



disputed plot from north to south and moreover, the temples in question are being visited by the local people, as such, the local people have got right of worship in the aforesaid temples. It is further submitted that the District Magistrate has got no knowledge about Title Suit No. 123/ 84. It is also submitted that one Sanjay Kumar Singh had preferred a second appeal before the then Collector under the provisions of Bihar Public Grievance Redressal Act, 2015 for removal of encroachment from the existing Plot No. 7778 and accordingly, orders have been passed for removal of the encroachment.

14. The learned counsel for the private Respondent No. 9 has submitted that the present writ petition is not maintainable and the appropriate remedy for the petitioner is to approach the competent civil court having appropriate jurisdiction. It is further submitted that the District Magistrate, Saran at Chapra has correctly passed the impugned orders dated 07.03.2017 and 06.04.2017, hence, there is no



merit in the present writ petition.

15. I have heard the learned counsel for the parties and perused the materials on record from which it is apparent that the facts in question are undisputed as also remain uncontroverted by the respondents, which is also apparent from the materials on record and the various judgments / orders, which have been placed on record, apart from the record produced by the respondents-State pertaining to Encroachment Case No. 2 of 2016-17, which are as follows:-

- (i) The Municipal Survey Plot No. 7778, called Maharani Asthan in Mohalla-Dahiyawan Dih, P.S-Chapra, District-Saran at Chapra is the bone of contention in the present case. A private ancestral temple of Maa Bhagwati as well as private road is situated within the four corners of Plot No. 7778 and the temple in question is personal, which has been constructed by the ancestors of the petitioner herein. The aforesaid Plot No. 7778 is recorded in khatiyani in the name of the predecessors of the petitioner herein, namely, Bhagwat



Prasad, who died living behind his only son, namely, Kapildeo Prasad, who has also died living behind three sons, namely, Vishwanath Prasad, Sheonath Prasad and Amit Kumar Gupta i.e. the petitioner herein. The said plot has an area of 8 katha 7 dhur.

- (ii) A title suit bearing Title Suit No. 123 of 1984 was filed by the predecessor of the petitioner for eviction of a tenant, namely, Smt. Bhagia Devi and in the said title suit, the question of title of the suit property i.e Plot No. 7778 was also raised by the defendant therein, however, ultimately, the suit was decreed in favour of the predecessor of the petitioner by the learned 6th Subordinate Judge, Chapra vide judgment and decree dated 23.06.1999.
- (iii) Yet another title suit bearing Title Suit No. 108 of 1977 was filed before the learned court of 1st Munsif, Chapra, which was also decided in favour of late Bhagwat Prasad on 14.12.1981 and the appeal filed against the said judgment bearing Title Appeal No. 14 of 1982 has also stood dismissed by a judgment dated 05.03.1983 passed by the learned District



Judge, Chapra and the second appeal filed against the said judgment dated 05.03.1983 bearing Second Appeal No. 121 of 1983 has also stood dismissed on 25.09.2012.

- (iv) In the year 2011, respondent no. 7 herein i.e. Bhola Rai had purchased land contingent towards east of the aforesaid Plot No. 7778 of the petitioner herein and then he started claiming a portion of the said Plot No. 7778 to be a road as also had alleged closure of road by means of a boundary wall. The said Bhola Rai also started claiming the temple to be a public temple. This led to filing of Bihar Land Dispute Resolution Case No. 87 of 2011 by the petitioner before the D.C.L.R., Chapra wherein, after issuance of notice to the respondent no. 7 and upon perusal of the documents, papers as well as the judgments and decrees of the learned civil court, the said case was allowed by the learned D.C.L.R., Chapra by an order dated 30.06.2012 passed in BLDR Case No. 87 of 2011. The said order dated 30.06.2012 was appealed against by the respondent no. 7 before the learned Commissioner, Saran Division, Chapra, which was numbered as BLDR Appeal No.



191 of 2012, however, the same was also dismissed by an order dated 25.04.2016.

- (v) The Circle Officer, Chapra at Saran, had earlier initiated an Encroachment Case No. 2 of 2016-17 on the application of one Sanjay Kumar Singh over the aforesaid Plot No. 7778, whereafter the petitioner had filed the relevant documents from which the Circle Officer, Sadar, Chapra came to the conclusion that the encroachment case is not maintainable, hence, the same was dropped by a reasoned order dated 05.01.2017 passed in Encroachment Case No. 02 of 2016-17.

