

(1999) 09 PAT CK 0022
In the Patna High Court
Case No : C.W.J.C. No. 3556 of 1989

Ashok Kumar Singh

APPELLANT

Vs

State of Bihar and Others

RESPONDENT

Date of Decision : 10-09-1999

Acts Referred:

Citation : (2000) 2 PLJR 184

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

Bench : Single Bench

Advocate : Yogendra Mishra and Birendra Kr. Tiwary, for the Appellant;

Final Decision : Allowed

Judgement

S.J. Mukhopadhaya, J.—The Petitioner moved before this Court for direction on the Respondents to forebear from demolishing the Petitioner's building and from interfering with the Petitioner's possession on the building/structure situated on portion of S.P. No. 214, appertaining to Khata No. 350 within the Jehanabad Municipality.

2. According to the Petitioner, the Respondent leased out land measuring 14" x 30" out of the Survey Plot No. 214 of Khata No. 350 situated within the erstwhile Jehanabad Notified Area Committee to the Petitioner on 7th of March, 1967. The details of boundary has been shown at paragraph 4 to the writ petition. Further, according to the Petitioner, the Notified Area Committee approved the map for construction of building and Petitioner constructed the same as per the map. The copy of the map has been enclosed as Annexure-1 to the writ Petition.

3. Grievance has been made that the Respondent Jehanabad Municipality, without any notice or proceeding threatened the Petitioner to demolish the structure/building, in question and thereby interfering with the possession of the Petitioner.

4. It appears that earlier similar threat was made on the Petitioner and he had to

move before this Court in C.W.J.C. 5022/89. In the said case counter-affidavit was filed on behalf of Jehanabad Municipality and following statements were made.

That it is a fact that on 7.3.1967, the Jehanabad Notified Area Committee had leased out the land measuring 40" x 30" in favour of the Petitioner out of Survey Plot No. 214 under Khata No. 350 for building purposes.

x x x

That the Municipality has not filed any case for demolition of the building in question.

5. A counter-affidavit has been filed in the present case on behalf of Jehanabad Municipality, but this time it appears that they have contested the case on the ground that the lease was void and out and out fictitious. From the facts aforesaid it will be evident that no land encroachment proceeding has been initiated against the Petitioner and the Respondents in the earlier writ petition practically accepted the right and title of the Petitioner by virtue of a lease as was granted by Jehanabad Notified Area Committee. Now, in the present case they are disputing the validity and genuinity of such lease deed.

6. According to this Court, the aforesaid disputed question of fact cannot be determined by the authorities concerned and for such declaration they should have moved before a Civil Court of competent jurisdiction.

7. In the facts and circumstances I direct the Respondents and forebear them from demolishing the building structure in question over portion of S.P. No. 214 of Khata No. 350 within Jehanabad Municipality with further direction not to interfere with the possession of Petitioner without obtaining a valid judgment/order from a Civil Court of competent jurisdiction.

8. The writ petition is allowed with aforesaid observations and directions. However, there shall be no orders as to costs.