

(2014) 01 JH CK 0011

In the Jharkhand High Court

Case No : Civil Review No. 50 of 2010 in WP (PIL) No. 3621 of 2007

Binod Singh

APPELLANT

Vs

Raghunath Tiwari and Others

RESPONDENT

Date of Decision : 23-01-2014

Acts Referred:

Citation : (2014) 1 JLJR 595

Hon'ble Judges : R. Banumathi, C.J;S. Chandrashekhar, J

Bench : Division Bench

Advocate : V. Shivnath and R.K. Rashidi, Advocate for the Appellant; Vikash Kishore for Respondent No. 1, Rajesh Kumar and Deepak Roshan, Advocate for the Respondent

Judgement

1. This review petition has been filed for review of order dated 18.7.2007 passed in W.P. (PIL) No. 3621 of 2007. The case as made out by the writ petitioner in the "Public Interest Litigation" being W.P. (PIL) No. 3621 of 2007 is as under:

The land appertaining to khata no. 334 plot nos. 1445 and 1446 is a property of Central Government as it is recorded as "Keshar-e-Hind" in the last Cadastral survey completed prior to 1910. The writ petitioner/first respondent came to know that the then Circle Officer illegally issued rent receipts in favour of one Shiv Narayan Jaiswal and Jagat Narayan Jaiswal by settling the same in their names and the said Shiv Narayan Jaiswal and Jagat Narayan Jaiswal have got no piece of land within the Bagodar. Circle and at no point of time they were resident of Bagodar Police Station. It is further submitted that the "Keshar-e-Hind" land cannot be settled with anybody who were not resident of the area. While so, Shiv Narayan Jaiswal and others filed an application to the Secretary, Deputy Commissioner, Hazaribagh and got an Officer Gyapank No. 10-1/2004-1786/Revenue and in spite of the fact that the Halka Karamchari submitted report that the land is Keshar-e-Hind, the C.O., Bagodar passed Mutation Order. One Hemlal Prasad, Khiru Mahto, Rajesh Kumar Rai and Mahendra Mahto are claiming to have purchased the property falling under Plot

Nos. 1445 and 1446 and have started construction of building. One Binod Singh (review applicant) M.L.A. of Bagodar Constituency and his workers namely, Taiyab Ansari and Mahesh Mishra also purchased the said "Keshar-e-Hind" land, falling under plot nos. 1445 and 1446 from the family members of Jaiswal on nominal price and they have put boundaries on the said land. It is further averred that the C.O., Bagodar issued notice to the said Hemlal Prasad, Khiru Mahto, Rajesh Kumar Rai and Mahendra Mahto to show cause why encroachment shall not be removed. Alleging that the said encroachment has not been removed from the "Keshar-e-Hind" land, the first respondent-writ petitioner filed the "Public Interest Litigation" to remove encroachment. The said writ petition was disposed of by a brief order dated 18.7.2007, which is quoted herein below:--

There is no dispute in the fact as contained in para 19 of the writ petition that already on the complaint of the petitioner, the Circle Officer, Bagodar, has taken steps to remove encroachment and issued notices to the respondent nos. 6 to 11 to show cause as to why encroachment shall not be removed.

Though the notices have been issued on 10.1.2007, the petitioner, without taking follow-up action in the matter, has chosen to file this PIL before this Court. But at this stage, it is not known as to what steps have been taken by the Circle Officer to stop so-called construction and remove the encroachment.

Under those circumstances, we feel that it would be appropriate to direct the petitioner to approach the Circle Officer and S.D.O., Bagodar, by filing representation for removal of the construction/encroachment, who, in their turn, will look into the matter, stop construction without any delay and pass reasoned order in accordance with law.

With these directions, this petition is disposed of.

Let copies of this order be given to the counsel for the parties.

2. This review application is filed by the review applicant, to review the order passed in the "Public Interest Litigation" stating that the order suffers from the error apparent on the face of the record and further it has not taken into consideration various factual aspects, on the following grounds:--

(i) Shiv Narayan Jaiswal and others are the owners of the property appertaining to plot nos. 1445 and 1446, by virtue of registered sale deed executed by the competent Court of Subordinate Judge-III in Title Suit No. 34 of 1937 and by sale deed dated 31.8.1954 being Deed No. 8162 in the District Sub-Registry at Gaya.

