

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No. 8585 of 2020

1. Ali Ahmad, aged about 53 years (Male), Son of Md. Idris Quraishi.
2. Shakil Alam, aged about 40 years (Male), Son of Md. Sohrab.
3. Akbar Ali, aged about 43 years (Male), Son of Md. Idris Quraishi.
4. Ashif Ekbal, aged about 32 years (Male), Son of Late Wazir Hasan.
5. Md. Aklaque, aged about 50 years (Male) Son of Sarfuddin.
6. Md. Sannullah, aged about 33 years (Male) Son of Aliullah.
7. Sakil Ahmad, aged about 43 years (Male), Son of Shakiullah Ansari.
8. Md. Jawed, aged about 45 years (Male), Son of Late Md. Yakuf.
All resident of Mohalla- Khanuwah Karimchak, PS- Chapra Town, District
Saran at Chapra- 841301.

... .. Petitioner/s

Versus

1. The State of Bihar.
2. The Collector, Saran at Chapra.
3. The Sub-Divisional Magistrate, Saran at Chapra.
4. The Circle Officer, Chapra Sadar, District Saran.
5. The Chairman, Chapra Municipality, Chapra.
6. The Executive Officer, Chapra Municipality, Chapra.

... .. Respondent/s

Appearance :

For the Petitioner/s	:	Mr. Surendra Kishore Thakur, Advocate
For the State/R1-6	:	Mr. Sajid Salim Khan, SC 25 with Mr. Arif Daula Siddique, AC to SC 25

**CORAM: HONOURABLE MR. JUSTICE AHSANUDDIN
AMANULLAH**

ORAL JUDGMENT

Date : 04-03-2021

This matter has been heard *via* video conferencing.

2. Heard Mr. Surendra Kishore Thakur, learned counsel
for the petitioners and Mr. Sajid Salim Khan, learned Standing
Counsel 25 along with Mr. Arif Daula Siddique, learned Assistant
Counsel to SC 25 for the State.



3. The petitioners have moved the Court for the following reliefs:

“(i) For issuance of writ in the appropriate nature for quashing of the Notice dated 9.6.2020 issued under the signature of the Circle Officer, Chapra Sadar under Section 6(ii) of the Bihar Public Encroachment Act, 1956 with direction to remove the structure and vacate the land stating therein that an order declaring public land has been passed without mentioning case number and date of the order without giving opportunity of hearing.

(ii) For further direction to the respondents authority to hear afresh and pass afresh order after giving opportunity to these petitioners providing case number.

(iii) And for any other relief/reliefs for which the petitioners are found to be entitled in the eye of law.”

4. *Vide* Order dated 02.02.2021, the Court had noticed the following:

“4. The main contention of the petitioners is that without proper notice to them, as the initial notice did not mention any proceeding number, the authorities are proposing to take action and are moving from one stage to the other. It was submitted that the petitioners cannot even take any copies of any orders as the proceeding number is not mentioned.

5. Learned counsel for the State prays for time to file detailed counter affidavit.

6. In view thereof, as prayed for by learned State counsel, for filing detailed paragraph-wise counter affidavit, the matter be listed on 4th March, 2021.

7. The Court would only observe that all averments to be made in the counter affidavit to be filed shall be supported by copies of relevant documents and further learned State counsel may



have with himself the records of the case during hearing.”

5. A counter affidavit has been filed on behalf of respondents no. 2 and 4.

6. Learned counsel for the petitioners submitted that the entire process adopted by the authorities is perverse and is a clear case of high-handedness as the very basic principles of law have been flouted. It was submitted that before taking drastic action of holding any person to be an encroacher, notice is required to be issued and admittedly in the present case, though a notice was given to the petitioners but it did not indicate any detail, much less, any number of any encroachment proceeding so as to enable the petitioners to get details of such proceedings as also file their defence(s).

7. On this short point, when the Court called upon learned counsel for the State to answer the issue, he frankly stated that the notice issued to the petitioners for removal of encroachment did not bear any proceeding number. However, he submitted that such proceedings were initiated in view of an order passed by the National Green Tribunal, Principal Bench, New Delhi (hereinafter referred to as the ‘NGT’) and as the local administration was under notice for not having implemented the earlier direction of the NGT, the exercise was taken to its logical



conclusion in the absence of the petitioners as they did not turn up in the proceedings.

8. At this juncture, the Court once again put a direct query to learned counsel for the State as to whether there was any indication in any communication by the authorities to the petitioners as to what the proceeding under which such notice was issued to them, related to, for them to either appear and/or file their show cause; on the basis of records which were available with him, he categorically stated that the petitioners were never informed the details of the proceedings, including the number of the case.

9. Having considered the facts and circumstances of the case and submissions of learned counsel for the parties, in the considered opinion of the Court, nothing further is required to be looked into for the purposes of deciding the present case.

10. There is no need to restate the obvious, by reemphasizing settled law. An adverse order cannot be passed against any person, by the State and its instrumentalities, which has grave consequences adverse to his interest, without providing reasonable opportunity to such person to explain his position.

11. In the present case, though a notice was issued to the petitioners, which may also have been received by them, but the



same being bereft of any number or proper details, as rightly contended by the petitioners, left them in a position where they could not even have got copies relating to such proceedings and materials on which such proceedings were based, and most importantly, they could have not filed their show cause and/or appeared in a proceeding, details whereof were, admittedly, not part of the notice.

12. Thus, the notice(s) were effectively *non-est* in the eyes of law. Further, it appears that they were a mere formality to, by any means, show a proceeding on paper with regard to an exercise undertaken by the authorities in, what can only be termed a totally arbitrary and capricious manner.

13. For reasons aforesaid, on the short point of flagrant violation of the principles of natural justice, the exercise undertaken by the authorities in the present case, is held to be unsustainable and a blatant abuse of the power vested in them. It is clarified that the Court has not examined any other issue, nor delved into the institution and/or justification of such proceedings, but has only looked into the manner in which they have been conducted.

14. Though, various materials/documents have been brought on record to indicate the right, title and possession of the



petitioners over the lands from which they have been forcibly evicted by the authorities, the Court is neither required nor is going into the merits of such claim and materials in view of the discussion hereinabove.

15. Accordingly, this application deserves to be, and is, allowed.

16. The so-called notices dated 09.06.2020 issued against the petitioners impugned herein stand quashed. However, it shall be open to the authorities to take action in the matter, but the same has to be done in accordance with law, after following the procedure prescribed.

17. The Court is constrained to observe that as there has been gross misuse and abuse of authority by the officers concerned, the State Government is required to fix responsibility and take appropriate action in the matter.

18. Learned counsel for the State shall communicate the order to the State Government.

(Ahsanuddin Amanullah, J.)

P. Kumar

AFR/NAFR	AFR
U	
T	

