

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.13936 of 2019

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Dhiraj Kumar Son of Late Chandrika Singh, Resident of Village- Jago Bigha,
P.O.- Aat, P.S.- Ben, District- Nalanda.

... .. Petitioner/s

Versus

1. The State of Bihar Through the Principal Secretary, Revenue and Land Reforms Department, Government of Bihar, Patna.
2. The Divisional Commissioner, Division- Patna, District- Patna.
3. The District Magistrate, Nalanda, District- Nalanda.
4. The Sub-Divisional Officer, Rajgir, District- Nalanda.
5. The Circle Officer, Ben, District- Nalanda.
6. The Station House Officer, Police Station- Ben, District- Nalanda.

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr.Niraj Kumar
For the Respondent/s : Mr.Rishi Raj Sinha (Sc19)

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CORAM: HONOURABLE MR. JUSTICE MOHIT KUMAR SHAH
C.A.V. JUDGMENT

Date : 13-08-2020

1. The present writ petition has been filed for directing the respondent-authorities to restore the demolished part of the house of the petitioner, constructed over his own land pertaining to *Khata* no. 845, Plot no. 4152, *Mauza*- Aat, Village- Joga Bigha, *Thana* no. 377, *Anchal*-Ben, District-Nalanda which has been forcibly and illegally demolished on 12.06.2019 by the demolition squad on the instruction of the Circle Officer, Ben, Nalanda.

2. The brief facts of the case are that an encroachment proceeding bearing Encroachment case no. 07 of 2017-18 was



initiated with respect to Plot no. 4120 situated at Anchal-Ben, District-Nalanda by the Circle Officer, Ben against the boundary *raiya*s of the said land and after sometime, the name of the petitioner was also included in the said case and notices were issued to the petitioner, whereupon he had appeared and filed his show cause as well as had assisted in measurement of the Plot in question. It is an admitted fact that upon measurement, the petitioner was found to have encroached about 140 sq. ft. of land of the said Plot no. 4120, whereafter the Circle Officer vide order dated 23.10.2017, passed in Encroachment case no. 07 of 2017-18, had directed the petitioner as well as some other persons to remove the encroachment from the said Plot no. 4120, whereupon the petitioner had himself removed the encroachment in question which is also reflected from the order dated 01.02.2018 passed by the Circle Officer, Ben and then the encroachment proceedings of Encroachment case no. 07 of 2017-18 were closed vide order dated 17.02.2018.

3. It appears that after sometime, one Guddu Kumar had filed a complaint before the Public Grievance Redressal Officer, Nalanda on 04.04.2018 alleging therein that one Abhay Singh had made encroachment over the aforesaid Plot no. 4120 and the Circle officer was not taking any action. The said



complaint of Guddu Kumar was registered and was heard on several dates, however since the Circle Officer, Ben did not apprise the said authority properly, the proceeding was closed vide order dated 08.12.2018, passed by the District Public Grievance Redressal Forum, District-Nalanda, while recommending for imposition of penalty against the Circle Officer. The said order dated 08.12.2018 was assailed in appeal by the said Guddu Kumar before the Divisional Commissioner, Patna, which was disposed off by an order dated 05.04.2019, wherein though it has been recorded that the Circle Officer, Ben has filed a report, wherein he has stated that the encroachment over Plot no. 4120 has been removed, nonetheless, the appellate authority had directed the District Magistrate, Nalanda to constitute a committee and hold measurement of the Plot in question. Thereafter, a notice dated 04.06.2019 was sent to the petitioner herein by the Circle Officer, Ben, Nalanda in connection with the Encroachment case no. 07 of 2017-18 stating therein that a team had been constituted for holding measurement and upon measurement having been carried out, it has transpired that 1.54 decimal of the *Gairmazarua Aam* Public land has been encroached by the petitioner, hence the petitioner was directed to remove the house, constructed illegally within



24 hours. The petitioner is stated to have approached the Circle Officer, Ben in pursuance to the aforesaid notice dated 04.06.2019 for the purposes of filing his objections, however the Circle Officer refused to accept any objection of the petitioner, hence the petitioner had sent his objection/ representation dated 06.06.2019 vide registered post dated 07.06.2019 to the Circle Officer, Ben. Thereafter, another notice dated 08.06.2019 was issued to the petitioner for removal of the alleged encroachment in question made over Plot no. 4120. The petitioner had again sent a representation dated 10.06.2019 by registered post to the Circle Officer, Ben and had also represented before the Divisional Commissioner on 11.06.2019 against the high-handedness of the Circle Officer but to no avail. Ultimately, the respondents have demolished a part of the house of the petitioner on 12.06.2019 in an illegal manner.

