
(2003) 04 JH CK 0022
In the Jharkhand High Court
Case No : CWJC No. 1805 of 1998

Bhola Nath Tiwari and Others

APPELLANT

Vs

State of Bihar and Others

RESPONDENT

Date of Decision : 07-04-2003

Acts Referred:

Constitution of India, 1950 — Article 226, 227

Citation : (2003) 3 JCR 332

Hon'ble Judges : M.Y. Eqbal, J

Bench : Single Bench

Advocate : N.N. Tiwari, R.R. Tiwari, V.K. Tiwari and A.K. Toppo, for the Appellant; Rajiv Ranjan Mishra, G.P. II, for the Respondent

Judgement

M.Y. Eqbal, J.—The petitioners seek appropriate direction upon the respondents not to dispossess them forcibly and illegally from their occupancy holdings comprised within C.S. Plot No. 105 under Khata No. 383 corresponding to new-survey plot Nos. 149 and 149/3355 of village Harinamar, P.S. Chainpur, District-Palamau and also for payment of suitable compensation for causing loss and Injury to the said land and depriving them from the agricultural produce.

2. From reading the affidavits filed by the parties the facts which emerge are that the aforesaid land was recorded in C.S. records of right as Gairmazurua malik land in the name of Samilat Malikan. In the year 1992, by virtue of a partition in suit No. 15/1922 and in terms of Batwaraship the land in question was allotted to Jaghdeo Tiwari and others. In 1948 by virtue of a notification issued under the Bihar Private Protected Forest Act the plot In question was shown as private forest. Against the said notification the predecessor-in-interest of the petitioner filed an objection before the Forest Settlement Officer which was registered as case No. 8031/1940-50. The Forest Settlement Officer, after making inquiry, passed a reasoned order excluding the afore-mentioned plot from the said notification. A copy of the order passed by the Forest Settlement Officer has been annexed as Annexure-3 to the writ application. It further appears that after

vesting of the land under the B.L.R. Act return was filed in respect of the aforesaid plot also and the petitioners are said to have been continuously coming in possession of the land. However, the recent survey operation a portion of the C.S. plot No. 105 which corresponds to new survey plot No. 149 has been recorded in the name of Forest Department, but in the remarks column possession of the petitioners and their family members has been recorded in respect of only 4.22 acres of land. On the basis of the entry made in the survey records of right it is alleged that the officers of the Forest Department are forcibly dispossessing the petitioners from the land in question.

3. In the background of the aforesaid facts it appears that the petitioners and their predecessors in interest have been continuously claiming title in possession over the land in question and that may be the reason why the name of some of the family members have been recorded in the remark column of the recent survey record of right. It is stated by the petitioners that against the wrong entry made in the survey records of rights the petitioners have already filed a revision which is pending.

4. From the affidavits filed by the parties it appears that both the parties are claiming title over the land in question. This Court, under Article 226 and 227 of the Constitution of India cannot adjudicate the question of title in respect of the land in question but when the authorities of the respondents forcibly and illegally are trying to dispossess the petitioners from the land without adopting the process of law. then certainly this Court shall interfere and restrain the respondents from forcibly and illegally evicting a person or taking possession without process of law. To that extent and for that reason this writ application has been entertained by this Court. In view of the prima facie evidence about the possession of the petitioner over the land in question and regard being had to the fact that against the wrong entry made in the recent survey records of right the petitioners revision is pending before the competent Court of law, the respondents are not justified in interfering with and taking possession of the land in question forcibly from the petitioners.

5. So far the claim of compensation is concerned, in view of the disputed question of fact with regard to title and possession, I am not inclined to express any opinion with regard to payment of compensation.

6. With the aforesaid observation/direction this writ application is disposed of.