

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.17068 of 2022

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Harekant Jha @ Hari Kant Jha Son of Late Kameshwar Jha, Resident of
Village- Hirni, Police Station- Kusheshwar Asthan, District- Darbhanga.

... .. Petitioner/s

Versus

1. The State of Bihar Principal Secretary Land Reforms and Revenue Department, Bihar, Patna.
2. The Secretary, Land Reforms and Revenue Department, Bihar, Patna.
3. The Divisional Commissioner, Darbhanga.
4. The District Magistrate, Darbhanga
5. The Deputy Collector Land Reforms, Biraul, Darbhanga.
6. The Sub-Divisional Officer, Biraul.
7. The Circle Officer, Kusheshwar Asthan Block, Darbhanga.

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr. Pankaj Kumar Jha, Advocate.

For the Respondent/s : Mr. Md. Khurshid Alam, AAG-12.

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CORAM: HONOURABLE MR. JUSTICE PURNENDU SINGH

ORAL JUDGMENT

Date : 02-02-2023

Heard Mr. Pankaj Kumar Jha, learned counsel
appearing on behalf of the petitioner and Mr. Md. Khurshid
Alam, learned AAG-12 appearing on behalf of the State.

2. Petitioner has filed the present writ petition for
the following reliefs:

i. For Issuance of appropriate Writ/s, Order/s, Direction/s
for quashing the Notice dated 02.11.2022 passed in
Encroachment Case No. 18/2022-23, whereby and under the
Circle Officer, Kusheshwar Asthan issued a Notice to the
petitioner showing that under Mauja Rampur, Thana No.
250, Khata No. 990, Khesra No. 538 (old), 1564 (New),
Total Rakba - 2 Dismal has been encroached by the
petitioner, should be within 48 Hrs.

ii. For Issuance of appropriate Writ/s, Order/s, Direction/s to



the Respondent No. 7, especially to not take any coercive action the land in question as mentioned in the Notice dated 02.11.2022 under Mauja Rampur, Thana No. 250, Khata No. 990, Khesra No. 538 (old), 1564 (New), Total Rakba - 2 Dismal.

iii. For Issuance of appropriate Writ/s, Order/s, Direction/s to the Respondent to pay the compensation because the Respondent no. 7 without passing a final order in Encroachment Case No. 18/2022-23 Respondent No. 7 remove all the shops situated over the land in question in arbitrary manner.

3. Learned counsel appearing on behalf of the petitioner submitted that in the *fasli* year 1331 and 1335, the ancestors of the petitioner were settled by Ex-land lord late Babu Ram Bharose Mandal in whose name Tauzi No. 7598 was running in Mauza-Rampur, Thana No. 250. The land in question relates to Khata No. 990, Khesra No. 538 (old), total area measuring 2 decimal as per cadastral survey and to that effect he has brought on record Register 'D' of the year 1997-98 by way of Annexure-1. He further submitted that petitioner's ancestors came into possession of the settled land and constructed residential house. During Revisional survey old Khesra No. 538 was renumbered as Khesra No. 1564 with respect to total area measuring two decimals of land, which has been incorrectly recorded as 'Anabad Sarv Sadharan'. The father of the petitioner had filed a case under Section 106 of Bihar Tenancy Act, 1885 (hereinafter referred to as "B.T. Act") being B.T. Case No. 612 of 2005, which was disposed of vide order dated



10.06.2009 in B.T. Case No. 612 of 2005 (Annexure-3) holding title of the petitioner and accordingly directed to make correction in the Revisional Survey to enter the name of the father of the petitioner in place of Anabad Sarv Sadharan. He further submitted that the State Government was made party to the said proceeding. The State has not filed any appeal under Section 108 of the B.T. Act against the said order.

4. The petitioner is aggrieved by the action of the Circle Officer, Kusheshwar Asthan- respondent no.7, who without conducting any spot inquiry and measurement in presence of the petitioner with respect to the land, which has been encroached in the vicinity, had served notice under Section 3 of the Bihar Public Land Encroachment Act, 1956 (hereinafter referred to as “Act 1956”). It is submitted that the petitioner was never served upon any notice under Section 3 of the Act. Thereafter, without giving him any opportunity to defend his case as per the provision of Section 6(1) of the Act, 1956, the Circle Officer without jurisdiction served notice under Sub-Section 2 of Section 6 of the Act, 1956 on 02.11.2022 and proceeded to demolish the house, in spite of the fact that the petitioner had produced all the documents in the office of the Circle Officer to the Head Clerk who had received it on



04.11.2022. The action of the Circle Officer is arbitrary, vested with malafide because no order under Sub-Section 1 of Section 6 of the Act has been passed.

