
(2019) 06 JH CK 0004
In the Jharkhand High Court
Case No : Writ Petition (C) No. 1910 Of 2019

Babita Kumari

APPELLANT

Vs

State Of Jharkhand And Ors

RESPONDENT

Date of Decision : 18-06-2019

Acts Referred:

Indian Penal Code, 1860 — Section 188
Constitution Of India, 1950 — Article 226

Citation : (2019) 06 JH CK 0004

Hon'ble Judges : Sujit Narayan Prasad, J

Bench : Single Bench

Advocate : Vishal Kumar Tiwary, Sanjeev Thakur, Vineet Prakash

Final Decision : Disposed Off

Judgement

Reference may be made to the order dated 14.05.2019, whereby following order has been passed:

This writ petition is filed under Article 226 of the Constitution of India whereby and whereunder notice dated 12.04.2019 passed by the Circle Officer,

Deoghar, is under challenge by which the petitioner has been directed to remove the encroachment by 24.04.2019 failing which she will be liable to

penalty provided under Section 188 of the Indian Penal Code.

Mr. Vishal Kumar Tiwari, learned counsel for the petitioner has submitted that the petitioner has approached to this Court by filing the writ petition

being W.P.(C). No.963 of 2019 by assailing the notice dated 23rd January, 2019 (Annexure-6) whereby and whereunder the petitioner has been

directed to appear before the Sub Divisional Officer-cum-Sub Divisional Magistrate to show her cause, as to why she be not directed to remove the

encroachment upon the Plot No.66 and 67 area 2962.5 sq. Feet, of Village

Jhousagarhi, Thana No.582, P.S.- Deoghar, District-Deoghar, this Court vide order dated 26.03.2019, has passed the order wherein directing the Sub Divisional Officer-cum-Sub Divisional Magistrate to dispose of the objection, if any, if not already disposed of, filed by the petitioner, within a period of four weeks from the date of receipt of copy of the order by providing an opportunity of hearing to the petitioner and other affected parties, if any, in accordance with law.

The petitioner, in terms of the aforesaid order dated 26.03.2019 passed in W.P. (C). No.963 of 2019 has been noticed by the Sub Divisional

Officer-cum-Sub Divisional Magistrate, in pursuance thereto, she has appeared before the Sub Divisional Officer-cum-Sub Divisional Magistrate and

the said authority is proceeding with the matter as yet no decision has been taken but in the meanwhile the Circle Officer, Deoghar has issued notice

on 12.04.2019 holding the petitioner to be an encroacher and thereby she has been directed to remove the said encroachment.

According to the learned counsel for the petitioner that when the Sub Divisional Officer-cum-Sub Divisional Magistrate has not yet taken decision in

pursuance to the order passed by this Court, the Circle Officer, Deoghar has entered into the picture and assumed the power of the competent

authority to decide the issue of a public encroachment therefore, he has exceeded his jurisdiction, hence, the instant writ petition.

Mr. Vineet Prakash, learned A.C. to S.C. (L&C)-I has sought for two weeksâ?? time to seek instruction in the matter and file counter affidavit.

As prayed for by him, list this case on 18.06.2019.

Ad-interim relief:-

This Court after hearing the learned counsel for the petitioner and taking into consideration the fact that the matter is under consideration before the

Sub Divisional Officer-cum-Sub Divisional Magistrate who is acting in pursuance to the order passed by this Court in W.P.(C). No.963 of 2019 dated

26.03.2019, therefore, the notice dated 12.04.2019 is required to be kept in abeyance.

In view thereof, the notice dated 12.04.2019 is directed to be kept in abeyance.

The Circle Officer, Deoghar is directed to appear in person on the next date of listing to explain his jurisdiction to act as an authority of the

Encroachment Act when the matter is now under the session of Sub Divisional

Officer-cum-Sub Divisional Magistrate.

In terms of the aforesaid order dated 14.05.2019, Mr. Amar Prasad, Circle Officer, Sadar, Deoghar is present in person and has filed affidavit, inter

alia, wherein it has been stated that the order passed by this Court in W.P.(C) No.963 of 2019 disposed of on 26.03.2019 has never been

communicated to the petitioner before issuance of impugned order dated 12.04.2019. It has further been stated that the Circle Officer was proceeding

in the light of direction passed by way of order dated 22.11.2018 by the Subdivisional Officer, Deoghar, whereby and whereunder a committee has

been constituted of which the Circle Officer, Circle Deoghar is also one of the member who have been authorized to earmark the encroachment and

submit a report and in pursuance to the said order the Circle Officer was acting.

It is his further contention that the Circle Officer was acting in terms of the direction of this Court dated 26.03.2019 passed in W.P.(C) No.963 of

2019 wherein the notice issued by the Circle Officer dated 12.04.2019 has been assailed and this Court has disposed of the writ petition directing the

Sub-Divisional Officer, Deoghar to dispose of the objection but the said order since has not been communicated, therefore on wrong notion and due to

communication gap the Circle Officer has issued notice hence the same is due to communication gap on account of non-supply of order dated

26.03.2019 passed in W.P.(C) No.963 of 2019 by the petitioner.

Since the mistake has been crept up due to bona fide mistake and after knowing about the order passed by this Court and looking to the fact that the

Sub-Divisional Officer, Sadar, Deoghar is in seisin of the matter, impugned order notice dated 12.04.2019 has been recalled.

In view of such stand, submission has been made that there is no mala fide and wilful interference in the order passed by this Court in W.P.(C)

No.963 of 2019 dated 26.03.2019.

Mr. V.K. Tiwary, learned counsel for the petitioner has fairly submitted that before issuance of notice dated 12.04.2019 the order dated 26.03.2019

passed in W.P.(C) No.963 of 2019 has not been communicated to the office of the Circle Officer, Sadar, Deoghar.

This Court after taking into consideration the stand taken by the Circle Officer, Sadar, Deoghar in the affidavit filed by him is of the view that the

officer has acted in terms of the order passed by the Sub-Divisional Officer dated

22.11.2018 and notice was issued which was the subject matter of the writ petition being W.P.(C) No.963 of 2019 disposed of vide order dated 26.03.2019 but as has been contended by the respondent Circle Officer that the said order has not been communicated being admitted by the learned counsel for the petitioner but after knowing about the order dated 26.03.2019 passed in W.P.(C) No.963 of 2019 and looking to the fact that Circle Officer is in seisin of the matter, has recalled the notice dated 12.04.2019.

In view thereof and taking into consideration the fact that the notice dated 12.04.2019 has been recalled which is the subject matter of the writ petition as such the writ petition is rendered to be infructuous, accordingly, stands disposed of

The personal appearance of Mr. Amar Prasad, Circle Officer, Sadar, Deoghar is dispensed with.