16. It is apparent from the records of the case that the right, title, possession and interest of the petitioner and his family members is not disputed as far as the aforesaid Plot No. 7778 is concerned and it is only the ill intentions and perverse thoughts of the private respondents that they have connived with the local administration with a view to grab the legitimate land of the petitioner herein and with such mala fide, evil and malicious intention, they have connived together and filed



various complaints / cases, which have rightly stood dismissed, however, in one case filed before the authority under the Bihar Right to Public Grievance Redressal Act, 2015 (hereinafter referred as the "Act, 2015"), though the same had stood rightly rejected by the Sub-Divisional Public Grievance Redressal Officer by an order dated 06.10.2016 as also by the first appellate authority i.e. the Additional Collector (Public Grievance Redressal), District-Saran by an order dated 09.01.2017, the private respondents succeeded in obtaining perverse and illegal orders dated 07.03.2017 and 06.04.2017 from the second appellate authority under the Bihar Right to Public Grievance Act, 2015 i.e. the District Magistrate, Saran at Chapra, obviously with active collusion of the then District Magistrate, Saran at Chapra.

17. At this juncture, it would be apt to reproduce the definition of "**complaint**" as defined under **Section 2(a) of the Bihar Right to Public Grievance Redressal, Act, 2015** herein below:-



“2 (a) - Complaint means any application made by a citizen or a group of citizens to a Public Grievance Redressal Officer for seeking any benefit or relief relating to any schemes, programme or services run in the State by the State Government or in respect of failure or delay in providing such benefit or relief, or regarding any matter arising out of failure in the functioning of, or violation of any law, policy, service, programme or scheme in force in the State by a public authority but does not include grievance relating to the service matters of a public servant, whether serving or retired, or relating to any matter in which any Court or Tribunal has jurisdiction or relating to any matter under Right to Information Act, 2005 (Central Act no. 22 of 2005) or services notified under the Bihar Right to Public Services Act, 2011.”

A bare perusal of the aforesaid definition of **“complaint”** would show that the authorities/Appellate Authority under the **Bihar Right to Public Grievance Redressal, Act, 2015** are not empowered to entertain any complaint pertaining to encroachment made over the public/



Government land, inasmuch as the same is governed by the provisions of the **Bihar Public Land Encroachment Act, 1956**, hence, the Second Appellate Authority-cum-District Magistrate, Saran at Chapra has committed a grave error by assuming the role of an authority under the provisions of the Bihar Public Land Encroachment Act, 1956, although he has got no jurisdiction or power to either entertain any complaint pertaining to encroachment or pass any order regarding removal / demolition of the encroachment in question, hence, on this ground alone, this Court finds that the orders dated 07.03.2017 and 06.04.2017 passed by the District Magistrate, Saran at Chapra in Complaint Case No. 517110130071600151/2A are perverse, illegal, malafide and de hors the provisions of law, hence, are set aside.

18. Even on merits, this Court finds that once the D.C.L.R., Chapra, by an order dated 30.06.2012, passed in Land Dispute Case No. 87 of 2011, has held that no portion of the road has been



encroached by the petitioner and moreover, no road exists through the Plot No. 7778, which has also been upheld by the learned Commissioner, Saran Division, Chapra in B.L.D.R. Appeal No. 191 of 2012, by an order dated 25.04.2016, the District Magistrate, Saran at Chapra could not have either disregarded or ignored the said orders and passed contrary orders dated 07.03.2017 and 06.04.2017, hence, the same shows the complicity and connivance of the then District Magistrate, Saran at Chapra with the land grabbers as also depicts the perverse, illegal and unscrupulous action of the then District Magistrate, Saran at Chapra, which definitely persuades this Court to recommend to the State Government for initiating appropriate departmental proceeding against the then District Magistrate, Saran at Chapra, who has passed the aforesaid orders dated 07.03.2017 and 06.04.2017, more so in view of the same being expedient for the ends of justice.

19. This Court further finds that the impugned orders dated 07.03.2017 and 06.04.2017 have



been passed by the then District Magistrate, Saran at Chapra without either issuing notice or granting an opportunity to the petitioner to file his objection, muchless granting him an opportunity of hearing, hence, the same has resulted in violation of the principles of natural justice, which also renders the said orders passed by the then District Magistrate, Saran at Chapra to be illegal and void.

