
(1971) 09 PAT CK 0015

In the Patna High Court

Case No : Civil Writ Jurisdiction Case No. 563 of 1969

Kamal Kanta Sah

APPELLANT

Vs

State of Bihar and Others

RESPONDENT

Date of Decision : 01-09-1971

Acts Referred:

Bihar Public Land Encroachment Act, 1956 — Section 6

Citation : AIR 1972 Patna 137

Hon'ble Judges : U.N. Sinha, C.J;K.B.N. Singh, J

Bench : Division Bench

Advocate : S.R. Ghosal, for the Appellant; R.P. Katriar, for the Respondent

Final Decision : Allowed

Judgement

1. This writ application has been filed by the petitioner under Articles 226 and 227 of the Constitution, praying that the orders incorporated in Annexures 1, 2 and 3, (although in the prayer portion only Annexure 3 has been mentioned) be quashed. The original order passed against the petitioner was incorporated in Annexure 1 and the appellate order passed against the petitioner is incorporated in Annexure 2. The final order by the Commissioner, Bhagalpur Division, is incorporated in Annexure 3. In effect, the petitioner has been ordered to remove an alleged encroachment from plot No. 1211 in Pakur town, u/s 6 of the Bihar Public Land Encroachment Act, 1956 (Bihar Act 15 of 1956). The last order passed by the Commissioner of Bhagalpur was on the 27th January 1969 and by a judgment and order passed by this Court in a Civil Writ Jurisdiction Case, Ramzan Mian v. Executive Engineer, P. W. D. Dehri on Sone, reported in 1969 BLJR 1010, dated the 1st April 1969, Section 6 of this Act has been held to be ultra vires as violative of the provisions of Article 14 of the Constitution. Therefore, it is clear that the orders passed by the authorities culminating in the order of the Commissioner of Bhagalpur Division are all null and void and they must all be quashed.

2. In the result, the orders incorporated in Annexures 1, 2 and 3 are quashed

and a writ of mandamus must issue on the respondents not to interfere with the petitioner's possession of the lands from which an alleged encroachment has been ordered to be removed, by virtue of the orders under consideration. The writ application is, therefore, allowed; but, in the circumstances, there will be no order for costs.