(ii) The review applicant is a member of the Communist Party of India (Marxist-Leninist) {in short "C.P.I. (M.L.)"} and is representing Bagodar Constituency. The said C.P.I. (M.L.) is a political party registered with Election Commission of India and it has its own building at Giridih and also running its office over portion of plot nos. 1445 and 1446 area 15.25 decimals of Khata No. 334. The C.P.I. (M.L.), pursuant to a contract of sale from Shiv Narayan Jaiswal and others, who are

owners of the property and on payment of consideration and part performance of contract of agreement dated 17.2.2005 have been put in possession thereof. The C.P.I. (M.L.) had also made a construction of five rooms in or about March, 2006.

(iii) Group of persons known as Choudhary family of Katihar were owners of the some set up for the manufacture of country liquor in the name and style of Manpur Distillery in pursuance to orders of Excise Commissioner, over portions of Plot Nos. 1445 and 1446 of Khata No. 108 of Village-Jarmune, Police Station-Bagodar, Giridih district.

(iv) In the year 1973, a dispute created between the members of the Choudhary Family taking the Manpur Distillery and various properties including Warehouse in the State of Bihar which led to filing of Title Suit No. 34 of 1937 in the Court of Sub-Judge-III at Gaya.

(v) In the said Title Suit No. 34 of 1937 Sri Shyam Bahadur was appointed by the Court as Receiver, who enquired into the contractor's Warehouse known as Country Liquor Warehouse at Bagodar, the then district of Hazaribagh and at present in the district of Giridih. The contractor's Warehouse was standing on the portion of the plot nos. 1445 and 1446, which was not the Government property. Pursuant to the order of the Court, Receiver was appointed in Title Suit No. 34 of 1937, who conducted a public auction and in the public auction Rai Sahab Lakshmi Narayan Jaiswal was the highest bidder. After approval was granted by the Court, the Court executed a registered deed of sale on 31st March, 1954 in the office of District Sub-Registrar at Gaya in favour of Lakshmi Narayan Jaiswal, who was the highest bidder. As per the said sale deed, the Warehouse at Bagodar being at serial No. 16 and Warehouse at Dhanbad, the then District-Manbhum being serial no. 19 besides others were purchased by late Lakshmi Narayan Jaiswal.

(vi) Under the Bihar Public Land Encroachment Act, proceedings were initiated as against serial no. 13 being the Warehouse at Dhanbad in the district of Manbhum now the district of Dhanbad. As against the order passed in B.P.L.E. No. 2 of 2001 of the Court of Land Reforms Deputy Collector at Dhanbad, an appeal was preferred before the Commissioner, North Chhotanagpur Division as B.P.L.E. Appeal No. 77 of 2000. The Commissioner, after considering the disputed question of title held as under:--

The complainant being the purchaser in the auction conducted by the Court cannot be dispossessed by taking recourse to a proceeding under the Bihar Public Land Encroachment Act. Accordingly, the order passed in the proceeding under B.P.L.E. Case No. 3 of 2001 was set aside. A member of the aggrieved party through Deputy Commissioner, Dhanbad to get the matter adjudicated before the Civil Court.

(vii) No suit was filed against the heirs of late Lakshmi Narayan Jaiswal for a declaration that item no. 19 or 16 of the sale deed could not have been the subject matter of sale made in favour of late Lakshmi Narayan Jaiswal. As

regards to item no. 16 of the sale deed of Warehouse at Bagodar, Giridih, the heirs of Lakshmi Narayan Jaiswal approached the Commissioner, North Chhotanagpur Division at Hazaribagh.

(viii) In terms of the order passed by the Commissioner, North Chhotanagpur Division at Hazaribagh in B.P.L.E. Appeal No. 77 of 2000, the name of the claimants were entitled to be mutated. Vide order dated 29.7.2004, the Deputy Commissioner, Giridih was directed to consider the claim of Shiv Narayan Jaiswal and others, who were claiming title on the basis of registered sale deed dated 31.8.1954. Accordingly, the Deputy Commissioner forwarded the representation of Shiv Narayan Jaiswal and others with the recommendation to the Circle Officer to mutate the name of Shiv Narayan Jaiswal and his co-sharer in the revenue records. Accordingly, the Circle Officer had passed an order dated 28.3.2005 allowing the mutation of name of Shiv Narayan Jaiswal and others of plot nos. 1445 and 1446 under Khata No. 344 of Jarmune. Accordingly the name of Shiv Narayan Jaiswal and his co-sharers were mutated and rent receipts were issued.