20. Yet another aspect of the matter is that in case, any encroachment is required to be removed from the public land, proceedings are required to be initiated in accordance with the provisions contained in the Bihar Public Land Encroachment Act, 1956, particularly in accordance with **Section 3** thereof and then notices are required to be issued to the encroachers to file their objections and only after following the procedure contained in **Sections 4 and 5 of the Act, 1956**, the Circle Officer is required to pass final orders under **Section 6(1) of the Act, 1956** and only thereafter, the encroachment in question can be removed, after issuing notice under **Section 6(2)**



of the said Act, in case the encroacher has failed to remove the encroachment in question. This Court finds that the said process required to be followed as per the procedure prescribed under **the Act, 1956**, has been admittedly by-passed by the Circle Officer, merely on the dictate of the Second Appellate Authority under the **Bihar Right to Public Grievance Redressal, Act, 2015**, hence, the entire action of demolition of the shop / godown of the petitioner herein is held to be illegal inasmuch as the same is dehors the provisions contained in the Bihar Public Land Encroachment Act, 1956.

21. This Court further finds that an encroachment proceeding pertaining to aforesaid Plot No. 7778 was initiated by the Circle Officer Sadar, Chapra (Saran) bearing Encroachment Case No. 02 of 2016-17, upon a complaint having been made by the private Respondent No. 9, namely, Sanjay Kumar Singh, whereafter notice was issued to the petitioner herein, who had then filed his objection and the relevant documents from which the Circle



Officer Sadar, Chapra found that the said encroachment case was not maintainable, hence by a reasoned and a speaking order dated 05.01.2017, the said Encroachment Case No. 02 of 2016-17 was dropped. This fact has not only been admitted but also expounded by the Circle Officer Sadar, Chapra (Saran) in the counter affidavit filed by him (Respondent No. 6), which is at running page no. 91 of the present writ petition and the order dated 05.01.2017 can be found at page no. 103 of the records of the present case. It is also apparent from the record produced before this Court pertaining to the encroachment case in question that no fresh encroachment proceeding has been initiated by the Circle Officer against the petitioner herein, after the aforesaid Encroachment Case No. 02 of 2016-17 was closed vide order dated 05.01.2017, hence it is apparent that the impugned notice dated 29.07.2016, which was issued to the petitioner herein, was in fact issued in connection with Encroachment Case No. 02 of 2016, as is apparent from the records produced



before this Court by the Circle Officer Sadar, Chapra, however, the same had already stood terminated / closed by a reasoned order dated 05.01.2017 passed in Encroachment Case No. 02 of 2016-17, after the petitioner had filed the relevant documents, from which the Circle Officer, Sadar, Chapra came to the conclusion that the petitioner has not engaged in any encroachment. It is thus surprising as to how the then District Magistrate, Saran at Chapra has passed illegal orders dated 07.03.2017 and 06.04.2017. Therefore, this Court holds that the action of the respondent authorities including that of demolition of shop / godown of the petitioner is illegal, perverse and de hors the procedure established by law as well as without jurisdiction and nullity in the eyes of law.

22. At this juncture, it would be relevant to refer to a judgment rendered by a coordinate Bench of this Court reported in **2019 (3) PLJR 472 (Shailesh Kumar v. The State of Bihar and others)**, paragraphs 3, 4, 12, 13 and 14 whereof



are reproduced herein below :-

“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 poart 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 encraochment. 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 09.04.2014 and as per the counsel for the petitioner, the notice was served to the petitioner on 09.04.2015 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 17.04.2015.

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 2012 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 here 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, direct 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. "

23. Having regard to the facts and circumstances of the case and for the reasons mentioned hereinabove, the present writ petition is allowed, the orders dated 07.03.2017 and 06.04.2017 passed by the then District Magistrate, Saran at Chapra are quashed and the respondent-District Magistrate, Saran at Chapra is directed to get the demolished structures/shop/ godown of the petitioner reconstructed within a period of four weeks of the receipt / production of a copy of this order and the expenditure incurred in the said reconstruction is directed to be recovered from the then District Magistrate, Saran at Chapra, who has passed the impugned orders dated 07.03.2017 and 06.04.2017, which have been held to be illegal, perverse, mala fide and de hors the provisions of law.



24. It is further directed that any interference in the peaceful possession of the petitioner and his family members over the Plot No. 7778, as aforesaid, either by the respondent authorities or by the private respondents no. 7 to 9 or others shall make such persons liable to be proceeded against, for interfering with the administration of justice, under the contempt jurisdiction of this Court.

25. With the aforesaid directions and observations, the writ petition stands allowed.

(Mohit Kumar Shah, J)

Ajay/-

AFR/NAFR	AFR
CAV DATE	NA
Uploading Date	02.10.2020
Transmission Date	NA

