

(2023) 05 PAT CK 0056

In the Patna High Court

Case No : Civil Writ Jurisdiction Case No. 9422, 9424, 10384, 10441, 10450, 10611, 10743, 10912, 10934, 10951, 10974, 11102, 11110, 11125, 11202, 11267, 11368, 11408, 11468, 11942, 12127, 12202, 12227, 12575, 12579, 13137, 13296, 13740, 13825, 14994, 15032 Of 2022

Satyendra Rai

APPELLANT

Vs

State Of Bihar

RESPONDENT

Date of Decision : 25-05-2023

Acts Referred:

Constitution Of India, 1950 — Article 19(1)(e), 21, 32, 226, 226(1), 300A
Digha Land Settlement Act, 2010 — Section 2, 2(r), 2(s), 2(w), 3, 6, 7
Land Acquisition Act, 1894 — Section 11A
Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Re-settlement Act, 2013 — Section 24(2)
Bihar Public Land Encroachment Act, 1956 — Section 3, 4, 5, 6

Citation : (2023) 05 PAT CK 0056

Hon'ble Judges : SANDEEP KUMAR, j

Bench : Single Bench

Advocate : Basant Choudhary, Shekhar Singh, Lalit Kishore, Abbas Haider, Rajeev Kumar Singh, P.K. Shahi, Pawan Kumar, Kumar Manish, Santosh Kumar

Final Decision : Allowed

Judgement

1. All the writ petitions have been filed by the petitioners challenging the illegal demolition of their houses in Mohalla - Nepali Nagar / Rajiv Nagar. Since the issue raised in all the writ petitions are similar, they have been heard together and are being disposed of by this common judgment and order.
2. For the sake of convenience, the facts of C.W.J.C. No.9422 of 2022 and C.W.J.C. No. 9424 of 2022 are treated as the lead matter.
3. The facts of the cases are stated as under:-
4. The Bihar State Housing Board (hereinafter to be referred/described as "the Housing Board") in the year 1974 had acquired 1024.52 acres of land in Rajiv

Nagar area on both sides of Ashiyana-Digha road for a colony named as Digha Housing Colony. As per the prevalent law, the land owners were to be paid a compensation of Rs.1361 per sq. ft. of land. The acquisition proceedings were challenged by some of the erstwhile land owners and ultimately, the matter travelled upto the Hon'ble Supreme Court of India, wherein, the acquisition proceedings were upheld in favour of the Housing Board. The Hon'ble Supreme Court directed the Housing Board to pay compensation through the District Magistrate, Patna and accordingly, the Housing Board paid a sum of Rs.17.42 crores in the account of the District Magistrate, Patna in lieu of compensation but, the farmers have not received the amount of compensation.

5. As the process of awarding compensation got delayed and the majority of the farmers were denied payment of compensation for their lands, they started selling/transferring their plots to various cooperative societies/individuals, which are situated on the eastern side of Ashiyana-Digha road. The area of eastern side is approximately 600 acres and odd and is occupied by the members of such societies/individuals, who after purchasing the plots constructed the houses and are living therein. Some of them have constructed commercial buildings which are being used for commercial purposes. The remaining 400 and odd acres of land which were acquired is located on the western side of the Ashiyana- Digha road known as Nepali Nagar.

6. Earlier, the State Government, in order to resolve the dispute, had come up with Digha Acquired Land Settlement Act, 2010 which was notified on November 27, 2013 (hereinafter to be referred as "the Digha Land Settlement Act, 2010"). The State Government had enacted the law in 2010 to settle the plots in favour of the residents of Nepali Nagar. In 2014, the State Government announced Digha Acquired Land Settlement Scheme, 2014 (hereinafter to be referred as "the Digha Land Settlement Scheme, 2014") under Section 3 of the Digha Land Settlement Act, 2010. The Digha Land Settlement Scheme, 2010 provides that settlement of land in favour of unauthorized occupants would be done after realizing the settlement charge at the Minimum Value Register (MVR) rate. Occupants having less than 2 Kathas of land will have to pay 25% of MVR as settlement charge. Occupants having land over 2 kathas, would have to pay 50% of MVR as settlement charge. Similarly, if the plot is located on the main road or principle road, the occupant will have to pay 75% of MVR as settlement charge. Settlement is 100% of MVR for the commercial plots. There was no policy to settle the plots on the western side of Ashiyana-Digha road i.e. in relation to the land of 400 acres situated at Nepali Nagar as per the existing MVR in the area. However, in terms of Section-7 of the Digha Land Settlement Act, 2010, the Housing Board was entitled to take possession of vacant land comprising area about 400 acres of land in Sectors 1, 2, 5, 8 and 10.

7. Section 7 of the Digha Land Settlement Act, 2010 reads as under:-

"7. Board to take possession of vacant land.-

The Board shall be entitled to take possession of vacant land comprised in an area of about 400 acres of land situated in Sectors 1, 2, 5, 8 and 10.

Provided that the constructed portion in the form of dwelling houses or commercial buildings shall be entitled for ex-gratia payment as well as an additional amount for the constructed area to be determined by the Board and approved by the Government.

Provided further that while framing and implementing the scheme under Section-3, the Board may earmark a compact area for settlement in favour of only those unauthorised occupants who have constructed only their residential houses, Provided further that unauthorised occupants shall not be entitled to settlement in the area described in Section-7, except the area which has been earmarked by the Board in the scheme for the said purpose."

8. The first proviso to Section 7 of the Digha Land Settlement Act, 2010 provides that unauthorized occupants who had constructed portion in form of dwelling houses or commercial buildings shall be entitled for ex-gratia payment as well as an additional amount for the constructed areas to be determined by the Board and approved by the Government. The second proviso to Section 7 of the Act imposes an obligation on the Board to ear-mark a compact area for settlement in favour of only those unauthorized occupants who have constructed only their residential houses. The third proviso to Section 7 of the Act further provides that unauthorized occupants shall not be entitled to settle in the area described in Section 7, except the area which has been earmarked by the Board in the Scheme for the said purpose.

9. Thereafter, the Digha Acquired Land Settlement Rules, 2014 (hereinafter to be referred as "the Digha Land Settlement Rules, 2014) has been framed for enforcement of the Digha Land Settlement Act, 2010. As per the aforesaid Rule, the unauthorized occupants were required to apply, within 60 days of publication of the notice, to the Board in a prescribed form (Form-A) for settlement of their respective plots of land. The erstwhile land owners/transferee were required to apply within 60 days of publication of notice in a form (Form-B) prescribed by the Board for ex-gratia payment as determined by the Board. As per the second supplementary counter affidavit filed by the Housing Board, the cut off date was extended from time to time and the last extension was granted till 31.05.2018 through notice published in daily newspaper dated 28.04.2018.

10. The demolition started on 03.07.2022 pursuant to the order dated 20.06.2022 passed in Encroachment Case No.70 of 2021-22. The notice dated 25.04.2022 does not mention the name of any person to whom the notice has been issued. It mentions only the plot numbers and the nature of encroachment and it has been directed that the land belonging to the Bihar State Housing Board has been encroached, which is an encroachment under the Bihar Public Land Encroachment Act, and therefore, the noticee should produce the documents (in Form-1) in support of their claims on 23.05.2022 at 2:30 P.M. and

if the noticee failed to do so, an ex parte order shall be passed. Thereafter, another notice was issued on 20.06.2022 in Form-2, in which the name of nine noticees were mentioned, which are:- (i) Nirala Cooperative Housing Society, Patna (ii) Smt. Madhu Prakash, wife of Sri Prakah (iii) Sri Sujit Raj, son of late Narayan Singh (iv) Sri Anil Kumar Vaste, son of late Ramkali Devi (v) Smt. Punam Prasad, wife of Sri Surendra Prasad (vi) Sri Dularchand Prasad, son of late Visheshwar Prasad (vii) Sri Arun Kumar Sinha, son of late Kapil Muni Singh (viii) Smt. Meena Devi, wife of Sri Ramashraya Prasad Singh (ix) Smt. Mankeshwar Singh, wife of Jatadhari Singh. This notice says that the land mentioned in the notice belongs to the Housing Board and the same has been declared as encroached under Section 6(i) of the Encroachment Act and the noticees were directed to remove the encroachment within a week. In case, they refused or were unable to do so, the lands in question will be vacated by use of force.

11. The subject matter of the dispute in the writ petitions pertains to forced eviction of residents of Nepali Nagar which came up in a portion of 400 acres of disputed land on the western side of Ashiyana-Digha road. The Bihar State Housing Board planned to build a Housing Colony in the area of 400 acres, which triggered violent protest when the police force and the officers of the Patna District administration with bulldozers demolished as many as 90 houses/buildings in the 400 acres of lands. The demolition started surprisingly on 03.07.2022, when all the Government offices and the Courts are closed. By the time the writ petitions were filed before this Court and heard, about 90 houses/buildings were demolished forcibly by the authorities with the help of police without following the due process of law, as has been contended by learned counsels for the writ petitioners.

12. In C.W.J.C. No. 9422 of 2022, the following prayer has been made by the petitioner:-

"a. For a direction to the respondent authorities to immediately stop demolition of the house of petitioner situated in Mohalla - Nepali Nagar, P.S.-Rajiv Nagar, District- Patna, Khata no.292, plot no.2422, Digha Thana No.1 under Patliputra Circle, Ward no.2, property no.1273133, Revenue Area-268 measuring area 1 katha 10 dhur.

