

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.2228 of 2020

1. Md. Tanweer Alam S/o Late Nasiruddin Resident of Village- Lahtora, Ward No.2, P.O.- Bagnagar, P.S.- Araria, District- Araria.
2. Shams Tabrez Ahmad S/o Late Nasiruddin Resident of Village- Lahtora, Ward No.2, P.O.- Bagnagar, P.S.- Araria, District- Araria.
3. Md. Afroz Alam S/o Late Nasiruddin Resident of Village- Lahtora, Ward No.2, P.O.- Bagnagar, P.S.- Araria, District- Araria.
4. Md. Nasimuddin S/o Late Nasiruddin Resident of Village- Khariya Basti, Ward No.11, P.S.- Araria, District- Araria.
5. Ruhi Perween W/o Mohtasim Akhtar D/o Md. Nasimuddin Resident of Village- Khariya Basti, Ward No.11, P.S. Araria, District- Araria.

... .. Petitioner/s

Versus

1. The State of Bihar through the Collector, Araria, Araria Collectorate, District- Araria.
2. The Chief Conservator of Forests, 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

Appearance :

For the Petitioner/s : Mr. Manish Kumar, Advocate
For the Respondent/s : Mr. Anant Prasad Singh (SC15)

CORAM: HONOURABLE THE CHIEF JUSTICE
and
HONOURABLE MR. JUSTICE S. KUMAR
ORAL ORDER

(Per: HONOURABLE THE CHIEF JUSTICE)

(The proceedings of the Court are being conducted by Hon'ble the Chief Justice/ Hon'ble Judges through Video Conferencing from their residential offices/residences. Also, the Advocates and the Staffs joined the proceedings through Video Conferencing from their residences/offices.)

3 11-02-2022 Petitioner has prayed for following relief(s) : -

“That, this is an application for issuance of appropriate writ, orders and directions to the respondents, prohibiting dispossession of the petitioners from the land held by them and restraining the Respondent No. 2 to 4



from fixing demarcation and boundary line over Plot No. 3570 Khata No. 360, situated in Manja- Haria, District-Araria, being carried out for constituting Protected Forest on the basis of Notification No. C F 17625, 67-2113-R dated 22.07.1967 issued under Section 29 of The Indian Forest Act 1927.

This writ application is also for a direction to the the Respondents to exclude the above land of the petitioners from purview of above notification dated 22-07-1967 to be categorized as Protected Forest.”

Learned counsel for the petitioner seeks reliance upon the decision rendered by a learned Single Judge in **C.W.J.C. No.621 of 2016, titled as Kamlesh Kumar Thakur @ Kamlesh Kr. Thakur & Ors. Vs. The State of Bihar & Ors.**

We are afraid, reliance upon the said decision is totally misconceived in law. What prevailed with the learned Single Judge to allow the writ petition was (a) admission made by the State of the petitioner's rights over the land and (b) non-compliance of the provisions of Section-29 of the Indian Forest Act, 1927 (referred to as the Act).

We are afraid, on both counts, the judgment cannot be relied upon, in reference to the instant facts.

The notification under Section-29 of the Act was issued way back on 22nd of July, 1967. None protested at that point in time. Petitioner only stepped into the shoes of the



erstwhile owner in late 1980's. By what mode, we need not go into that aspect, but however, the notification prohibits any non-forest activity, to be carried out in any forest area, declared to be protected forest. Once the area is declared as a protected forest, then all activities and rights of individual land-owners/inhabitants are necessarily required to be regulated in view of and under the provisions of the Act. The erstwhile owner was not only bound but accepted such position of law.

In this view of the matter, petitioner's prayer for issuance of a writ of mandamus, directing the forest authorities not to dispossess him, is totally misconceived in law.

At this stage, learned counsel for the petitioner states that petitioner shall approach the Collector concerned setting out his case, warranting non-interference by the forest authorities.

Well, we accept this prayer. It shall be open for the authorities to decide the petitioner's request in accordance with law, more so considering the intent; scope; object; and purpose of the provisions of the Indian Forest Act.

As and when any such request is received, the same shall be considered and decided expeditiously, in accordance with



law, preferably within a period of three months thereafter.

We clarify that the judgment in **Kamlesh Kumar Thakur @ Kamlesh Kr. Thakur** (supra) would not bind the parties, more so, the Department of Forest. We may also record as to whether the said decision has attained finality or not is not evident from the record. Hence, the same shall not be considered to be a binding precedent in view of the reasons which we have referred to (supra).

Petition is disposed of in the aforesaid terms.

Interlocutory application, if any, shall also stand disposed of.

(Sanjay Karol, CJ)

(S. Kumar, J)

K.C.Jha/chn

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