

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.1791 of 2021

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1. Parmeshwar Pandey, aged about 59 years, Male.
 2. Rameshwar Padney, aged about 57 years, Male.

Both Sons of late Sudarshan Pandey, both Resident of Village -
Churamanpur, P.S. - Buxar, District- Buxar.

... .. Petitioners

Versus

1. The State of Bihar through its Chief Secretary, Govt. of Bihar, Patna.
2. The Union of India through its Secretary, Ministry of Road Transport and Highways, Transport Bhawan, 1, Parliament Street, new Delhi- 110001.
3. The National Highways authority of India through its General manager Cum Project Director, Project Office, Varansi.
4. The Project Director, National Highways Authority of India, PIU- Buxar, P.S. - Buxar, District- Buxar.
5. The Competent Authority cum District Land Acquisition Officer, District- Buxar.

... .. Respondents

Appearance :

For the Petitioner	:	Mr. Ramchandra Singh, Advocate
For the State	:	Mr. Sajid Salim Khan, S.C.-25
For NHAI	:	Mr. S.N. Pathak, Advocate

CORAM: HONOURABLE MR. JUSTICE SANDEEP KUMAR

ORAL JUDGMENT

Date : 22-11-2022

Heard learned counsel for the parties.

2. In this writ petition, the petitioners have challenged the notice dated 07.09.2020 issued by competent authority-cum-District Land Acquisition Officer, Buxar, by which the petitioners have been directed to receive



compensation of their land as agriculture land and return the excess amount of Rs.27,28,309/- which has been paid to them treating the said land as commercial land.

3. Sri Ramchandra Singh, learned counsel for the petitioners submits that the petitioners have challenged the recovery notice dated 07.09.2020 issued to them by the competent authority on various grounds. One of the grounds raised by the petitioners is that once the amount is disbursed, the same cannot be recovered from them without initiating appropriate proceeding. He further submits that the impugned notice is illegal as without initiating appropriate proceeding before the competent authority, no recovery can be made from the petitioners on any ground for the amount which has been disbursed in respect of the land of the petitioners which has been acquired by the respondents.

4. Sri Sajid Salim Khan, learned counsel for the State submits that the power to recover the excess amount, which has wrongly been disbursed/released in favour of the petitioners, is there and the State cannot be debarred from making any legal recovery. He further submits that the petitioners have challenged the notice issued by the competent authority, if they have some objections with regard to the



issuance of notice then the right course available to them is that they should file show-cause reply to the notice and raise all objections, which can be considered by the authority concerned.

5. Sri Sajid Salim Khan, learned counsel for the State has relied upon two judgments of this Court rendered in the case of ***Kailash Prasad Ram vs. The State of Bihar & Ors.*** (C.W.J.C. No.10191 of 2018) decided on 31.07.2018 and ***Sanjay Kumar vs. The State of Bihar & Ors.*** (C.W.J.C. No.311 of 2014) decided on 13.03.2018 and submits that the State has authority to recover the excess amount paid to the claimant, and for that, they can initiate an appropriate proceeding under the Bihar and Orissa Public Demands Recovery Act, 1914.

6. Considered the submissions of learned counsel for both the parties.

7. In the opinion of this Court, this writ petition is premature as the petitioners have challenged the recovery notice. The Supreme Court in the case of ***Union of India & Another vs. Kunisetty Satyanarayana*** reported in (2006) 12 SCC 28 has held that a mere charge-sheet or show-cause notice does not give rise to any cause of action because it does not amount to an adverse order which effects the rights of any party unless the same has been issued by a person having no



jurisdiction to do so.

8. At this stage, learned counsel for the petitioners prays to withdraw this writ petition with a liberty to file reply before the competent authority in answer to the impugned recovery notice.

9. This writ petition is permitted to be withdrawn with a liberty to the petitioners to file a fresh reply to the impugned recovery notice and raise all objections before the competent authority.

10. If the petitioners file fresh show-cause reply to the impugned recovery notice, the competent authority will consider all the submissions of the petitioners raised in the reply and after hearing the petitioners, the competent authority will decide future course of action including initiating a recovery proceeding under the Bihar and Orissa Public Demands Recovery Act, 1914. After considering the judgments of this Court in the case of ***Kailash Prasad Ram*** (*supra*) & ***Sanjay Kumar*** (*supra*), it is the opinion of this Court that the State has no other option but to initiate a recovery proceeding under the Bihar and Orissa Public Demands Recovery Act, 1914 if the petitioners do not return the amount as per the demand of the State.



11. With the aforesaid observations and directions,
this writ petition stands disposed of as withdrawn.

(Sandeep Kumar, J)

pawan/-

AFR/NAFR	N.A.F.R.
CAV DATE	N/A
Uploading Date	20.12.2022
Transmission Date	N/A

