

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.621 of 2016

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1. Kamlesh Kumar Thakur @ Kamlesh Kr. Thakur Son of Shri Amarnath Thakur, resident of Thakur Niwas, Ward No. 10, Ashram Road, Araria, P.S. Araria, District – Araria.
 2. Poresk Kumar Thakur, Son of Shri Amarnath Thakur, resident of Thakur Niwas, Ward No. 10, Ashram Road, Araria, P.S. Araria, District – Araria.
 3. Shailesh Kumar Thakur @ Shailesh Kr. Thakur, Son of Shri Amarnath Thakur, resident of Thakur Niwas, Ward No. 10, Ashram Road, Araria, P.S. Araria, District – Araria.

.... Petitioner/s

Versus

1. The State of Bihar, through the Collector, Araria, Araria Collectorate, District – Araria.
2. The Chief Conservator of Forest, Bihar, Patna.
3. The Conservator of Forests, Purnia, Forest Circle Purnia, at Purnia.
4. The Divisional Forest Officer, Araria, Forest Division Araria, at – Araria.

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Rabindra Nath Kanth, Advocate
For the Respondent/s : Mr. Sunil Kumar Mandal, SC-3
Mr. Bipin Kumar, AC to SC-3
Ms. Neelam Kumar, AC to SC-3

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CORAM: HONOURABLE MR. JUSTICE JYOTI SARAN

ORAL JUDGMENT

Date: 13-01-2017

Heard the parties.

The three petitioners herein have prayed for an appropriate direction to the authorities of the Forest department including the District Magistrate –cum- Collector, Araria to restrain them from interfering in any manner with the right, title and possession of the petitioners over Plot No.3570, Khata No.360, Mauza- Haria in the district of Araria in purported exercise of rights under Notification No.CF.-17625, 67-2113-R dated 22.7.1967 issued under section 29 of the Indian Forest Act (hereinafter referred to as ‘the Act’) declaring the area under Haria Thana



in the then district of Purnea and presently Araria as 'protected forest' which comprises several plots including the plot of the petitioners bearing No.3570.

It is not in dispute that these petitioners are purchasers of the plot from the title-holder in the year 1988. The grievance of the petitioners is that the authorities of the Forest department including the District Magistrate, Araria in complete misconception of the powers vested in them under the notification dated 22.7.1967, a copy of which is annexed as Annexure-1 to the writ petition, are trying to interfere with the right, title and possession of the petitioners over the plot in question.

Mr. Rabindra Nath Kanth, learned counsel appearing for the petitioners while referring to the notification itself as well as the provisions underlying section 29 of 'the Act' submits that no such right is vested in the respondents to interfere with the title and possession of the land-holders without taking recourse to appropriate proceedings for acquiring lands in accordance with law. Learned counsel has relied upon a judgment of this Court reported in **AIR 1967 Patna 287 (Jetmull Bhojraj vs. The State of Bihar)** in support.

Mr. Sunil Kumar Mandal, learned Standing Counsel No.3 while accepting the scope of the notification, has submitted that the petitioners are purchasers and the issue is being raised belatedly after almost 50 years of the notification. He, however, submits that whatever action would be taken by the Forest department would be in tune with the notification issued under section 29 of 'the Act'.



I have heard learned counsel for the parties and I have perused the records.

Section 29 of 'the Act' enables the State Government to notify any area as 'protected forest' by following the procedure provided under sub-section (3) thereof. The proviso attached to the section even while enabling the State Government to exercise such right yet protects the existing rights of the individuals. The notification issued under the provision takes notice of the legislative intent and saves the existing right of the land holder which would obviously include the petitioners. The notification also admits that the required enquiry as mandated under sub-section (3) of section 29 of 'the Act' has not been carried out explaining the exigency of the notification.

The representation filed by the petitioners before the Collector is enclosed at Annexure-5 series and have not been disposed of. The grievance of the petitioners herein is that the respondent authorities of the Forest department in complete misconception of the powers derived under the notification have started to interfere with their right, title and possession over the land bearing Plot No.3570, Khata No.360 in village Haria which presently falls in the district of Araria.

In my opinion, in view of the statutory provisions underlying section 29 of 'the Act' read along side the notification dated 22.7.1967 placed at Annexure-1, the respondent authorities of the Forest department including the District Magistrate –cum- Collector, Araria has no such jurisdiction to interfere with the right, title and possession of the



petitioners over the lands in question. The notification in question merely declares the area as ‘protected forest’ and nothing beyond. In fact the statutory provisions of section 29 of ‘the Act’ by itself save the right of the individuals whose plots fall within such declaration.

In the circumstances discussed and until such time that the State would take recourse to any of the remedy available to them to acquire the plots which are subject-matter of the notification they cannot interfere with the right, title and possession of the land holders whose plots stand covered by the notification, for any such attempt would be contrary to the statutory provisions and in violation of the constitutional guarantee. The respondent authorities including the District Magistrate – cum- Collector, Araria are thus appropriately directed to refrain from interfering with the right, title and possession of the petitioners over the plot in question.

Let a writ of mandamus be issued accordingly. The writ petition is allowed.

(Jyoti Saran, J)

SKPathak/-

AFR/NAFR	AFR
CAV DATE	NA
Uploading Date	23-01-2017
Transmission Date	NA

