

IN THE HIGH COURT OF JUDICATURE AT PATNA

Letters Patent Appeal No.899 of 2024

In

Civil Writ Jurisdiction Case No.17688 of 2022

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1. Hari Kishan Sharma @ Hari Maharaj Son of Gokhul Ram Sharma, R/o Sonauli Chowk, Hasdah, P.O. Gulabbagh, P.S.- Sadar, District- Purnea, Bihar- 854326.
 2. Rishav Kumar Pugalia Son of Late Umed Pugalia, R/o Sanauli Chowk, Hasdah, P.O. Gulabbagh, P.S.- Sadar, District- Purnea, Bihar- 854326.
 3. Amritansh Kumar Son of Anay Kumar Gupta, R/o Ward No. 36, N.H.-31, Ram Mohni Chow Hasdah, P.O. Gulabbagh, P.S.- Sadar, District- Purnea, Bihar- 854326.
 4. Vijay Kumar Manjhi @ Vijay Manjhi @ Vijay Kumar Son of Ramesh Prasad Manjhi, R/o Lohapatti, N.H.-31, Gulabbagh, Hasdah, P.O. Gulabbagh, , P.S.- Sadar, District- Purnea, Bihar- 854326.
 5. Navratan Mal Baid Son of Gulab Chand Baid, R/o N.H.-31, Chandan Nagar, Hasdah, P.O. Gulabbagh, , P.S.- Sadar, District- Purnea, Bihar- 854326.
 6. Rahul Kumar Kedia @ Rahul Kumar Son of Late Pramod Kumar Kedia, R/o Kedia Campus, Sanauli Chowk, Abdullah Nagar, Gulabbagh, P.O.- Gulabbagh, P.S.- Sadar, District- Purnea Bihar- 854326
 7. Sundar Lal Sancheti Son of Dhanraj Sancheti, R/o Near Mahavir Mandir, Hasdah, Gulabbagh, Hasdah, P.O.- Gulabbagh, P.S.- Sadar, District- Purnea Bihar- 854326
 8. Savitri Devi W/o Indra Prasad, R/o Gulabbagh, Abdullah Nagar, P.O. Gulabbagh, P.S. -Sadar,District- Purnea Bihar- 854326
 9. Ashok Kumar Baid Son of Manik Chand Baid, R/o Baid Bhawan, Gulabbagh, P.O.- Gulabbagh, P.S.- Sadar, District- Purnea Bihar- 854326
 10. Ashok Kumar Pandit Son of Laxmi Pandit, R/o Sonauli Chowk, Gulabbagh, P.O.- Gulabbagh, P.S.- Sadar, District- Purnea, Bihar- 854326.
 11. Bajranj Sancheti Hanuman Sancheti, R/o Sonauli Chowk, Hansdah, P.O. Gulabbagh, P.S. -Sadar, District- Purnea- Bihar- 854326.
 12. Avinash Chandra Mishra Son of Aditya Nath Mishra, R/o Bageshwari Asthan, Abdullah Nagar, P.O. Gulabbagh, P.S. -Sadar, District- Purnea- Bihar- 854326.
 13. Ganesh Kumar Mandal @ Ganesh Son of Late Prem Lal Mandal, R/o Ward No. 36, Near Marketing Chowk, P.O. Gulabbagh, P.S. -Sadar, District- Purnea- Bihar- 854326.
 14. Yugal Kishore Borar Son of Kewal Chand Borar, R/o N.H.- 31, Abdullah Nagar, P.O. Gulabbagh, P.S. -Sadar, District- Purnea- Bihar- 854326.