5. Mr. Md. Khurshid Alam, learned AAG-12 appearing on behalf of the State submitted that the record reveals that a notice under Section 3 of the Act 1956 was served upon the petitioner, but the petitioner refused to accept the same, however record reveals that no order under Sub-Section 1 of Section 6 was passed and the petitioner was duly served with notice under sub-section 2 of Section 6 of the Act 1956.

6. At this stage, the Circle Officer was directed to verify the signature endorsed on the application filed by the petitioner on 04.11.2022, the Circle Officer after giving his careful and meticulous examination informed this Court that the said signature is of the Head Clerk of his Office.

7. Learned counsel further placed his reliance on Section 13 of the Act 1956 that any action or any order passed by the Circle Officer may be reviewed once he realizes that vital documents have not been entertained while passing ex-parte order dated 29.10.2022.

8. Section 13 of the Act 1956 is reproduced as follows:

Section 13 – Review: “Any order passed under this Act



may, after giving the parties reasonable opportunity of being heard, be reviewed by the officer who made the order, or by his successor-in-office, on account of any mistake or error in the course of any proceeding under this Act.”

9. In this regard, he submitted that not abiding by the provision of the Act can be rectified, as no notice admittedly under Sub-Section 1 of Section 6 has been served upon the petitioner as per the records available with the Circle Officer, therefore, review is permissible.

10. He further submitted that the Circle Officer admits that he has not acted in accordance with the provision of the Act, 1956 and has committed error / mistake as Head Clerk of his office could not place the application dated 04.11.2022 filed by the petitioner.

11. Heard rival submissions of the parties and perused the materials on record.

12. Learned Additional Advocate General-12 in the presence of the Circle Officer has verified the record. It is admitted by the Circle Officer that he has not complied with the provisions of the Act, 1956. The record reveals that no notice under Sub-Section 1 of Section 6 was issued to the petitioner and without jurisdiction an order was passed under Sub-Section 1 of Section 6. Notice under Sub-Section 2 of Section 6 was served granting only 48 hours of time for removal of any



encroachment from the land in question. Record also reveals that no measurement was done in presence of the petitioner. Petitioner has produced order passed under Section 106 of the B.T. Act, which was not considered by the Circle Officer. In absence of any appeal under Section 108 of the B.T. Act, the order under Section 106 of the B.T. Act has become final. The Circle Officer has deliberately not informed the Collector, Darbhanga about the entire facts. He has also suppressed that no notice under Section 6(1) of the Act, 1956 was served to the petitioner and the fact that the petitioner had filed an application on 04.11.2022, leading to filing of a misconceived report before this Court by the Collector. The action of the Circle Officer who has not only deliberately misled this Court but he has suppressed the record before the Collector.

13. The Collector cum District Magistrate, Darbhanga is directed to issue show cause in requisite form to the Respondent No. 7 – Circle Officer for misleading this Court and suppressing vital facts and the records relevant for the proper adjudication of the case. He may initiate disciplinary proceedings against the Circle Officer, if he is not satisfied by the reply filed by the Circle Officer, who has misused his office and has caused much inconvenience to this Court and has



caused irreparable loss to the petitioner.

14. The District Magistrate, Darbhanga is directed to verify the signature of the Head Clerk of the Circle Office who has deliberately not put the application dated 04.11.2022 filed by the petitioner before the Circle Officer as per the allegation made by the Circle Officer. He must seek report from Forensic Science Laboratory for verification of the signature of the Head Clerk. In case FSL report reveals that it is the signature of the Head Clerk, immediate action must be taken against him by initiating disciplinary proceeding.

