

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.965 of 2023

1. Sanjay Kumar Son of Late Madan Chowdhary, Resident of Village - Bangaon Bazar, Police Station - Bajpatti, District - Sitamarhi.
2. Chiranjeev Kumar, Son of Kailash Sah, Resident of Village - Bangaon Bazar, Police Station - Bajpatti, District - Sitamarhi.
3. Ramesh Chowdhary, Son of Late Prahlad Chowdhary Resident of Village - Bangaon Bazar, Police Station - Bajpatti, District - Sitamarhi.
4. Ajeet Kumar, Son of Kamal Chowdhary, Resident of Village - Bangaon Bazar, Police Station - Bajpatti, District - Sitamarhi.
5. Rajesh Kumar @ Rakesh Kumar Son of Late Ram Nagina Prasad, Resident of Madhuban Bazar, Police Station - Bajpatti, District - Sitamarhi.
6. Manoj Kumar @ Manoj Sah Son of Late Bhuneshwar Rai, Resident of Madhuban Bazar, Police Station - Bajpatti, District - Sitamarhi.
7. Ram Babu Sah, Son of Late Surajee Sah, Resident of Madhuban Bazar, Police Station - Bajpatti, District - Sitamarhi.
8. Aurang Bihari @ Raghavendra Kumar, Son of Jangli Sah, Resident of Madhuban Bazar, Police Station - Bajpatti, District - Sitamarhi.

... .. Petitioner/s

Versus

1. The State of Bihar through its Secretary Revenue Department Govt. of Bihar, Patna, Bihar.
2. The District Magistrate, Sitamarhi.
3. The Circle Officer, Bajpatti, District - Sitamarhi.

... .. Respondent/s

Appearance :

For the Petitioner/s : Mr.Alok Kumar Jha, Advocate
For the Respondent/s : Mr.Raj Kishore Roy (GP-18)

CORAM: HONOURABLE MR. JUSTICE PURNENDU SINGH
ORAL ORDER

2 25-01-2023 Heard Mr. Alok Kumar Jha, learned counsel

 appearing on behalf of the petitioners and Mr. Raj Kishore Roy,

 learned GP-18 for the State.

2. Learned counsel appearing on behalf of the

petitioners submitted that petitioners have an alternative remedy



of appeal and in that view of the matter he seeks to withdraw the present writ application. He further submitted that he will file an application under Section 14 of the Bihar Public Land Encroachment Act, 1956 (hereinafter referred to as ‘ the Act’) for stay of execution order passed by the Circle Officer, Bajpatti, District- Sitamarhi. Learned counsel further submitted that the Circle Officer, Bajpatti, District- Sitamarhi, is adamant to not provide certified copy to the petitioner and instead of settling the petitioners, the Circle Officer has proceeded to dispossess them by passing ex-parte order dated 26.12.2022.

3. In the present case, the petitioners have made their specific statement in paragraph no. 16 of the writ petition, which is reproduced hereunder:

“That, now the authorities are rigid to vacate the land from all the petitioners and the petitioners are scared of their eviction, so they went in the office and tried to get the copy of the order passed in the encroachment case but office refused even to take the Chirkut.”

4. Such plight of the petitioners has forced them to file the present writ petition to protect their Fundamental Right. The order dated 26.12.2022 has been passed behind the back of the petitioners. The order reveals that the shops of the petitioners are to be removed but in absence of any opportunity



of hearing and notices in accordance with the provision of the Act, the same requires to be interfered by this Court.

5. Mr. Raj Kishore Roy, learned counsel appearing on behalf of the State submitted that from the pleadings made in the writ petition, it appears that final order under Sub-Section 1 of Section 6 of the Act has already been passed and as on date, as per the records of the writ petition, no notice under Sub-Section 2 of Section 6 has been issued. He further submitted that the petitioners have alternative remedy of appeal under Section 11 of the Act and as per the provision of Section 14 of the Act, the petitioners have remedy to file an appeal for grant of stay by the Appellate Authority.

6. This Court finds that the petitioners have been able to make out a case of misuse of exercise of power by the Circle Officer, Bajpatti, District- Sitamarhi, who, even though, was aware of the fact that these petitioners were earning their livelihood from the shops which admittedly have been constructed on the Sairat land and they have been running their shops since decades and the same was being settled from time to time by District Administration and pursuant to which the petitioners were depositing the rent for the said shops which is evident from annexure-2 to the writ petition which are receipts



to show that shops were allotted and rent for some period was also deposited by the petitioners either to the State Government or to the settlee after the repeal of the Bihar Agricultural Produce Market Act, 1960.

7. Considering the rival submissions of the parties, the petitioners are directed to file their appeal by 30.01.2023 and seek such interim relief in accordance with Section 14 of the Act.

8. Taking into consideration the concern shown by the learned counsel appearing on behalf of the petitioners, it goes without saying that the District Magistrate, Sitamarhi shall not take any action to proceed with the demolition till final disposal of the application of the petitioners filed under Section 14 of the Act in accordance with law.

9. The District Magistrate, Sitamarhi, is further directed to dispose of the application filed under Section 14 within a period of three weeks'. Till then *status quo* is directed to be maintained.

10. Mr. Raj Kishore Roy, learned GP-18 is directed to inform District Magistrate, Sitamarhi, by electronic means as well as by written communication to entertain the petitioners' appeal once it is filed even without certified copy of this order



today itself.

12. With the above observation and direction, the writ
petition stands disposed of.

(Purnendu Singh, J)

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