(b) For quashing of the order dated 20.06.2022 passed in Encroachment Case No.70 of 2021-22 and entire proceedings of the said encroachment case including the notices dated 25.04.2022 and 20.06.2022 in the facts and circumstances of case.

(c) For restraining the respondent authorities from taking any action disturbing the lawful possession of the petitioner over the house and the land disputed in Plot no.242, Mohalla-Nepali Nagar, P.S.-Rajiv Nagar, District- Patna.

(d) For any other relief(s) for which the petitioners are entitled."

13. In connected writ petition i.e. C.W.J.C. No.9424 of 2022, the following prayer has been made by the petitioners:-

"(i) For issuance of an appropriate writ in the nature of MANDAMUS, commanding and directing the Respondent Authorities not to demolish the houses constructed by the individuals in Mohalla-Nepali Nagar, Patna-25 on the land allegedly acquired by the State in the year 1974 for the Respondent Housing Board for the purposes that the Board would allot open plot to its members for the purposes of construction of their residential houses on the ground that:-

(a) if in view of the provisions contained under Section 11A of the Land Acquisition Act, 1894 (hereinafter referred to as 1894 Act), the acquisition proceeding initiated in the year 1974 and lapsed in 1978, the land in question goes away from the category of "acquired land" and no authority has the jurisdiction to demolish the structures existing therein if it has been constructed by the individuals after the purchase of land from its Khatiyani Raiyat as held by the Hon'ble Supreme Court in the case of Mohan -Versus-State of Maharashtra since reported in 2007 (2) PLJR (SC)-163;

(b) Even in view of the provisions contained under Section 24(2) of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (hereinafter referred to as 2013 Act) since though the award of the land acquired in the year 1974 was prepared in 1978, however, the Respondent Housing Board or the State had not taken the physical possession of the land rather it comes under the physical possession of Khatiyani Raiyat throughout before they had sold it to the individuals after realizing the cost of the land.

(ii) For issuance of an appropriate writ in the nature of MANDAMUS, commanding and directing the Respondent Authorities for settlement of those pieces of land in favour of individuals after holding the survey of an area on which they have constructed their houses and they are residing therein since much-much ago, in some cases for last about 40 years, if the individual house holders are prepared to pay the amount which the Respondent Board has offered to other similarly situated persons but residing in Rajiv Nagar area situated in eastern part of Ashiana Digha Road even on equitable ground that:-

(a) The residents of the area had purchased their land from the original landlord after paying its cost and they have invested their hard earned money to construct their houses;

(b) If the acquisition for the Board in 1974 was for the construction of planned residential houses in the city and the object of the acquisition has already served its purposes if the land in question has been used for construction of residential houses, the State being a Welfare State and the Board being a creature of a Welfare State cannot demolish the houses since it will amount to loss not only to the individuals but loss to the nation also.

(iii) For a declaration that if the Respondent Board had allowed construction of the residential houses in the land in question for last about 40 years and the peoples are residing there peacefully since then, for which they were bound to oblige not only the Housing Board Officials but also the Rajeev Nagar Police Station, their houses can not be demolished so lightly if once upon time it was constructed with the consent of the Board and District Administration.

(iv) For issuance of any other appropriate writ / writs, order / orders direction/ directions for which the petitioners would be entitled under the facts and circumstances of the case.”

14. In other connected writ petitions, the petitioners have made similar/identical prayers.

15. So far as C.W.J.C. No.10743 of 2022 is concerned, the writ petitioner has prayed for compensation in view of illegal demolition of a part of her residential house. The relief claimed in the aforesaid writ petition is quoted hereinbelow:-

“a. For restraining the respondent authorities from demolishing the house of petitioner situated at plot no.-255A of Nirala Sahakari Griha Nirman Samiti Ltd.. Tauzi No. 5339, Khata no. 1637, Survey Plot No. 2433 Mohalla-Nepali Nagar, Patna measuring area 1960 sq. feet.

b. For a direction to the respondent authorities to pay compensation of Rs. 50 lakhs for the loss caused to the petitioner due to illegal demolition of the major part of her house situated at plot no.- 255A of Nirala Sahakari Griha Nirman Samiti Ltd., Tauzi No. 5339, Khata no.- 1637, Survey Plot No. 2433, Mohalla-Nepali Nagar. Patna measuring area 1960 sq. Feet.

c. For a direction to the respondent authorities to pay Rs. 1 crore to the petitioner as compensation for the mental harassment and trauma caused to the petitioner and her family due to demolition of her house without following due process of law and without taking any decision as to whether her possession on her house is unauthorized or not, along with the legal expenses and any other cost incurred by the petitioner.

d. For a direction to the respondent authorities to not disturb the lawful and peaceful possession of the petitioner over the house and land situated at plot no 255A, Khata No.1637, Survey Plot 2433, Nepali Nagar, 90 feet Road, P.S. Rajiv Nagar, Patna.

e. For any other relief(s) for which the petitioner is entitled in the facts and circumstances of this case.”

16. In these writ petitions, the petitioners have annexed the copy of the order dated 20.06.2022. From reading of the aforesaid order dated 20.06.2022, it appears that pursuant to the notices, some claimants appeared and they represented themselves in the Court of Circle Officer, Patna Sadar, who has passed the order. It is the contention of the petitioners that the order passed by

the Circle Officer, Patna Sadar is illegal, without following the due process of law and without any service of notice under the Bihar Public Land Encroachment Act.

17. On 04.07.2022 writ petitions viz. C.W.J.C. Nos. 9422 of 2022, 9423 of 2022 and 9424 of 2022 were filed and were heard together by this Court upon special mentioning having been allowed by the Motion Bench. This Court after hearing learned counsel for the parties, restrained the respondent authorities from proceeding further with demolition of the dwelling houses. The order dated 04.07.2022 is quoted hereinbelow:-

"These cases have been listed before this Court by way of special mentioning having been allowed by the Motion Bench. These cases were directed to be heard at 03.45 P.M. today. Sri Basant Choudhary, learned senior counsel assisted by other advocates mentioned these cases at 3:40 P.M. and brought to the notice of this Court that since these matters relate to demolition of houses situated in Neepali Nagar / Rajiv Nagar, Patna, the same may be heard.

Considering the urgency of the matter, the Court started hearing these cases.

The presence of the District Magistrate, Patna and the Managing Director, Bihar State Housing Board was required in the matter so that the Court should hear the matter. The Court has waited for them till 4:40 P.M. but they have not been able to reach the Court despite messages. The Court cannot wait for the respondents indefinitely.

It has been submitted by learned counsel for the petitioners that demolition has been ordered without giving personal notice to each and every house owner and a general notice was given in the area and thereafter, an order was passed for demolition of the houses in question.

Many questions have been raised at the time of hearing including the fact that the provisions of the Digha Acquired Land Settlement Act, 2010 have not been followed. The proceeding has not been initiated by the owner of the land i.e. Bihar State Housing Board but the proceeding has been initiated under the provisions of the Public Land Encroachment Act by the Circle Officer and his order is appealable before the Collector but the Collector himself is supervising the demolition. It has also been submitted by learned counsel for the petitioners that demolition is being carried without giving any chance to the petitioners to file appeals. It is well settled right from the case of M/S. Motipur Zamindary Co. (P) Ltd vs The State Of Bihar reported in AIR 1962 SC 660 and The Gait Public Library and Institute, Gardanibagh, Patna vs. The State of Bihar, reported in 1995 (1) PLJR 585 that even an encroacher has a right and he cannot be removed without giving opportunity of hearing and without following the due procedure of law.

Considering the aforesaid submissions and also considering the fact that the houses are being demolished by the State without following the due procedure of law, the State Authorities are restrained from demolishing the houses situated in

Rajiv Nagar / Neepali Nagar, Patna, till next date of hearing.

The respondents are directed to file counter affidavit in the matters. Put up these cases for further hearing on 06.07.2022 at 2:15 P.M. This order has been passed in presence of learned counsel for the State. It is expected that the demolitions are stayed forthwith. When this order has been dictated, the Managing Director of the Bihar State Housing Board has appeared in the Court.

The respondents will not disturb the occupants of the houses whose houses have been demolished or partially demolished if they are protecting themselves in this rainy season and staying in their demolished houses.

The Police will not take any coercive step against any protester, who might have been protesting against this strong action of the authorities and who have been made accused by filing FIRs by the Police/ District Administration.

This Court requests Mr. Md. Khurshid Alam, AAG-12 for the State to communicate this order of stay of demolition to the Collector, Patna, who will stop the demolition work forthwith.

Let a copy of this order be handed over to Mr. Md. Khurshid Alam, AAG-12 for the State."

18. Further, this Court vide order dated 14.07.2022 directed the respondent authorities to restore the electricity and water supply for the residents of Nepali Nagar. The order dated 14.07.2022 is also quoted hereinbelow:-

"Heard learned counsel for the parties.

Today, some additional affidavits have been filed by the State and the Housing Board. The copies of the additional affidavits have been served upon learned counsel for the petitioners in the Court itself.

The list, as directed by this Court, has been furnished by the State as well as the Housing Board.

Learned counsel for the petitioners are directed to add the South Bihar Power Distribution Company Limited through its Managing Director as respondent in these writ petitions.

The South Bihar Power Distribution Company Limited is directed to explain as to why earlier order of this Court for providing temporary electric connection to the semi demolished houses is not being complied with.

List these cases on 19.07.2022 at 2:15 P.M. for further hearing.