15. Mohan Lal Sancheti Son of Labh Chandra, R/o Abdullah Nagar, P.O. Gulabbagh, P.S. -Sadar, District- Purnea- Bihar- 854326.
16. Akhilesh Chandra Son of Aditya Nath Mishra, R/o Bageshwari Asthan, P.O. Gulabbagh, P.S. -Sadar, District- Purnea- Bihar- 854326.
17. Om Prakash Sharma Son of Jora Ram Sharma, R/o Near Hanumanganji Temple, Abdullah Nagar, P.O.- Gulabbagh, P.S.- Sadar, District- Purnea, Bihar- 854326.
18. Anand Kumar Modi Son of Doman Lal Modi, R/o Sonauli Chowk, Hansdah, P.O. Gulabbagh, P.S. -Sadar, District- Purnea- Bihar- 854326.
19. Mohammad Parvez Alam Son of Md. Kamruddin, R/o Sonauli Chowk, Abdullah Nagar, P.O. Gulabbagh, P.S. -Sadar, District- Purnea- Bihar- 854326.
20. Ranjan Kumar Gosh Son of Gopal Chandra Gosh, R/o City Road, Hansdah, P.O. Gulabbagh, P.S. -Sadar, District- Purnea- Bihar- 854326.
21. Mahaveer Mistri Son of Madan Mistri, R/o Ward No. 36, Shastri Nagar, P.O. Gulabbagh, P.S. -Sadar, District- Purnea- Bihar- 854326.
22. Pushjeet Kumar Son of Baldev Prasad Saha, R/o Naya Tola Line Bazar, Purnea, P.O. and P.S. K. Hat, District- Purnea-854301.
23. Bishwajit Kumar Son of Baldev Prasad Saha, R/o Naya Tola, Line Bazar, Purnea, P.O.- Purnea, P.S. Sahayak K. Hat, District- Purnea- 854301.
24. Sukhdeo Prasad Saha Son of Harihar Prasad, R/o Ward No. 37, Saha Market, Lohapatti Chowk, P.O. Gulabbagh, P.S.- Sadar, District- Purnea, Bihar- 854326.
25. Parwati Devi W/o Baijnath Modi, R/o Ward No. 12, Madar Ghat, Kasba, Purnea, P.O. and P.S. - Kasba, District- Purnea-854330.
26. Hari Prasad Chaudhary S/o Rit Lal Choudhary, R/o Sonauli Chowk, Hasdah, P.O. Gulabbagh, P.S.- Sadar, District- Purnea, Bihar- 854326.
27. Mohammad Rustam Khan Son of Babu Khan, R/o Gandhi Nagar, Hasdah Road, P.O. Gulabbagh, P.S.- Sadar, District- Purnea, Bihar- 854326.
28. Mayank Kumar Ranka Son of Nirmal Kumar Ranka, R/o Gulabbagh, Hasdah, P.O. Gulabbagh, P.S.- Sadar, District- Purnea, Bihar- 854326.
29. Ramesh Prasad Verma Son of Sarda Prasad Verma, R/o Sardar Tola, Near State Bank, Abdullah Nagar, P.O.- Gulabbagh, P.S.- Sadar, District- Purnea, Bihar- 854326.
30. Gyan Prakash, Son of Badri Ram, R/o Abdullah Nagar, P.O.-Gulabbagh, P.S. Sadar, District- Purnea, Bihar,- 854326.
31. Bishwanath Agrawal, Sobnof Satyanarayan Agrawal, R/o Greater Kailash, Part-II, P.O. Greater Kailash, P.S. Chittranjan Park, South Delhi- 110048.



- 32. Dhanraj Pugalia, Son of Meghraj Pugalia, R/o Ward no. 39, Soanauli Chowk, Abdullah Nagar, P.O. Gulabbagh, P.S. Sadar, District- Purnea, Bihar- 854326.
- 33. Ravi Sancheti, Son of Rajendra Sancheti, R/o Ward no. 37, Soanauli Chowk, Hansdah, P.O. Gulabbagh, P.S.Sadar, District- Purnea, Bihar- 854326.
- 34. Anand Kumar Sancheti, Son of Srichand Sancheti, R/o Soanauli Chowk, Abdullah Nagar, P.O. Gulabbagh, P.S. Sadar, district- Purnea, Bihar- 854326.
- 35. Raju Chaudhary, Son of Jaganath Chaudhary, R/o House No. 602/19, Ward No. 3, VTC, Mehrauli, P.O. Mehrauli, P.S. Sadar, District- Hauz Khan, South Delhi- 110030.

