

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No. 8857 of 2020

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1. Ramakant Mishra S/o Sita Ram Mishra R/o Village- Paruka, P.S.- Chutiya, District- Rohtas.
 2. Umashankar Choubey S/o Vishwanath Choubey R/o Village- Paruka, P.S.- Chutiya, District- Rohtas.

... .. Petitioner/s

Versus

1. The State of Bihar through its Principal Secretary, Land Reforms Department, Govt. of Bihar, Patna.
2. The Director, Department of Land Reforms, Govt. of Bihar.
3. The Collector, Rohtas at Sasaram.
4. The Sub Divisional Officer, Sasaram.
5. The Circle Officer, Nauhatta, District- Rohtas.

... .. Respondent/s

Appearance:

For the Petitioner/s : Mr. Ashutosh Tripathy, Advocate
For the State : Mrs. Divya Verma, AC to AAG-3

CORAM: HONOURABLE MR. JUSTICE MOHIT KUMAR SHAH

CAV JUDGMENT

Date :04-10-2024

The present writ petition has been filed for quashing the notices dated 03.03.2020, 09.05.2020 and 07.07.2020, issued by the Circle Officer, Nauhatta i.e. the respondent no. 5, whereby and whereunder the petitioners have been directed to remove the encroachment from the land appertaining to Thana No. 626, Khata No. 274, Khesra No. 1123 and 1133 situated at Mauja- Panduka, P.S. Chutiya, District-Rohtas.



2. The brief facts of the case, according to the petitioners are that after receiving the aforesaid notice under Section 3 of the Bihar Public Land Encroachment Act, 1956 (hereinafter referred to as the 'Act, 1956'), the petitioners and others had visited the Circle Officer, Nauhatta i.e. the respondent no. 5 and had filed their objections regarding measurement of the land in question, however, no heed was paid and instead notice under Section 6(2) of the Act, 1956 has been issued, which is illegal.

3. It is further submitted by the learned counsel for the petitioners that again a notice dated 03.05.2024 has been issued to the petitioners to remove the encroachment in question, in connection with Encroachment Case No. 6 of 2023-24. It is the contention of the learned counsel for the petitioners that the respondent no. 5 has, without carrying out proper measurement, passed the final order under Section 6(1) of the Act, 1956, in connection with the encroachment proceedings initiated in the year 2020, however, no



encroachment case number has been mentioned either in the notice dated 03.03.2020 issued under Section 3 of the Act, 1956 or in the notices issued under Section 6(2) of the Act, 1956 dated 09.05.2020 and 07.07.2020 and thereafter, behind the back of the petitioners a new encroachment proceeding vide Encroachment Case No. 6 of 2023-24 has been initiated by the respondent no. 5 and the final order under Section 6(1) of the Act, 1956 has been passed, whereupon notice dated 03.05.2024 has been issued under Section 6(2) of the Act, 1956 to remove the encroachment in question, in an illegal manner. Thus, it is submitted that the aforesaid notices dated 03.3.2020, 9.5.2020, 07.07.2020 and 03.05.2024 issued by the respondent no. 5 are fit to be quashed.

4. *Per contra*, the learned counsel for the respondent-State has submitted, by referring to the counter affidavit, filed by the District Magistrate, Rohtas that an enquiry committee was constituted to enquire into the matter, vide letter dated 04.07.2024, whereafter joint report dated



10.07.2024 has been submitted by the D.C.L.R., Dehri and the S.D.M., Dehri, from which it transpires that initially an encroachment proceeding, vide Encroachment Case No. 17 of 2019-20 was initiated by the respondent no. 5, upon a joint application having been made by 117 villagers to remove the encroachment made by the petitioners and others on public road/Rasta/*Anawad Sarvsadharan* land, whereafter notices under Section 3 of the Act, 1956 were issued to the petitioners and others, whereupon the petitioners had appeared before the respondent no. 5 and had requested him to get the encroached land measured, leading to measurement being conducted on 09.06.2020 and ultimately it was found that the land in question is *Anawad Sarvsadharan* land, hence notices were issued to the petitioners on 07.07.2020 and again on 18.07.2020, to remove the encroachment, in view of the fact that admittedly the land in question is a public land and the nature of land is *Anawad Sarvsadharan*, however, the petitioners did not



remove the encroachment in question, despite final order having been passed by the Circle Officer under Section 6(1) of the Act, 1956 in connection with Encroachment Case No. 17 of 2019-20 on 22.05.2020/07.07.2020, which has also not been challenged by the petitioners till date.