This Court hopes that before next date of hearing, the South Bihar Power Distribution Company Limited will comply the direction of this Court for providing temporary electricity connection to the semi demolished houses or this Court will direct for personal appearance of the Managing Director of the South Bihar Power Distribution Company Limited.

Sri Kumar Manish, learned counsel appears for the South Bihar Power Distribution Company Limited. Let a copy of this order be handed over to Sri Kumar Manish, learned counsel for the South Bihar Power Distribution Company Limited for communication and compliance.”

19. All these writ petitions have been heard in detail and after hearing the respective parties, on 17.11.2022 the judgment was reserved by this Court.

20. On behalf of the writ petitioners arguments were advanced by Sri Basant Choudhary, learned senior counsel. It has been contended by learned counsel for the petitioners that before taking drastic steps for demolition of residential houses, the petitioners ought to have been heard by giving individual notices. The demolition of the petitioners’ houses without issuance of proper notice under the Bihar Public Encroachment Act is without jurisdiction as it is incumbent upon the respondent authorities to issue a proper notice mentioning the name of the noticee, his/her address, the details of the properties which are being sought to be under the alleged encroachment and individual notice should have been provided to each house owner before initiating the demolition by brute use of force. It is well known that when the State is going to take drastic action against its citizen it has to follow the law. It has been argued by learned senior counsel for the petitioners that the proceeding under the Bihar Public Land Encroachment Act has been conducted in hurried manner and without giving proper opportunity to the petitioners to file appeal or to approach any other Court/Forum, the houses were demolished by the District administration.

21. Learned senior counsel for the petitioners has taken this Court to the various provisions of the Digha Land Settlement Act, 2010 and the Scheme framed under Section 3 of the Act as well as the Digha Land Settlement Rules, 2014. He has contended that the State Government had already decided to settle the plots of Nepali Nagar in favour of unauthorized occupants by enacting the law in 2010. He has drawn the attention of this Court to the Preamble of the Digha Land Settlement Act, 2010 to show that the said Act has been enacted for settlement of land and taking over the possession of the vacant areas. He has also relied on the definition clause of Section 2, especially definition of Section 2(r), 2(s) and 2(w) which provides for the definition of “settlees”, “settlement” and “unauthorized occupants”.

22. Learned senior counsel for the petitioners has also relied upon Sections 6 and 7 of the Digha Land Settlement Act, 2010 and the provisions of the Digha Land Settlement Scheme, 2014. It is the contention of learned senior counsel that unauthorized occupants of the locality had acquired a right under the existence of a particular scheme and Digha Land Settlement Act, 2010 which provide for the means to facilitate exercising the right by the unauthorized occupants of Nepali Nagar. In this case, the means is the settlement policy. It is contended by the learned senior counsel for the petitioners that the right of the writ petitioners, in occupation of 400 acres of land, has been violated since the State has failed to fulfill its obligation under the Digha Land Settlement Act, 2010 and

Digha Land Settlement Scheme, 2014.

23. Learned senior counsel for the petitioners has also argued that demolition of dwelling houses by the Police is antithetical not only to Article 300(A) of the Constitution of India but also to the spirit of the Constitution of India as a whole. It has infringed the right for dignified life of the petitioners under Article 21 of the Constitution of India and by demolishing the houses of the unauthorized occupants, the State has actually bulldozed hard-earned freedom of the writ petitioners.

24. Learned senior counsel for the petitioners has further argued that since the State Government and the Housing Board failed to keep up with their promise of allotting permanent residence to the erstwhile land owners/settlers within 400 acres of land, upon voluntarily surrendering their houses, it defeats the legitimate expectation of the land owners/settlers of 400 acres of land of Nepali Nagar on the western side of Ashiyana-Digha road.

25. On behalf of the State, Sri Lalit Kishore, learned Advocate General has advanced his arguments. He has submitted that these writ petitions, as framed, are not maintainable since none of the petitioners has provided the material particulars about due date of purchase of land, which is relevant for deciding the dispute. He has further contended that as the cause of action is illusory, writ of mandamus cannot be issued by this Court. He has further contended that the petitioners have failed to establish their legal right to the performance of the legal duties and hence, these writ petitions are not maintainable.

26. The learned Advocate General has also submitted that the various provisions of the Bihar Public Land Encroachment Act has been strictly followed before undertaking the exercise of forced eviction and relies upon the contents of the first supplementary counter affidavit of the State Government. He has also submitted that on the first day i.e. 02.07.2022, the boundary walls of the houses were demolished and on the second day i.e. on 03.07.2022 the dwelling houses were demolished. Further, learned Advocate General has contended that the wisdom of legislature is not a subject matter of judicial review and has referred to Sections 6 and 7 of the Digha Land Settlement Act, 2010 and argued that Sections 6 and 7 of the aforesaid Act operate for different areas and as the Housing Board was entitled to take possession of vacant lands comprising in the area of about 400 acres situated in Sectors 1, 2, 5, 8 and 10 under Section 7 of the Digha Land Settlement Act, 2010, no construction could be allowed in the said area.

27. Lastly, the learned Advocate General has submitted that the doctrine of legitimate expectation cannot be invoked against the statute and relied upon a judgment of the Hon'ble Supreme Court rendered in the case of State of Uttar Pradesh & Others vs. United Bank of India & Others reported in (2016) 2 SCC 757, more particularly, paragraph nos. 43 and 44 of the said judgment.

28. On behalf of the Housing Board, Sri P.K. Shahi, learned senior counsel has

appeared and advanced his arguments. He has contended that these writ petitions are premature and are not maintainable as the same have been filed in anticipation of injury by the petitioners. He has also referred to Sections 6 and 7 of the Digha Land Settlement Act, 2010 to show that the petitioners have no right to make construction over the land of 400 acres i.e. in Nepali Nagar and they are encroachers of the land. He has further contended that the Constitution of India does not recognize any fundamental right to live by committing encroachment on public land and points out that under the provisions of the Bihar Public Land Encroachment Act, the public authorities are empowered to remove encroachment on public land for the purposes of fulfilling the object of the land and systematic development of said area of about 400 acres. He has submitted that the authorities have followed the procedure as prescribed under the Bihar Public Land Encroachment Act for restoring the possession of the properties for use of the Housing Board.

29. Learned senior counsel for the Housing Board has further submitted that the Housing Board in terms of the Digha Land Settlement Scheme, 2014 has notified the procedure for calculating the ex gratia payment in respect of the claimants in Nepali Nagar and the same was advertised in the daily newspaper published on 11.09.2014 and a cut off date to make application in requisite form was extended till 31.05.2018 and 93 applications were received in proper form i.e. Form-A. Form-B is for determination and payment of ex gratia amount in both categories of 600 acres and 400 acres of land. Only few applicants were found eligible for ex gratia payment but, the same could not be paid because of pending Title Suit between the parties.

30. By an order dated 06.07.2022 this Court has appointed Sri Santosh Kumar and Sri Viswas Vijeta, learned counsel as amicus curiae in these matters. Learned amicus curiae have contended that the Digha Land Settlement Act, 2010 and the Digha Land Settlement Scheme, 2014, recognize that the settlement is an essential component of unauthorized occupants' right to shelter and housing so that no eviction can take place without complying with the provisions of the Digha Land Settlement Act, 2010. They have further submitted that Digha Land Settlement Act, 2010 and the Digha Land Settlement Scheme, 2014 should be interpreted in a right/affirmative manner so that the unauthorized occupants residing in the area about 400 acres (Nepali Nagar) were eligible for settlement. They have further contended that the enactment of 2010 Act, the Scheme and the Rules framed under 2010 Act, are beneficial statute and scheme, which ought to be broadly and liberally interpreted so as to maximize their scope and their intention.

31. By relying upon the various provisions of the Digha Land Settlement Act, 2010 learned amicus curiae have contended that the provisions of the aforesaid Act are intended to protect the substantive rights of unauthorized occupants and erstwhile land owners/transferees. The provisions favour the class of persons for which it has been enacted. They have further contended that for interpreting

expressions like "settlee" "settlement" and "unauthorized occupants" etc. in the definition clause, a construction is required to be placed with regard to the purpose and protective intendment of the legislation, which furthers the purpose for which such legislation was made i.e. to protect the unauthorized occupants, erstwhile land owners/ transferees.

32. It has been contended by learned amicus curiae that purposive approach while interpreting the provisions of the Digha Land Settlement Act, 2010 is for equity, justice and good conscience. This is the hallmark of the Preamble of the Constitution. The dominant legislative intent of the Digha Land Settlement Act, 2010 is to settle the lands in favour of the unauthorized occupants and therefore, the Digha Land Settlement Act, 2010 should receive purposeful and functional interpretation.

33. Learned amicus curiae have referred to Clause 3.2 of the Digha Land Settlement Scheme, 2014 and has strongly urged that the unauthorized settlees within the area of 400 acres (Nepali Nagar) are the beneficiary under the Scheme and are eligible for permanent residents before surrendering their possession of the houses. It has further been contended that failure to take up development activities as enjoined by Clause-3.2 of the Scheme infringes the rights of the writ petitioners guaranteed under Articles 21 and 300(A) of the Constitution of India. Further, it is contended that the State Government has failed to keep up with its promise and it has defeated the legitimate expectation and Constitutional trust of the petitioners.

