

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.7222 of 2015

=====

Upendra Singh, Son of late Bachchu singh, resident of Village- Batta Rampur,
P.O. Mananpur, Circle Office Chanan, District - Lakhisarai, at present resident
of Village- Bhaluki, P.O. Budhauri, District – Nawada (Bihar)

... .. Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Mines and Geology Department, Government of Bihar, Patna.
2. The Principal Secretary, Mines and Geology Department, Government of Bihar, Patna.
3. The Commissioner, Munger Division, Munger.
4. The Collector-cum-District Magistrate , Munger.
5. The Collector -cum District Magistrate, Lakhisarai.
6. The Land Reforms Deputy Collector, Lakhisarai.
7. The Assistant Mining Officer, Lakhisarai.
8. The Circle Officer, Chanan, Lakhisarai.
9. The Officer-in-charge, Chanan, Lakhisarai.

... .. Respondent/s

=====

Appearance :

For the Petitioner/s	:	Mr. Shambhu Sharan Singh, Advocate.
For the State	:	Mr. Ratna Kumari, A.C. to PAAG-2
For the Mines & Geology:		Mr. Naresh Dikshit (Special P.P. Mines & Geology)
		Mr. Brij Bihari Tiwary, Advocate, Mines & Geology

=====

CORAM: HONOURABLE MR. JUSTICE SANJAY PRIYA
ORAL JUDGMENT

Date : 22-01-2019

1. Heard Mr. Shambhu Sharan Singh, counsel for the informant, Mr. Ratna Kumari, A.C. to PAAG-2 and Mr. Naresh Dikshit, Special P.P. Mines.

2. The petitioner has filed this writ application for following reliefs:-

(I) For issuance of direction/order to the respondents to pay compensation for admitted illegal mining of Minor Mineral (sand and sand



mixed soil) come up by way of alluvion since long on the surface of the Raiyati land of petitioner situated adjacent to the Bank of Kiul river under Circle office, Chanan, Mauza Batta, bearing Jamabandi No. 16, Thana No. 53, Rayati Khata No. 47 having Khesra No. 63 (0.24 decimal).

128(0.10)decimal,

179(0.19) decimal,

197 (0.26) decimal,

216 (0.06) decimal,

256(0.22) decimal,

358(0.11) decimal,

and Khata No. 48 having Khesra No.

16(0.28) decimal,

36(0.19) decimal,

59(0.22) decimal,

89(0.69)decimal,

300(0.18) decimal,

301(0.16) decimal,

425(0.49) decimal,

501(0.29) decimal,



506(0.32) decimal,

507(0.49) decimal,

524(0.49) decimal,

526(0.48) decimal,

527(0.19) decimal,

530(0.26) decimal,

537(0.47) decimal,

551(0.69) decimal,

Total area 6 acres and 69 decimal without acquisition of land or without consent of *Raiyat* (petitioner and his ancestors) and auctioned, the area for mining upon which admittedly have no right, title and possession of the State Government.

(II) For quashing the letter No. 645 dated 19.12.2014 of the District Mining Officer, Lakhisarai, who has refused to permit the prospecting licences in favour of petitioner to uplift the sand with reasonable royalty only with a purpose to make the land as agricultural to enjoy the surface right in accordance with law.

3. Counsel for the petitioner submits that petitioner is *Khatiyani Raiyat* of Khata Nos. 47 and 48 situated under



Jamabandi No. 16, Mauza Basbitta, Thana No. 53, Circle Office Chanan, Distt. Lakhisarai old District Munger. The petitioner got knowledge that his *Raiyati Khatiyani* land is covered by the soil mixed with sand and sand useful for building the houses in the locality. The petitioner has approached before the authority that on his *Raiyati* land, some anti social elements are doing illegal mining, for which, he has filed representation before the District Magistrate-cum-Collector, Lakhisarai, enclosing all relevant documents for perusal and consideration vide Annexure-1. On aforesaid application of petitioner, the Mineral Development Officer, Lakhisarai, has written letter to Circle Officer, Chanan, and Officer In-charge of Chanan Police Station, to stop the illegal mining on Khata Nos. 47 and 48 by anti social element vide letter No. 2/12 dated 2.9.2014 (Annexure-2). It has also been submitted that vide letter No. 733 dated 19.11.2014, the Circle Officer, Chanan, has written to Mineral Development Officer, Lakhisarai, that nature of land is sand and name of *Raiyat* is Borhan Singh which runs in the record of right and rent for the period 2014-15 has already been paid by the petitioner. The xerox copy of aforesaid letter has been enclosed as Annexure-3.

