

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.10208 of 2013

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1. Umesh Sow S/O Late Suraj Saw R/O Village- Dobhi, P.S.- Dobhi, Distt.- Gaya
2. Jyotish Saw S/O Late Suraj Saw R/O Village- Dobhi, P.S.- Dobhi, Distt.- Gaya

.... Petitioner/s

Versus

1. The State Of Bihar
2. District Magistrate, Gaya
3. Sub Divisional Officer, Serghati, Gaya
4. Circle Officer, Dovi At Gaya

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Satyaveer, Advocate.

For the Respondent/s : Mr. Parmeshwar Vishwakarma, AC to GP-28

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CORAM: HONOURABLE MR. JUSTICE KISHORE KUMAR
MANDAL
ORAL ORDER

3 02-03-2016

Heard the counsel for the petitioners and the State.

A counter affidavit has been filed.

The writ application seeks quashing of the order dated 11.9.2012 passed by the Sub Divisional Officer, Sherghati in case no. 12/Anu/139/2011-12 whereby the petitioners were forbidden from making commercial use of the land and was also directed to pay the penalty for such use of the agricultural land. The order further directed for institution of a proceeding under the Public Demand Recovery Act for realization of the amount. The subject land has been described in para 4 which is situated at Kusha Bira, P.O.+P.S. Dobhi, Dist.Gaya. It is stated that the



subject land was leased out by the petitioners on 27.11.2007 . Subsequently by virtue of sale deeds dated 13.5.2009 and 09.07.2012 the subject land was sold out to the lessor. The proceeding was initiated in the year 2011-12 wherein the petitioner neither appeared nor filed show cause. The authority finding the land being used commercially passed the order under the Bihar Agriculture Land (Re-transfer for non-agricultural Purposes) Act, 2010 (for short 'the Act'). The Court asked the petitioners to state whether any proceeding under the Public Demand Recovery Act was initiated or not. On institution he submits that till date no such proceeding has been initiated pursuant to the aforesaid order. He has drawn attention of the court to the order dated 10.5.2012 passed by this Court in CWJC No. 8755 of 2012 (Annexure-4) from which it appears that the purchaser of the land was also proceeded against under the Act in which an order was passed on 24.12.2011, the legality/veracity whereof was challenged by the purchaser wherein this Court granted the ad interim stay of the aforesaid order dated 24.12.2011. Learned counsel for the petitioners submits that the said proceeding is still pending.

In the counter affidavit, it has been stated that 03 decimals of the subject land was used for

construction/establishment of cold storage without the permission of the authority. Since it was the commercial use of the agricultural land the action was taken. If the petitioners have already sold the land then they are not required to be proceeded against for such commercial use of land by the purchaser. According to the petitioners, the lessor who is also the purchaser who used the said land for commercial purposes a proceeding has already been initiated which is under challenge before this Court.

Considering the fact that the land now does not belong to the petitioners and that the purchaser has already been proceeded against for such conversion of the land use, in my view, the order does not merit to be sustained. The respondents having realized the same have not till date initiated the proceeding under the Public Demand Recovery Act as directed under the impugned order. The impugned order is set aside. The writ application is allowed.

(Kishore Kumar Mandal, J)

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