34. It has further been contended by learned amicus curiae that the State Government is bound to keep up with its promise and meet the legitimate expectation of the writ petitioners by handing over the possession of the permanent residents in the area to be earmarked by the Housing Board and that they should not go back against their own commitment given by them under Digha Land Settlement Act, 2010 and the Digha Land Settlement Scheme, 2014.

35. It has been contended that inaction on the part of the respondent authorities i.e. the State Government and the Housing Board in not taking any step under the Digha Land Settlement Scheme, 2014 amounts to deprivation of chance of the writ petitioners to get the benefit under the said Scheme and it amounts to violation of the rights of the petitioners.

36. Learned amicus curiae have further argued that issuing eviction/demolition notice in omnibus manner i.e. without individual notice and without considering all the options available with the State Government to provide permanent residence, is clearly an unjust, unreasonable, unfair and illegal decision and therefore, violates the due process clause and deserves to be quashed and set aside. They have also contended that the State acted in a most hasty manner and used brute force to evict the unauthorized settlees without giving them any opportunity and time to pursue their legal remedies and the very initiation of the encroachment proceeding without following the due process of law goes at the

jurisdiction of the order passed by the respondent authorities under the Bihar Public Land Encroachment Act.

37. The amicus curiae have further argued that the action of evicting the petitioners in ineffective method is in violation of the fundamental right to life of the petitioners as well as in violation of the International Covenant and International law obligations of the State as well as against the mandate of the Constitution. It has further been argued that till alternative residence were provided by the State Government to the unauthorized settlees, as per the Scheme of the State Government, they could not have been thrown out forcibly by the respondent authorities. He has further argued that the Constitutional Court should not take narrower view of seeing and treating the petitioners as encroachers upon the Government land and must protect the fundamental right of many families (approx 3100) residing in the area of 400 acres of land.

38. Learned amicus curiae has also contended that cut off date for the beneficiaries under the Scheme was extended till 31.05.2018 which is mentioned in the second supplementary counter affidavit filed by the Housing Board. He has further submitted that since the cut off date has been extended by the Executives so as to confer the benefits to the eligible persons, it should not be subjected to the same rigour of interpretation to which legislature documents are subjected and the hyper semantic and strict interpretation should be avoided in the present case.

Findings / Analysis

39. Having heard learned counsel for the parties, the issues to be decided is as to whether the writ petitions are maintainable or not and as to whether the petitioners are entitled to any relief from this Court, as prayed in the writ petitions.

Issue of maintainability of the writ petitions.

40. Sri Lalit Kishore, learned Advocate General appearing for the State of Bihar and Sri P.K. Shahi, learned senior counsel appearing for the Housing Board have raised objection with regard to the maintainability of the writ petitions. It has been argued by them that since the writ petitions have been filed in anticipation of injury, this Court cannot issue a writ of mandamus. They have further argued that in absence of a legal right to enforce the performance of any duty, these writ petitions are not maintainable and the same should be dismissed.

41. The conditions precedent for maintaining a writ petition for issuance of writ of mandamus appear to be (a) The petitioner for issuance of a writ of mandamus must show that there is a legal right leading to the performance of the legal duty by a party against whom writ of mandamus is sought for; (b) A writ of mandamus may be issued to compel something to be done which imposes a legal duty; (c) The writ of mandamus is only granted to compel the performance of duties of public nature; (d) The Court may/will as a general rule and in exercise

of its discretion, refuse a writ of mandamus when there is an alternative specific remedy at law which is not less convenient/beneficial and effective. As stated in the Hulsbury's Law of England, 3rd Edition, by Lord Symonds, at Page 105, the legal right to enforce the performance of a duty must be with the applicant himself and the Court will therefore only enforce the performance of statutory duties of public bodies on the application of a person, who can show that he himself has a legal right to insist on such performance.

42. In the opinion of this Court, in the present case, the writ petitioners have been able to bring their case within the principles of issuance of a writ of mandamus since the State Government and the Housing Board have failed to act in discharge of their duties of public in nature or a public duty.

43. At this stage, it is relevant to quote Clause-3.2 of the Digha Settlement Scheme, 2014, which is as under:-

"3.2 Ex-gratia Amount: The erstwhile landowner or their transferee shall be paid over and above the awarded compensation under Land Acquisition Act, ex-gratia amount, as may be fixed, against their respective plot of land in such a manner that the gross amount (i.e. compensation plus ex-gratia amount) does not exceed the total amount payable as mentioned below:

Total amount payable : A, where A = District Registrar Office value of the particular plot of land in the financial year under consideration as adopted by the Board.

Provided that as per the spirit of proviso to Section 7 of the Act, such erstwhile landowners or their transferees in area of about 400 acres of land comprised in sector 1, 2, 5, 8 and 10 (i.e. in the western side of so-called Digha-Ashiana Road), who have constructed a brick- mortar dwelling house shall get allotment of flats of reasonable size in the earmarked area of proposed township to be constructed by the Board on the condition of their written oath to vacate and handover the occupied space to the Board before getting possession of flat."

44. A bare reading of Clause 3.2 unequivocally shows that the Housing Board will provide permanent residence (flats) to the erstwhile land owners or their transferees within the ear-marked area of proposed township to be constructed by the Housing Board and inaction on the part of the Housing Board in not taking any steps under Clause-3.2 of the Digha Land Settlement Scheme, 2014 amounts to not only deprivation of a chance to get flats as per Clause- 3.2 of the Settlement Scheme but also amounts to violation of the fundamental rights of the erstwhile land owners or their transferees and the case of the petitioners are fully covered under Clause 3.2 of the Digha Land Settlement Scheme, 2014. Further, issuance of eviction/demolition notice without first attempting to re-settle/provide alternative accommodation to the land owners or their transferees is in complete violation of the due process of law as guaranteed under the Digha Land Settlement Scheme, 2014. The action of the respondent authorities in not implementing the scheme of the State Government amounts to depriving the

petitioners of their statutory rights to permanent residence guaranteed under the Digha Land Settlement Scheme, 2014.

45. It is trite law that the writ petitioners can enforce their right before it is actually infringed in a Court of law. The judgment of the Hon'ble Supreme Court in the case of S.M.D. Kiran Pasha vs. Government of Andhra Pradesh & Others reported in (1990) 1 SCC 328 is for the proposition that the writ petition can be filed before the right is actually infringed. Relevant paragraph i.e. paragraph no.14 is quoted hereinbelow:-

"14. Article 226(1) of the Constitution of India notwithstanding anything in Article 32, empowers the High Court throughout the territories in relation to which it exercises jurisdiction, to issue to any person or authority, including in appropriate cases, any government within those territories directions, orders or writs, including writs in the nature of habeas corpus, mandamus, prohibition, quo warranto and certiorari, or any of them, for the enforcement of any of the rights conferred by Part III and for any other purpose; and it also envisages making of interim orders, whether by way of injunction or stay or in any other manner in such a proceeding. Article 21 giving protection of life and personal liberty provides that no person shall be deprived of his life or personal liberty except according to procedure established by law. For enforcement of one's right to life and personal liberty resort to Article 226(1) has thus been provided for. What is the ambit of enforcement of the right? The word 'enforcement' has also been used in Article 32 of the Constitution which provides the remedy for enforcement of rights conferred by Part III of the Constitution. The word 'enforcement' has not been defined by the Constitution.

According to Collins English Dictionary to enforce means to ensure observance of or obedience to a law, decision etc.

Enforcement, according to Webster's Comprehensive Dictionary, means the act of enforcing, or the state of being enforced, compulsory execution; compulsion. Enforce means to compel obedience to laws; to compel performance, obedience by physical or moral force. If enforcement means to impose or compel obedience to law or to compel observance of law, we have to see what it does precisely mean. The right to life and personal liberty has been guaranteed as a fundamental right and for its enforcement one could resort to Article 226 of the Constitution for issuance of appropriate writ, order or direction. Precisely at what stage resort to Article 226 has been envisaged in the Constitution? When a right is so guaranteed, it has to be understood in relation to its orbit and its infringement.

Conferring the right to life and liberty imposes a corresponding duty on the rest of the society, including the State, to observe that right, that is to say, not to act or do anything which would amount to infringement of that right, except in accordance with the procedure prescribed by law. In other words, conferring the right on a citizen involves the compulsion on the rest of the society, including the

State, not to infringe that right. The question is at what stage the right can be enforced? Does a citizen have to wait till the right is infringed? Is there no way of enforcement of the right before it is actually infringed? Can the obligation or compulsion on the part of the State to observe the right be made effective only after the right is violated or in other words can there be enforcement of a right to life and personal liberty before it is actually infringed? What remedy will be left to a person when his right to life is violated? When a right is yet to be violated, but is threatened with violation can the citizen move the court for protection of the right? The protection of the right is to be distinguished from its restoration or remedy after violation.

