

IN THE HIGH COURT OF JHARKHAND AT RANCHI
W.P.(C) No. 5881 of 2018

Rajendra Singh Petitioner
 Versus

1. The State of Jharkhand
2. The Deputy Commissioner, Seraikella-Kharsawan
3. The Circle Officer, Chandil, Seraikella-Kharsawan Respondents

CORAM

HON'BLE MR. JUSTICE RAJESH SHANKAR

For the Petitioner : Mr. Ranjan Kumar, Advocate
 For the Respondent-State : Ms. AC to GA-III

Order No. 02

Dated: 21.12.2018

The present writ petition has been filed for quashing the notice dated 25.10.2018 (Annexure-6 to the writ petition) issued by the respondent No.3 under Section 6(2) of the Bihar (now Jharkhand) Public Land Encroachment Act, 1956 (hereinafter referred to as 'the Act, 1956') in Encroachment Case No. 28/17-18 directing the petitioner to remove the encroachment from the land appertaining to Khata No. 162, Plot No. 802, measuring an area of 0.05 acre, Village-Tamulia, Thana No. 333, P.S-Chandil, District-Seraikella-Kharsawan within a period of 14 days, failing which he shall be liable to pay the penalty provided under Section 188 of the I.P.C.

The learned counsel for the petitioner submits that the land in question has been jointly purchased by the petitioner and his wife by way of registered Sale Deed No. 3511/3456 dated 06.09.2013 from one Manoj Kukmar Behra, who had been in continuous possession of the said land before selling the same to the petitioner and his wife. Thereafter, the petitioner and his wife filed an application before the respondent No.3 on 05.02.2016 for mutation of the said land in their names. However, the same was rejected by the respondent No.3 vide order dated 20.02.2016 primarily on the ground that the said land comes under the provisions of the C.N.T. Act, 1908. Even in view of the said order, the petitioner's land cannot be treated as a public land so as to initiate a proceeding under Section 3 of the

Act, 1956. However, ignoring the said facts, the respondent No.3 initiated a land encroachment proceeding being Encroachment Case No. 28/17-18 against the petitioner and issued a notice on 24.03.2018 under Section 3 of the Act, 1956 to the petitioner. Thereafter, the petitioner submitted his reply before the respondent No.3 on 09.04.2018 stating inter alia that the said land is not a public land and the petitioner has been occupying the same by constructing a residential house over it. It was also stated inter alia that the said land was purchased by the petitioner and his wife by virtue of a registered sale deed dated 06.09.2013. However, the respondent No.3, without considering the reply submitted by the petitioner and providing any opportunity of hearing to him, issued the impugned notice dated 25.10.2018 under Section 6(2) of the Act, 1956 directing the petitioner to remove the encroachment from the said land within a period of fourteen days, failing which he shall be liable to pay the penalty provided under Section 188 of the I.P.C.

Learned AC to GA-III, at the very outset, submits that the petitioner has got an alternative/efficacious/statutory remedy of preferring an appeal against the impugned notice dated 25.10.2018 before the respondent No.2 under Section 11 of the Act, 1956 and, therefore, the present writ petition is not maintainable.

Having heard the learned counsel for the parties and considering the fact that the petitioner has got an alternative/efficacious/statutory remedy of preferring an appeal before the respondent No.2 under Section 11 of the Act, 1956 against the impugned notice dated 25.10.2018 issued under Section 6(2) of the Act, 1956, I am not inclined to entertain the present writ petition at present.

The petitioner is, however, given liberty to prefer an appeal against the impugned notice dated 25.10.2018 before the respondent No.2 on or

before 10.01.2019 along with an application for condonation of delay. If the petitioner files an appeal along with an application for condonation of delay by the aforesaid date, the respondent No.2 shall take up the same, consider the limitation petition liberally in view of the fact that the present writ petition was filed before this Court on 26.11.2018 and after providing due opportunity of hearing to the petitioner, shall take appropriate decision in the matter in accordance with law.

Till the appeal is disposed of by the respondent No.2, the structure standing over the land in question shall not be demolished by the respondents.

The present writ petition is accordingly disposed of with aforesaid liberty and direction.

(Rajesh Shankar, J.)