

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.20716 of 2014

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1. Jagat Narayan Sahni son of late Shiv Narayan Sahni
 2. Pawan Sahni , son of late Shiv Narayan Prasad
 3. Naresh Roy
 4. Mahendra Roy
 5. Hari Roy
 6. Umesh Roy All sons of late Bhola Roy
 7. Ram Chandra Sahni, son of late Biltu Singh

All residents of Mohalla:
Malahi Pakri Survey Plot No.86, Khata No.96, Thana No. 25, Holding
No.1909A/1, P.S. Kankerbagh, Town and District: Bihar

.... Petitioner/s

Versus

1. The State of Bihar
2. The District Magistrate, Patna
3. The Managing Director, Bihar State Housing Board, Mangles Road, Patna
4. The Municipal Commissioner, Patna Municipal Corporation, Patna.
5. The Circle Officer, Phulwarisharif, Patna

.... Respondent/s

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Appearance:

For the Petitioner/s : Mr. Subroteswar De, Advocate
Mr. Ram Suresh Roy, Sr. Advocate
For the State : Smt. Namrata Mishra, G.A.-13
For the respondent no. 3 : Ms. Binita Singh, Advocate

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CORAM: HONOURABLE MR. JUSTICE JYOTI SARAN
ORAL ORDER

3 03-02-2015 Heard Mr. Ram Suresh Roy, learned senior counsel

appearing on behalf of the petitioner and Ms. Namrata Mishra,

learned G.P.-13 for the State.

The petitioners being aggrieved by the notice dated
1.12.2014 issued by the Circle Officer, Phulwari Sharif, Patna in
purported exercise of power vested under the provisions of the
Bihar Public Land Encroachment Act, 1956 (hereinafter referred
to as 'the Act') in a proceeding arising from Encroachment Case

No. 2 of 2012-13 had filed this writ petition complaining the action on the following grounds:

- (a) That though the action is being taken in the light of the directions passed by this Court in M.J.C. No. 3674 of 2014 but no such order is present in the said proceeding; and
- (b) No notice has been received by the petitioner affording him opportunity to defend his case in the encroachment proceedings, except the notice impugned.

This Court taking note of the circumstances and while staying further proceedings in Encroachment Case No. 2 of 2012-13 required an affidavit to be filed by the District Magistrate, Patna in the light of the circumstances and which counter affidavit has since been filed by the District Magistrate. In context with the reference to the contempt case, it is stated in paragraph-6 of the counter affidavit that the encroachment case in question had been initiated in the light of the order passed by this Court in CWJC No. 4113 of 2012 (Umesh Prasad & Ors. vs. the State of Bihar & Ors.). It is next stated that due to inadvertence the reference of the contempt case has been made in the notice though which is not correct and for which notice has been issued to the Circle Officer to explain the circumstances.

A counter affidavit has also been filed by the Circle

Officer and who while admitting to the fact that the encroachment proceeding has been initiated in the light of the order passed in CWJC No. 4113 of 2012 has admitted that due to inadvertence the reference of the contempt case has been made.

Insofar as the issue regarding the proposed action under the Act being taken by the Circle Officer without due notice to the petitioner, the District Magistrate, Patna has very fairly admitted that some portions have been removed by the statutory authority without opportunity to the concerned parties and taking note of such lapse, the District Magistrate, Patna himself has taken charge of the encroachment proceedings and whereafter the parties have been noticed and have also appeared before the District Magistrate, Patna. In substance the encroachment case now stands transferred before the District Magistrate and where the parties have registered their appearance.

In view of the circumstances discussed hereinabove and taking note of the fact that the Encroachment Case No. 2 of 2012-13 is now pending adjudication before the District Magistrate, Patna no further order needs to be passed in the present proceedings which is accordingly disposed of.

(Jyoti Saran, J)

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