When right to personal liberty is guaranteed and the rest of the society, including the State, is compelled or obligated not to violate that right, and if someone has threatened to violate it or its violation is imminent, and the person whose right is so threatened or its violation so imminent resorts to Article 226 of the Constitution, could not the court protect observance of his right by restraining those who threatened to violate it until the court examines the legality of the action? Resort to Article 226 after the right to personal liberty is already violated is different from the pre-violation protection. Post-violation resort to Article 226 is for remedy against violation and for restoration of the right, while pre-violation protection is by compelling observance of the obligation or compulsion under law not to infringe the right by all those who are so obligated or compelled. To surrender and apply for a writ of habeas corpus is a post-violation remedy for restoration of the right which is not the same as restraining potential violators in case of threatened violation of the right. The question may arise what precisely may amount to threat or imminence of violation. Law surely cannot take action for internal thoughts but can act only after overt acts. If overt acts towards violation have already been done and the same has come to the knowledge of the person threatened with that violation and he approaches the court under Art. 226 giving sufficient particulars of proximate actions as would imminently lead to violation of right, should not the court call upon those alleged to have taken those steps to appear and show cause why they should not be restrained from violating that right? Instead of doing so would it be the proper course to be adopted to tell the petitioner that the court cannot take any action towards preventive justice until his right is actually violated whereafter alone he could petition for a writ of habeas corpus? In the instant case when the writ petition was pending in court and the appellant's right to personal liberty happened to be violated by taking him into custody in preventive detention, though he was released after four days, but could be taken into custody again, would it be proper for the court to reject the earlier writ petition and tell him that his petition has become infructuous and he had no alternative but to surrender and then petition for a writ of habeas corpus? The difference of the two situations, as we have seen, have difference legal significance. If a threatened invasion of a right is removed by restraining the potential violator from taking any steps towards violation, the rights remain protected and the compulsion against its violation is

enforced. If the right has already been violated, what is left is the remedy against such violation and for restoration of the right.”

46. Therefore, the contention of the respondents, as advanced by learned Advocate General for the State of Bihar and learned senior counsel for the Housing Board, with regard to non-maintainability of the writ petitions is not acceptable and this Court holds that these writ petitions are maintainable.

Issue of applicability of the Digha Land Settlement Act, 2010, the Digha Land Settlement Scheme, 2014 and Digha Land Settlement Rules, 2014.

47. The Digha Land Settlement Act, 2010 was notified on November 27, 2013. The Preamble of the aforesaid Act reads as follows:-

“Preamble. - WHEREAS, an area of 1024.52 acres of land was acquired by the Government of Bihar at Digha within Patna Municipal Corporation for Bihar State Housing Board, a statutory body, with an object that the Board shall develop and provide urban housing facilities to the citizens,

WHEREAS, the acquisition proceeding was challenged by some of the erstwhile land owners and ultimately the matter went up to the Supreme Court of India, wherein, the acquisition proceeding was upheld,

WHEREAS, acquisition was completed and the award was pronounced,

WHEREAS, to meet the cost of acquisition and development the Board obtained interest bearing loan from the Government/financial Institutions on certain terms and conditions,

WHEREAS, the Board has deposited a sum of Rs. 17.42 crores with the Collector, Patna towards the acquisition cost,

WHEREAS, during the process of acquisition and even after the acquisition various erstwhile land owners unlawfully delivered possession of the portions of the acquired land to various co-operative societies/individuals, either through deed of transfer registered in Metropolitan Cities or through any other written instrument notwithstanding, that such land holders had no title in the land transferred,

WHEREAS, with the lapse of time approximately 600 and odd acres out of the said acquired land has been unlawfully occupied to a major extent by members of such societies/individuals, who have constructed their houses and are living therein or have constructed commercial buildings for commercial use,

WHEREAS, about 400 and odd acres of the remaining acquired land is largely free from unauthorized construction, except for a few unauthorised constructions in smaller areas,

WHEREAS, a Public Interest Litigation was filed in the Patna High Court in the year 1987 by a social organization alleging inaction on the part of the State Government and its agencies in the execution of the proposed housing scheme

over the acquired land,

WHEREAS, the Patna High Court passed several orders from time to time with respect to the removal of the unauthorised occupations and allotment of the plots of land carved out from the acquired land to different categories of applicants as well as in regard to execution of the proposed housing scheme over the acquired land and accordingly under the said orders of the Patna High Court all possible steps were taken by the Board with the assistance of the State Government/District Administration for execution of the proposed housing scheme over the acquired land but the same proved to be futile mainly on account of the stiff resistance of the unauthorised occupants in collusion with the erstwhile land owners, leading to serious law and order problems,

WHEREAS, taking into account the said factual position the Patna High Court also observed that the State Government and the Board should endeavour to frame a scheme embracing within it interest of the unauthorised occupants and the applicants for allotment of plots of land under different categories,

WHEREAS, the erstwhile land owners have represented and demanded additional amount in view of the low market value which prevailed on the date of notification under Section-4 of the Land Acquisition Act and rapid rise in the valuation of the acquired land thereafter,

WHEREAS, it is considered expedient that the entire acquired area may be classified in two categories, one which is largely under unauthorised occupation and the other which is mostly free from unauthorised occupation encroachment with only a few construction in smaller areas,

WHEREAS, with a view to solve the vexed problem it is considered imperative to make a law authorising the Board or any other special purpose vehicle for the settlement of land and taking over the possession of vacant areas."

48. It aimed at categorization of land and through it unauthorized occupants are to be regularized by way of final settlement of plots after payment of penalty by them. The various provisions of the Digha Land Settlement Act, 2010 are intended to protect the substantive rights of erstwhile land owners and transferees. The provisions favour the class of persons for which it is made. While interpreting the expressions like "settlee", "settlement" and "unauthorized occupants" etc. in the definition clause, a construction is required to be placed with regard to the protective intendment of the legislation i.e. which furthers the purpose for which the Settlement Act has been enacted.

49. The Digha Land Settlement Scheme, 2014 prescribes provision for regularizing houses of 600 acres of the encroached land on the eastern side of the Ashiyana- Digha road by taking a penalty from the encroachers. It also prescribes for requisitioning around 400 acres of land on the western side of Ashiyana-Digha road by paying ex-gratia amount to the land owners. The Scheme further provides that permanent residence (flats) would be provided to

the residents settled in 400 acres of land, in the earmarked area as per Clause-3.2 of the Digha Land Settlement Scheme, 2014.

50. The contention of learned senior counsel for the petitioners that the provisions of the Digha Land Settlement Act of 2010, the Digha Land Settlement Scheme, 2014 and the Digha Land Settlement Rules, 2014 provide a right in favour of the settlees is accepted as correct, this Court is of the view that on conjoint reading of the provisions of the aforesaid Act of 2010, the Scheme of 2014 and the Rules of 2014, indisputably shows that the enactment, the Scheme and the Rules is right based relating to housing. It has independently recognized a right and defined the right of the unauthorized occupants, who are residing in the area of 400 acres on the western side of Ashiyana - Digha Road.

51. The contention of learned amicus curiae that right to adequate housing is enumerated in the Digha Land Settlement Scheme in favour of unauthorized occupants in the area of 400 acres on the western side of Ashiyana-Digha road is accepted as correct. A bare perusal of the provisions of the statutory enactment and the Scheme reflects that the right to adequate housing can be understood as a guarantee of certain freedoms and the entitlements in favour of unauthorized occupants residing in 400 acres of land situated on the western side of the Ahiyana-Digha road, such as to live in the earmarked portion by the Housing Board, free from arbitrary interference and arbitrary demolition of one's house. Adequate housing as provided under the Scheme to the unauthorized occupants is not merely a shelter in form of four walls and roof but also includes fundamental elements necessary for unauthorized occupants of the locality to live with peace and safety.

52. In the case of Millennium Educational Trust vs. State of Karnataka reported in I.L.R. 2013 Karnatka. 1452, the Karnataka High Court in paragraph no.12 has held as under:-

"12. In the case of Chameli Singh V. State of Uttar Pradesh reported in (1996) 2 SCC 549, it is observed thus:

"8. In any organised society, right to live as a human being is not ensured by meeting only the animal needs of man. It is secured only when he is assured of all facilities to develop himself and is freed from restrictions which inhibit his growth. All human rights are designed to achieve this object. Right to live guaranteed in any civilised society implies the right to food, water, decent environment, education, medical care and shelter. These are basic human rights known to any civilised society. All civil, political, social and cultural rights enshrined in the Universal Declaration of Human Rights and Convention or under the Constitution of India cannot be exercised without these basic human rights. Shelter for a human being, therefore, is not a mere protection of his life and limb. It is home where he has opportunities to grow physically, mentally, intellectually and spiritually. Right to shelter, therefore, includes adequate living space, safe and decent structure, clean and decent surroundings, sufficient light,

pure air and water, electricity, sanitation and other civic amenities like roads etc. so as to have easy access to his daily avocation. The right to shelter, therefore, does not mean a mere right to a roof over one's head but right to all the infrastructure necessary to enable them to live and develop as a human being. Right to shelter when used as an essential requisite to the right to live should be deemed to have been guaranteed as a fundamental right. As is enjoined in the Directive Principles, the State should be deemed to be under an obligation to secure it for its citizens, of course subject to its economic budgeting. In a democratic society as a member of the organised civic community one should have permanent shelter so as to physically, mentally and intellectually equip oneself to improve his excellence as a useful citizen as enjoined in the Fundamental Duties and to be a useful citizen and equal participant in democracy. The ultimate object of making a man equipped with a right to dignity of person and equality of status is to enable him to develop himself into a cultured being. Want of decent residence, therefore, frustrates the very object of the constitutional animation of right to equality, economic justice, fundamental right to residence, dignity of person and right to live itself. To bring the Dalits and Tribes into the mainstream of national life, providing these facilities and opportunities to them is the duty of the State as fundamental to their basic human and constitutional rights."

