

(2013) 11 JH CK 0021

In the Jharkhand High Court

Case No : Writ Petition (PIL) No. 4845 of 2013

Aurobindo Nagar Ekta Committee

APPELLANT

Vs

State of Jharkhand and Others

RESPONDENT

Date of Decision : 19-11-2013

Acts Referred:

Citation : (2013) 11 JH CK 0021

Hon'ble Judges : R. Banumathi, C.J.;Dhirubhai Naranbhai Patel, J

Bench : Division Bench

Advocate : Jai Prakash Jha, for the Appellant; Jai Prakash, A.A.G., Ray Rajat Nath and Prashant Kr. Singh, for the Respondent

Final Decision : Dismissed

Judgement

1. This writ petition has been preferred by the petitioner by way of public interest litigation with the following prayers:

(a) To declare officially Plot No. 6, Khata No. 38, Area-30 decimals of land situated at Aurobindo Nagar, P.O. & P.S.-Doranda, District-Ranchi in front of Aurobindo Ashram, as a Public Park for use of general public;

(b) To direct the respondent State of Jharkhand, Ranchi Regional/Development Authority, the Municipal Corporation, Ranchi and/or their appropriate authority to erect boundary wall after 6 ft. (which is at present 4 ft. only) and install big gate from two sides for ingress and egress of general public for the betterment and specially for exercise of the children and old and senior citizen and for the general public as a whole.

(c) To implant the flower plants in and around the proposed park which is already being used as a play ground for the children of the locality as well as it is being used for the marriages and other secular purposes like independence day and on different occasions of social and secular functions of every community of the locality.

(d) To remove encroachment with immediate effect as the proposed park area has already been encroached by the persons, particularly in the Eastern side of the park.

Learned counsel for the petitioner vehemently submitted that approximately 23 Decimals out of the Plot, in question, described as Plot No. 6, Khata No. 38, Area-30 Decimals, situated at Aurobindo Nagar, P.O. & P.S.-Doranda, District-Ranchi, is now encroached and, therefore, it is submitted that let this encroachment be removed and the whole Plot may be allowed to be used for public purpose and as a park.

2. It is also submitted by the learned counsel for the petitioner that there is encroachment by Jharkhand State Police and the plot, in question, as per the counter affidavit, filed by the Ranchi Municipal Corporation, Ranchi, being Quaiser-e-Hind land, belongs to the Union of India and the same cannot be encroached upon by anyone much less by Jharkhand Armed Police and, therefore, this writ petition is having a wider public interest for removal of the encroachment by the State authorities.

3. We have heard learned counsel for the respondents, who have vehemently submitted that this is not a public interest litigation at all rather it is absolutely a private interest litigation. It has also been submitted by the learned counsel for the State that the land, in question, is owned by the Union of India and under the relevant Revenue laws it is described as a Quaiser-e-Hind land and, therefore, no question whatsoever arises of declaring the same to be used as a park and its use by private persons cannot be permitted by this Court, unless there is desire shown by the Union of India and, in fact, for this type of prayer, this writ petition may not be entertained by this court.

4. Having heard learned counsel for both the sides and looking to the facts and circumstances of the case and the counter affidavit, filed by the respondent-Ranchi Municipal Corporation we see no reason to entertain this writ petition, mainly for the following facts and reasons:

(i) It is alleged by the learned counsel for the petitioner that on the land, in question, there is a substantive encroachment and, therefore, the said encroachment may be removed and it may be allowed to be utilized as a park or for public purpose.

This contention of the learned counsel for the petitioner is not accepted by this Court mainly for the reason that the land, in question, is Quaiser-e-Hind land, belonging to the Union of India and, therefore, there is no question of declaring the same to be used as a park or public purpose.

(ii) It appears that the land, in question, belongs to the Union of India and the Jharkhand State Police has occupied the same.

Even if this contention is accepted, then also we see no reason to entertain this writ petition for removal of this type of encroachment by the Police authorities,

which is wholly owned, managed and controlled by the State of Jharkhand. It is a matter in between the Union of India and the State Government.

(iii) The plot, in question, is belonging to the Union of India and if the Jharkhand State Police is occupying the same, then in fact, it cannot be termed as an encroachment, in a strict sense. The Union of India is not joined as a party respondent. It appears that the present petitioner is in search of the aforesaid plot, because it wants the same to be utilized as a park. Without joining the Union of India as a party respondent, we are unable to ascertain the desire of the Union of India. Thus, necessary party is not joined as a party respondent in this petition and hence also this writ petition deserves to be dismissed.

As a cumulative effect of the aforesaid facts and reasons, we see no reason to entertain this writ petition and, thus, the prayer, as made in this memo of petition, cannot be allowed and hence this writ petition is hereby dismissed. However, liberty is given to the petitioner to approach the authority concerned, if he is further aggrieved.