4. The petitioner has alleged that respondent authority has not taken consent from the petitioner or his ancestor and have



uplifted the sand from the *Raiyati* land belonging to the petitioner. The petitioner has given representation to different authorities including Minister, Mines and Geology Department, Government of Bihar, on 31.12.2014, as contained in Annexure-5, claiming entitlement of compensation for the excavation of sand from his *Raiyati* land.

5. The detailed counter affidavit has been filed on behalf of respondents (Mining Department) stating in paragraphs-7 and 8 that according to New Sand Policy, all the rivers in a district are formed as separate stretches and all the stretches of a district are combined to form a unit for the purpose of sand settlement. It is mentioned in paragraph-8 of the counter affidavit that as per decision of the State Government, Jamui and Lakhisarai districts have been combined into one single unit and have been settled through Public auction for a period of 5 years from the calendar year 2015 onwards in favour of one Raj Nandini Project Pvt. Ltd. at a settlement amount of Rs. 40.91 crore for the calendar year 2015 followed by subsequent enhancement in the settlement amount by 20% for every subsequent year till the calendar year 2019. It is also mentioned in paragraph-9 of the counter affidavit that as per Rule 11A(2)(viii), the sand *Settlee* cannot extract sand over any private land unless he obtains the permission of the



concerned land owner (*Raiyat*). It has also been laid in the said Rule that no person other than the *Settlee* can do any mining operation over any area even if it is private land. The Rule 11A(2) (viii) of Bihar Minor Mineral Concession Rules, 1972 (Amended) has been quoted in the counter affidavit which speaks as follows:

11A(2)(viii) “No quarrying of sand shall be permitted in any private land owned by a person other than the settlee unless the settlee obtains the consent of the concerned land owner/raiyat.”

6. Counsel for the petitioner submits that in terms of the aforesaid Rule, no person even if he is *Settlee* of the said sand ghat unit, can extract sand from the land owned by the petitioner unless the said *Settlee* obtains the permission of the petitioner. Hence, in case any person indulges in illegal extraction of sand over the land of petitioner without his consent, the petitioner is free to take legal action against the said person, even if he is the *Settlee*. The petitioner is also not permitted to extract sand accumulated over his own land unless he obtains the mineral right over the said land by means of a valid lease/permit/settlement as prescribed under the Rules.



7. Counsel for the petitioner has pointed out Annexure-4 by which his representation to do mining of sand on his own land has been refused by the authority.

8. This Court after looking into submission of the petitioner and the counter affidavit filed on behalf of the respondents including the order contained in Annexure-4, finds that whether excavation is being made by the *Settlee* on the *Riyati* land of petitioner after being settled by the State Government is pure question of facts. The petitioner has given in the writ petition about details of *Raiyati* land belonging to him, over which, mining is being done by the *Settlee* illegally.

9. This Court is of the view that Collector will be the competent authority to decide as to whether any illegal mining has been done from the *Raiyati* land of petitioner by the *Settlee*. In the event the *Settlee* will be found doing such act, the Collector will be competent to take appropriate action against him in accordance with law.

10. In such circumstances, this writ petition is disposed off with direction to the petitioner to file detailed representation including Annexure-1, 2 and 4 as well as other relevant documents which he deems fit and proper, before the Collector, Lakhisarai, within a period of one month from the date of receipt of this order.



The Collector will pass final order in accordance with law on aforesaid representation after giving proper opportunity to the petitioner, within a period of three months from the date of filing of aforesaid representation.

(Sanjay Priya, J)

S.Ali/-

AFR/NAFR	NAFR
CAV DATE	N.A.
Uploading Date	31/01/2019
Transmission Date	