53. In the aforesaid judgment, it has been observed that shelter for a human being is not a mere protection of his life and limb. It is home where he has opportunities to grow physically, mentally, intellectually and spiritually. It has also been observed in the aforesaid judgment that right to shelter includes adequate living space, safe and decent structure, clean and decent surroundings, sufficient light, pure air and water, electricity, sanitation and other civic amenities like roads etc. so as to have easy access to his daily avocation and the right to shelter, therefore, does not mean a mere right to a roof over one's head but right to all the infrastructure necessary to enable them to live and develop as a human being.

54. In *Pearless Tea and Industries Limited vs. State of Tripura & Ors.* reported in MANU/TR/0147/2015, the Gauwahati High Court relied on a judgment of the Hon'ble Supreme Court in the case of *Tukuram Kana Joshi & Others vs. Maharashtra Industrial Development Corporation & Others* reported in (2013) 1 SCC 353, in which it has been held that the right to property is now considered to be not only a constitutional or a statutory right but, also a human right though it is not a basic feature of the Constitution or a fundamental right. Human rights are considered to be in realm of individual rights, such as the right to health, the right to livelihood, the right to shelter and employment etc. Now however, human rights are gaining an even greater multi-faceted dimension. The right to property is considered very much to be a part of such new dimension.

55. Thus, the Digha Land Settlement Scheme, 2014 was to be implemented and executed by the State authorities as they are considered as a part of the

statutory mandate under the enactment of 2010 Act and the State is under obligation to act.

56. From the materials on record, the picture that emerges is that the writ petitioners started living in the land situated at Nepali Nagar locality over a period of almost two decades. In one case, the writ petitioner is residing for over a period of almost three decades. If the State Government would have paid attention at the right time and in the right direction then the situation, as highlighted before this Court in the present litigation, could have been averted. There can be no denial to the fact that everyone has the right to adequate standard of living, health and well-being for himself as well as his family including fooding, clothing, housing, medical care and necessary services. The protection of life guaranteed by Article 21 of the Constitution of India encompasses within its ambit the right to shelter. The preamble of the Constitution of India ensures social and economic justice and equality of status to every citizen so as to fasten fraternity amongst all the sections of the society in the country. Right to shelter is an inseparable component of meaningful right to life. There need not be any debate on the question whether the right to residence and settlement is a fundamental right under Article 19(i)(e) of the Constitution of India and is inseparable meaningful right to life under Article 21 of the Constitution of India. The answer has to be in affirmative.

57. In the present cases, the State has undertaken as an obligation to provide permanent residence (flats) in the earmarked area of proposed township, which must be held to be a well thought strategy to settle unauthorized occupants. However, this Court is not at all impressed with the submission made on behalf of the State and the Housing Board that the writ petitioners are encroachers and they in no way can enforce the right to shelter for the purpose of protecting their unlawful possession. This Court in the preceding paragraphs has held that writ petitioners are not encroachers as they have a right to permanent residence being both; statutory as well as human right, which is to be enforced under the Constitution of India. Having realized this, the State Government has come up with the enactment of 2010 and framed the Scheme and the Rule for the allotment of permanent residence (flats) to the unauthorized occupants settled in the area of 400 acres on the western side of the Ashiyana-Digha Road.

58. It has been argued by learned amicus curiae that the statutory enactment of 2010 should be construed as ameliorative and beneficial statute. He also argued that the Scheme has been framed under the statutory enactment of 2010. The Scheme of 2014 should also be construed as beneficial. This Court is of the view that in order to resolve the conflict between the residents of Nepali Nagar locality and the State Government, the Digha Land Settlement Act was enacted in the year 2010. The scheme was framed to settle the residents of Nepali Nagar. The covenants in the scheme and the provisions of the statute have to be treated as beneficial statute and it cannot be subjected to a strict interpretation.

59. So far as the purpose of the scheme is concerned, it is clear that the State

Government intended to provide permanent residence (flats) in the earmarked area of proposed township to the unauthorized occupants of the area of 400 acres on the western side of Ashiyana - Digha road.

60. It is well settled law that whenever such a beneficial legislation has a scheme of its own, the Court cannot travel beyond the scheme of the legislation and extend the scope of the statute to anyone on the pretext of extending the statutory benefits to those who are not covered by the scheme of legislation. The judgments of the Hon'ble Supreme Court of India in *Regional Director, Employees State Insurance Corporation, Trichur vs. Ramanuja Match Industries* reported in (1985) 1 SCC 218, *Bombay Anand Bhavan Restaurant vs. The Deputy Director, ESI Corporation and Anr.* (2009) 9 SCC 61, *Edukanti Kistamma (Dead) through LRS. And Others vs. S. Ventareddy (Dead) Through LRS. & Others* reported in (2010) 1 SCC 756, *Revanasiddappa & Anr. vs. Mallikarjun & Ors.* reported in (2011) 11 SCC 1 and *Union of India & Others vs. Nitdip Textile Processor Private Limited & Private Limited & Another* reported in (2012) 1 SCC 226 supports the aforesaid legal proposition. What can be gathered from the aforesaid decisions is that the scheme of beneficial legislation has to be respected and cannot be allowed to be overridden by anyone far less than the State. A beneficial legislation must receive a liberal construction so far as it promotes its objects. The observations made by the Hon'ble Supreme Court of India (7 Judges Bench) in the case of *Pathuman & Others vs. State of Kerala & Others* reported in AIR 1978 SC 771 is quite apposite. The relevant portion of the aforesaid decision reads as under.

"...Courts interpret the constitutional provisions against the social setting of the country so as to show a complete consciousness and deep awareness of the growing requirements of the society, the increasing needs of the nation, the burning problems of the day and the complex issues facing the people which the legislature in its wisdom, through beneficial legislation, seeks to solve. The judicial approach should be dynamic rather than static, pragmatic and not pedantic and elastic rather than rigid..."

ISSUE OF VALIDITY OF THE CUT OFF DATE

61. The Housing Board in its second supplementary counter affidavit dated 25.07.2022 sworn by Sri Vijay Kumar, Superintending Engineer has asserted that the cut off date to receive ex gratia payment by the persons residing in the area of about 400 acres stands extended till 31.05.2018. The relevant paragraph nos. 7 and 8 of the second supplementary counter affidavit are quoted hereinbelow:-

"7. That though the Act was notified in the official gazette on 26th of April, 2010, in Section 1(2) of the Act it is provided that it shall come into force on such date as the Government may notify. The said Act was notified on 27th of November, 2013. After notification of the Act the Board with the approval of the State Government formulated a scheme providing for procedure and modalities to confer benefit enshrined under the Act in respect of both class of occupants i.e.

600 Acres and 400 Acres. After the publication of the scheme, the Board on 11th September, 2014 published in daily newspaper notifying the salient features of the scheme. The Board notified the procedure for calculating ex-gratia in respect of the claimants under 400 Acres category. The same was explained through the notice published in the newspaper on 11th September, 2014. The Secretary of Urban Development and Housing Department issued a notice published in the daily newspaper on 24.09.2014. The said notice was in reference to the notice published by the Board on 11/12.09.2014. In the said notice it was notified that all willing stake holders to make application in requisite form within 60 days from the publication of notice on 11/12.09.2014 and latest by 8th of November to apply in requisite form. Subsequently the cut-off date was extended from time to time and last extension was granted up till 30.03.2015/31.05.2018. The notice fixing 30.03.2015 at the cut-off date was published and circulated through newspaper on 26.03.2015.

8. That, however despite affording sufficient opportunity to stake holders, unauthorized occupants occupying piece of land, came to lodge their claim and the number of such claimants is very miniscule. Up till cut-off date 30.03.2015, 150 applicants submitted their claim in Form-B of the scheme. The Board however has facilitated benefit of the scheme and kept on extending the cut-off date and the same was extended up till 31.05.2018 through notice published in daily newspaper dated 28.04.2018. After extension 185 more applicants were received all in Form-B. It may be mentioned that so far Form-A is concerned in all 93 application were received.”

62. From reading of the aforesaid paragraphs of the second supplementary counter affidavit, it is clear that the cut off date was fixed as 31.05.2018 for getting the benefits under the Scheme. The cut off date has not been challenged by the writ petitioners and therefore, this Court is also bound by the cut off date fixed by the Housing Board. Moreover, the Hon’ble Supreme Court in a number of decisions, with regard to cut off date, has held that the fixation of the cut off date is within the domain of the Executives and normally the Court should not interfere with the same unless it appears that the same has been fixed arbitrarily and indiscriminately. For fixing the cut off date, the consideration for the executive authorities can be financial, administrative or there may be other considerations. The Court must exercise judicial restraint and ordinarily leave it to the wisdom of the executive authorities to fix the cut off date.

63. It has been held by the Hon’ble Supreme Court in the case of Divisional Manager, Aravali Golf Club & Another vs. Chander Hass & Another reported in (2008) 1 SCC 683 and in the case of Government of Andhra Pradesh & Others vs. P. Lakshmi Devi (Smt.) reported in (2008) 4 SCC 720 that the Court must maintain judicial restraint in matter of executive domain and therefore, this Court is of the view that once the executive has fixed the cut off date i.e. 31.05.2018 for grant of benefit to the eligible persons for providing alternative allotment by way of permanent residence (flats) to the residents of the locality within 400

acres of land situated in the western side of Ashiyana -Digha road, this Court should not interfere with the same.

