

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.1040 of 2017

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1. Narendra Kishore, Son of Late Shyam Prasad,
 2. Kishore Mahto, Son of Late Deo Narain Prasad,
 3. Purushottam Singh, Son of Late Sabal Singh,
 4. Diwakar Gupta, Son of Rameshwar Prasad Gupta, All Resident of Village - Chhapwa Bazar, P.S. - Sugauli, District - East Champaran
- Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Road Construction Department, Govt. of Bihar, Patna.
 2. The Collector, East Champaran.
 3. The Zila Parishad, East Champaran Motihari through its Chairman.
 4. The Executive Officer, Zila Parishad, East Champaran, Motihari.
 5. The District Engineer, Zila Parishad, East Champaran, Motihari.
 6. The Superintending Engineer, Road Construction Department, East Champaran, Motihari.
- Respondent/s

Appearance :

For the Petitioner/s	:	Mr. Y. C. Verma, Sr. Advocate
For the State	:	Mr. Manoj Kr. Ambastha-SC26
		Mr. Subodh Kumar, AC to SC-26
For the Respondent Nos. 3-5:		Mr. Sanjeev Kumar, Advocate

CORAM: HONOURABLE THE CHIEF JUSTICE

and

HONOURABLE MR. JUSTICE ASHUTOSH KUMAR

ORAL ORDER

(Per: HONOURABLE THE CHIEF JUSTICE)

3 05-09-2018 By filing this petition under Article 226 of the Constitution of India, the petitioners have prayed for an appropriate writ/s, order/s and direction/s for setting-aside the impugned notice/letter, bearing no. 300, dated 10.12.2016, issued by the District Engineer, Zila Parishad, East Champaran, Motihari intimating that they have encroached land at Chapra Harsidhi Road of Zila Parishad by constructing temporary shops with request to vacate the same or place their evidence in support of their claims at the office of the Zila Parishad,



otherwise F.I.R. would be filed against them.

It is the case on behalf of the petitioners that before initiating any proceeding under the provisions of the Bihar Land Encroachment Act, 1956 and before adjudicating whether the petitioners have encroached the land as alleged or not and/or the temporary shops constructed by the petitioners are at the Zila Parishad's land or not, such letter, bearing no. 300, dated 10.12.2016, should not have been issued by the Respondent No. 5.

However, it is required to be noted in the present case that the provisions of the Bihar Land Encroachment Act, 1956 shall not be applicable, as contained on behalf of the petitioners, as the land is not a public land but the public land handed over by the government to the Zila Parishad.

As stated in the counter, MDR road passing through Chapra Chowk to Sevrahan Via Harsidhi under Khesra Nos. 730, 731 and 732 and the total length of the road is minimum 24 meters and maximum 32 meters and in which the petitioners constructed some shops on Khesa Nos. 730 and 732.

Be that as it may, by the impugned letter/notice the petitioners are called upon to put forward their claim. But instead of approaching and putting forward their claim before



the appropriate authority, they straightaway came before this Court by filing the present writ petition. The petitioners ought to have approached the appropriate authority when they were called upon to put forward their claim.

Under the circumstances, the submissions made on behalf of the petitioners that in the letter/notice, the Respondent No. 5 has already stated that the petitioners have made the encroachment and, therefore, the issue is pre-determined, has no substance. It is specifically stated in the letter/notice that either the petitioners may remove the encroachment or put forward their claim.

Under the circumstances, there is no substance in the present petition. The same is dismissed.

It will be open to the petitioners to put forward their claim as per the impugned letter/notice and the same may be considered in accordance with law, for which we are not expressing anything on the merits of the case.

(Mukesh R. Shah, CJ)

(Ashutosh Kumar, J)

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