

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.13499 of 2012

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1. Most. Indu Devi wife of late Baleshwar Singh Resident of village - Ramji Chak, P.O.- Bataganj, P.S. - Digha, Distt - Patna
 2. Sanjay Kumar Singh
 3. Dhananjay Singh
 4. Mritunjai Kumar Singh All sons of Late Baleshwar Singh, Resident of village - Ramji Chak, P.O.- Bataganj, P.S. - Digha, Distt - Patna

.... Petitioner/s

Versus

1. The State of Bihar
2. The Principal Secretary, Water Resources Department, Old Secretariat, Govt. of Bihar, Patna
3. The Chief Engineer, Water Resources Department, Sone Bhawan, Anisabad, Patna
4. The Superintending Engineer, Water Resources Department, Mithapur, Patna
5. The Executive Engineer, Water Resources Department, Sone Canal Division, Khagaul, Danapur, Patna
6. The Sub Divisional Officer, Sone Canal, Sub-Division, Naubatpur, Patna
7. The District Magistrate, Patna
8. The Circle Officer, Patna Sadar, Patna
9. Bihar Police Building Construction Corporation, Patna

.... Respondent/s

With

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Civil Writ Jurisdiction Case No. 759 of 2014

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1. Arun Kumar Singh Son of Late Surendra Singh Resident of Mohalla- Digha, P.S.- Digha, Distt.- Patna

.... Petitioner/s

Versus

1. The State of Bihar
2. The Principal Secretary, Water Resources Department, Old Secretariat, Govt. Of Bihar, Patna
3. The Chief Engineer, Water Resources Department, Sone Bhawan, Anisabad, Patna
4. The Superintending Engineer, Water Resources Department, Mithapur, Patna
5. The Executive Engineer, Water Resources Department, Sone Canal Division, Khagaul, Danapur, Patna
6. The Sub-Divisional Officer, Sone Canal, Sub-Division, Naubatpur, Patna
7. The District Magistrate, Patna
8. The Circle Officer, Patna Sadar, Patna
9. Bihar Police Building Construction Corporation, Patna

.... Respondent/s

With

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Civil Writ Jurisdiction Case No. 23095 of 2013

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1. Bishun Chaudhary S/O Late Deo Narayan Chaudhary Resident of Village-

Jamakhani Bigha,, P.O- Digha, P.S- Digha, Distt- Patna.

.... Petitioner/s

Versus

1. The State of Bihar
2. The Principal Secretary, Water Resources Department, Old Secretariat, Govt. of Bihar, Patna.
3. The Chief Engineer, Water Resources, Department, Sone Bhawan, Anisabad, Patna.
4. The Superintending Engineer, Water Resources Department Mithapur Patna.
5. The Executive Engineer, Water Resources Department, Sone Canal Division, Khagaul, Danapur, Patna.
6. The Sub- Divisional Officer, Sone Canal, Sub- Division, Naubatpur, Patna.
7. The District Magistrate, Patna.
8. The Circle Officer, Patna, Sadar, Patna.
9. Bihar Police Building Construction Corporation, Patna

.... Respondent/s

Appearance :

(In CWJC No. 13499 of 2012)

For the Petitioner/s : Mr. Dhananjai Kumar Singh, Adv.

For the Respondent/s : Mr. Namrta Mishra, GP-17

(In CWJC No. 759 of 2014)

For the Petitioner/s : Mr. Dhananjai Kumar Singh, Adv.

For the Respondent/s : Mr. Pandey Sanjay Sahay, Adv.

(In CWJC No. 23095 of 2013)

For the Petitioner/s : Mr. Dhananjai Kumar Singh, Adv.

For the Respondent/s : Mr. Dinbandhu Singh, Adv.

CORAM: HONOURABLE MR. JUSTICE JYOTI SARAN

ORAL JUDGMENT

Date: 04-08-2015

Heard learned counsel for the parties.

The petitioners in these three writ petitions are aggrieved by a notice dated 9.11.2011 issued by the Sub Divisional Officer, Sone Canal Sub Division, Naubatpur in the District of Patna whereby they have been directed to vacate the land occupied by them bearing Plot No. 1705 (new) 1764(old) at Digha, Thana No. 1 in the town and district of Patna.

According to the notice, since a police station is to be constructed on the land in question the details of which are completely absent in the notice, that these petitioners have been directed to vacate the land.

Since the notice concerns the petitioners in these three writ petitions

hence these writ petitions have been heard analogous and are being finally disposed of with the consent of the parties at the stage of admission itself.

Mr. Dhananjay Kumar Singh learned counsel for the petitioners has submitted that even though such notice was received by the petitioners requiring them to vacate the land and as well an encroachment case under the provisions of the Bihar Public Land Encroachment Act, 1956 (hereinafter referred to as 'the Act') was initiated giving rise to Encroachment Case No. 5 of 2011-12 by the Circle Officer Sadar Patna but the Circle Officer, Patna Sadar upon examining the matter in the backdrop of the letter No.4803 dated 17.11.2011 and letter No. 416 dated 5.12.2011 of the Sub Divisional Officer, Sone Canal Sub Division, Naubatpur has taken note of the fact that the petitioners have been settled in the land for some time and had been also paying rent in respect thereof. The Circle Officer considering the transformation in the nature of land where its nomenclature as a public land itself was under a cloud has sought for guidelines from the Additional Collector, Patna as is manifest from his order as well as from his letter dated 29.12.2011 addressed to the Additional Collector. With reference to these documents it is the contention of Mr. Singh that until such time that the encroachment case remains pending, the notice issued by the Sub Divisional Officer has lost its meaning and cannot be enforced.

Counter affidavits have been filed in each of the writ petitions and although counsel representing the State have opposed the prayer made in the writ petition inter alia on grounds of absence of documents on record but they have not been able to contest the submission of Mr. Singh that the encroachment case yet remains pending for final adjudication before the Circle Officer who has sought guidelines from the Additional Collector on the issue taking note of the fact that the settlement was done quite some time back.

I have heard learned counsel for the parties and I have perused the materials on record.

The encroachment case having been initiated by the Circle Officer for removal of these petitioners giving rise to Encroachment Case No.5 of 2011-12, the notice issued by the Sub Divisional Officer bearing No.385 dated 9.11.2011 as impugned in Annexure-5 to C.W.J.C.No.13499 of 2012 and similarly impugned in other writ petitions, has got no lawful sanction. Apart from the fact that the notice so issued by the Sub divisional Officer stands transformed in an encroachment proceeding which is yet pending for final adjudication, its existence has got no meaning.

For the reasons aforementioned and taking note of the pendency of the Encroachment Case No. 5 of 2011-12, I am of the opinion that the notice issued by the Sub Divisional Officer, Naubatpur bearing no. 385 dated 9.11.2011 is pre-judging the issue and cannot be allowed to stand and thus is accordingly set aside.

Since the matter is already pending consideration before the Circle Officer in Encroachment Case No.5 of 2011-12, the issue so raised in the writ petition would be subject to the final outcome of the encroachment proceedings and in which the petitioners would be at liberty to raise all issues and lead all evidences which they seek to raise and lead by way of present writ petitions.

For the reasons aforementioned, the notice bearing no. 385 dated 9.11.2011 impugned in the three writ petitions are set aside. The writ petitions are allowed with the directions aforementioned.

(Jyoti Saran, J)

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