64. The second supplementary counter affidavit does not address, however, the fate of all the writ petitioners who have been residing in the said area prior to 31.05.2018. Can the persons who are said to be residing in the area of 400 acres before the cut off date i.e. 31.05.2018 be denied the benefit of right of permanent residence as enjoined under the Digha Land Settlement Scheme, 2014? This Court is of the considered view that extending benefits to the writ petitioners for permanent residence (flats) in the earmarked area of proposed township is legally justifiable. The interpretation of the beneficial legislation and the clauses of the settlement scheme should be in consonance with social justice against the hair-splitting interpretation based on blind law and this Court holds that all the unauthorized occupants of the area residing under 400 acre of land of Nepali Nagar before the cut off date are also eligible to be considered for beneficial benefits of permanent residence (flats) i.e. if any person is an unauthorized occupant of that area and he has been residing as an unauthorized occupant before the cut off date i.e. 31.05.2018 he should also get the benefit of permanent residence (flats) as per Clause 3.2 of the Digha Land Settlement Scheme, 2014.

65. This is in view of the fact that it is the authorities who for the last 30 years have been allowing unauthorized occupancy in the said area of 400 acres of land and it was right under their nose that people have been constructing their houses and therefore, they are eligible to get permanent residence (flats) as per Clause 3.2 of the Digha Land Settlement Scheme of 2014.

ISSUE OF LEGITIMATE EXPECTATION

66. It has been argued by learned senior counsel for the writ petitioners that the State is bound to keep up with its promise flowing from the Scheme keeping in view of the legitimate expectation of the residents in the area of 400 acres situated on the western side of the Ashiyana-Digha Road.

67. Learned amicus curiae has also argued that failure to implement the scheme in the letter and spirit is serious violation of the statutory right of the petitioners guaranteed under the Settlement Scheme of 2014.

68. On the other hand, learned counsel for the State and the Housing Board have argued that plea of the petitioners for invocation of the doctrine of legitimate expectation is untenable since it cannot be claimed against the State.

69. The doctrine of legitimate expectation was first developed in England in English Law as a ground for judicial review in administrative law to protect a procedural or substantive interest when a public authority rescinds from a representation made to a person or a class of persons. It is based on the principles of natural justice and fairness and seeks to prevent authorities from abusing power. The Courts in the United Kingdom have recognized both;

procedural and substantive legitimate expectations. The procedural legitimate expectation rest on the presumption that a public authority will follow a certain procedure in advance when a decision being taken, while a substantive legitimate expectation arises where an authority makes a lawful representation that an individual will receive or continue to receive some kind of substantive benefits. The doctrine of legitimate expectations is one amongst several tools incorporated by the Court to review administrative action taken by the public authorities. This doctrine pertains to the relationship between individual and a public authority. According to this doctrine, the public authority can be made accountable in lieu of legitimate expectation.

70. So far as the present case is concerned, a sanction has been issued by the State Government to provide permanent residence (flats) in the earmarked area to the unauthorized occupants residing in the area of 400 acres on the western side of Ashiyana-Digha road. This sanction has entitled the writ petitioners with legitimate expectation and the matter of allotment of permanent residence (flats). The duty is to act fairly on the part of the public authorities entitles every writ petitioner to have legitimate expectation to be treated in a fair manner and it is imperative to give due importance to such an expectation in order to satisfy the requirement of non-arbitrariness in State action and therefore, there is violation of the principles of legitimate expectation.

ISSUE OF LEGALITY AND VALIDITY

OF THE SHOW-CAUSE NOTICE

DATED 25.04.2022 & THE ORDER

DATED 20.06.2022.

71. It has been submitted by learned counsel for the petitioners and learned amicus curiae that the show-cause notice is mere empty formality. In this case, the Government has not complied with the substantive due process standard.

72. The importance of a show-cause has been reiterated by the Hon'ble Supreme Court in the case of Uma Nath Pandey & Others vs. State of Uttar Pradesh & Another reported in (2009) 12 SCC 40, and it has been held that notice is the first limb of this principle. It must be precise and unambiguous. It should appraise the party determinatively the case he has to meet. Time given for the purpose should be adequate so as to enable him to make his representation. In the absence of a notice of the kind and such reasonable opportunity, the order passed becomes wholly vitiated. Thus, it is but essential that a party should be put on notice of the case before any adverse order is passed against him. Any encroachment on public land can be removed only in accordance with procedure prescribed under the Bihar Public Land Encroachment Act, 1956. The procedure for removal of the encroachment on public land has been prescribed in Sections 3 to 6 of the Bihar Public Land Encroachment Act, 1956, which read as under:-

"3. Initiation of the proceedings:-

1(1) If it appears to the Collector from an application made by any person or upon information received from any sources that any person has made or is responsible for the continuance of any encroachment upon any public land, the Collector may cause to be served upon such person a notice in the prescribed form requiring him to appear on a date which shall not be less than two weeks from the date of service of notice to show cause:--

(a) Why he should not be restrained from making such encroachment by issue of injunctions; or

(b) Why such encroachment should not be removed.

(2) Under clause (a) of sub-section (1) the Collector shall have power to issue temporary injunction at any stage to restrain such encroachment till the disposal of the proceeding or till further orders or he may pass such orders as he deems proper for preventing such encroachment:

Provided that where the encroachment on public land is in the nature of exposure of articles for sale, or opening temporary booth for vending, the Collector may without the formality of issuing a notice as required under sub-section (1) order for its immediate removal or cause it to be removed immediately and for the purpose he may use such force as is necessary in the case:

Provided further that where the encroachment on public land is of such a nature as the Collector considers its immediate removal essential for the safety of general public or for the safety of any other structure on the public land and the notice cannot be served without unnecessary delay upon the person responsible for the encroachment or his representative owing to his absence or for any other reason, he may order the removal of encroachment or if necessary cause it to be removed immediately and may use such force for the purpose as is necessary.

(3) If the person who has made or is responsible for the continuance of the encroachment is not known or cannot be found, the Collector may cause notice to be affixed in the neighbourhood of the alleged encroachment requiring any person interested in the same to show cause by the date specified in the notice why the encroachment should not be removed and it shall not be necessary to name any person in such notice.

1. Substituted by Act 3 of 1982.

4. Defence :-

Any person on whom notice is served under Section 3 or any person interested in the encroachment may appear before the Collector and raise any defence which he could have raised if he was a defendant in a properly framed suit for the removal of the encroachment.

5. Hearing:-

On the date specified in the notice served under section 3, the matter shall be heard, unless the hearing is adjourned by the Collector to a future day, and the Collector shall hear the applicant if any, the person on whom the notice has been served and any other person who may be interested either in the encroachment or in the removal thereof and take such other evidence as may be adduced in that behalf:

Provided that, if the person on whom notice has been served under section 3 or any other person interested in the encroachment, fails to appear and show cause on the date specified in the notice, or any other date to which the hearing may be adjourned, the matter shall be heard, ex-parte.

6. Final order of the Collector:-

1[(1) In all cases not covered by the provisos to sub-section (2) of section 3, the Collector shall after hearing the persons concerned and taking evidence, if any under section 5 and after making such enquiry as he deems necessary the Collector may, as the circumstances of the case requires--

(a) either drop the proceeding, or

(b) make the temporary injunction issued under sub-clause (a) of subsection (1) of section 3 absolute against the person making encroachment of the public land, or

(c) if any person who together with his homestead does not own more than 5 acres of land, has encroachment up to 10 dec. of public land continuous to his agricultural holding and has used the encroached public land for agricultural purposes. The Collector shall order the settlement of such public land with such person on payment of rent and damages for the use of this land. The amount of damages and rent shall be calculated by considering the rent payable in case of similar land in the neighbourhood. Where no rent is payable the rent and damages for the encroached public land shall be calculated on the basis of such fair rent as the Collector may deem proper, or

(d) where the temporary encroachment on public land has been removed by the person making encroachment after some time the Collector shall order payment of damages for the use of the land during the period of encroachment. The amount of damages shall be calculated according to the prescribed procedure, or

(e) in the cases not covered by the foregoing sub-clauses, the Collector shall direct the person making encroachment of the public land to remove the encroachment within specified period which shall not in any case be more than two weeks in case the encroachment is not removed within the specified time the crops standing or all types of structures existing on the encroached land shall be forfeited by the Collector;

Provided if any landless person encroached up to 12 1/2 dec. of public land before the 10th October 1955, no action shall be taken against him under this

Act.

Explanation.-- In this proviso landless person means a person whose source of livelihood is agricultural or agricultural labour and who either does not possess any land or does not possess more than one acre of land.

2["(2) If any person does not comply with the orders passed by the Collector under this section, he shall be punishable with imprisonment for a term, which may extend to one year or with fine up to Rs. 20,000/- (twenty thousand) or with both."

(3) Notwithstanding anything contained in the Code of Criminal Procedure, 1973, the offence under this section shall be cognizable.

1. Substituted by Act 3 of 1982.

2. Substituted by Act 17 of 2012.

6A. Power of the State Government to compound the proceeding under the Act :-

The State Government or any officer specially authorised by the State Government in this behalf not below the rank of an Additional Collector, may compound the offences arising out of any proceeding under the Act on such terms and conditions as the State Government may determine."

73. Section-3 of the aforesaid act gives power to the Collector to give notice to a person who has encroached on a public land. Section 4 of the aforesaid Act provides that any person on whom notice has been served under Section 3 or any person interested in the encroachment may appear before the Collector and take any defence which he could have taken if he was a defendant in a properly framed suit for the removal of the encroachment. Section-5 of the aforesaid act makes a provision of hearing and the Collector is duty bound to take evidence adduced by the parties in course of the proceeding and to hear the parties before passing the final order. Section-6 of the aforesaid act provides the manner in which the Collector can pass final order in a proceeding initiated under Section 3 of the Act.

