

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.10578 of 2023

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Binod Kumar Singh S/o Sarju Singh, Resident of Village-Jalwaiya, P.S.-Kaler,
District-Arwal.

... .. Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Land Revenue and Reforms Department, Govt. of Bihar, Patna.
2. The Principal Secretary, Land Revenue and Reforms Department, Govt. of Bihar, Patna.
3. The District Magistrate, Arwal.
4. The Additional District Magistrate, Arwal.
5. The Land Reforms Deputy Collector, Arwal.
6. The Anchal Adhikari, Kaler, Arwal.
7. Jay Kishore Singh son of Late Ramadhar Singh, Resident of Village-Jalwaiya, P.S.-Kaler, District-Arwal.

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr.Rama Kant Singh, Advocate
For the Respondent/s	:	Mr.Sajid Salim Khan (SC 25)
	:	Mr. Arif Daula Siddiqui, AC to SC 25
For Pvt. Resp. no. 7	:	Mr. Mrigendra Kumar, Advocate
	:	Ms. Kusum Kumari, Advocate

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CORAM: HONOURABLE MR. JUSTICE MOHIT KUMAR SHAH
ORAL JUDGMENT

Date : 05-09-2023

1. The present writ petition has been filed for quashing the letter dated 06.07.2023, issued by the Circle Officer, Kaler, Arwal, whereby and whereunder the petitioner has been directed to remove the encroachment from the land in question, in pursuance to the final order passed in connection with Encroachment case no. 01 of 2021-22.

2. The learned counsel for the petitioner has referred



to the order dated 19.06.2023, passed by this Court in a writ petition bearing C.W.J.C. no. 16049 of 2022 to submit that this Court had directed the Circle Officer, Kaler, Arwal to conclude the proceedings of the aforesaid Encroachment case no. 01 of 2021-22, in case the same has not been concluded, by passing the final order under Section 6(1) of the Bihar Public Land Encroachment Act, 1956 (hereinafter referred to as “the Act, 1956”), after hearing the affected parties and in accordance with law, within a period of six weeks. It is thus submitted that though this Hon’ble Court had directed the Circle Officer, Kaler, Arwal to first hear the petitioner and then pass the final order under Section 6(1) of the Act, 1956 but instead the Circle Officer, Kaler, Arwal has passed the final order dated 18.10.2022 and 06.07.2023 without hearing the petitioner, hence the impugned letter dated 06.07.2023 is illegal and fit to be set aside.

3. *Per contra*, the learned counsel appearing for the respondent State has submitted by referring to the counter affidavit filed in the present case that the private respondent no. 7 had filed an application before the Circle Officer, Kaler, Arwal, complaining about encroachment of *Gairmajarua Aam* land by the petitioner, whereupon a Measurement Case no. 36 of



2019-20 was instituted, measurement was conducted and it was found that as per Cadestral Survey, *Khatiyan* plots in question including that of the petitioner are *Gairmajarua Aam* land situated at Mauza- Kaler, Thana no. 159 and identified as Khata no. 464, Plot no. 5121, *Kism-Chhaur*, Area 45 dec. and Khata no. 464, Plot no. 5223, *Kism-Gali*, Area 17 dec. In the measurement report, it has been found that in both the plots, a total of 5 persons have encroached the lands in question. The petitioner has encroached 1083 sq. ft. of land in Plot no. 5121 and Jai Kishore Singh (private respondent no. 7) has encroached 336 sq. ft. in Plot no. 5223. Thereafter, the private respondent no. 7 filed an Appeal before the learned court of D.C.L.R. vide Measurement Appeal Case no. 1/2021-22 but the same has stood rejected and the Circle Officer, Kaler was directed to clear the encroachments. The Circle Officer, Kaler had then initiated encroachment proceedings vide Encroachment Case no. 1 of 2021-22 under the provisions of the Bihar Public Land Encroachment Act, 1956 and issued notice under Section 3 of the Act, 1956 to the petitioner and the private respondent no. 7 and then after hearing them, had passed the final order under Section 6(1) of the Act, 1956 dated 18.10.2022 holding the petitioner and others to be encroachers. It is submitted that the



said order dated 18.10.2022 would itself show that the petitioner and others were present during the hearing of the encroachment proceedings but had failed to produce any evidence in their favor, as would be apparent from running page no. 55 of the brief. Thus, it is submitted that as a consequence, the Circle Officer, Kaler has rightly issued the letter dated 06.07.2023, inasmuch as the said final order dated 18.10.2022 has neither been challenged by the petitioner by filing an Appeal nor before this Court, meaning thereby that it has been accepted by the petitioner that he is an encroacher.

