

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.19615 of 2011

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1. Umesh Choudhary S/O Sri Jagarnath Choudhary R/O Mohalla- Sultan Pokhar, Ward No.4, P.S.- Forbishganj, District- Araria
 2. Om Prakash Sah S/O Sri Prashuram Sah R/O Mohalla- Sultan Pokhar, Ward No.4, P.S.- Forbishganj, District- Araria
 3. Kumar Kumod Ranjan S/O Sri Ganganand Pandey R/O Mohalla- Tirashkund, P.S.-Forbisganj, District- Araria
 4. Pramod Narayan Thakur S/O Late Parmanand Thakur R/O Village & P.O.- Dolbazza, P.S.- Forbisganj, District- Araria

.... Petitioner/s

Versus

1. The State Of Bihar Through Secretary Department Of Agriculture, Bihar, Patna
2. The Agriculture Production Commissioner, Department, Of Agriculture, New Secretariat, Patna
3. The District Magistrate, Araria
4. The Sub-Divisional Officer-Cum-Special Officer Agricultural Production And Marketing Committee (B), Forbisganj, District- Araria
5. The Secretary Agriculture Production And Marketing Committee, Forbisganj, Araria

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Durga Nand Jha

For the Respondent/s : Mr. Yogendra Pd. Sinha Aag15

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CORAM: HONOURABLE MR. JUSTICE KISHORE KUMAR
MANDAL
ORAL ORDER

8 30-11-2015

Heard Mr. Jha learned counsel for the petitioners

and A.C. to A.A.G-15.

Counter affidavit has been filed. Petitioners
filed rejoinder thereto.

This application seeks to challenge the notice
dated 25.10.2011 (Annexure-1) issued by the S.D.O. cum Special
Officer (respondent no.4) directing them to vacate the cover

platform within the marketing yard. Mr. Jha states that although notice has been issued but the respondents have not till date removed them from the covered platform located within the premises of the marketing area.

The respondents in the counter affidavit have stated asunder in paragraph 4.

“ That with respect to the facts mentioned in paragraph 1 clause 1 to v of the writ petition. It is humbly submitted that the letter no. 57 dated 25.10.2011 of S.D.O. cum Special Officer Agricultural Production Marketing Committee (B) Farhbisganj has been issued in accordance with the provision of law as laid down in Bihar Public Land Encroachment Act 1956 and also in compliance of the direction of Secretary (Agriculture Dept) Govt. of Bihar vide letter no. 983 dated 11.02.2011 and letter no. 334/c dated 24.02.2011 of the D.M. Araria, regarding immediate removal of encroachments from Agricultural Produce Marketing Area and also to hand over the covered platforms to the allotted persons.

It is important to mention here that prior to the notice dated 25.10.2011 an earlier notices vide letter no. 11 dated 26.03.2011 have been served upon the petitioners Umesh Choudhary and others giving them 15 days time to remove the



encroachments and on 13.04.2011 and 15.4.2011 they were informed through loud speaker as such till 18.4.2011 about $\frac{3}{4}$ encroachments have been removed suo-motu and on 19.4.2011 rest of the encroachments have been removed in presence of Magistrate as per provision of law and accordingly the land of agricultural produce marketing committee has been measured and demarcated which is admitted by the petitioner Umesh Choudhary in his representation to the D.M. dated 29.10.2011 in para 4 but it is very serious matter that the petitioner Umesh Choudhary again encroached the covered platform of agricultural produce marketing yard forcibly without having any paper of allotment for which several reminders have been given to him to remove encroachment and letter no. 57 dated 25.10.2011 been served to the petitioner Umesh Choudhary in the regard which requires to be upheld petitioner had not applied or submitted their application forms till the due dated 03.10.2011 and the covered platforms have already been allotted to the order licensee who had applied within time.

It is also important to mention here that letter no. 57 dated 25.10.2011 has been given only to the petitioner Umesh Choudhary who never been allotted any covered platforms rather he illegally encroached the same hence he does not deserve any

relief”.

It has been submitted on behalf of the State that the petitioners forcibly occupied the platform. At no point of time the covered platform was allotted to the petitioners. Paragraph 12 of the counter affidavit states that after due notice in the proceeding the encroachers were removed from the marketing premises/yard. The petitioners have filed reply thereto. It has been stated that the petitioners continued on the covered platform within the marketing yard. This is on the basis of the payment made to and received by the appropriate authority of the marketing committee which is, in fact a licence to possess the covered platform.

Having appreciated the contention of the parties what appears to this court is that according to the respondents the petitioners have been found to be the encroachers and removed from the marketing yard. The petitioners asserted that they have continued in possession of the platform allotted to them. If the case of the petitioners is non removal from the marketing yard, this court is not required to go further into this matter. If any action is taken for removal and a fresh order is passed against the petitioners by the respondents the same can be challenged by them before the appropriate forum in accordance with law. The writ

application on the own showing of the petitioners is pre mature
and is accordingly disposed of.

(Kishore Kumar Mandal, J)

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