
(2005) 09 JH CK 0051
In the Jharkhand High Court
Case No : Writ Petition C No. 4201 of 2005

Bhola Prasad Sinha

APPELLANT

Vs

State of Jharkhand and Others

RESPONDENT

Date of Decision : 01-09-2005

Acts Referred:

Urban Land (Ceiling and Regulation) Act, 1976 — Section 27

Citation : (2005) 3 BLJR 2343 : (2005) 4 JCR 216

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

Bench : Single Bench

Advocate : Biren Poddar, for the Appellant; H.K. Mehta, G.A., for the Respondent

Final Decision : Allowed

Judgement

M.Y. Eqbal, J

1. Heard the counsel for the parties.
2. In this writ application the petitioner has prayed for quashing the order dated 14/10/2005 passed by the Circle Officer, Town Anchal, Ranchi in Encroachment Case No. 09/01-02 whereby he has directed the petitioner to remove the encroachment over a portion of the land in question comprised within survey plot No. 948, Khata No. 1, thana No. 202 situated at village Hesal, district-Ranchi and also for quashing the order dated 28.05.2005 passed by Additional Collector, Ranchi in Encroachment Appeal No. 2R 15 of 2004-05 affirming the order passed by the Circle Office, Ranchi.
3. Case of the petitioner is that the land in question belonged to one Smt. Ketki Sahay, daughter of late Krishna Mohan Sahay from whom the petitioner purchased the said land by virtue of registered deed of sale deed dated 20/9/90. Before purchasing the land, the vendor of the petitioner applied for permission of the Deputy Commissioner, Ranchi as required u/s 27 of the Urban Land Ceiling Act, 1976 in case No. 418 of 1989. It was only after the permission was granted by the Deputy Commissioner, the land was purchased by the petitioner.

Petitioner's further case is that after purchasing the aforesaid land mutation was allowed by the Circle Officer in Mutation case No. 1978R-27/90-91 and also by the Ranchi Municipal Corporation in Mutation case No. 15/94 and he has been paying all rent and taxes in his name since 1992. In 1996 the petitioner filed site plan of the house before the Ranchi Regional Development Authority for sanction of the said site plan, which was duly sanctioned in case No. 12/96 on 12.2.1996. The petitioner, thereafter, constructed a building. All of a sudden in 2001 an encroachment case was initiated against the petitioner vide Encroachment case No. 9/2001-02 for removal of the encroachment on the ground that the land is a public land.

4. A counter affidavit has been filed on behalf of respondent Nos. 2, 3 and 4, namely, the Deputy Commissioner, Additional Collector and the Circle Officer, Ranchi, affidavit of which has been sworn by the Circle Officer. In the counter affidavit the purchase of land by the petitioner after obtaining permission from the Deputy Commissioner u/s 27 of the Act, the mutation of the name of the petitioner in the revenue records as also in the records of the Municipal Corporation has not been denied by the respondents. The stand taken by the respondents is that the land was acquired under the Land Acquisition Act in the year, 1965 for Public Health Engineering Department and possession of the same was delivered to the department and, in this way, the land in question is a public land.

5. Not a single chit of paper has been filed to prima facie, show that the land was acquired under the Land Acquisition Act. If, in fact, the land was acquired under the Land Acquisition Act and possession was delivered to the Public Health Engineering Department, then I am surprised how the Deputy Commissioner granted permission for transfer of the land in question without holding any inquiry as to whether the land belongs to the PHED department or the vendor from whom the petitioner purchased the land. The Circle Officer who is the custodian of the revenue records of the Government lands, has also not disclosed that the land was acquired before passing the order in the Mutation case.

6. As noticed above, not a single chit of paper has been filed atleast to show that either the land was acquired under the Land Acquisition Act or possession was delivered to the PHE department. In spite of all these facts, both the Circle Officer and the appellate authority, on assumption and presumption that the land was acquired in the year, 1965, passed the impugned order for removal of the building from the land in question.

7. Mr. Mehta, learned Govt. Advocate relied on a decision of the Supreme Court reported in 1997 (9) SCC 545 in support of his contention that the land was acquired under the Land Acquisition Act. There is no dispute with regard to legal position that once the land is acquired under the Act and possession is delivered, then no one can claim title or possession over the same. But, in the instant case there is nothing on record to show that the land in question was ever acquired and possession was delivered or continued with the Public Health Engineering

Department. If, as a matter of fact, the land was acquired in the year, 1965 under the Land Acquisition Act and compensation was paid to the land owner, then how the Deputy Commissioner and the Circle Officer have acted against the interest of the State by granting permission to transfer the land and for entering the name of the petitioner in the revenue records. In my opinion, therefore, there is serious disputed question of title and possession with respect to the land in question which cannot be adjudicated in a Land Encroachment Proceeding. If the respondents have any interest over the land in question, they are at liberty to go to the civil court of competent jurisdiction for appropriate relief in accordance with law. The impugned orders, therefore, cannot be sustained in law.

8. For the aforesaid reasons, this writ application is allowed and the impugned order are quashed.