

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.6939 of 2023

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Sainik Welfare Organization India 409, Block - C, Veer Awas, Sector - 18A, Dwarika, New Delhi, through its Authorized Signatory Arjun Kumar Singh, aged about 62 years, Son of Late Sri Narayan Singh, Resident of Q.N. 13, Nand Nagar Colony, Gujarat Samaj, Saidpur, P.S. - Bahadurpur, District - Patna.

... .. Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Water Resources Department, Government of Bihar, Patna.
2. The District Magistrate-cum-Collector, Patna.
3. The Engineer, Minor Irrigation Division, Patna.
4. The Divisional Officer, Danapur, Patna.
5. The Circle Officer, Bihta, Patna.

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Vinay Mistry, Advocate
For the State	:	Mr. Akash Chaturvedi, Advocate

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CORAM: HONOURABLE MR. JUSTICE HARISH KUMAR
ORAL JUDGMENT

Date : 19-05-2023

Heard Mr. Vinay Mistry, learned counsel appearing on behalf of the petitioner and Mr. Akash Chaturvedi, learned counsel representing the State of Bihar.

2. The petitioner, who is the Sainik Welfare Organisation India, invoked the extraordinary jurisdiction of this Court under Article 226 of the Constitution seeking quashing of Notice No. 5 dated 08.04.2023, as contained in Annexure-6, issued by the Circle Officer, Bihta, Patna, directing the petitioner to remove the encroachment of K.P. beam and the other boundary wall made over tube-well *karha*, situated at



mauja Bilap-2, Thana No. 3, P. S.-Bihta, District- Patna.

3. Submission has been made on behalf of the petitioner that a complaint made by the Engineer, Minor Irrigation Division, Patna (respondent no. 3), an encroachment proceeding bearing Encroachment Case No. 13 of 2022-23 has been initiated against the petitioner. In response to the notice contained in Annexure-4 dated 07.03.2023, the petitioner entered his appearance and filed his show cause reply/objection before the Circle Officer, Bihta. However, in the case of the petitioner neither any date has been fixed for hearing nor he has been provided any opportunity of hearing and all of a sudden the notice/order under Section 6(2) of the Bihar Public Land Encroachment Act, 1956 (hereinafter referred to as the 'Act') has been passed without passing any final order under Section 6(1) of the Act.

4. On the other hand, learned counsel for the State submits that the petitioner had been given proper opportunity but he failed to produce any documentary evidence in support of his case, hence the order of removal has been passed.

5. Be that as it may, *prima faice*, it appears that without passing the final order the impugned order of removal of encroachment has been passed under Section 6(2) of the Act



which appears to be wholly unsustainable, hence the same is fit to be quashed and set aside.

6. Accordingly, the matter is remitted to the respondent no. 5, the Circle Officer, Bihta, Patna enabling him to issue a fresh notice to the petitioner who, in turn, will appear before the Circle Officer, and file his fresh show cause/objection and the respondent no. 5, after giving proper opportunity of hearing, shall pass the final order under Section 6(1) of the Act.

7. The present writ application stands disposed of with the aforesaid observations and directions.

(Harish Kumar, J)

Anjani/-

AFR/NAFR	N.A.
CAV DATE	N.A.
Uploading Date	19.05.2023
Transmission Date	N.A.

