

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.7897 of 2018

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1. Krishan Kant Singh, Son of late Tapeswar Singh
 2. Bameswar Singh @ Bameswar Sharma Son of late Raghunandan Singh
All are Resident of Village P.O. P.S.- Main, District- Gaya.

... .. Petitioner/s

Versus

1. The State Of Bihar
2. The Circle Officer, Belaganj, District- Gaya.

... .. Respondent/s

Appearance :

For the Petitioner/s : Mr. Nagendra Sharma, Advocate
For the Respondent/s : Mr. Raj Kishore Roy, GP-18

CORAM: HONOURABLE THE CHIEF JUSTICE

and

HONOURABLE MR. JUSTICE MADHURESH PRASAD

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE MADHURESH PRASAD)

Date : 07-04-2023

The writ application has been filed in the form of Public Interest Litigation (PIL) for setting aside the encroachment proceedings arising out of notice issued to the petitioners under Section 3 of the Bihar Public Land Encroachment Act, 1956 (hereinafter referred to as “Act”), bearing Encroachment Case Number 1 of 2018-19.

2. Show cause notice has been issued calling upon the petitioners to reply as to why orders may not be passed against the petitioners under the provisions of the Act for prevention and removal of encroachment, from the lands pertaining to *Khata* No. 432, bearing Plot Nos. 1651 and 1652, situated at village Main (Bela), P.S. Belaganj, *Thana* No. 104 in the District of Gaya, as the same are public lands as per entry in the revenue records.

3. We at the very outset enquired from the petitioners’ learned counsel whether the writ petition as a PIL would be maintainable, having regard to the personal nature of relief arising out of encroachment



proceedings against the petitioners, treating them as encroachers on public lands?

4. It is submitted by the learned counsel for the petitioners that there is a decree in respect of the lands in question in favour of the petitioners in Suit Case No. 319 of 1978 dated 07.08.1986 by the "Competent Court". Consequent thereto, the respondent-State Authorities have been receiving land rent with respect to the same lands.

5. Learned counsel for the State on the other hand submits that the petitioners' claim is based on an alleged judgment dated 04.01.1986 passed by the Assistant Settlement Officer in Suit No. 319/78 under Section 106 of the Bihar Tenancy Act. The validity of which, as per the State's case, is doubtful and disputed. There is no incorporation of such order/judgment dated 07.08.1986 in the *Khatiyani* available in the *Anchal*/Circle Office. However, the same has been incorporated in *Khatiyani* of the record room, 30 years later i.e. on 29.08.2016, that also without taking any permission from the competent authority (Collector of the District).

6. The consequential issuance of alleged land rent receipts in favour of the petitioners has also thus been doubted by the State Authorities in the counter-affidavit.

7. On consideration of rival submissions, it is more than obvious that the petitioners have raised their private/personal grievance arising out of a show cause notice under Section 3 of the Act alleging the petitioners to be encroachers. The issue raised by the petitioners is based on their disputed claim to right, title and interest over the lands in question. It is trite law that resort to writ proceedings in respect of such disputed claims regarding declaration of right, title and interest, is normally impermissible.

8. The scope of judicial review under Article 226 of the Constitution of India and maintainability of writ petition seeking to assail a



show cause notice is also well settled. From perusal of decisions of the Apex Court, in the case of *Union of India & Anr. -versus- Kunisetty Satyanarayana* reported in (2006) 12 SCC 28 as well as in the case of *Oryx Fisheries Private Limited -versus- Union of India & Ors.* reported in (2010) 13 SCC 427, it is apparent that a writ petition seeking to assail a show cause notice ordinarily is considered as being premature and not maintainable, subject, however, to some very rare and exceptional cases where a show cause notice is found to be wholly without jurisdiction or otherwise illegal. It is trite law that mere show cause notice does not infringe anyone's right and only when the final order, adversely affecting a party, is passed that he can allege any grievance. There are, however, exceptions as taken note of above.

9. Instant case obviously is not one, coming within the exceptional circumstance, warranting interference at the stage of issuance of show cause notice. It is not that the District Magistrate does not have any jurisdiction to issue notice under the Act. In fact the District Magistrate is the Competent Authority under the Act. No personal *mala fide* has been alleged against anyone.

10. After the petitioners submit their reply to the show cause and appear in the proceedings, the statute provides an inherent fair procedure for consideration of the petitioners' reply. Section 4 of the Act allows an opportunity to the noticee (petitioners) to raise any defense which they could have raised if they were defendants in a properly framed suit for removal of encroachment. The Act also provides an opportunity of hearing under Section 5; as well as the consequences of non-appearance in the proceedings.

11. It is only after observing the above procedure that final order is to be passed by the Collector under Section 6 of the Act, either



dropping the proceedings or passing orders for ensuring removal of encroachment, damages or otherwise. The order of the Collector for removing encroachment is also subject to appeal under Section 11 of the Act. Section 13 of the Act also provides an opportunity of review in case of any mistake or error in the course of any proceedings. Applying the prejudice test also, no case is made out for invocation of writ jurisdiction by the petitioners in the instant case for assailing issuance of a show cause notice.

12. Having regard to the above noted facts and circumstances and nature of relief, we are mindful of the fact that while exercising jurisdiction under Article 226 of the Constitution of India we must ensure that frivolous or private interests are not masqueraded as genuine claims in the garb of a PIL, as is sought to be done by the petitioners in the instant case.

13. It has been laid down by the Apex Court in the case of ***Kalyaneshwari -versus- Union of India & Ors.***, reported in ***(2012) 12 SCC 599***, as follows:-

“27. ... Even if we were to take somewhat liberal view, still it is the duty of this Court to ensure that such unscrupulous and undesirable public interest litigation be not instituted in the courts of law so as to waste the valuable time of the courts as well as preserve the faith of the public in the justice delivery system.”

Similar duty is cast upon this Court also while exercising writ jurisdiction under Article 226 of the Constitution of India. While discharging such duty, we cannot but deprecate the manner in which the petitioners have wasted the valuable time of this court, which time could have been devoted for dealing with matters of urgency and importance which are waiting in queue.

14. This court would, therefore, deem it proper to dismiss the



writ petition with a token cost, quantified at Rs. 5,000/- (Five thousand rupees), to be deposited in the Patna High Court Legal Aid Services Committee.

15. Writ petition is dismissed.

(K. Vinod Chandran, CJ)

(Madhuresh Prasad, J)

shashank/-

AFR/NAFR	AFR
CAV DATE	NA
Uploading Date	13.04.2023
Transmission Date	NA

