

**IN THE HIGH COURT OF JUDICATURE AT PATNA**  
**Civil Writ Jurisdiction Case No.9 of 2014**

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1. Gaina Mahto @ Gaina Prasad S/O Late Ramfal Prasad R/O Badaharwa  
Kala Tola Konaha P.S. Kowta Dist E. Champaran

2. Most Sona Kuwar W/O Late Harindra Prasad R/O Badaharwa Kala Tola  
Konaha P.S. Kowta Dist E. Champaran

.... .... Petitioner/s

Versus

1. The State of Bihar

2. The District Magistrate Motihari Dist E. Champaran

3. The A.L.D.C. Sadar Motihari E. Champaran

4. Circle Officer Kowta Dist East Champaran

5. Madam Thakur S/O Late Dasharath Thakur R/O Badaharwa Kala Tola  
P.S. Kotwa Dist E.Champaran

6. Mahendra Thakur S/O Late Satnarayan Thakur R/O Badaharwa Kala  
Tola P.S. Kotwa Dist E.Champaran

.... .... Respondent/s

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**Appearance :**

For the Petitioner/s : Mr. Dhannjay Kumar No 2, Adv.

For the Respondent/s : Mr. Prabhat Kumar Singh, Adv.

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**CORAM: HONOURABLE MR. JUSTICE JYOTI SARAN**  
**ORAL ORDER**

4      25-06-2015      Heard Mr. Dhananjay Kumar No.2 learned counsel for the  
petitioners and Mr. Amitabh Bharadwaj, A.C. to S.C.12 for the  
State.

The petitioners are aggrieved by a notice issued by the  
Circle Officer, Kotwa in the district of East Champaran whereby  
they have been asked to remove the encroachment stated to be  
made over land bearing Khata No. 679 Khesra No. 455 in village  
Konhwa in the district of East Champaran which plot of land is in  
the nature of Gairmajarua Rasta.

It was specifically argued by Mr. Kumar learned counsel for  
the petitioner that without drawing a formal proceedings as

mandated under the provisions of the Bihar Public Land Encroachment Act, 1956 (hereinafter referred to as 'the Act') that the Circle Officer, Kotwa has proceeded to issue notice requiring them to remove the encroachment.

The matter was heard on 12.2.2015 and when learned counsel for the State was directed to file a counter affidavit as to the issues raised and which has since been filed on 24.4.2015 after service of copy on the petitioner. There is no rejoinder to the counter affidavit. Paragraphs 5 to 13 of the counter affidavit manifests that an encroachment proceeding had been initiated in 2011-12 itself bearing Encroachment Case No. 3 of 2011-12 after following the procedures and requiring the petitioners to remove encroachment.

The petitioners in order to avoid the proceeding filed a representation before the Deputy Collector Land Reforms on 15.4.2012 by invoking the provisions of the Bihar Land Dispute Resolution Act, 2009 and which application was dismissed by the Deputy Collector Land Reforms, Motihari on 14.12.2012, a copy of which is placed at Annexure-B. The order attained finality as the petitioners never questioned the same.

The petitioners again filed a second application before the Deputy Collector Land Reforms on 21.6.2013 which gave rise to



Case No. 256 of 2013-14 and the Deputy Collector Land Reforms taking note of the fact that an encroachment proceeding had already been initiated in the mean time, dismissed the same vide order passed on 9.9.2014 placed at Annexure-C. It is in view of the aforementioned circumstances that the notice was issued to the petitioner on 25.3.2015 to remove the encroachment by 5.4.2015. It is submitted that these facts have been suppressed by the petitioners from this Court while filing the writ petition. It is stated in paragraph 13 that the land bearing Khata No. 629, Khesra No. 455 under Mauza Barharwa tola, Block Kotwa is Gair Mazarua Aam land and is in the nature of a road which is being encroached by the petitioners.

Having heard learned counsel for the parties and taking note of the position explained by the Circle Officer, Kotwa in the counter affidavit which has not been contested, I am not persuaded to interfere with the proceedings so initiated by the Circle Officer and the writ petition is accordingly dismissed.

The interim order dated 12.2.2015 stands vacated.

**(Jyoti Saran, J)**

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