

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.467 of 2023

1. Sundarpari Devi Wife of Ashnarayan Singh, Resident of Village- Shahjahanpur, P.S.- Bikram, District- Patna.
2. Anil Yadav @ Anil Kumar Son of Late Mahendra Prasad Yadav, Resident of Village- Shahjahanpur, P.S.- Bikram, District- Patna.
3. Dindayal Yadav Son of Late Badri Yadav, Resident of Village- Shahjahanpur, P.S.- Bikram, District- Patna.
4. Kameshwar Yadav Son of Late Lekha Yadav, Resident of Village- Shahjahanpur, P.S.- Bikram, District- Patna.
5. Dinanath Yadav Son of Late Devnandan Yadav, Resident of Village- Shahjahanpur, P.S.- Bikram, District- Patna.
6. Binod Sharma @ Binod Kumar Son of Madheshwar Sharma, Resident of Village- Shahjahanpur, P.S.- Bikram, District- Patna.
7. Navin Kumar Son of Nawal Sharma, Resident of Village- Shahjahanpur, P.S.- Bikram, District- Patna.
8. Kaushlendra Kumar Son of Ashok Sharma, Resident of Village- Shahjahanpur, P.S.- Bikram, District- Patna.
9. Rajeev Ranjan Kumar Son of Mithilesh Prasad Dixit, Resident of Village- Shahjahanpur, P.S.- Bikram, District- Patna.
10. Pankaj Kumar Son of Raj Kumar Singh, Resident of Village- Shahjahanpur, P.S.- Bikram, District- Patna.

... .. Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Department of Revenue and Land Reform, Bihar, Patna.
2. The Collector cum Divisional Magistrate, Patna.
3. The Senior Superintendent of Police, Patna.
4. The Sub-Divisional Officer, Paliganj, District- Patna.
5. The Deputy Collector Land Reforms, Paliganj, District- Patna.
6. The Circle Officer, Bikram, P.S.- Bikram, District- Patna.
7. S.H.O., P.S.- Bikram, District- Patna.

... .. Respondent/s

Appearance :

For the Petitioner/s : Mr. Madhav Raj, Advocate
For the Respondent/s : Mr. Raj Kishore Roy (GP-18)

CORAM: HONOURABLE MR. JUSTICE PURNENDU SINGH
ORAL ORDER

2 13-01-2023

Heard Mr. Madhav Raj, learned counsel appearing on



behalf of the petitioners and Mr. Raj Kishore Roy, learned GP-18 for the State through video conferencing.

2. Learned counsel appearing on behalf of the petitioners submitted that he is aggrieved by the action of the Circle Officer, Bikram, District-Patna, who has proceeded to issue notice contained in Memo No. 7 dated 02.01.2023. By the said notice, the petitioners have been directed to remove the encroachment made on Khata No. 44, Khesra No. 45, Khata No. 90 corresponding Khesra No. 289 by 17.01.2023 which necessitated learned counsel for urgent posting of the case for protecting the life and liberty of the petitioner from the illegal action of the Circle Officer, Bikram, District- Patna.

3. In support of his arguments, learned counsel appearing on behalf of the petitioner submitted that from the notice dated 02.01.2023 served to the petitioners it is not clear as to under which Section of the Bihar Public Land Encroachment Act, 1956 (hereinafter referred to as 'Act') such action has been taken for removal. He further submitted that no opportunity of hearing was provided to the petitioners. Now, the Circle Officer, Bikram, District- Patna has threatened to demolish their house.

4. Learned counsel's specific statement is that the



Circle Officer can invoke jurisdiction on receipt of complain that public land has been encorached and proceed in accordance with the provision of Bihar Public Land Encroachment Act, 1956. His specific submission is that the notice contained in Memo No. 7 dated 02.01.2023 is devoid of gist of acquisition and section under which action has been taken as action to remove can only be resorted to in accordance with the provision of Section 6 of the Act, by the Circle Officer, Bikram, District-Patna. On these grounds, he seeks quashing of notice contained in Memo No. 7 dated 02.01.2023.

5. Learned counsel appearing on behalf of the State submitted that the very statement made in the notice contained in Memo No. 7 dated 02.01.2023 seems to have been issued under Section 6 (ii) of the Act after the petitioners were provided with the appropriate opportunity of hearing under Section 3 and Sub-section 1 of Section 3, the Circle Officer, Bikram has resorted to issue notice under the provisions of Section 6 of the Act and as such the petitioners are required to remove the encroachment made on public land. He further submitted that on perusal of the records as well as pleading made in the writ petition, the petitioners have not been able to bring on record any legal document to show that the plots as



mentioned in the notice belong to petitioners or they are privileged person.

6. Heard the rival submission of the parties.

7. The core issue involved in the present writ petition is that as to whether the notice contained in Memo No. 7 dated 02.01.2023 allegedly issued under the Provision of Bihar Public Land Encroachment Act, 1956 to the petitioners is in accordance with the provision of the Act or not?

8. Certainly the rights of the State over public land are circumscribed by the right of user or of any other right enjoyed by the general public. In such case, the State can deprive the members of general public of their right only in accordance with law.

9. From the perusal of the notice it appears that a general notice has been issued without mentioning as to on which plot the petitioners have encroached the public land which is to be removed by 17.01.2023. In want of personal notice issued to the petitioners mentioning the area and plot number allegedly encroached by them, the notice contained in Memo No. 7 dated 02.01.2023 is held to be not issued in accordance with the provision of Bihar Public Land Encroachment Act, 1956.



10. Accordingly, the notice as contained in 'Annexure-2' to the writ petition is without jurisdiction and is hereby quashed.

11. The Circle Officer, Bikram, District-Patna is directed to assume jurisdiction in accordance with law. The Circle Officer, Bikram, District-Patna, shall proceed in accordance with the provision of Bihar Public Land Encroachment Act, 1956 by providing proper opportunity of hearing to the petitioner in accordance with law before passing any order.

12. It is needless to say that the Circle Officer, Bikram, District- Patna must not proceed in any manner to demolish any portion of the house of the petitioners as notice contained in 'Annexure-2' has been quashed.

(Purnendu Singh, J)

Niraj/Aditya

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