5. It is further submitted by the learned Counsel for the respondents that subsequently, one another encroachment proceeding bearing Encroachment Case No. 6 of 2023-24 was initiated by the respondent no. 5 on 15.01.2024 and notices were issued to the petitioners and others under Section 3 of the Act, 1956, whereafter measurement was made and it was found that the petitioners and others had encroached the aforesaid land, however, in response to the aforesaid notice issued to the petitioners under Section 3 of the Act, 1956, though they had appeared before the respondent no. 5, however, they failed to produce any document to show their right, title and interest over the land in question and instead stated that the Hon'ble High Court vide order dated 09.04.2021



passed in CWJC No. 8857 of 2020, has directed to keep the earlier notice, issued by the respondent no. 5, in abeyance. In such view of the matter as also in view of the measurement report submitted by the Circle Amin along with the map, it was concluded that six persons including the petitioners have encroached the aforesaid land in question, hence the final order dated 02.05.2024 was passed under Section 6(1) of the Act, 1956 and notices were directed to be issued to the encroachers for removal of the encroachment in question, however, the said order dated 02.05.2024 has also not been challenged by the petitioners till date.

6. I have heard the learned counsel for the parties and perused the materials on record. At the outset, this Court had asked the learned counsel for the petitioners as to whether he can show from the records, any such document which would demonstrate the right, title and interest of the petitioners in the aforesaid land in question, i.e. the one appertaining to Thana No. 626, Khata No. 274, Khesra No. 1123 and 1133, situated at Mauza-



Panduka, P.S. Chutiya, District-Rohtas, to which the answer of the learned counsel for the petitioners is in the negative. This Court has though minutely perused the entire brief of the present case, however, it has not been able to lay its hand on even a chit of paper, which would show that the petitioners have got any right, title or interest over the said land in question. Yet another aspect of the matter is that the respondents have not only adhered to their constitutional obligation, as provided for under Article 300A of the Constitution of India but have also duly followed the provisions contained under the Act, 1956, inasmuch as notices were issued to the petitioners under Section 3 of the Act, 1956, in connection with both the encroachment proceedings i.e. Encroachment Case No. 17 of 2019-20 and Encroachment Case No. 6 of 2023-24, whereafter the petitioners had appeared before the respondent no. 5 and then measurement was also conducted, however, it was found that the land in question is *Anawad Sarvsadharan* category land and the petitioners



had failed to produce any document to show that the land in question is their private raiyati land and not a public land, leading to passing of the final order under Section 6(1) of the Act, 1956 on 22.05.2020/07.07.2020, in connection with Encroachment Case No. 17 of 2019-20 as also the one dated 02.05.2024, in connection with Encroachment Case No. 6 of 2023-24, both of which have not been challenged by the petitioners inasmuch as no encroachment appeal has been filed by the petitioners till date. In fact, upon a query being put to the learned counsel for the petitioners as to whether the petitioners intend to challenge the aforesaid orders by filing appropriate encroachment appeals, the answer is in the negative.

7. This Court further finds that only after passing of the final order by the respondent no. 5 in the aforesaid encroachment proceedings, notices under Section 6(2) of the Act, 1956 were issued to the petitioners, last being the one dated 03.05.2024. Thus it is apparent from the records of the present



case that the petitioners have miserably failed to satisfy this Court with regard to their right, title and interest in the aforesaid land in question, inasmuch as neither any cogent proof much less any admissible documents have been produced by the petitioners with regard to the same, whereas the Respondent-State has amply demonstrated that it had followed the due process of law, more particularly contained in the Act, 1956 for the purposes of removal of the encroachment from public/ government land, which is *Anawad Sarvsadharan* category land. This Court also finds that there is no discrepancy in the description of the land, as mentioned either in the notices issued under Section 3 of the Act, 1956 or for that matter in the final order, which in any view of the matter is not material in the present case inasmuch as the petitioners have failed to produce any evidence to the effect that the land in question is their private raiyati land and they have right, title and interest over the same, thus it is amply clear that the petitioners are encroachers and the encroachment



in question is required to be removed forthwith. In fact, the petitioners have set up a false and fabricated case, only with a view to usurp the government/ public land in an illegal and fraudulent manner, without them being in possession of any cogent and legally tenable document in proof of their right, title and interest over the land in question. Therefore, the present writ petition is devoid of any merit.

8. Having regard to the facts and circumstances of the case and for the foregoing reasons, I do not find any merit in the present writ petition, hence the same stands dismissed. Interim order, if any, stands vacated.

(Mohit Kumar Shah, J)

S.Sb/-

AFR/NAFR	NAFR
CAV DATE	12.08.2024
Uploading Date	04.10.2024
Transmission Date	N/A