... .. Appellant/s

Versus

- 1. The State of Bihar Bihar.
- 2. The Prohibition Excise and Registration Department (Registration), Government of Bihar through the Principal Secretary.
- 3. The District Magistrate-cum-District Collector, Purnea, Bihar.
- 4. The Commissioner Purnea.
- 5. The Sub-Divisional Officer, Purnea.
- 6. The Circle Officer, Purnea East, Purnea, Bihar.
- 7. The Municipal Corporation, Purnea, Bihar.
- 8. The Municipal Commissioner, Municipal Corporation, Purena, Bihar.
- 9. Jai Singh Golchha, Son of Bachhraj Golchha, R/o Bageshwari Ashtan, Abdullah Nagar, P.O. Gulabbagh, P.S. Sadar, District- Purnea, Bihar- 854326.
- 10. Masomat Sulekha Choudhary, Wife of Basant Kumar Choudhary, R/o Marketting Yard, Soanauli Chowk, Hansdah, P.O. Gulabbagh, P.S. Sadar, District- Purnea, Bihar- 854326.

... .. Respondent/s

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with

Letters Patent Appeal No. 883 of 2024

In

Civil Writ Jurisdiction Case No.17689 of 2022

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- 1. Bijay Kumar Poddar Son of Ramswarup Poddar, R/o Ward No. 36, Shastri Nagar, Hasdah, P.O.- Gulabbagh, P.S. Sadar, District- Purnea, Bihar- 854326.



2. Kumar Rahul Singh, Son of Dr. Randhir Bahadur Singh, Resident of Chandan Nagar, P.O.- Gulabbagh, Abdullahnagar, P.S. Sadar, District- Purnea, Bihar- 854326.

... .. Appellant/s

Versus

1. The State of Bihar Bihar.
2. The Prohibition Excise and Registration Department (Registration), Government of Bihar through the Principal Secretary.
3. The District Magistrate -cum-District Collector, Purnea, Bihar.
4. The Commissioner, Purnea.
5. The Sub-Divisional Officer, Purnea.
6. The Circle Officer, Purnea East, Purnea, Bihar.
7. The Municipal Corporation, Purnea, Bihar.
8. The Municipal Commissioner, Municipal Corporation,Purnea, Bihar.

... .. Respondent/s

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with
Letters Patent Appeal No. 926 of 2024
In
Civil Writ Jurisdiction Case No.727 of 2023

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Arjun Kumar Sah Son of Ghotan Prasad Sah Resident of village - Sonauli Chowk, N.H.- 31, Gulab Bagh, Purnea, District - Purnea.

... .. Appellant/s

Versus

1. The State of Bihar Bihar.
2. The Prohibition Excise and Registration Department (Registration), Government of Bihar through the Principal Secretary.
3. The Commissioner, Purnea.
4. The District Magistrate -cum- District Collector, Purnea, Bihar.
5. The Municipal Corporation, Purnea, Bihar.
6. The Municipal Commissioner, Municipal Corporation, Purnea, Bihar.

... .. Respondent/s

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Appearance :



(In Letters Patent Appeal No. 899 of 2024)

For the Appellant/s : Mr. Y.V. Giri, Sr. Advocate
Ms. Shrishti Singh, Advocate
For the State : Mr. P.K. Shahi, AG
Mr. Vivek Prasad, GP-7
For the Municipal Corp. : Mr. Prince Kumar Mishra, Advocate

(In Letters Patent Appeal No. 883 of 2024)

For the Appellant/s : Mr. Y.V. Giri, Sr. Advocate
Ms. Shrishti Singh, Advocate
For the State : Mr. P.K. Shahi, AG
Mr. Vivek Prasad, GP-7
For the Municipal Corp. : Mr. Prince Kumar Mishra, Advocate