(ix) The Land Reforms Deputy Collector has registered a Mutation Appeal No. 137/2007-08 filed on behalf of the State and by order dated 25.6.2007 allowed the appeal of the State. Challenging the said order dated 25.6.2007, Lakshmi Narayan Jaiswal filed W.P. (C) No. 4473 of 2007. The Circle Officer issued a notice u/s 6(2) of the Jharkhand Public Land Encroachment Act on 23.7.2007 and directed Shiv Narayan Jaiswal giving him fifteen days time for giving a possession of plot nos. 1445 and 1446 of Village-Jarmune, P.S.-Bagodar, District-Giridih.

(x) Based on the order passed in the Encroachment Case being Encroachment Case No. 6 of 2006-07 and order passed in the Mutation Appeal No. 130 of 2007-08 impugned notice was issued stating that the mutation made in favour of Shiv Narayan Jaiswal and others are cancelled and, therefore, Shiv Narayan Jaiswal and others were directed to remove the encroachments.

(xi) Challenging the action of the State authorities not to interfere with the possession of Shiv Narayan Jaiswal in view of the order passed by the Commissioner, North Chhotanagpur Division in B.P.L.E. Appeal No. 77 of 2000, said Shiv Narayan Jaiswal preferred W.P. (C) No. 941 of 2005 which was disposed of in terms of order dated 30.6.2005 holding that till the order passed by the Commissioner is set aside/modified by a competent authority, the State will not disturb the possession of the petitioner from the land in question.

(xii) After passing of the order passed on 30.6.2005, Shiv Narayan Jaiswal was served with another notice dated 23.7.2007. Then the said Shiv Narayan Jaiswal moved this Court by filing W.P. (C) No. 4573 of 2007, in which, the Hon"ble Court has passed the interim order staying the notice dated 23.7.2007 holding that "In the meantime, pursuant to the notice as contained in Annexure-5 there shall not be demolition of the structure standing in plot No. 1446 area of Village-Jarmune, Thana No. 108, P.S.-Bagodar, Giridih."

(xiii) When the writ petitioner/respondent no. 1 came to know about the stay order passed in W.P. (C) No. 4573 of 2007, he moved before this Court by filing Interlocutory Application, being I.A. No. 328 of 2007, for impleading him as a party, which was rejected. (vide order dated 23.01.2008).

(xiv) Thereafter, the writ petitioner/respondent no. 1 moved this Court by filing a Contempt Petition suppressing the fact of rejection of his Interlocutory Application. On service of notice in the said contempt petition, the Sub-Divisional Officer, Giridih has passed executive order vide memo no. 349 dt. 20.4.2010 (Annexure-13) directing the Circle Officer, Bagodar to take immediate steps for removal of encroachment.

(xv) On receipt of notice as contained in Memo No. 349 dated 20.4.2010, the Circle Officer, Bagodar has purported to issue the impugned notice dated 21.4.2010 (Annexure 14) treating it to be issued in Encroachment Case Nos. 5/07-08 and 6/2006-07.

(xvi) The C.P.I. (ML) has already moved this Court by filing W.P. (C) No. 2502 of 2010 challenging the executive order issued on 20.4.2010 by Sub-Divisional Officer, Giridih, which is still pending.

(xvii) On enquiry, the applicant came to know that in view of the direction of this Hon''ble Court dated 18.7.2007 in W.P. (PIL) No. 3621 of 2007 the concerned officer/Circle Officer/Sub-Divisional Officer, Bagodar has to stop the construction without delay.

3. The review petitioner is represented by Mr. V. Shivnath, learned Senior Advocate, respondent no. 1 is represented by Mr. Vikash Kishore, and respondent-State of Jharkhand is represented by Mr. Rajesh Kumar, learned G.P.-V.

4. We have heard the learned counsel for the parties.

5. The learned counsel appearing for the review petitioner has drawn our attention to Annexure Nos. 13 & 14 (page nos. 124 & 125) and submitted that Vide Annexure-13 the Sub-Divisional Officer, Giridih appointed the Circle Officer, Bagodar as Magistrate and directed him to remove the encroachment prior to 27.4.2010 so that the compliance report may be submitted to the Hon''ble Court in Contempt Case and accordingly vide Annexure-14 the Circle Officer, Bagodar directed the review petitioner to remove the encroachment (in the notice petitioner's father was named, Mahendra Singh) and submitted that the said order of the Circle Officer (Annexure-14) dated 21.4.2010 is under challenge by the Shiv Narayan Jaiswal-petitioner in predecessor in W.P. (C) No. 2502 of 2010.

