

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.5013 of 2018

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1. Rajiv Kumar and Anr S/o Shri Ram Outar Chaudhary R/o Main Road, Hilsa, Kali Sthan, P.S. - Hilsa, District - Nalanda.
 2. Sita Ram Prasad S/o Late Yogeshwar Ram R/o Main Road, Hilsa, Kali Sthan, P.S. - Hilsa, District - Nalanda.

... .. Petitioner/s

Versus

1. The State Of Bihar through the Revenue and land Reforms Department, Bihar, Patna.
2. The District Magistrate, Nalanda.
3. The Deputy Collector, Land Reforms, Nalanda.
4. The Circle Officer, Circle - Hilsa, Nalanda.

... .. Respondent/s

Appearance :

For the Petitioner/s : Mr.Awadhesh Kumar, Advocate
For the Respondent/s : Mr.Sajid Salim Khan -SC 25

CORAM: HONOURABLE MR. JUSTICE MOHIT KUMAR SHAH
ORAL ORDER

6 15-09-2022 The present writ petition has been filed seeking the following reliefs :-

“ (i) For setting aside the notice issued by the Circle officer, Hilsa on 12.03.2018 in Encroachment case no. 03/17-18, whereby the petitioners and other persons have been directed to remove the “so called” encroachment from the plot of land bearing Thana no. 177, Khata no. 569, Khesra no. 191, Mauja-Hilsa admeasuring 40 decimals, which is Gair Mazarua Aam Pokhar and such encroachment has been directed to be removed by 16.03.2018, failing which the same shall be removed by the administration



at their own level and the expense of such action would be realized from the petitioners.

(ii) To stay the operation of the notice dated 12.03.2018 issued by the Circle Officer, Hilsa, Nalanda, during the pendency of the writ application.”

This Court had directed the District Magistrate, Nalanda to file the requisite counter affidavit, duly sworn by him, which has been filed on 01.09.2022, wherein, in paragraphs no. 8 to 10, it has been stated as follows :-

“(8) That it is pertinent to mention here that in pursuance to the direction as well enquiry report a proceeding under Encroachment case no. 03 of 2017-18 was initiated by the respondent no. 4 and notices against the encroachers were ordered to be issued for removal of the alleged encroachment from the land in question. It is relevant to mention here that the land in question was again inspected by the respondent no. 4 with Revenue Karmchari and Anchal Amin and found that altogether 08 persons including the petitioners have made encroachment over the land in question and then notices were issued against all the encroachers. However, vide letter dated 13.12.2017 passed in Encroachment case no. 03/2017-18, the parts of the land in question possessed by the



encroachers except the land possessed by the petitioner no. 1 declared as encroached land and accordingly, notice under Section 6(2) of the Bihar Public Land Encroachment Act, 1956 has been order to be issued.

(9) That it is further stated and submitted that notices were again issued against the encroachers by way of giving last chance for removal of encroachment, but when no response was made on their behalf, the encroachment was removed on 17.03.2018 in presence of the magistrate and police forces and vide letter no. 669 dated 17.03.2018 issued by the respondent no. 4, the S.H.O. Hilsa PS was informed to remain vigilant so that the encroachment could not be made over the land in question again. It is relevant to mention here that part of the land possessed by the petitioner no. 01 was left from removal on account of his claim that his uncle Laxmi Chaudhary, who is Jamabandi owner of the land gifted the same to him.

(10) That in view of the present writ petition, the status of the land was got enquired jointly by the S.D.O. Hilsa, the respondent no. 03 and 04 and according to joint enquiry report vide letter no. 987 dt. 25.08.2022 issued from the office of the S.D.O., Hilsa revenue receipt for 6 decimal land is being issued in favour of uncle of the petitioner no. 01 namely



Laxmi Chaudhary on the basis of Basgit Parcha, but no parcha was produced by the petitioner no. 01, who claimed over the same on the basis of deed of gift executed by laxmi Chaudhary in the year 2006. The fact remains that Laxmi Chaudhary died leaving behind his 5 daughters and the land occupied by him on the basis of Basgit Parcha is not transferable. It is also detected during enquiry that earlier proceeding conducted in Case no. 95/96 the land possessed by Laxmi Chaudhary was remained free from removal of encroachment on the basis of the Basgit Parcha. At present also status of the land of the petitioner no. 01 is same. So far part of the land claimed by the petitioner no. 02 on the basis of resolution taken in the meeting of Patna Zila Parishad, it is categorically made clear that the said settlement was temporary in favour of Yugeshwar Ram father of the petitioner no. 02 on 30.05.1951 since after that no paper regarding extension of settlement period or resettlement has been produced by the petitioner no. 02. Besides that no revenue receipt or paper of creation of Jamabandi have been given in support of his claim. Moreover during inspection it was found that no tea shop is in existence over the land in question.”



Thus, it is apparent that no final order under Section 6(1) of the Bihar Public Land Encroachment Act, 1956 has been passed till date by the Circle Officer, Hilsa, Nalanda i.e. the respondent no. 4. Hence, this Court deems it fit and appropriate to dispose off the present writ petition with liberty to the petitioners to file their objections/ show cause replies in the aforesaid Encroachment case no. 03 of 2017-18, within a period of four weeks from today, whereupon, the respondent no. 4 shall consider the same and take appropriate decision as also pass the final order under Section 6(1) of the Bihar Public Land Encroachment Act, 1956 and till then, *status quo* existing as on today *qua* the plot/ land/ shop/ house in question shall be maintained.

(Mohit Kumar Shah, J)

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