(In Letters Patent Appeal No. 926 of 2024)

For the Appellant/s : Mr. Siya Ram Sahi, Sr. Advocate
Mr. Kameshwar Pd. Singh, Advocate
Mr. Jitendra Kumar Pandey, Advocate
For the State : Mr. P.K. Shahi, AG
Mr. Vivek Prasad, GP-7
Mr. Arun Kumar Bhagat, AC to AAG-12
For the Municipal Corp. : Mr. Prince Kumar Mishra, Advocate

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CORAM: HONOURABLE THE CHIEF JUSTICE
and
HONOURABLE MR. JUSTICE PARTHA SARTHY
CAV JUDGMENT
(Per: HONOURABLE THE CHIEF JUSTICE)

Date : 07-10-2024

The above appeals arise from three writ petitions respectively; C.W.J.C. No.17689 of 2022 by two writ petitioners, C.W.J.C. No.17688 of 2022 by 37 writ petitioners and C.W.J.C. No. 8727 of 2024 by one writ petitioner. The appellants are aggrieved with the judgment of the learned Single Judge, which refused interference to the show-cause notices issued under Bihar Public Land Encroachment Act, 1956 (for



brevity 'Encroachment Act') in encroachment cases before the Circle Officer, Purnea East. There was also allegation in CWJC No.17689 of 2024 that some structures were forcibly demolished without proper notice, even under the Encroachment Act.

2. The identical contention raised by the different petitioners was that the very same property was twice attempted to be evicted under the Public Land Encroachment Act, once in the year 1953 and then in the year 1973, both of which were resisted by the land-owners; at the first instance by the predecessors-in-interest of the writ petitioners. At the first instance, it was categorically found by the various hierarchical authorities under the Encroachment Act; except the first appellate authority, the Collector, that there was no ground to proceed summarily for eviction. The next attempt was made in the year 1973 which was resisted by the land owners in a writ petition, successfully. In 2013 also, a proceeding was initiated which was not however continued. The present proceedings are in the year 2023.

3. Sri Y.V. Giri, learned Senior Counsel appeared for the appellants in L.P.A. No.883 of 2024 and 889 of 2024 and Mr. Siya Ram Sahi, learned Senior Counsel, appeared for the



appellants in L.P.A. No.926 of 2024. Sri Y.V. Giri had the compelling argument of *res judicata* and no summary proceeding under the Encroachment Act being permissible; if there is found a semblance of right on the lands, as proved by the petitioners. The earlier proceedings ended in favor of the petitioners and there is no reason to initiate a further proceeding for eviction under the Encroachment Act; in which complicated and disputed questions of title and possession cannot be decided. The learned Counsel has placed before us a number of decisions to canvas both the grounds urged; of *resjudicata* & the summary proceedings being impermissible. It is the argument of the learned Senior Counsel and the other learned Counsel who adopted all the aforestated arguments, that if at all the State has a valid claim over the properties, then it is for the State to approach the appropriate Civil forum, as has been held by another Division Bench with respect to the very same properties in ***Ritlal Chaudhary and Others v. The District Magistrate Purnea, 1997 (25) BLJR 581.***

4. Arbitrary and peremptory demolition of structures cannot be a handy substitute for eviction of tenants and lessees and there should necessarily be a decree of a Civil Court obtained to effect such eviction. Reliance was placed on



M/s Hindusthan Petroleum Corporation v. State of Bihar; AIR 1996 Patna 163 and Amrit Varsha Hindi Dainik v. Bihar State Agriculture Marketing Board and Another; 1999 (1) PLJR 1.

Even mere possession of property, if settled for a long time, despite absence of a right to remain, eviction can be only after recourse to law, as has been held in ***Sopan Sukhdev Sable v. Assistant Charity Commissioner; (2004) 3 SCC 137*** and ***Krishna Ram Mahale v. Shobha Venkat Rao, (1989) 4 SCC 131***. On general principles of *res judicata*, the decision in ***Ritlal Chaudhary (supra)*** was urged and to buttress the ground, ***Gulabchand Chotalal Parikh v. State of Gujarat; AIR 1965 SCC 1153*** was also cited at the Bar.

