

**IN THE HIGH COURT OF JUDICATURE AT PATNA**  
**Civil Writ Jurisdiction Case No.6113 of 2013**

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1. Kusheshwar Jha S/O Late Subdhar Jha Resident Of Village- Chatra, Tole- Makunma, P.S. Khajauli, District- Madhubani
  2. Phul Chand Jha S/O Narsingh Jha Resident Of Village- Chatra, Tole- Makunma, P.S. Khajauli, District- Madhubani
  3. Mahanand Jha S/O Late Vedanand Jha Resident Of Village- Chatra, Tole- Makunma, P.S. Khajauli, District- Madhubani
  4. Subhchandra Jha S/O Late Gulab Chandra Jha Resident Of Village- Chatra, Tole- Makunma, P.S. Khajauli, District- Madhubani
  5. Surendra Jha S/O Bachchan Jha Resident Of Village- Chatra, Tole- Makunma, P.S. Khajauli, District- Madhubani
  6. Prayag Mahto S/O Late Genai Mahto Resident Of Village- Chatra, P.S. Khajauli, District- Madhubani
  7. Tej Kant Jha S/O Late Genalal Jha Resident Of Village- Chatra, P.S. Khajauli, District- Madhubani

.... .... Petitioner/s

Versus

1. The State Of Bihar Through The Collector, Madhubani
2. The Additional Collector, Madhepura
3. The Sub Divisional Officer, Sadar, Madhubani
4. The Land Reforms, Deputy Collector, Madhubani
5. The Circle Officer, Khajauli, District- Madhubani

.... .... Respondent/s

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**Appearance :**

For the Petitioner/s : Mr. D.K. Sinha, Sr. Advocate  
Mr. Kripa Nand Jha  
For the Respondent/s : Mr. S.S. P. Yadav, S.C.-14.

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**CORAM: HONOURABLE MR. JUSTICE KISHORE KUMAR MANDAL**  
**ORAL ORDER**

6      08-08-2016                      Heard Mr. D.K. Sinha for the petitioner and Mr. S.S.P. Yadav for the State. Parties have exchanged their pleadings.

Seven (07) petitioners have joined hands to seek a direction upon the respondent to produce the records and orders of Encroachment Case No. 07/2005-06 including the order stated to have been passed on 22.2.2007. Upon production, it is prayed that the proceeding be quashed.



The subject matter of the land appertains to Khesra No. 6787 (old), 16704, 16706, 16461 to 16464, 16813 and other(new) situated at Mauza Chatra in the district of Madhubani. The petitioners claim their right and title over the land on the basis of diverse facts. It is stated that the land was under the bed of river belonging to ex-landlord which was settled with the raiyats and from the raiyat, they are the purchasers. Further grievance of the petitioners is that the respondents issued notice in 2004 again under Section 3 of the Public Land Encroachment Act (for short 'the Act') and subsequently another notice (Annexure-4 series) was issued to the petitioner to which replies/show causes have been filed but no final order in terms of the provisions of the Act has, till date, been passed and certified copy of thereof furnished to the petitioners.

Under orders of the Court, the respondents were directed to supply the copy of the order dated 22.2.2007 upon requisitions filed for supply of certified copy thereof. Mr. Sinha has placed statements of the State respondents made in the counter affidavit wherefrom it appears a stand has been taken that the records have been destroyed owing to the incident mentioned in the counter affidavit. In such circumstance, this Court is not aware as to whether the proceeding at all was initiated in which a show

cause of the petitioner was/were filed and thereafter any order was passed and the proceeding was given a hiatus.

Neither the petitioner is able to say what happened in the said encroachment proceeding of the year 2004 nor anything has come in the counter affidavit filed on behalf of the State. However, it is stated the respondent subsequently initiated land Encroachment Case No. 07/2005-06 as fresh proceeding treating as if the earlier proceeding was never initiated,

An interlocutory application being I.A. No. 5791 of 2016 is filed enclosing therewith another notice dated 14.07.2016 (Annexure-10 to the I.A.) wherefrom it appears the petitioners have been called upon to vacate the land of khata no. 485, khesra no. 6787 as the same has to be distributed amongst the eligible purcha holders. It is stated that the said order has been passed in Encroachment Case No. 07/2005-06.

Mr. Yadav appearing for the State respondents, on the other hand, submits that the subject land is the government land. It has been distributed amongst the eligible persons and the petitioners are illegally claiming right over the land. However, in the light of the statements made in the counter affidavit, he has fairly stated that the records of Encroachment Case No. 07/2005-06 are not traceable with the respondents wherein some order is

stated to have been passed.

Having considered the submissions of the parties, in my view, the application deserves to be disposed of by permitting the State respondents to initiate fresh proceeding, if at all they want to do so, treating as if the earlier proceeding was never initiated, and conclude the same in accordance with law. In that event, the petitioners shall be entitled to contest the proceeding by filing their replies.

The writ application is, accordingly, disposed of.

**(Kishore Kumar Mandal, J)**

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