4. The learned Senior counsel for the petitioner Sri Triloki Nath Maitin has submitted that firstly, the petitioner has not encroached upon any part of Plot no. 4120 and infact, the petitioner has got his land i.e. plot no. 4152 measured by the private Amin on 29.06.2019 which clearly indicates that the house of the petitioner was constructed over his own land. Secondly, it is submitted that once the earlier encroachment



proceeding, initiated vide Encroachment case no. 07 of 2017-18 had culminated into a finality by removal of the encroachment and closure of the proceedings vide order dated 17.02.2018, the said proceedings could not have been re-opened even if re-encroachment has been made, although it is the case of the petitioner that no re-encroachment has been made over the plot no. 4120, inasmuch as there is no provision in the Bihar Public Land Encroachment Act, 1956 (hereinafter to be referred to as “the Act, 1956”) which permits the original authority i.e. the concerned Circle Officer to either review his order or re-open the closed proceedings. It is further submitted by the learned Senior counsel for the petitioner that in case, the respondent authorities were of the view that the Government land in question has been re-encroached, fresh proceeding and fresh notice under the provisions of the Bihar Public Land Encroachment Act, 1956 was required to be issued. Thus, the submission of the learned Senior counsel for the petitioner in nutshell is that the notices dated 04.06.2019 and 08.06.2019, issued by the Circle Officer, Ben, are not only perverse and illegal but furthermore, the petitioner has not been granted any opportunity of hearing or filing any objection, hence the Principles of Natural Justice have been violated, nevertheless



the respondents have, in a malafide manner, demolished a portion of the house of the petitioner alleging the same to have been constructed over the public land i.e. Plot no. 4120. Thus, it is submitted that the petitioner is required to be adequately compensated. In this connection, the learned counsel for the petitioner has relied upon 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 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 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. ”



5. *Per contra*, the learned counsel for the respondent-State has submitted that the earlier Encroachment case no. 07 of 2017-18 was initiated by the Circle Officer, Ben for removal of encroachment made over *Khata* no. 888, Plot no. 4120, area 1.55 acre under *Mauza-Aat*, *Tole-Joga* bigha, *Thana* no. 377, *Anchal*-Ben, District-Nalanda which is a Gairmazarua Aam land. It is stated that the *Anchal Amin* had conducted measurement and submitted a report, according to which it was found that the petitioner had encroached .75 decimals of land situated at Plot no. 4120, whereafter, upon the request of the petitioner, the land in question was re-measured and it was found that the petitioner had encroached 140 sq.ft. of the aforesaid plot no. 4120 and accordingly, notice was issued to the petitioner, however the petitioner accepted the encroachment in question and then the Circle Officer, Ben had passed the final order dated 23.10.2017, whereafter the encroachment in question was removed on 29.01.2018 by the respondent-State and the proceedings were dropped/ closed vide order dated 17.02.2018. It has been further submitted that subsequently, a complaint was filed by one Dhananjay Kumar @ Guddu Sharma before the Divisional Commissioner, Bihar, Patna against the order of the District Public Grievance Redressal Officer,



Nalanda, whereupon the land was measured by the Government *Amin* and the private *Amin*, however on account of dispute, a team of *Amin* was constituted for demarcation of the Plot no. 4120, whereafter demarcation was carried out on 03.06.2019 and it was found that the same portion of land in question, which was encroached by the petitioner earlier, had again been encroached, hence fresh notice dated 04.06.2019 was issued to the petitioner to remove the encroachment in question within 24 hours, however the same was not removed, whereafter the encroachment was removed by the District authorities in presence of Executive Magistrate, D.C.L.R. Rajgir and the B.D.O. Ben on 12.06.2019. The learned counsel appearing for the State has contended that the authorities under the Bihar Right to Public Grievance Redressal, Act, 2015 i.e. the District Public Grievance Redressal Officer as also the appellate authority are fully empowered to direct for removal of encroachment, hence once the District Appellate Authority by an order dated 05.04.2019, had directed the Circle Officer and the District Magistrate, Nalanda to constitute a committee and carry out demarcation after measurement of the Plot in question, it was imperative on the part of the Circle Officer, Ben to have given notice to the petitioner by re-opening the closed case i.e.



