
(2003) 06 JH CK 0052
In the Jharkhand High Court
Case No : CWJC No. 1232 of 1993

Adarsh Sahkari Grih Nirman Samiti Ltd. and Others	APPELLANT
Vs	
State of Bihar and Others	RESPONDENT

Date of Decision : 16-06-2003

Acts Referred:

Bihar Public Land Encroachment Act, 1956 — Section 3

Citation : (2003) 2 BLJR 1567 : (2003) 3 JCR 193

Hon'ble Judges : S.J. Mukhopadhaya, J

Bench : Single Bench

Advocate : Sameer Saurabh, for the Appellant; R.R. Mishra, for the Respondent

Final Decision : Allowed

Judgement

S.J. Mukhopadhaya, J.—A writ petition has been preferred by petitioners for quashing the notice dated 20th November, 1992 issued by the Divisional Forest Officer, Dhanbad u/s 3 of the Bihar Public Land Encroachment (for short B.P.L.E.) Act. In B.P.L.E. Case No. 19/88-89.

2. The main ground taken by petitioners is that B.P.L.E. Case No. 19/88-89 having reached finality, the respondents have no occasion to revive the case, nor have any jurisdiction to issue notice u/s 3 of the B.P.L.E. Act. The case of the petitioner is that the land in dispute measuring 47.60 acres of Plot No. 5 and 32.88, acres of Plot No. 15, total 80.48 acres of village Bandhgora, Thana No. 35, P.S. Pindrajora, District Bokaro was a raiyati land. Earlier a dispute was raised between the Forest Department and the original raiyats of the plots, in question, for which a regular Title Suit No. 140/54 was preferred by eleven plaintiffs against the State of Bihar. One of the plaintiffs was Shanti Ram Mahatha. The Plots No. 5 and 15 of Khata No. 28 were covered in the said title suit,

3. The aforesaid suit was heard by the Court of learned Munsif, Purulia on 24th July, 1956 and was decreed in favour of the plaintiffs, including plaintiff No. 11

Shanti Ram Mahatha. It was decreed on contest and following order was passed against State of Bihar :--

"That the suit of the plaintiffs is decreed on contest with costs against the defendants. Pleader's fee Rs. 16/-allowed. It is hereby declared that the properties described in the Schedule I to IV of the plaint have not been constituted into a private protected forest as contemplated under the Bihar Private Forest Act and that plaintiffs right to control menase and possess a disputed property will subsists. It is further ordered that the defendant be enjoined from interfering with the possession of the plaintiffs over the trees standing over the lands of Schedule I to IV have till such time the properties mentioned in Schedule I to IV have been properly arid legally constituted into private protected forest in accordance to the provisions as laid-down under the Bihar Private Forest Act."

4. Further case of petitioners is that the petitioners purchased the land in question from the heirs of plaintiff No. 11 namely Shanti Ram Mahatha by a registered deed of the year 1984.

5. It appears that when the petitioners started construction over the land in question, the Range Officer, Chas Range, Chas filed a petition u/s 144, Cr PC registered as Case No. 1701 of 1987. It was decided in favour of petitioners on 12th February, 1988 in the light of decree passed in Title Suit No. 140/54. Again a petition u/s 145, Cr PC was filed by the Forest Department against the petitioners wherein an attachment order was passed which was challenged before this Court in Criminal Revision No. 27/1980(R). The said case was admitted and further proceeding was stayed.

6. The Range Officer, Chas Range, Chas thereafter filed a Land Encroachment Chas before the Land Reforms Deputy Collector. Dhanbad vide B.P.L.E. Case No. 19/88-89. The petitioners being not satisfied at that stage moved before this Court in C.W.J.C. No. 1025/1988(R) wherein, this Court vide order dated 29th of September, 1988 directed to await for a final order and, if necessary, to exhaust their alternative remedy.

7. In the Encroachment Case, the State took plea that the land in question is a forest land. It was notified vide Notification No. C.P.F. 10140/52-603(R) dated 4th February. 1953 and Notification No. 1244(R) dated 25th March, 1953 and was declared forest land. The original raiyats, such as, Radha Nath Mahto and others, though preferred a Title Suit No. 140/1954 against the State of Bihar, which was decreed but after two years of the judgment, the State-Forest Department vide Notification No. C/F-17014/58/1429(R) declared the area of 113.40 acres comprising of Plots No. 15, 18, 1025. 2022, 985, 978, 1040 and 5 of Village Bandhgora, Thana Chas, Thana No. 35, District Dhanbad (now Bokaro) as protected forest.

8. Initially the Land Reforms Deputy Collector vide order dated 26th April. 1989 decided the case in favour of the petitioners but the appellate authority remitted

the case for fresh decision. Subsequently while the Court of Land Reforms Deputy Collector, Chas vide order dated 16th March, 1991 though decided the case in favour of the petitioners by a detailed reasoned order but remitted the case to the Deputy Commissioner, Dhanbad to pass final order. The petitioners being aggrieved with the last part of the order dated 16th March, 1991 preferred a writ petition before this Court, C.W.J.C. No. 980 of 1991(R), Adarsh Co-operative House Construction Society Ltd. and Ors. v. The State of Bihar and Ors. A Division Bench of this Court vide order dated 3rd May, 1991 while noticed that the dispute was finally adjudicated in favour of petitioners, held that the Land Reforms Deputy Collector had no jurisdiction to pass final order u/s 11 of the B.P.L.E. Act, subject to the proper order by the Deputy Commissioner. The last part of the order dated 16th March, 1991 whereby the matter was referred to the Deputy Commissioner was held to be illegal, without jurisdiction and was set aside.

9. From the facts aforesaid it will be evident that the B.P.L.E. Case No. 19/88-89 was finally decided by the Collector under the Act in favour of the petitioners. Against the said decision though it was open to the aggrieved person to prefer appeal but there was no occasion to re-open the B.P.L.E. case, nor there was any occasion to issue fresh notice u/s 3 of the B.P.L.E. Act, 1956. For the reasons aforesaid, the impugned notice dated 20th November, 1992 (Annexure-6) issued u/s 3 of the B.P.L.E. Act, 1956 in a case which has already been finally determined, being illegal and without jurisdiction, is set aside. The Collector under the Act having passed final order on 16th March, 1991 in B.P.L.E. Case No. 19/88-89 and therefore, for the dispute in question, no liberty is given to respondents to move in appeal.

Aggrieved person, if so chooses, may move before a Civil Court of competent jurisdiction for declaration of right, title and possession/restoration of possession, if permissible.

10. The writ petition is allowed. However, there shall be no order as to costs.