
(2015) 03 JH CK 0128

In the Jharkhand High Court

Case No : Writ Petition (C) No. 5621 of 2014

Baby Devi and Others

APPELLANT

Vs

State of Jharkhand and Others

RESPONDENT

Date of Decision : 25-03-2015

Acts Referred:

Citation : (2015) 3 AJR 808

Hon'ble Judges : S. Chandrashekhar, J

Bench : Single Bench

**Advocate : Manoj Prasad, for the Appellant; V.K. Prasad, S.C. (L and C),
Advocates for the Respondent**

Final Decision : Dismissed

Judgement

S. Chandrashekhar, J—Seeking quashing of notices issued to the petitioners in S.A.R. Appeal No. 15R15/2014-15, the present writ petition has been filed. The brief facts of the case are that, the respondent No. 8 filed application under Section 71A of C.N.T. Act for restoration of land comprised in Khata No. 294, Plot No. 2752, measuring 20 Kathas and 08 Chattak, situated at Mouza Argora, Doranda, Ranchi. The petitioners appeared before the Special Officer and filed their show-cause reply stating that they have constructed their residential house over the aforesaid land and they are in lawful possession of the same. Vide order dated 26.12.2012, the Special Officer allowed the application under Section 71A of C.N.T. Act fixing the compensation at the rate of Rs. 4,25,500/- per decimal, which the petitioners deposited in the Court of Special Officer. The respondent No. 8 subsequently accepted the said amount, voluntarily however, the State has preferred S.A.R. Appeal No. 15R15/201415 against order dated 26.12.2012 passed by the S.A.R. Court in S.A.R. Case No. 178 of 201112. A notice dated 04.09.2014 has been issued to the petitioner which has been challenged in the present proceeding.

2. Heard the learned counsel for the parties.

3. The learned counsel for the petitioners submits that, once the S.A.R. Court has exercised power under second proviso to Section 71A of C.N.T. Act and the aggrieved applicant has accepted the amount of compensation, no appeal would lie against the order passed by the S.A.R. Court. It is further submitted that, the appeal preferred by the State is incompetent and therefore, liable to be dismissed. Per contra, the learned counsel for the respondent-State of Jharkhand raises a question of maintainability of the writ petition and submits that, the plea taken by the petitioners cannot be adjudicated in the present proceeding. The petitioners are required to raise the question of competence and/or jurisdiction before the appellate authority and not before this Court. Having considered the rival contentions and after perusing the documents on record, I am of the opinion that no interference is required in this matter. The petitioners have challenged notices issued to them in S.A.R. Appeal No. 15R15/2014-15 whereby, they have been informed that the aforesaid appeal has been filed against order passed in S.A.R. Case No. 178 of 2011-12 and therefore, they are required to appear in the Court and present their case. Against a show-cause notice, generally, writ petition is not maintainable unless, it is found that the show-cause notice is either without jurisdiction or it is illegal. Notice dated 4-9-2014 issued to the petitioners is not even a show-cause notice and therefore, challenge by the petitioners to the said notice must fail. The learned counsel for the petitioners refers to order passed by this Court in W.P.(C) No. 6487 of 2014 and contends that in a similar case, this Court has quashed the S.A.R. Appeal preferred by the State. From order dated 19.02.2015 in W.P.(C) No. 6487 of 2014 it appears that a contention was raised that the Deputy Commissioner who is the appellate authority directed the Circle Officer to file S.A.R. Appeal and there was no order of the State Government granting approval for preferring appeal against the order passed by the S.A.R. Court. Whereas, in the present case, it is noticed that in the Memo of S.A.R. Appeal No. 15R-15/2014-15, it is pleaded that the Government of Jharkhand vide Memo No. 2959 dated 13-8-2013 addressed to Additional Collector granted approval for filing appeal against the order in S.A.R. Case No. 178 of 2011-12. Considering the above facts, I find no merit and accordingly, the Writ Petition is dismissed. However, a liberty is reserved with the petitioners to raise all the pleas in the appeal, which have been raised in the present proceeding including, the plea of competence and jurisdiction.