Encroachment case no. 07 of 2017-18 and once the petitioner had failed to remove the encroachment in question, the encroachment made by the petitioner over the aforesaid public land pertaining to Plot no. 4120 was removed by demolishing a part of the house of the petitioner, hence there is no illegality in the action of the respondents, thus the present writ petition is fit to be dismissed.

6. I have heard the learned counsel for the parties and perused the materials on record. Admittedly, the earlier encroachment proceedings had culminated into a finality by passing of final orders under **Section 6(1) of the Act, 1956** on 23.10.2017 and thereafter issuance of notice under **Section 6(2) of the Act, 1956**, whereafter the encroachment in question was removed and the proceedings of the said Encroachment case was closed vide order dated 17.02.2018. This Court is of the view that in case, the respondent-authorities, especially the Circle Office, Ben had discovered that fresh encroachment has been made by the petitioner over the aforesaid public land in question i.e. Plot no. 4120, he was required to initiate fresh proceedings in accordance with the provisions contained in the **Act, 1956**, particularly as per **Section 3** thereof and thereafter, notices were required to be issued to the petitioner to file his



objections and only after following the procedure contained in **Sections 4 and 5 of the Act, 1956**, the Circle Officer was required to pass final orders under **Section 6(1) of the Act, 1956** and only then, the encroachment in question could have been removed, after issuing notice under **Section 6(2) of the said Act** to the petitioner herein, in case the encroacher had 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 by-passed by the Circle Officer, merely on the dictate of the Appellate Authority under the **Bihar Right to Public Grievance Redressal, Act, 2015**, hence the notice dated 04.06.2019 and 08.06.2019 are held to be illegal, inasmuch as the same are *de hors* the provisions of the **Act, 1956**. It is further proclaim that the said notices dated 04.06.2019 and 08.06.2019, issued in connection with Encroachment case no. 07 of 2017-18, purportedly in garb of the said earlier proceedings, which had admittedly stood closed vide order dated 17.02.2018 passed by the Circle Officer, Ben, evidently depicts that the Circle Officer, Ben has acted in haste, unlawfully and without following the procedure laid down under the **Act, 1956** inasmuch as under the **Act, 1956**, neither the Circle Officer concerned has the power to review his



own final order nor there is any provision for opening a closed encroachment proceeding. Consequently, it is held the said notices dated 04.06.2019 and 08.06.2019 are not only illegal but the entire action of the Circle Officer, Ben and the other authorities leading to illegal demolition of the house of the petitioner is *de hors* the provision of law especially, the provisions of the Act, 1956 as also in blatant violation the Principles of Natural justice, inasmuch as neither any opportunity of filing any objection nor any opportunity of hearing was granted to the petitioner prior to the Circle Officer, Ben having decided that the petitioner was an encroacher over the aforesaid Plot no. 4120 and having demolished a part of the house of the petitioner. Thus, it is held that the action of the respondent- authorities including that of demolishing the house of the petitioner, is illegal, perverse and *de hors* the procedure established by law as well as without jurisdiction and a nullity in the eyes of law.

7. At this juncture, this Court finds that it would be appropriate to deal with the other submission advanced by the learned counsel for the respondent- State to the effect that the authorities/ appellate authorities under the ***Bihar Right to Public Grievance Redressal, Act, 2015*** are empowered to



entertain complaint pertaining to encroachment of public land and issue directions. In this regard, 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.”

8. 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 to the said extent, this Court finds that the learned counsel for the State has made an incorrect submission, hence the said submission of the learned counsel for the State is being noted only for the purposes of being rejected.

9. Having regard to the facts and circumstances of the case and for the reasons mentioned hereinabove, the present writ petition stands allowed and the respondent-District Magistrate, Nalanda is directed to get the demolished structure / part of the house of the petitioner, reconstructed within a period of two months from today. It is further held that since the Circle Officer, Ben, Nalanda has acted *de hors* the provisions of law especially the **Act, 1956** resulting in his actions, as aforesaid, being wholly without jurisdiction and a nullity in the eyes of law, the sufferer i.e. the petitioner in the present case is entitled to be compensated for the arbitrary acts of the instrumentalities of the State i.e. the Circle officer, Ben. Hence the District Magistrate, Nalanda is further directed to pay a compensation of Rs. 1 lac to the petitioner herein within a period of four weeks



from today.

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

(Mohit Kumar Shah, J)

rinkee/-

AFR/NAFR	AFR
CAV DATE	05.11.2019
Uploading Date	18.08.2020
Transmission Date	NA

