
(2011) 03 JH CK 0195

In the Jharkhand High Court

Case No : Writ Petition (C) No. 938 of 2011

Awadh Kishore Mistry

APPELLANT

Vs

The State of Jharkhand and Others

RESPONDENT

Date of Decision : 23-03-2011

Acts Referred:

Constitution of India, 1950 — Article 226, 32

Miscellaneous Rules of the Board of Revenue, Bihar, 1958 — Rule 3

Citation : (2011) 2 JCR 458

Hon'ble Judges : R.K. Merathia, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

R.K. Merathia, J.—In this writ petition, Petitioner has challenged the order dated 07.06.2005 passed in Revenue Misc. Petition No. 62 of 1993/94, by the Commissioner, Dumka (Annexure 6); the order dated 11.8.2010 passed in R.M.A. Case No. 144 of 1988-89 by Respondent No. 3 - Deputy Commissioner, Dumka (Annexure 7) affirming the order dated 06.09.1988 (Annexure 4) passed by the Respondent No. 4 - Sub-Divisional Officer, Dumka directing the Petitioner to remove the alleged encroachment.

2. Mr. Anil Kumar, learned Counsel appearing for the Petitioner submitted that a proceeding under the Bihar Public Land Encroachment Act ("B.P.L.E. Act" for short) was started against the father of the Petitioner being Encroachment Case No. 1 of 1954-55 which was dropped on 17.07.1955 as no encroachment was found. Thereafter one Ainul Haque and another filed suit against the predecessor-in-interest of the Petitioner, claiming the land in question, along with other lands, which was decreed on compromise. On the basis of a purported encroachment report made by the L.R.D.C. to the S.D.O., an encroachment case being E. E. Case No. 45 of 1987-88 was initiated, in which by the aforesaid order dated 06.09.1988 (Annexure 4) Petitioner was directed to remove the alleged encroachment. Against that order, Petitioner filed appeal being Revenue Misc.

Appeal No. 144 of 1988-89 which was disposed of by order dated 28.08.1992 (Annexure 5) holding inter alia that the Petitioner has been in continuous possession of the land in question since at least 15.04.1954 and thus he acquired title by adverse possession on the land.

He further submitted that though there was/is no provision, for second appeal under the B.P.L.E. Act, but the State filed a petition which was registered as Revenue Misc. Petition No. 62 of 1993-94 before the Commissioner, Dumka who remanded the matter to the Deputy Commissioner, Dumka by order dated 07.06.2005 (Annexure 6) for passing a fresh order after hearing the parties. Thereafter, the Deputy Commissioner has passed the impugned order on 11.08.2010 (Annexure 7) asking the Petitioner to remove the alleged encroachment. He submitted that in the facts and circumstances indicated above, the impugned orders are liable to be set aside.

3. On the other hand, Mr. Srijit Choudhary, learned Counsel for the State submitted that in view of Rule 3 of the Bihar Board Miscellaneous Rules, 1958, ("B.B.M. Rule" for short) the Commissioner had power to pass Annexure 6 order. He relied on the judgment reported in Bibi Khairun Nisa Vs. The State of Bihar and Others, He also relied on the judgment reported in Srikrishnapuri Boring Road Vyapari Sangh and Another Vs. State of Bihar and Others and submitted that this Court should not interfere in the matter of removing encroachment.

4. The first question is whether the Commissioner could entertain and pass Annexure 6 order in the Revenue Misc. Petition filed on behalf of the State.

It appears from Annexure 6 order that one Anjuman Islamia, Dumka filed writ petition in Patna High Court being Writ Petition No. 11587 of 1992 which was disposed of on 05.05.1997 directing all the parties to appear before the Commissioner in the said Misc. Petition. In terms of the said order, the Commissioner heard the parties, including the Petitioner and passed Annexure 6 order. Then Annexure 7 order was passed by the Deputy Commissioner in terms of the said order. Therefore, the contention of the Petitioner that the Commissioner had no authority to pass Annexure 6 order cannot be accepted.

5. The next question is whether the impugned orders calls for interference or not.

6. From Annexure 4 order passed by the S.D.O., it appears that he considered the respective cases of the parties in detail. He inter-alia found that the Petitioner and his predecessor were running a motor-garage on the land in question, and that the Petitioner could not show any document in proof of his right, and that the earlier encroachment case was dropped only on the ground that there was no encroachment on P.W.D. Road whereas the land in question is beside the P.W.D. Road and the encroachment in question was of recent origin; and that the Petitioner has encroached public land over plot No. 1513 and 1514 measuring respectively 0-6-3 and 0-1-2 dhurs total area 0-7-5 dhurs which is equal to 15 decimal; and that the Petitioner has not acquired prescriptive title; and that he is not entitled to settlement of Land applied for. Petitioner filed

appeal against the said order before the Deputy Commissioner. The Deputy Commissioner inter-alia observed that the said proceeding was not barred by res-judicata; and that the Petitioner did not press his claim with regard to plot No. 1514, and therefore to that extent the order of S.D.O. was not challenged. With regard to plot No. 1513, it was not disputed by the Petitioner that it is a public land. However, on the ground that encroachment was more than 30 years old, the Deputy Commissioner set aside Annexure 4 order and directed the S.D.O. to start proceeding for fixation of commercial rent.

Apparently, the Deputy Commissioner was not competent to decide the question of adverse possession, specially when the encroachment proceeding itself was started in the year 1954. Such question could be decided only by competent Civil Court.

The State filed Revenue Misc. Petition against the said order before the Commissioner. It appears that in terms of the order passed by the Patna High Court, the Commissioner heard the parties including the Petitioner and passed Annexure 6 order remanding the matter back to the Deputy Commissioner. The Deputy Commissioner after hearing the parties passed the impugned order (Annexure 7) for removal of encroachment inter-alia on the ground that on the land in question Petitioner is running his motor garage which is situated on Dumka-Bhagalpur road; and moreover, it was in front of the gate of the Mosque which had created law and order problem. It was also observed that Petitioner was not eligible and it was not possible to settle the land with him; and the land is a valuable land in the midst of the Dumka town; and the road in front of the garage is narrow and due to increase in traffic, the land was required for widening the road and making parking zone.

7. Thus it appears that the impugned orders have been passed after hearing the parties, and on relevant consideration.

Moreover, the effect of setting aside the impugned orders (Annexures 6 & 7) will be restoring Annexure 5 order which was apparently wrong as the Deputy Commissioner, was not competent to decide, the claim of adverse possession, specially when the encroachment proceedings were initiated in 1954 itself.

Further, even if it is accepted that the State could not file second appeal before the Commissioner and consequently, the order of the Deputy Commissioner was also illegal, it appears that the encroachment is sought to be removed for widening the road for free flow of traffic and for making the parking space which are public purposes. In the case reported in (2005) 6 SCC 454 ONGC Ltd. v. Sendhabhai Vastram Patel etc. even while holding that the orders in question in that case were bad, it was observed by the Hon''ble Supreme Court as follows:

23. It is now well settled that the High Courts and the Supreme Court while exercising their equity jurisdiction under Articles 226 and 32 of the Constitution as also Article 136 thereof may not exercise the same in appropriate cases. While exercising such jurisdiction, the superior courts in India may not strike down

even a wrong order only because it would be lawful to do so. A discretionary relief may be refused to be extended to the Appellant in a given case although the Court may find the same to be justified in law. See S.D.S. Shipping (P) Ltd. v. Jay Container Services Co. (P) Ltd..

8. In my opinion, the impugned orders are in public interest, and for this reason also, I am not inclined to interfere with them.

In the result, this writ petition is dismissed. However, no costs.