4. The learned counsels for the respondents have further submitted by referring to the final order, passed by the Circle Officer, Kaler, Arwal dated 18.10.2022, under Section 6(1) of the Act, 1956, in connection with Encroachment case no. 01 of 2021-22 that the final order had already been passed prior to passing of the order of this Court on 19.06.2023, hence the said order dated 19.06.2023 had already worked out its force, in view of the fact that in the said order dated 19.06.2023, itself, it was mentioned that the Circle Officer, Kaler, Arwal is directed to conclude the encroachment proceedings, in case the same have not been concluded, however, in the present case, the encroachment proceedings in question had already stood



concluded on 18.10.2022, thus there was no need of either hearing the petitioner or passing a new/ fresh order under Section 6(1) of the Act, 1956, thus the Ld. Counsel for the petitioner has not only made a false submission but has also tried to mislead this Hon'ble Court with a view to somehow snatch a favourable order from this Court.

5. I have heard the Ld. Counsel for the parties and considered the facts and circumstances of the case as also have considered the submissions advanced by the learned counsel for the parties, from which it is apparent that the Circle Officer, Kaler had initiated encroachment proceedings vide Encroachment Case no. 1 of 2021-22 under the provisions of the Bihar Public Land Encroachment Act, 1956 and issued notice under Section 3 of the Act, 1956 to the petitioner and the private respondent no. 7 and then after hearing them, had passed the final order under Section 6(1) of the Act, 1956 dated 18.10.2022, holding the petitioner and others to be encroachers. The aforesaid order dated 18.10.2022 would itself show that the petitioner and others were present during the course of hearing of the encroachment proceedings but had failed to produce any evidence in their favor, as would be apparent from running page no. 55 of the brief. Thus, ample opportunity was granted to the



petitioner to put forth his defense but he had failed to produce any evidence in his favour. This Court further finds from the records that this Court by an order dated 19.06.2023, passed in C.W.J.C. no. 16049 of 2022 had though directed the Circle Officer, Kaler to conclude the proceedings of the said Encroachment case no. 1 of 2021-22, after hearing the effected parties but had also made the said direction subject to non-conclusion of the said encroachment proceedings, however, in the present case, the encroachment proceedings had already stood concluded prior to passing of the order dated 19.06.2023, inasmuch as the Circle Officer, Kaler had already passed the final order under Section 6(1) of the Act, 1956, in connection with Encroachment case no. 1 of 2021-22 on 18.10.2022, holding the petitioner and others to be encroachers, thus the contention of the petitioner that in compliance of the order of this Court dated 19.06.2023, the Circle Officer, Kaler has not heard the petitioner is false. Moreover, the Ld. Counsel for the petitioner has also failed to show any legally tenable document to establish the right, title and interest of the petitioner in the land in question. This Court further finds that neither the petitioner has filed any Appeal within the prescribed time limit, against the aforesaid order dated 18.10.2022, under Section 11



of the Act, 1956, nor the same has been challenged before this Court, hence it appears that the petitioner is not having any grouse *qua* the said order dated 18.10.2022.

6. Having regard to the facts and circumstances of the case and for the reasons mentioned here-in-above, I do not find any merit in the present writ petition, hence the same stands dismissed. The District Magistrate, Arwal is directed to ensure compliance of the aforesaid letter dated 06.07.2023, issued by the Circle Officer, Kaler, Arwal forthwith and report to the Registrar General of this Court. Let a copy of this order be communicated to the District Magistrate, Arwal for needful compliance.

(Mohit Kumar Shah, J)

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AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	08.09.2023
Transmission Date	NA

