

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.13306 of 2016

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1. Md. Mahiuddin Ansari son of late Abdul Hakim Ansari
 2. Ayub Ansari son of late Abdul Hakim Ansari
 3. Shakil Ahmed son of late Abdul Hakim Ansari
 4. Kalam Ansari son of late Amirul Hasan
 5. Rizwan Ansari son of late Ali Hasan Ansari All are residents of village - Daraul, P.O. - Goithahi, Police Station - Matiyariya, District - East Champaran.

... .. Petitioner/s

Versus

1. The State Of Bihar through the Principal Secretary, Dept. of Mines and Zoology, Govt. of Bihar, Patna
2. The Director, Mines, Bihar, Patna.
3. The Collector, West Champaran at Bettiah.
4. The District Mining Officer, West Champaran at Bettiah.
5. The Mines Development Officer, West Champaran at Bettiah.
6. Harendra Singh, the Director, Singh and Infrastructure Private Limited, Narainpur, Bagha - 2, District West Champaran.

... .. Respondent/s

Appearance :

For the Petitioner/s	:	Mr.Bashishtha Narayan Mishra
For the Respondent/s	:	Mr.Sunil Kumar Mandal- SC3
For the Mines	:	Mr. Naresh Dikshit, Spl. PP mines.

CORAM: HONOURABLE MR. JUSTICE SANJAY PRIYA
ORAL JUDGMENT

Date : 01-07-2019

Heard learned counsel for petitioners, learned counsel for State and learned counsel for the Mining Department.

The present writ application has been for issuance of writ in the nature of mandamus commanding the respondents for making an assessment of the compensation and payment of the same in favour of the petitioners, whose lands which



details are given in para 4 of the writ petition, are used for purpose of mining since 2010 to up-to date and to pay the compensation yearly in future for using the land for mining of the sand.

Learned counsel for petitioner has drawn the attention of this Court to averments made in para 4 of the writ petition, wherein, it is mentioned that petitioners jointly possessed the land bearing khata no. 118, khersra nos. 201 and 132 having its total area 10 bigha out of which about 5 bighas of the land are usually submerged in rainy season in the water. The water flows over the land from the hills of nearby from where sand used to come because of flow of the water from the hill and after rainy season the water logging over the plot becomes dry and then the respondents use to mine the sand from the land for which respondent no.3 use to make settlement for mining the sand. The State Govt. collect royalty as well as earns revenue. The respondents who are land holder of the said land are not being paid single penny for using the same..

A counter affidavit has been filed on behalf of the respondent nos. 3, 4 and 5, wherein, it has been mentioned that petitioner is getting payment on each trailer after price assessment by the Collector, in sale price letter issued by the



District Magistrate. It has further been submitted that the petitioner has taken false plea that compensation has not been paid since 2010. If compensation has not been paid since 2010 how the petitioners became ready for giving consent for their land for further five years to the respondent no. 6. It has further been submitted in the counter affidavit that District Magistrate has fixed the sale price of the sand under Rule 48 of BMMC Rules 1972 at the rate of Rs. 550/- per trailer. He has also fixed Rs. 30/- per trailer for rayati compensation on the said land. The raiyati representative collect the amount firstly then trailer moves for loading the sand on ghat. The petitioner is getting payment on each trailer after price assessment by the District Magistrate, in sale price letter issued by the District Magistrate. Photo copy of sale price fixed by District Magistrate has been annexed as Annexure-B to the counter affidavit.

Learned counsel for petitioners has submitted that land of the petitioners has not been demarcated and consent for only one acre of land has been taken by the Authority for the purpose of mining of sand. He makes prayer for direction to District Magistrate for proper demarcation of land of petitioner over which mining is going on.

This Court is of the view that all these disputed



questions of fact cannot be determined in the writ application filed under Section 226 of the Constitution of India. All these facts can be properly adjudicated by District Magistrate after giving opportunity of hearing to petitioner and looking into all the relevant documents.

This writ application is accordingly disposed off with liberty to petitioner to file appropriate representation before the District Magistrate (respondent no.3), which shall be considered and disposed off in accordance with law within a period of two months from the date of filing of such representation by giving proper opportunity of hearing to petitioner and looking into all the relevant documents.

(Sanjay Priya, J)

shyambihari/-

AFR/NAFR	NAFR
CAV DATE	N/A
Uploading Date	11 /07/2019
Transmission Date	