5. The learned Advocate General appearing for the respondent-State would assert that there is rank encroachment by the petitioners into the lands belonging to the National Highway Authority of India (for brevity 'N.H.A.I.'). The 170 feet wide road narrows to 60 feet due to the encroachments within Purnea which has led to the powers under the Encroachment Act being invoked, to effect eviction from lands wherein the *Jamabandi* is recorded in the name of N.H.A.I.. The appellants have absolutely no right over the properties and there is nothing to indicate that the present writ petitioners are the



predecessors-in-interest of those persons who had challenged the earlier proceeding under the Encroachment Act. It is urged that the High Court would not invoke the extra ordinary powers against a show-cause notice and there are questions of fact to be decided as to the claim raised by the appellants over the land being *bonafide* and the appellants being the successors-in-interest of the earlier landowners; to prove which, the identity of such lands as relatable to the earlier titleholders, to which the present appellants have succeeded, would also have to be established. Unless these *prima facie* facts are established, the appellants cannot challenge the summary proceedings initiated. The N.H.A.I. is not a party to the proceedings, and in any event, the learned Single Judge was perfectly right in having declined jurisdiction; which refusal to exercise discretion cannot be upset in an appeal unless such refusal is found to be per se illegal, arbitrary and perverse. There is absolutely no ground to upset the findings of the learned Single Judge, is the compelling argument of the learned Advocate General, who is assisted by learned Counsel Sri Vivek Prasad.

6. Reference is made to Section 23 of the N.H.A.I. Act, which is yet another alternate efficacious remedy available to the petitioners. There is also no rule that the State should file



a Civil Suit, if there are disputed questions of fact, especially when the *bonafides* of the claim of the noticees have not been established before the authority under the Encroachment Act. Even if further summary proceedings are continued, there is nothing stopping the appellants from approaching the Civil Court with proper documents and evidences, so as to establish their claim over the property, as against that now asserted by the N.H.A.I..

7. The learned Single Judge has specifically noticed the contention of the District Magistrate-cum-Collector, Purnea, from the counter affidavit filed, that the *Jamabandi* is running in the name of the N.H.A.I. in the revenue records. The *kabuliyats* said to have been executed by the then Raja PC Lal Chaudhary has been specifically disputed by the District Collector. Neither the District Board, Purnea nor the N.H.A.I. had ever settled the property in question in favor of the writ petitioners or their ancestors and hence, the records clearly indicate that the writ petitioners are in un-authorized occupation of the lands in question. On the dispute raised of a proper notice having not been given, it was asserted that prior information had been given for removing the temporary structures, by loudspeakers; an action initiated by the Municipal Corporation



Purnea, since 01.11.2022, which was also carried out on regular intervals, after which some of the temporary structures were removed. The earlier proceedings initiated in the year 2013 were dropped but there was no acknowledgment of the writ petitioners as *rayats*. Even as on 2013, the land belonged to the N.H.A.I. and as per the survey, the *Jamabandi* was continuously running in the name of N.H.A.I.. The Purnea Municipal Corporation fully supported the district administration.

8. The learned Single Judge specifically considered the decision in *Ritlal Chaudhary (supra)* and extracted the same *in toto* in the judgment. The binding declaration of this Court, was only insofar as no forcible eviction being possible and the direction was also to the effect that eviction can be only after following the due course of law under any appropriate statute including the Code of Civil Procedure. It was found in the impugned judgment that in the context of the large number of petitioners, it was impossible for the Court to examine the individual cases of each petitioner in one single writ petition. It was also found that there was absolutely no document annexed with the writ petition in support of the respective claims. The disputed questions of fact regarding the land belonging to the N.H.A.I., the settlement of



the land in the name of the predecessors of the petitioners and whether summary proceedings of eviction can be initiated under the Encroachment Act, could only be decided after the petitioners appear before the Circle Officer, and file their objections to the show-cause notice. The learned Single Judge refused to exercise the extraordinary jurisdiction under Article 226 and rejected the writ petitions, while issuing directions to ensure the proper representation and filing of objections before the authority under the Encroachment Act and a fair disposal of their objections, including the preliminary objection of summary proceedings not being permitted.

