

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.1343 of 2019

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Gita Devi, wife of Shivnandan Yadav, resident of Ward No. 11, Raghunathpur,
P.S.- Bhargama, Raghunathpur, District- Araria, Bihar- 854334.

... .. Petitioner/s

Versus

1. The State Of Bihar through the Collector, Araria, Araria Collectorate, District- Araria.
2. The Chief Conservator of Forests, 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. Chitranjan Sinha, PAAG-2
		Mrs. Ratna Kumari, AC to PAAG-2

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CORAM: HONOURABLE MR. JUSTICE SANJAY PRIYA

ORAL JUDGMENT

Date : 23-01-2019

The Petitioner has filed this writ application for the following reliefs:

- I. For a direction to the Respondents to refrain from interfering with the right, title and possession of the Petitioner over 42 Decimal private land of Plot No.3570, Khata No.360, situated in Mauja- Haria, District- Araria, and restraining the Respondent No. 2 to 4 from fixing demarcation and boundary over the said land, which has been carried out for constituting 'Protected Forest' on the basis of Notification No. CF-17025/67-2113-R dated 22.07.1967 issued under Section 29 of the Indian Forest Act, 1927.



II. For an order and direction to the Respondents to exclude the aforesaid private land of 42 Decimal of the Petitioner from the purview of Notification No. CF-17025/67–2113-R dated 22.07.1967, to be categorized as 'Protected Forest'.

Counsel for the Petitioner submits that land, in question, appertaining to Khata No.360, Plot No.3570, Area 42 Decimal, Mauja- Haria, Thana No.196, District- Araria (old District Purnia) is owned by the Petitioner. She got right, title and possession over the said land by virtue of Registered Sale Deed executed by the land owner in her favour. The Petitioner is the recorded Raiyat/Tenant as separate Jamabandi has been created in her name. She is paying rent to the State Government. The Rent Receipts have been issued by the Government in the name of the Petitioner.

The State Government by Notification issued vide No. CF-17025/67–2113-R dated 22.07.1967 under Section 29 of the Indian Forest Act, 1927, declared a large area of land in the old district of Purnia as Protected Forest. The land covered by said notification also includes the Plot No.3570 Khata No.360 along with other plots of village- Haria, Thana No.196, under P.S.-Araria (presently in the District of Araria) at Serial No.1. Xerox copy of the aforesaid notification is enclosed as Annexure-2 to the writ application.



Counsel for the Petitioner submits that power of the State Government to issue notification under Section 29 of the Indian Forest Act, 1927, is subject to limitation prescribed under Section 29(3) of the said Act, which provides that no such notification shall be made unless the nature and extent of rights of Government and of private persons in or over the forest land or wasteland comprising therein have been enquired into and recorded at a survey or settlement, or in such manner as the State Government thinks sufficient.

Counsel for petitioner further submits that the nature and extent of the rights of Government and the private persons in or over forest land and wasteland so acquired and comprised in this notification have not yet been enquired into and recorded as laid down in sub section (3) of Section 29 of the Act.

Counsel for the Petitioner further submits that in similar case co-ordinate Bench of this Court vide judgment dated 13.01.2017 passed in CWJC No.621 of 2016, has held that 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 constitution guarantee. The respondent authorities including the District Magistrate cum



Collector, Araria, was directed to refrain from interfering with the right, title and possession of the petitioners over the plot in question.

Counsel for the Petitioner submits that this Petitioner is also rightful owner of 42 Decimal of land of the aforesaid Plot No.3570, Khata No.360 situated in Mauja- Haria, District- Araria, and after mutation of her name rent receipts have been issued. Xerox copy of rent receipts issued in the name of Petitioner is enclosed as Annexure-5 to the writ application.

In such circumstances, this writ application is disposed off in terms of direction of this Court given in judgment dated 13.01.2017 passed in CWJC No.621 of 2016. The Respondents are directed to refrain from interfering with the right, title and possession of the petitioner over the plot in question until such time that the State would take recourse to any of the remedy available to them to acquire the plots.

Writ of mandamus be issued accordingly.

This writ application is, accordingly, disposed off.

(Sanjay Priya, J)

J. Alam/-

AFR/NAFR	NAFR
CAV DATE	N/A
Uploading Date	04-02-2019
Transmission Date	N/A

