

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.21746 of 2011

- =====
1. Bhola Rai, son of Late Late Pujan Rai.
 2. Bipin Bihari Sharma @ Bipin Bihari Rai, son of Late Beleshwar Rai.
 3. Rama Shankar Rai, son of Late Jageshwar Rai.
 4. Daya Shankar Rai, son of Kashi Rai.
 5. Harendar Rai, son of Late Kashi Rai.
 6. Tarkeshwar Pandey @ Tarkeshwari Rai, son of Late Kashi Rai.
 7. Ram Nevas Rai, son of Late Jagarnath Rai.
 8. Shivji Rai, son of Late Ramashar Rai.
 9. Arbinda Rai, son of Late Rajendra Rai.
 10. Sudama Rai, son of Late Bal Dev Rai.
 11. Sanjay Rai, son of Brahmdeo Rai.
 12. Surendra Rai, son of Brahmdeo Rai.
 13. Ram Dev Rai, son of Late Sarwan Rai.
 14. Birendra Rai, son of Brahmdeo Rao.

All are residents of village- Simri, P.O.-Simri Dudhipatti, P.S.-
Simri, District-Buxar.

.... Petitioner/s

Versus

1. The State of Bihar through Collector, Buxar.
2. District Magistrate -cum- Collector, Buxar.
3. Chairman, Zila Parishad, Buxar.
4. Land Reforms Deputy Collector, Dumaraon, District-Buxar.
5. Anchal Adhikari, Simri, District-Buxar.

.... Respondent/s

=====

Appearance :

For the Petitioner/s : Mr. Satyendra Kumar Sinha

For the Respondent/s : Mr. Shashank Praveer, AC to SC-27

=====

CORAM: HONOURABLE MR. JUSTICE JYOTI SARAN
ORAL ORDER

4 04-08-2015 Heard Mr. Satyendra Kumar Sinha, learned counsel

 appearing on behalf of the petitioners and Mr. Shashank Praveer,

 learned Assisting Counsel to Standing Counsel No.27 for the

 State.

The petitioners herein have questioned a proceeding

initiated under the provisions of the Bihar Public Land

Encroachment Act, 1956 (hereinafter referred to as ‘the Act’)



bearing Land Encroachment Case No.01 of 2011 initiated for removal of alleged encroachment from the land bearing plot nos.5632, 5633, 5740 and 5760 which, according to the respondents, is the public land recorded in the name of the Zila Parishad. The petitioners have questioned the notice issued by the Circle Officer, Simari impugned at Annexure-1 to the writ petition, whereby the petitioners have been directed to respond to the charge of encroachment failing which orders would be passed.

It is apparent from the notice that it is at the very initiation of the proceedings charging the petitioners with encroachment that they moved this Court and the matter has remained pending since last four years.

Mr. Sinha, learned counsel appearing on behalf of the petitioners has submitted that even in the encroachment case nothing has progressed. He further submits that the petitioners have also filed title suit for declaration of the title over the land and which is pending but while making such submission Mr. Sinha fairly submits that although show cause reply has been filed by the petitioners in the proceedings but no final order has yet been passed. Mr. Sinha with reference to the Khatiyani enclosed with the writ petition has submitted that whereas the



lands in question were recorded in the name of the petitioners and are raiyati land of the petitioners but on a misconception as to the nature of land and without even referring to the khata number of the plots in question that the petitioners are being charged of encroachment.

Be that as it may, the fact remains that the encroachment proceeding is yet pending adjudication before the Circle Officer, Simari. Section 5 of 'the Act' mandates the Collector under 'the Act' to give an opportunity of hearing to the alleged encroachers and also afford them opportunity to lead their evidence in support of their contention. It is only after a fair opportunity being given to the alleged encroachers of defending their case that a final order is to be passed under section 6 of 'the Act'.

Since it is admitted by Mr. Sinha that the proceeding remains pending before the Circle Officer at the pre hearing stage and has not yet been disposed of although show cause reply has been filed on behalf of the petitioners, the writ petition is disposed of with a direction to the Circle Officer, Simari to dispose of the encroachment case after opportunity of hearing to the petitioners and also after affording them opportunity to lead such evidence as they may chose to support their contentions.

Until such time that the encroachment case is finally disposed of, let status quo as existing today prevail as to the matter in dispute.

The writ petition is disposed of accordingly.

(Jyoti Saran, J)

SKPathak/-

U			
---	--	--	--