

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.3 of 2018

1. Nanhak Mahto, son of Nago Matho
2. Mukhlal Mahto, son of Jhaman Mahto
3. Srikant Dwivedi, son of Rajeshwar Dubey
4. Birendra Prasad, son of Prabhu Prasad
5. Ramanuj Prasad, son of Pokhan Mahto All residents of Dobhi,
P.S. - Dobhi, District – Gaya ... Petitioners

Versus

1. The State of Bihar through its Chief Secretary, Govt. of Bihar, Patna.
 2. The District Magistrate, Gaya.
 3. The Superintendent of Police, Gaya.
 4. Assistant Land Settlement Officer, Gaya.
 5. The Land Reforms Deputy Collector, Sherghati, Gaya.
 6. Sub Divisional Officer, Sherghati, Gaya.
 7. The Sub-Divisional Police Officer, Sherghati, Gaya.
 8. Circle Officer, Dobhi, Anchal - Gaya.
 9. Officer-In-Charge, Dobhi Police Station - Dobhi, Gaya ... Respondents
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Appearance :

For the Petitioners : Mr. Vijay Bharti & Arun Bhagat, Advs.
For the Respondents : Mr. Md.Khurshid Alam -AAG XII

CORAM: HONOURABLE MR. JUSTICE JYOTI SARAN
and
HONOURABLE JUSTICE SMT. NILU AGRAWAL
ORAL JUDGMENT
(Per: HONOURABLE MR. JUSTICE JYOTI SARAN)

Date : 29-10-2018

Heard the parties.

2. A proceeding under the provisions of Bihar Public Land Encroachment Act, 1956 (here-in-after referred to as, ‘the Act’), was initiated by the Circle Officer, Dobhi Circle, Gaya, against the writ petitioners giving rise to Encroachment Case No. 8 of 2017. The petitioners, by filing their reply tried to demonstrate that the land in question is their raiyati land and, thus, outside the purview of ‘the Act’. Nothing forthcoming, they are before this



Court in the present writ petition to challenge the entire proceedings.

3. The foundation for the writ petition lies on an order passed by the Settlement Officer under Section 106 of the Bihar Tenancy Act in Suit No. 4776 of 1977 whereby the title and possession of petitioners and their ancestors possession over the land in question has been confirmed. This position is not disputed, rather, according to the Circle Officer, since this order is ex parte and without notice or summons on him, it has no lawful support and is not binding on him.

4. Such is the statement made in paragraph 6 of the counter affidavit and which simply goes to explain the lack of understanding of a legal position and the import of an order passed by the statutory authority under Section 106 of the Bihar Tenancy Act.

5. It is unfortunate that such kind of affidavits are being filed on behalf of the State without verification of the legal position and of the statements made therein by the superiors. The counter affidavit so filed is on behalf of the Secretary of the Department, the District Magistrate, Gaya, the Land Reforms Deputy Collector, Sherghati, Gaya, and the Subdivisional Officer, Sherghati, Gaya, and, thus, binds them.



6. The dispute relates to land bearing khata no. 22, khesra no. 393, which after the revisional survey was numbered as R.S. Khata No. 180, plot no. 1348 with an area of 72 decimals. The present dispute relates to an area of 34 decimals which has been settled under the order, dated 22.01.1979, by the Settlement Officer. The Circle Officer, after brazenly refusing to accept the order passed under Section 106 of the Bihar Tenancy Act, has tried to correct the damage by recommending to the Additional Collector, Gaya, for cancellation of Jamabandi standing in the name of two of the writ petitioners.

7. In our opinion, once the Circle Officer, Dobhi Circle, Gaya, has accepted that the plot in question has been entered in the revenue records in favour of individuals, until such time that this situation is altered by recourse to appropriate remedy, the proceeding under the Bihar Public Land Encroachment Act, 1956, would be an exercise without jurisdiction.

8. For the reasons, discussed above, the entire proceedings arising in Encroachment Case No. 8 of 2017, pending before the Circle Officer, Dobhi Circle, Gaya, in so far as it relates to the present writ petitioners cannot be upheld in view of the order passed by the Settlement Officer under Section 106 of the Bihar Tenancy Act and, accordingly, the entire proceeding is **quashed**.



9. The writ petition is **allowed**. In so far as the recommendation of the Circle Officer, Dobhi Circle, Gaya, in relation to cancellation of Jamabandi is concerned, the petitioners would be at liberty to question the action in an appropriate proceeding before the appropriate forum, if so advised.

(Jyoti Saran, J)

(Nilu Agrawal, J)

Shamshad/-

AFR/NAFR	NAFR
CAV DATE	N/A
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