9. At the outset, we notice the dictum of the Hon'ble Supreme Court in *Commissioner of Central Excise, Haldia v. M/s Krishna Wax Private Ltd.; (2020) 12 SCC 572*; also reckoned by the learned Single Judge. Admittedly, the writ petitions were filed against show-cause notices issued under the Encroachment Act. The contention was also that the State has to be restrained from such proceeding on the ground of *resjudicata*; the predecessors-in-interest of the petitioner over the lands having successfully challenged similar proceedings under the Encroachment Act, wherein the hierarchical authorities found the State to be incapacitated in taking out a



summary proceeding for eviction; which argument has to be examined from the documents produced on the record, for which we look at C.W.J.C. No.17688 of 2022.

10. Before we examine the records, we also have to notice that in C.W.J.C. No.17688 of 2022, there is clear mis-joinder of parties insofar as the writ petitioners though have an identical claim, are asserting their rights over separate properties on which different constructions are made and the claim is also under different persons. This objection of mis-joinder of parties we notice, is in addition to the non-joinder of necessary party; i.e. N.H.A.I., as argued by the respondent-State.

11. The first of the proceedings alleged to have been taken against the properties was in the year 1953. Annexure-2 is the order of the Additional S.D.O., Purnea in a number of cases initiated under the Bihar Land Encroachment Act, 1950. It was found that the noticees therein were not unauthorized occupants and even if they were in such occupation, continued possession would not enable summary eviction under the Amended Act of 1952. The District Collector overturned the said findings, a copy of which order has not been annexed with the writ petition. However, by Annexure-3, the Commissioner's Court, restored the order of the S.D.O., which was affirmed by



the Board of Revenue, as is seen from Annexure-4.

12. The next proceeding is evident by *Ritlal Chaudhary (supra)* a copy of which decision is also produced as Annexure-5. Therein, 37 petitioners approached this Court claiming that they have built permanent structures; residential-cum-commercial structures in Ward Number 21 in Gulabbagh within Purnea Municipality, existing prior to 1950; also constructed after obtaining sanction of the Municipality. The earlier proceedings in the year 1952, which was referred to in the preceding paragraph, was relied upon. In the year 1975 some officials of the Lateral Project Division Number 1, Bahadurganj at Purnea, came to the locality and started demarcating considerable portion of the premises of the petitioners' property and directed demolition of such demarcated structures; upon which they filed the writ application in which there was an order of status quo till the disposal of the writ petition. The very same contention regarding settlement by Raja P.C. Lal was resisted by the District Administration, on the ground that there was no right to sublet and after expiry of the lease, the occupants were to be deemed rank trespassers. The acceptance of rent from some of the occupants was also stated to be a mistake. However, it is pertinent that the Division Bench refused to consider the



contention of the petitioners that, in view of Section 116 read with Section 106 of the Transfer Property Act and in view of the earlier order under the Land Encroachment Act, a suit would be the only remedy. The refusal was also on account of the fact that the State of Bihar was absent in the proceedings. What had been declared was that the petitioners could be evicted only under due course of law and there can be no forcible eviction from the lands in their possession. A caveat was also made that this would be without prejudice to the right of the respondents or the authorities to take such proceeding as they may be advised under any appropriate statute including the Code of Civil Procedure. Hence, what was interfered with was a peremptory attempt to demarcate properties and a summary direction to demolish structures, without any proceeding being taken. The Court had not restricted a proceeding under the Encroachment Act, by the decision in ***Ritlal Chaudhary (supra)***. There can be no *resjudicata* claimed by virtue of the above cited decision.

