

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.427 of 2014

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1. Rajendra Manjhi S/o Late Ledha Manjhi R/o Bedu Tola, P.S- Thawe, District- Gopalganj.
 2. Ismail Mian @ Md. Ismail S/o Late Nazir Mian R/o Bedu Tola, P.S- Thawe, District- Gopalganj.
 3. Islam Mian S/o Late Rajak Mian R/o Bedu Tola, P.S- Thawe, District- Gopalganj.
 4. Mokhtar Mian @ Md. Mokhtar S/o Late Reyazuddin Mian R/o Bedu Tola, P.S- Thawe, District- Gopalganj.
 5. Mustaque Mian @ Mustaque Ahmad S/o Late Reyazuddin Mian R/o Bedu Tola, P.S- Thawe, District- Gopalganj.
 6. Kudus Mian @ Md. Kudus S/o Late Pawal Mian R/o Bedu Tola, P.S- Thawe, District- Gopalganj.

.... Petitioner/s

Versus

1. The State of Bihar through District Magistrate, Gopalganj.
2. The District Magistrate, Gopalganj.
3. The S.D.O. Gopalganj.
4. The Circle Officer, Thawe Gopalganj.
5. The District Board Gopalganj through its Executive Officer Gopalganj.

.... Respondent/s

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Appearance:

For the Petitioner/s : Mr. Vishwajeet Mishra, Advocate
Mr. Radha Mohan Pathak, Advocate

For the State-Respondent/s : Mr. Pandey S. Sahay, SC-31
Mr. Bhuneshwar Pandey, AC to SC-31

For the Zila Parishad : Mr. Y.V. Giri, Sr. Advocate
Mr. Ranjeet Kumar Pandey, Advocate

For the Intervener : Mr. Dhananjay Kumar, Advocate

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CORAM: HONOURABLE MR. JUSTICE JYOTI SARAN
ORAL ORDER

5 07-05-2015

Reg: C.W.J.C. No. 427 of 2014

with

I.A. No. 972 of 2014 & I.A. No. 851 of 2015

Heard Mr. Vishwajeet Mishra, learned counsel

appearing for the petitioners, learned counsel for the State, Mr.

Y.V. Giri, learned senior counsel assisted by Mr. Ranjeet Kumar Pandey for the Zila Parishad, Gopalganj and Mr. Dhananjay Kumar, learned counsel appearing for the interveners.

The writ petition was initially filed questioning a notice issued by the then Circle Officer, Thawe, District-Gopalganj dated 03.12.2013 whereby these petitioners were directed to vacate the land having an area of one bigha, 18 katha and 9 dhurs, the details of which are mentioned in the notices placed at Annexure-5 series, *inter alia* on grounds that the lands in question have been illegally encroached by the petitioners.

The six petitioners claim settlement and possession though the Hathwa Raj and claim possession over the lands in question since more than hundred years. It was argued by Mr. Mishra that even when the notice of the Circle Officer was to be responded by the petitioners that the Assistant Engineer, Zila Parishad issued further notices on identical grounds which have been placed on record vide I.A. No. 851 of 2015 at Annexure-1 series and whereby the petitioners have been asked to vacate the encroached portion.

Counter affidavits have been filed by the State as well as Zila Parishad. An exhaustive affidavit has also been filed by the interveners questioning the right of occupation of these petitioners

on the land in dispute.

Insofar as the notice issued by the Circle Officer impugned at Annexure-5 series to the writ petition is concerned, it neither bears a proceeding number nor does it indicate the source of power for issuing such notice.

A counter affidavit has been filed by the Circle Officer, Thawe who again is silent as to his source of power or whether he has registered any formal proceeding in the matter. Whereas the notice issued by the Circle Officer and the Zila Parishad charge the petitioners as encroachers, the petitioners submit that they are validly settled by the Hathwa Raj. While making such submission it is also stated by Mr. Vishwajeet Mishra that a title suit has been filed for such declaration bearing Title Suit No. 132 of 2015.

I have heard learned counsel for the parties and I have perused the records. Insofar as the notices issued by the Circle Officer, Thawe as contained in Annexure-5 series is concerned, in absence of any descriptive details in the notice indicating the source of power, the same cannot be upheld and are accordingly set aside.

Insofar as the notice issued by the Zila Parishad is concerned, the petitioners should respond to the notice and establish their stand before the authority concerned.

Mr. Giri, learned senior counsel appearing for the Zila Parishad submits that though the notice has been issued by the Assistant Engineer but the matter is pending before the Executive Officer-cum-Deputy Development Commissioner, Gopalganj.

In the circumstances it is directed that the petitioners should file their reply alongwith supportive papers and which shall be considered and disposed of by the Executive Officer, Gopalganj in accordance with law and after giving an opportunity of hearing to the petitioners. The interveners would also be at liberty to assist the Zila Parishad in the matter.

The petitioners would appear before the Executive Officer, Zila Parishad, Gopalganj together with their reply and alongwith a copy of this order on **25.05.2015 at 11:00 A.M.** and when the Executive Officer shall proceed to fix up a date of hearing and dispose of the matter in the manner stipulated hereinabove and until such disposal, let status quo as existing today be maintained by the parties.

The writ petition is allowed with the directions aforementioned.

(Jyoti Saran, J)

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