74. A bare perusal of the aforesaid provisions shows that a detailed procedure for removal of encroachment has been prescribed in the said Act. In the present case, a general notice for removal of encroachment was issued. Moreover, the general notice has not been issued in proper format as given in the aforesaid Act. It is also important to note that in almost all the relevant provisions of the Bihar Public Land Encroachment Act, the word "Service of Notice" has been used and therefore, issuance of notice in the aforesaid Act is not sufficient rather, the service of aforesaid notice is essential before proceeding in the matter and passing final order under the aforesaid Act.

75. Admittedly, in the present case, neither any individual notice was issued or served nor the public notice was pasted on the wall accompanying with the signature of two witnesses as prescribed in the aforesaid Act. Further, the

opportunity of hearing was not given to the affected persons. In the case of Chandra Kishore Jha v. Mahavir Prasad and Others 1999 (8) SCC 266 a three Judges Bench of Hon'ble Supreme Court has held that it is a well-settled salutary principle that if a statute provides for a thing to be done in a particular manner, then it has to be done in that manner and in no other manner.

76. In Chief Information Commissioner & Anr. vs. State of Manipur & Anr. reported in (2011) 15 SCC 1 it has been held that it is well known when a procedure is laid down statutorily and there is no challenge to the said statutory procedure, the Court should not, in the name of interpretation, lay down a procedure which is contrary to the express statutory provision. This principle has been followed by the Judicial Committee of the Privy Council in Nazir Ahmad v. King Emperor reported in AIR 1936 Privy Council 253(2), in the case of Deep Chand v. State of Rajasthan reported in AIR 1961 SC 1527 and also in the case of State of Uttar Pradesh v. Singhara Singh & Others reported in AIR 1964 SC 358.

77. In the case of State through P.S. Lodhi Colony, New Delhi vs. Sanjeev Nanda reported in (2012) 8 SCC 450, the Hon'ble Supreme Court has held that it is a settled principle of law that if something is required to be done in a particular manner, then that has to be done only in that way or not, at all. In the case of Nazir Ahmad Vs. King Emperor (supra) it has been held that the rule which applies is a different and not less well recognized rule, namely, that where a power is given to do a certain thing in a certain way, the thing must be done in that way or not at all.

78. In J. Jayalalithaa & Ors. vs. State of Karnataka & Ors. reported in (2014) 2 SCC 401 the Hon'ble Supreme Court has held that there is an un-controverted legal principle that when the statute provides for a particular procedure, the authority has to follow the same and cannot be permitted to act in contravention of the same. In other words, where a statute requires to do a certain thing in a certain way, the thing must be done in that way and not contrary to it at all. Other methods or mode of performance are impliedly and necessarily forbidden. The aforesaid settled legal proposition is based on a legal maxim "Expressio unius est exclusio alterius", meaning thereby, that if a statute provides for a thing to be done in a particular way, then it has to be done in that manner and in no other manner and following any other course is not permissible.

79. In the case of Biecco Lawrie Ltd. & Anr. vs. State of West Bengal & Anr. reported in (2009) 10 SCC 32 the Hon'ble Supreme Court has held that one of the essential ingredients of fair hearing is that a person should be served with a proper notice i.e. a person has a right to notice. Notice should be clear and precise so as to give the other party adequate information of the case he has to meet and make an effective defence. Denial of notice and opportunity to respond result in making the administrative decision vitiated. The adequacy of notice is a relative term and must be decided with reference to each case. But generally a notice to be adequate must contain the following: (a) time, place and nature of

hearing; (b) legal authority under which hearing is to be held; (c) statement of specific charges which a person has to meet.

80. In the present case, there is violation of principle of natural justice. Therefore, the contention of learned senior counsel for the petitioners and learned amicus curiae merits acceptance as there is failure to comply with the procedure prescribed under the Bihar Public Land Encroachment Act, 1956 and it leads to specific consequence of eviction. The State Government was in hurry and has not given any chance to the petitioners to prefer appeals against the order dated 20.06.2022 passed by the Circle Officer in Encroachment Case No. 70 of 2021-22. The provision of appeal is not mere a formality under the Act and the authorities cannot be allowed to act in such a hurried manner like a private litigant and in such a manner so that petitioners do not have any right of appeal. It is an admitted fact that to deny the right of appeal, the demolition was carried on 02.07.2022 and 03.07.2022 i.e. on Saturday and Sunday.

81. In view of the above facts, the notice dated 25.04.2022 and the order dated 20.06.2022 passed in Encroachment Case No. 70 of 2021-22 are hereby quashed and set aside as the entire proceeding has been conducted without following the procedure as provided under the Act and the State should not have acted upon the orders passed under the said proceeding. Moreover, the Bihar Public Land Encroachment Act, 1956 provides for appeal against the order the Circle Officer.

ISSUE OF DEMOLITION.

82. The exercise of demolition was carried by the authorities of the State on 02.07.2022 and 03.07.2022 without considering all the options with the State Government to provide permanent residence (flats) in the earmarked area of proposed township to be constructed by the Board, is unreasonable, unjust and unfair. It is in violation of the due process of the law. It has been brought to the notice of this Court that the Patna District Administration and police personnel reached the venue with bulldozers and poclain machines/ vehicle to demolish the alleged illegal structures on the second day of anti-encroachment drive. It has been stated at Bar that 95 constructed structures had been demolished on 02.07.2022 and 03.07.2022 and an area of about 50 acres has been taken over by the district administration. Further, when the final order was passed ordering for demolition of houses under the Bihar Public Land Encroachment Act, 1956, the petitioners ought to have given some time for vacating the lands in question and/or for making alternative arrangement. The demolition exercise of the State authorities on the basis of an illegal order passed in a proceeding in which the provisions of law including the service of notice etc. was not at all followed, was illegal. The punitive bulldozer demolition was blatantly illegal, unconstitutional and unauthorized and cannot be permitted in a State governed by the rule of law.

83. From the above discussions and the facts of the case, the picture which emerges is that for the last 30 years when the Housing Board has been in possession of the area of 400 acres in Nepali Nagar, illegal constructions have

been allowed to be made. This has happened right under the nose of the State including the Bihar State Housing Board and the Rajeev Nagar Police Station. The State has chosen to demolish the so-called illegal constructions of unauthorized occupants but the State has been silent as to the action taken against its own officials who were there to safeguard the interest of the State. Not even a whisper has been made in the counter affidavit filed on behalf of the State and the Housing Board as to what action has been taken against the officials of the Housing Board and the Police officials of Rajeev Nagar Police Station for allowing the residents to make construction over the said land. This inaction on the part of the State Government against its own officials and police personnel emboldens them not to obey the law for extraneous reasons. It is for the State Government to take a decision as to what action should be taken against its own officials i.e. civil and police officials including the officials of the Bihar State Housing Board responsible for their dereliction of duties.

DIRECTIONS

84. In view of the aforesaid facts, this Court directs the Chief Secretary, Government of Bihar, to enquire into the matter and find out the name(s) of the delinquent officials including the police officials, who have not performed their duties and have been involved in the dereliction of their official duties and after finding out the name(s), he will recommend as to the suitable action to be taken against them in accordance with law.

84.1. This exercise must be completed by the Chief Secretary, Government of Bihar, within six months from today and a report be filed in this Court about the action taken against such erring officials.

84.2. So far as the compensation claimed by the affected persons, whose houses have been demolished by the State authorities on the basis of an illegal proceeding in the most arbitrary manner is concerned, this Court is of the view that all the petitioners whose houses have been demolished without considering their cases individually are entitled to interim compensation of Rs.5,00,000/- (Rupees Five Lakhs) each. The writ petitioners/occupants can file their claim for damages in an appropriate forum/authority/court. If such claims are filed before such an authority, the same must be decided by the concerned authority/Court within a reasonable period preferably within one year of its filing after proceeding with the hearing of the case on day-to-day basis and after hearing all the parties. If the writ petitioners/occupants are found to be entitled for more compensation than what has been awarded as an interim compensation by this Court, the same shall be disbursed to them after deducting the interim compensation from the final compensation amount.

84.3. The petitioners whose houses have been demolished cannot be evicted from the land on which they have constructed their houses unless and until they are provided permanent residence (flats) as envisaged under Clause 3.2 of the Digha Land Settlement Scheme, 2014 as well as the final compensation as

directed in preceding paragraph.

84.4. It is also directed that if the State wants to decide the fate of the writ petitioners then they have to be heard individually in accordance with law under the Bihar Public Land Encroachment Act, 1956. Further, if the State wants to evict the residents of Nepali Nagar then the State is bound to follow the Digha Land Settlement Act, 2010, Digha Land Settlement Scheme, 2014 and the Digha Land Settlement Rules, 2014.

84.5. It has been reported that those who have applied for ex gratia amount under the Digha Land Settlement Scheme, 2014 are being kept in limbo by the Housing Board and no decision has been taken by the Housing Board. If that be so, the Housing Board is directed to take a decision on all pending applications filed under the Digha Land Settlement Scheme, 2014 for ex gratia amount within one month from today.

85. With the aforesaid observations and directions, these writ petitions stand allowed.

86. Before parting, I must place on record my appreciation for the valuable assistance rendered by Sri Santosh Kumar and Sri Viswas Vijeta, as amicus curiae.