13. As far as the first proceeding, with respect to the hierarchical authorities and the Encroachment Act, 1950, none of the appellants have a contention that any of them were parties; personally, before the authorities at that stage. Their claim is that their predecessors-in-interest; who had raised the



first claim over the property, had obtained orders of the hierarchical authorities in their favor, against a summary eviction. There is nothing in the present writ petition to establish the line of succession by which the individual petitioners claim under the persons who are sought to be evicted in the proceedings initiated in the 1953. When claiming under an order issued long back in the 1950s, definitely each petitioner or petitioners claiming to be owners or co-owners of the property; as succeeding to it from their predecessor-in-interest, would have to first establish their line of succession and then the claim of right over the property, which also has to be identified. Further, the appellants also contend that they have rent receipts obtained from the authorities. In one of the writ petitions, ie: in C.W.J.C. No.17688 of 2022, only Annexure-1 has been produced with respect to the first petitioner therein. The appellants in that and the other cases would also have to establish their rights for which no single document has been produced. The *bonafides* of their claims are to be first established before the authority under the Encroachment Act; before seeking that they be absolved from summary proceedings for eviction.

14. The scope of judicial review under Article 226



of the Constitution of India and maintainability of writ petition seeking to assail a show cause notice are also well settled. From a perusal of the decision in *Union of India & Anr. v. Kunisetty Satyanarayana reported in (2006) 12 SCC 28* as well as in *Oryx Fisheries Private Limited -versus- Union of India & Ors. reported in (2010) 13 SCC 427*, it is apparent that a writ petition seeking to assail a show cause notice ordinarily is considered as being premature and not maintainable, subject, however, to some very rare and exceptional cases where a show cause notice is found to be wholly without jurisdiction or otherwise illegal. It is trite law that mere show cause notice does not infringe on anyone's right and only when the final order, adversely affecting a party, is passed, that he can allege any prejudice and raise a grievance.

15. The decisions cited, insofar as summary proceedings for eviction not being permissible, when there is a *bonafide* dispute raised on the ownership or possession of the land and those relied on to buttress the ground of *resjudicata*, are not relevant to be considered at this stage. However, those decisions are to be looked into by the authorities to find out if there is a *bonafide* claim established by the individual petitioners, in reply to their objections. We perfectly agree with



the learned Single Judge that there should be first a consideration by the authority under the Encroachment Act, which also has to be after objections filed to the show-cause notices. Only considering the time lapse, we permit the appellants to file proper objections to the show-cause notices within a month from the date of uploading of this judgment.

16. Notices shall be issued to the individual appellants/claimants by the authority and separate proceedings conducted to adjudicate the objections raised with respect to separate parcels of land. We make it clear that the authority would have to *prima facie* find that the summary proceedings are enabled, insofar as the individual petitioners having not established any semblance of rights over the separate properties; before an eviction is ordered, though the consideration can be in the very same order passed. On the objections being filed, the authority would issue individual notices and afford an opportunity of personal hearing to the individual appellants or their authorized representatives before a speaking order is passed. If an order is passed, which is prejudicial to the individual appellants necessarily the authorities shall stay their hands for a period of one month for the petitioners to take up appropriate proceedings, including those before the statutory



authorities. Insofar as the demolition carried out, as claimed in one of the writ petitions, without proper notice, the same would have to be established in an appropriate proceeding before the Civil Court; which if the individual appellants desire, can be instituted for damages.

17. We make it clear that we have not made any observation on the claims raised by the petitioners of their succession or assertion of their individual rights over the property, by virtue of the succession from those who were parties in the earlier proceedings initiated and concluded in the 1950s. With the above observations and reservations we reject the appeals.

(K. Vinod Chandran, CJ)

Partha Sarthy, J: I agree

(Partha Sarthy, J)

sharun/-

AFR/NAFR	
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