

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.4581 of 2015

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1. Kishun Sah.
 2. Bishun Sah.

Both are sons of Baran Sah and are residents of village - Brindawan Tola, Parsauni, P.S. Kalyanpur, District - East Champaran.

.... Petitioner/s

Versus

1. The State of Bihar.
2. The District Magistrate, East Champaran at Motihari.
3. The Sub-Divisional Magistrate, Chakiya, District - East Champaran at Motihari.
4. The Circle Officer, Block Kalyanpur, District - East Champaran at Motihari.
5. Awadhesh Rai, son of Punit Rai, resident of village - Brindawan Tola, Parsauni, P.S. Kalyanpur, District - East Champaran.

.... Respondent/s

with

Civil Writ Jurisdiction Case No.19339 of 2014

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Awadesh Rai, son of Punit Rai, resident of Village-Brindawan Tola, Persouni, P.S.-Kalyanpur, District-East Champaran.

.... Petitioner/s

Versus

1. The State of Bihar through the Collector, East Champaran.
2. The Sub Divisional Magistrate, Chakiya, East Champaran.
3. The Circle Officer, Kalyanpur, East Champaran.
4. The Officer-in-Charge, Chakiya Police Station, East Champaran.
5. Tha Anchal Amin, Kalyanpur, East Champaran.
6. Kishun Sah, son of Barun Sah.
7. Bishun Sah, son of Barun Sah.

Both are residents of Brindawan Tola, Parsouni, P.S.-Kalyanpur, District-East Champaran.

.... Respondent/s

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Appearance :

(In CWJC No.4581 of 2015)

For the Petitioner/s : Mr. Shashi Bhushan Pandey
For the Respondent/s : Mr. Rewati Kant Raman, AC to GP-31

(In CWJC No.19339 of 2014)

For the Petitioner/s : Mr. Dilip Kumar Tondon
For the Respondent/s : Dr. Raj Kumar Singh, AC to SC-8

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CORAM: HONOURABLE MR. JUSTICE JYOTI SARAN
ORAL ORDER

8 07-07-2015

Heard the parties.



Whereas the writ petitioners in CWJC No.4581 of 2015 has questioned the notice dated 4.9.2014 issued by the Circle Officer, Kalyanpur in the district of East Champaran purportedly issued under the provisions of the Bihar Public Land Encroachment Act, 1956 (hereinafter referred to as 'the Act') and 'the Rules' framed thereunder charging the petitioner with encroachment over a plot bearing Khesra no.4428 situated in Village- Brindawan, Tola- Parsauni, Block- Kalyanpur in the district of East Champaran which, according to the respondents, is a *Gairmazarua Aam* land in the nature of a public road, on the other hand the writ petitioner in CWJC No.19339 of 2014 is the author behind the initiation of the proceedings.

Since the two matters are inter related hence they have been heard together and are being disposed of with the consent of the parties at the stage of admission itself by a common judgment.

The facts of the case briefly stated is that a proceeding under section 133 of the Code of Criminal Procedure had been initiated against the petitioners of CWJC No.4581 of 2015 at the instance of writ petitioner Awadhesh Rai and which was allowed requiring the two writ petitioners in CWJC No.4581 of 2015 to remove the encroachment. The order was



questioned by the two writ petitioners in the revision which was allowed and the matter was remitted to the Sub-Divisional Magistrate, Chakiya for disposal afresh. It is agreed by the parties contesting that the matter is yet pending.

The writ petitioner Awadhesh Rai also filed a writ petition bearing CWJC No.11255 of 2007 with a prayer to direct the respondents for removal of encroachment and which was not accepted in view of the pending proceedings and the writ petition was disposed of. The writ petitioner Awadhesh Rai thereafter filed an application under section 3 of 'the Act' before the Collector, East Champaran charging the writ petitioners in CWJC No.4581 of 2015 of encroachment on a public land and which was registered as Miscellaneous Case No.84 of 2012. A show cause was filed on behalf of the two writ petitioners in CWJC No.4581 of 2015 in the said proceedings and the Collector vide order passed on 13.12.2012 (Annexure-C to the counter affidavit) transferred the matter for consideration and disposal before the Circle Officer, Kalyanpur and pursuant where to Encroachment Case No.01 of 2012-13 was registered and notice was issued. A copy of the proceedings in the encroachment case so initiated is present at Annexure-E which reflects that by order dated 8.4.2013 notice was issued to the two



writ petitioners in CWJC No.4581 of 2015 to show cause as to why the encroachment be not removed. The order dated 15.9.2014/17.9.2014 further reflects that the notice was validly served on the two writ petitioners but they did not respond to the same and since the encroachment case was not being contested that by the said order directions were issued by the Circle Officer discharging duties of a Collector under 'the Act' for removal of encroachment. The order was passed on 15.9.2014/17.9.2014 and much prior thereto that the notice impugned in the writ petition as Annexure-1 was issued on 4.9.2014 and thus the writ petitioners had full knowledge of the proceedings but they never chose to participate in the same.

The two writ petitioners in CWJC No.4581 of 2015 thus cannot raise the issue of denial of opportunity for the laches are on their part in not participating in the encroachment proceeding.

In the circumstances, this Court is not persuaded to interfere with the impugned notice dated 4.9.2014 which has lost its force upon passing of the final order in Encroachment Case No.01 of 2012-13 by the Circle Officer, Kalyanpur on 15.9.2014/17.9.2014 as is manifest from Annexure-E and the two writ petitioners, if so advised, may question the said order

before the appellate authority under the provisions of ‘the Act’ and also make a prayer for interim relief in the appeal so to be filed.

Since the second writ petition i.e. CWJC No.19339 of 2014 was filed for enforcing the encroachment proceeding, in view of the final order passed in the encroachment proceedings, the grievance so raised stand redressed.

The two writ petitions are accordingly disposed of.

(Jyoti Saran, J)

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