15. At this stage, learned AAG-12 submitted that the record, which is available with the Circle Officer do not contain the application dated 04.11.2022 filed by the petitioner and received by the Head Clerk. The petitioner may be directed to file the photocopy of the application along with the receiving made by the Head Clerk, Circle Office, Kusheshwar Asthan, District-Darbhanga. He further submitted that the Circle Officer has admitted his laches and is also apologetic, disciplinary action against him is not required. This Court appreciates the learned AAG-12 to give correct picture by placing the record. He has fairly informed that there has been complete non-compliance of the provisions of the Act, 1956 as already



observed against the Circle Officer and the Head Clerk. This Court is not inclined to give any concession to the Circle Officer in particular and head clerk in general, who has not only misled this Court and caused irreparable loss to the petitioner, at the same time, he has given incorrect information to the Collector, which has led to the filing of the counter affidavit filed by the Collector without being supported by any order passed under Sub-Section 1 of Section 6 of the Act or any notice to have been issued in compliance of the said provision.

16. Considering the scheme of the Act, 1956, after the case is registered as Encroachment Case under Section 3 of the Act, 1956, after the notice is served upon the concerned encroacher under Section 3 of the Act, a hearing is required to be given as provided under Section 5 of the Act, 1956. That thereafter, the Collector/Circle Officer is required to pass the final order under Section 6 of the Act, 1956. The Collector may, as the circumstances of the case require, pass the following order:—

“6(1)(a) either drop the proceeding, or

(b) make the temporary injunction issued under subclause

(a) of sub-section (1) of section 3 absolute against the person making encroachment of the public land, or

(c) if any person who together with his homestead does not own more than 5 acres of land, has



encroachment up to 10 dec. of public land continuous of his agricultural holding and has used the encroached public land for agricultural purposes, the Collector shall order the settlement of such public land with such person on payment of rent and damages for the use of this land. The amount of damages and rent shall be calculated by considering the rent payable in case of similar land in the neighbourhood. Where no rent is payable the rent and damages for the encroached public land shall be calculated on the basis of such fair rent as the Collector may deem proper, or

(d) where the temporary encroachment on public land has been removed by the person making encroachment after some time the Collector shall order payment of damages for the use of the land during the period of encroachment. The amount of damages shall be calculated according to the prescribed procedure, or

(e) in the cases not covered by the foregoing subclauses, the Collector shall direct the person making encroachment of the public land to remove the encroachment within specified period which shall not in any case be more than two weeks in case the encroachment is not removed within the specified time the crops standing or all types of structures existing on the encroached land shall be forfeited by the Collector:

Provided if any landless person encroached up to 12½ dec. of public land before the 10th October, 1955, no action shall be taken against him under this Act."

17. Only after the final order is passed under Section 6 of the Act and if no order is passed under Section 6 (1) (a), 6 (1)(c) and an order is passed directing the person making encroachment of the public land to remove the encroachment, more particularly the order passed under Section 6(1)(e) of the Act, only thereafter and if any person does not comply with the



order passed by the Collector under Section 6 of the Act, a further notice in Form No. II of sub section (2) of Section 6 of the Act, 1956 can be issued. Without passing any final order as per Section 6 of the Act there is no question of issuing any notice in Form No. II under sub section (2) of Section 6 of the Act. As observed hereinabove, in the present case nothing is on record and/or even it is not the case of the respondents that any final order has been passed in Encroachment Case No. 18 of 2022-23.

18. In view of the above and for the reasons stated above, in absence of any final order in Encroachment Case No. 18 of 2022-23 under Section 6(1) of the Act, the impugned notice in Form No. II under sub section (2) of Section 6 is illegal and contrary to the provisions of the Act, 1956, more particularly Section 6 of the Act and, therefore, the same deserves to be quashed and set aside.

19. The matter is directly referred to the District Magistrate-cum-Collector, Darbhanga for passing final order in Encroachment Case No. 18 of 2022-23 registered at Circle Office, Kusheshwar Asthan, Darbhanga. The petitioner is directed to file his detailed application along with all the requisite documents and is also required to give the estimate of



damages, which has been caused to him.

20. The District Magistrate, Darbhanga is directed to pass reasoned order within a period of three weeks. Further, if he contemplates to initiate any disciplinary proceeding against the Circle Officer and the Head Clerk of Circle Office, Kusheshwar Asthan, Darbhanga. The same may be completed within a period of three months.

21. In view of the above and for the reasons stated above, the present petition succeeds. The impugned notice is hereby quashed and set aside.

(Purnendu Singh, J)

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AFR/NAFR	NAFR
CAV DATE	N.A.
Uploading Date	11.02.2023
Transmission Date	N.A.

