

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.2571 of 1999

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1.Md.Ismail Ansari son of Late Dr. Albdullah.
2.Md. Isahaque son of Late Sujat Ali.
3.Mauli Devi wife of Doman Prasad, d/o Late Rupali Sah.
All residents of village and P.O. Dagarwa, P.S Sadar district Purnea.

.... Petitioner/s

Versus

1. The State of Bihar.
2. District Magistrate, Purnea
3.
4. Addl. District Magistrate, Purnea.
5. Circle Officer, Amorah and also Dagarwa District Purnea.

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. S.Ashfaque Ahmad, Adv.

For the Respondent/s : Mr. (SC9)

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CORAM: HONOURABLE MR. JUSTICE SHIVAJI PANDEY

ORAL JUDGMENT

Date: 09-03-2015

Heard learned counsel for the petitioner and the State.

In this case, petitioners have sought a relief for prohibiting the respondents from going over the house and shop of petitioners situated on plot Nos. 713, 714 and 715 without following the procedure of law.

As per claim of petitioners, plot no. 713 belongs to Late Rupali Sah and his name is entered into Khatiyani since 1954 and at present the said land is in possession of Mauli Devi, petitioner no.3. Md. Isahaque, petitioner no.2 has claimed in lot No. 714 and his name has been entered in the Khatiyani over which the house and shop has been constructed and plot no. 715 is standing in the name of Dr. Abdullah, having Kirana and cycle repairing shops. It has been claimed that the respondents without initiating a proper proceeding started demolishing the structure, as aforesaid. It has been claimed that they are the owners of the aforesaid land and the structure over the said plots cannot be

demolished without initiating proper proceeding so much so that they have not encroached upon the public land and, as such action of demolishing the structure is completely illegal.

A counter affidavit has been filed by the State in which in Para-6 onwards it has been claimed that the aforesaid land has been recorded as Gairmazarua Bihar Sarkar Khas in the Khatian and in the remarks column, petitioners have been shown as Kabjedar.

In view of the statement made in the counter affidavit, the State authorities without initiating a proper proceeding and without giving reasonable opportunity of hearing cannot demolish the structure and, as such, if the authorities finds that they have encroached upon the public land, before going for demolition they must initiate a proceeding after giving proper notice and hearing only then they can pass appropriate order in accordance with law.

Accordingly, this petition is allowed.

(Shivaji Pandey, J)

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