

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.2260 of 2018

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1. Rajendra Prasad @ Rajendra Das, Son of Late Raj Kishore Das @ Munda Baba,
 2. Mosmat Sita Devi, Wife of Late Pampul Das @ Daughter of Raj Kishore Das @ Munda Baba, Both resident of Purani Bazar, (Jamui), P.S. & District- Jamui.

.... Petitioner/s

Versus

1. The State of Bihar through the Collector, Jamui.
2. The Sub Divisional Officer, Jamui.
3. The Deputy Collector Land Reforms, Jamui.
4. The Circle Officer, Jamui, District- Jamui.
5. The Secretary, Ram Krishna Goshala, Jamui Bazar, P.S. & District- Jamui.

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Dronacharya, Advocate
For the Respondent/s : Mr. Raj Kishore Roy-GP18

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CORAM: HONOURABLE MR. JUSTICE DINESH KUMAR SINGH
ORAL ORDER

02/ 03-04-2018

Heard Mr. Dronacharya, learned counsel for the petitioners and Mr. Raj Kishore Roy, learned GP-18 for the State respondents.

Considering the nature of order this Court intends to pass, this Court is not inclined to issue notice to respondent no. 5 Ram Krishna Goshala.

The petitioners are aggrieved by issuance of notice dated 15.12.2017 under the signature of Circle Officer, Jamui being Collector under Bihar Public Land Encroachment Act, 1956 (hereinafter referred to as the 'Act') in Encroachment Case No. 09



of 2017-18, as contained in Annexure-3, whereby petitioner no. 2 Sita Devi has been directed to appear in the office of Circle Officer on 29.12.2017 at 11.00 A.M. as to why the encroachment be not removed from the land appertaining to Thana No. 41, Khata No. 86, Plot No. 941 which is a public land.

It is submitted by learned counsel for the petitioners that the land in question, though, is recorded in the cadastral survey khatian as Parti Kadim, but in the remark column the name of raiyats Shibotardar Ba-kabje Lal Das S/o Mahanth Gurumukh Das of Nanak Sahi has been mentioned. The Ex-landlord Maharaja Gidhaur settled 5.79 decimals of land in question, to one Shibottardar, Mahanth Guru Sharan Das S/o Mahanth Gurumukh Das, who had two sons, Mahanth Gurusharan Das and Lal Das but Mahanth Gurusharan Das died issueless and Lal Das inherited the property of Mahanth Gurusharan Das and Raj Kishore Das was the son of Lal Das and petitioners are son and daughter of Raj Kishore Das. After the death of their ancestors, petitioners are claiming the land in question. Subsequently, the land in question is being claimed by Ram Krishna Goshala leading to filing of Title Suit No. 27 of 2014 on 01.02.2014 before the court of learned Sub-Judge-I, Jamui, which is still pending, challenging the rent fixation in favour of Ram



Krishna Goshala passed in Rent Fixation Case No. 08 of 1987-88 passed by the then DCLR, though, the petitioners have also preferred Rent Fixation Case No. 40 of 2011-12 but the same was ultimately dropped but the title suit is pending.

It is further submitted by learned counsel for the petitioners that in the background of serious dispute with regard to the title and possession of the land in question between the petitioners and Ram Krishna Goshala. The issuance of impugned notice, as contained in Annexure-3, under Section 3 of the Act appears to be absolutely without jurisdiction. Learned counsel for the petitioner has relied upon the judgments reported in 2000(1) PLJR 209, 1955 Patna 1 and 1982 SC 1081, which basically stipulates that where there is dispute with regard to title the same cannot be resolved through a summary proceeding under the Act. Hence, very initiation of proceeding and issuance of impugned notice is bad in law.

Mr. Raj Kishore Roy, learned counsel for the State respondents submits that the cadastral survey khatian, as contained in Annexure-1, reflects that the nature of land has been recorded as Gairmajarua Parti Kadim and hence, the initiation of proceeding cannot be questioned on this score alone. However, petitioners have been given opportunity to produce their defence



before the Circle Officer being the Collector under the Act and if any order adverse to them is passed, the same would be amenable to appeal under Section 11 of the Act.

Considering the rival submissions of the parties, it is a settled law where there is a dispute with regard to the title, the same cannot be resolved through a summary proceeding under Bihar Public Land Encroachment Act. However, the pre-condition for initiation of a proceeding under Section 3 of the Act mandates that the same can be initiated, if it 'appears' to the Collector under the Act from an application made or from the information received that any person has encroached upon a public land or is responsible for continuance of any encroachment upon any public land. From the pleading of the petitioners it appears that the rent is being paid with regard to the land in question by Ram Krishna Goshala in pursuance to the order passed in Rent Fixation Case No. 08/1987-88. The petitioners claim for fixation of rent in their favour could not find favour by the DCLR as the Rent Fixation Case No. 40/2011-12 filed by the petitioners was dropped by virtue of an order passed by the DCLR, but it appears that the same has not been challenged by the petitioners. Moreover, there is nothing on record to suggest that Ram Krishna Goshala has challenged the initiation of such proceeding under the Act.



In the circumstances, this Court is not inclined to interfere at this stage. However, it is expected from Circle Officer, Jamui, respondent no. 4 to continue with the proceeding while keeping in view the settled law that where there is serious dispute with regard to the title the same cannot be resolved a the proceeding under Bihar Public Land Encroachment Act.

Accordingly, this Writ application is disposed of.

(Dinesh Kumar Singh, J)

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