

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.10206 of 2015

- 1.1. Hira Devi W/o Late Shashibodh Jha, Resident of Village and Post - Mahrail, P.S. Andhratharhi (Rudrapur), District - Madhubani.
- 1.2. Subhash Jha S/o Late Shashibodh Jha, Resident of Village and Post - Mahrail, P.S. Andhratharhi (Rudrapur), District - Madhubani.
- 1.3. Ganesh Chandra Jha S/o Late Shashibodh Jha, Resident of Village and Post - Mahrail, P.S. Andhratharhi (Rudrapur), District - Madhubani.
- 1.4. Sumitra Jha D/o Late Shashibodh Jha, W/o Bhagwan Jha, Resident of Village and P.O. - Sugauna, P.S. - Rajnagar, District- Madhubani.

... .. Petitioners

Versus

1. The State Of Bihar
2. The District Magistrate, Madhubani, District- Madhubani.
3. The Sub- Divisional Officer, Madhubani, District- Madhubani.
4. The Circle Officer, Andhratharhi Block, District- Madhubani.
- 5.1. Arachi Devi W/o late Madan Mohan Jha, Resident of Village and P.O. - Mahrail, P.S. - Rudrapur, District- Madhubani.
- 5.2. Brajesh Jha S/o Late Madan Mohan Jha, Resident of Village and P.O. - Mahrail, P.S. - Rudrapur, District- Madhubani.
- 5.3. Prasun Devi D/o Late Madan Mohan Jha, Resident of Village and P.O. - Mahrail, P.S. - Rudrapur, District- Madhubani.
- 5.4. Pankajiya Devi D/o Late Madan Mohan Jha, W/o Ganga Nath Jha, Resident of Village and P.S. - Ghonghardiha, District - Madhubani.
- 5.5. Chandani Devi D/o Late Madan Mohan Jha, W/o Raju Thakur, Resident of Village and P.O. - Bistol, P.S. - Jhanjharpur, District- Madhubani.
- 5.6. Nandu Devi D/o late Madan Mohan Jha, W/o Keshab Jha, Resident of Village - Karnapur, P.O. - Mahrail, P.S. - Rudrapur, District- Madhubani.

... .. Respondents

Appearance :

For the Petitioners	:	Mr. Manish Jha, Advocate
For the State	:	Mr. Mujtabaul Haque, GP-12
	:	Mr. Vasant Vikas, AC to GP-12

CORAM: HONOURABLE MR. JUSTICE ALOK KUMAR SINHA
ORAL ORDER

5 06-08-2025 Heard learned counsel for the petitioner and learned
counsel for the Respondent-State.

2. The petitioner is aggrieved by notice-cum-order dated 12.05.2015 (Annexure-8) purportedly issued in Land Encroachment Case No. 02/2014-15 whereby the petitioner has



been directed to remove the encroachment from a plot of land bearing Khesra No. 2229 of Khata No. 421 in Mauja-Mahrail in the District of Madhubani *inter alia* on the ground that the petitioner has encroached on the public land. Learned counsel for the petitioner has referred to an order of this Court in CJWC No. 3173 of 2012 placed at Annexure-5 to submit that on a similar occasion, the petitioner had moved this Court and a Bench of this Court considering the nature of dispute directed the respondent no. 2 i.e., the District Magistrate, Madhubani and/or the concerned authority under the Bihar Public Land Encroachment Act, 1956 to initiate appropriate proceedings against the encroachers which would include the petitioner as well and to take appropriate steps in accordance with law, after giving proper opportunity of hearing.

3. Learned counsel for the petitioner further submits that though in compliance of the order (Annexure-5), the case was registered as Land Encroachment Case No. 2/2014-15 and a show-cause was issued on 06.04.2015 (Annexure-6) which was duly replied by the petitioner *vide* Annexure-6A. He further submits that the reply was followed by a second show-cause notice impugned at Annexure-7 which is dated 29.04.2015 which again was replied by the petitioner *vide* Annexure- 7A but



thereafter the notice-cum-order has been passed by the Circle Officer on 12.05.2015 (Annexure-8) without giving any opportunity of hearing to the petitioner as mandated under Section 5 of the Bihar Public Land Encroachment Act, 1956 and despite the specific order to that effect given by this Court *vide* Annexure-5. Learned counsel for the petitioner, therefore, submits that the impugned notice-cum-order contained at Annexure-8 which is dated 12.05.2015 is not only in teeth of the statutory provision underlying in Section 5 of the Bihar Public Land Encroachment Act, 1956 but the same is also in violation of the directives given by this Court passed in CWJC no. 3173/2012 whereby this Court had directed the authority concerned to dispose of the matter after giving an opportunity of hearing to the encroachers concerned.

4. Learned counsel appearing for the Respondent-State submits that opportunity of hearing was granted to the petitioner and thereafter notice-cum-order dated 12.05.2015 (Annexure-8) has been issued which as per the learned counsel for the Respondent-State is a notice issued under Section 6(2) of the Bihar Public Land Encroachment Act, 1956. On a query being posed by this Court as to where is the final order passed under Section 6(1) of the Bihar Public Land Encroachment Act,



1956, learned counsel appearing for the Respondent-State is unable to satisfy this Court.

5. Considering the submissions made by both the parties, this Court is of the view that the impugned notice-cum-order dated 12.05.2015 (Annexure-8) which is said to be a notice under Section 6(2) of the Bihar Public Land Encroachment Act, 1956 is patently illegal for the reason that prior to issuance of such a notice, no final order under Section 6(1) of the Bihar Public Land Encroachment Act, 1956 has been shown to have been passed. In absence of a final order having been passed under Section 6(1) of the Bihar Public Land Encroachment Act, 1956, the impugned notice-cum-order dated 12.05.2015 (Annexure-8) could not have been issued. Manifestly, the impugned notice-cum-order dated 12.05.2015 (Annexure-8) is completely illegal and without jurisdiction and, therefore, the same is quashed.

6. The present writ application is allowed to the aforesaid extent.

(Alok Kumar Sinha, J)

Gaurav Sinha/-

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