

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.4174 of 2015

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1. Harendra Mahato, S/o Raghunath Mahato.
 2. Madan Mahato, S/o Rudal Mahato.
 3. Shrawan Mahato, S/o Badari Mahato.
 4. Yogi Mahato, S/o Ganesh Mahato.
 5. Ram Kishore Mahato, S/o Ganga Mahato.
 6. Kodai Mahato, son of Basudeo Mahato.
 7. Ramchandra Mahato, S/o Chulhai Mahato.
 8. Jokhan Mahato, S/o Rameyad Mahato.
 9. Tapasi Mahato, S/o Adalati Mahato.
 10. Moti Mahato, S/o Bhada Mahato.
 11. Mohan Mahato, S/o Gyan Mahato.
 12. Bali Mahato, S/o Bhola Mahato.

All are residents of village- Basudeo Chhapra, Panchayat Raj
Piaparakhem, 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 Officer, Chakiya at Chakiya, District- East Champaran at Motihari.
4. The Circle Officer, Kalyanpur at Kalyanpur, District- East Champaran at Motihari.

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Shashi Bhushan Pandey
For the Respondent/s : Mr. Pandey S.Sahay, SC-31

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CORAM: HONOURABLE MR. JUSTICE JYOTI SARAN
ORAL ORDER

5 21-04-2015

Heard the parties.

The petitioners have questioned a notice bearing Memo No.321 dated 4.9.2014 of the Circle Officer, Kalyanpur in the district of East Champaran in a proceeding arising from Encroachment Case No.4 of 2014-15, whereby they have been directed to remove the encroachment over a plot bearing Khesra no.331 in village Basudeo Chhapra, Circle- Kalyanpur in the district of East Champaran. The petitioners came before this Court

complaining that the notice has been issued without drawing any proceeding under the Bihar Public Land Encroachment Act, 1956 (hereinafter referred to as 'the Act') and that the petitioners have not encroached any portion of any public land.

Since the notice did not reflect any number of the case initiated that the State was required to respond to the issue raised and whether the notice was duly served on the petitioner.

A counter affidavit has since been filed, a copy of which has been received by the counsel for the petitioners as back as on 6.4.2015. Since more than two weeks has lapsed and there is no rejoinder to the counter affidavit, the statement made in the counter affidavit goes uncontested. It is stated in paragraph 4 of the counter affidavit that one Suresh Mahto had filed a petition before the department complaining encroachment over a public land bearing plot no.331 by the petitioners and whereupon the Sub-Divisional Officer, Chakiya called for a report from the Circle Officer, Kalyanpur who got it enquired by the Halka Karmchari and Anchal Amin and it has been found that the land has been encroached by some persons inclusive of these petitioners. The Circle Officer has submitted his report to the Sub-Divisional Officer, Chakiya who directed the Circle Officer for initiating proceedings for removal of encroachment and it is following such direction that a proceeding was registered on 10.4.2014 against the

petitioners. It is specifically stated in paragraph 5 of the counter affidavit that notice was served on Harendra Mahto and three others but they did not turn up to respond or place any defence nor did they take any steps for vacating the encroachment. In paragraph 6 it is stated that the said Harendra Mahto filed an application before the District Magistrate, East Champaran that though there are several encroachers but only some of them have been directed to vacate the same. The complaint of the said encroacher was examined by the Anchal Amin and who found 14 other persons encroaching on the land and in view of the report notices were issued on all 15 encroachers to vacate the land. It is thus submitted that in view of the conformity of encroachment on public land there is no infirmity in the impugned notice. It is also admitted that due to clerical mistake the number of the encroachment case was not mentioned in the notice i.e. Case No.4 of 2014-15 and which mistake has since been removed.

Having heard learned counsel for the parties and considering the counter affidavit I find no reason to interfere with the proceedings and the writ petition is accordingly dismissed.

(Jyoti Saran, J)

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