6. The property was purchased by Shiv Narayan Jaiswal and others in the Court auction conducted by the Receiver appointed by the Court of Sub-Ordinate Judge-Ill in Title Suit No. 34 of 1937 and by sale deed dated 31.8.1954 (document being Deed No. 8162). Thereafter, in pursuance of the sale deed, mutation proceeding was also effected in the name of Shiv Narayan Jaiswal and others.

Shiv Narayan Jaiswal and others have purchased the property pertaining to plot nos. 1445 and 1446 area 15.25 decimals in Khata No. 334 way back in the year, 1954 and the matter has been the subject matter in various proceedings. Suppressing all these proceedings and also the sale deed in favour of Shiv Narayan Jaiswal and others, the first-respondent appears to have filed a Public Interest Litigation being W.P. (P.I.L.) No. 3621 of 2007. By perusal of the writ petition being W.P. (P.I.L.) No. 3621 of 2007, it appears that the first-respondent has simply alleged that the land in plot nos. 1445 and 1446 are recorded as "Keshar-e-Hind" in the last Cadastral survey completed prior to 1910 and that the persons named therein are trying to grab the property by encroachment.

7. It has been held in catena of decisions that only a person acting bona fide and having sufficient interest in the proceeding of PIL, alone would have locus standi to approach the Court. In *Kansing Kalusing Thakore and Others Vs. Rabari Maganbhai Vashrambhai and Others*, , when a person in illegal occupancy of land approached the Court without adding necessary party in the proceeding, the Hon"ble Supreme Court held that the writ petition was an abuse of the process of Court. In *State of Uttaranchal Vs. Balwant Singh Chaufal and Others*, , the Hon"ble Supreme Court has issued the following directions:--

(1) The Courts must encourage genuine and bona fide PIL and effectively discourage and curb the PIL filed for extraneous considerations.

(2) Instead of every individual Judge devising his own procedure for dealing with the public interest litigation, it would be appropriate for each High Court to properly formulate rules for encouraging the genuine PIL and discouraging the PIL filed with oblique motives. Consequently, we request that the High Courts who have not yet framed the rules, should frame the rules within three months. The Registrar General of each High Court is directed to ensure that a copy of the rules prepared by the High Court is sent to the Secretary General of this Court immediately thereafter.

(3) The Courts should prima facie verify the credentials of the petitioner before entertaining a PIL.

(4) The Courts should be prima facie satisfied regarding the correctness of the contents of the petition before entertaining a PIL.

(5) The Courts should be fully satisfied that substantial public interest is involved before entertaining the petition.

(6) The Courts should ensure that the petition which involves larger public interest, gravity and urgency must be given priority over other petitions.

(7) The Courts before entertaining the PIL should ensure that the PIL is aimed at redressal of genuine public harm or public injury. The Court should also ensure that there is no personal gain, private motive or oblique motive behind filing the public interest litigation.

(8) The Courts should also ensure that the petitions filed by busybodies for extraneous and ulterior motives must be discouraged by imposing exemplary costs or by adopting similar novel methods to curb frivolous petitions and the petitions filed for extraneous considerations.

8. In Santosh Sood Vs. Gajendra Singh and Others, , a case in which civil suit was pending however, in a PIL when the High Court passed an order of dispossession of petitioner, the Hon"ble Supreme Court held that except for cogent reasons, in PIL High Court would not interfere with due process of law.

9. The petitioner/respondent no. 1 in the "Public Interest Litigation" had not disclosed the earlier sale deed no. 8162 dated 31.8.1954 and also various transactions. The first respondent filed the "Public Interest Litigation" by simply alleging that plot nos. 1445 and 1446 are recorded as Keshar-e-Hind and that some other persons are running the shop and these persons sought to be removed so that Keshar-e-Hind land may be kept open and Keshar-e-Hind cannot be settled with any individual. It has been brought to our notice that a Title Suit was filed in which order was passed by the trial court. There are writ petitions pending in this Court relating to the land in question in the PIL. However, all these facts were not brought to the notice of the Court. In the "Public Interest Litigation" the respondent could not come forward with the correct facts and based on such fact the P.I.L. was disposed of with a liberty to the first respondent to approach the Circle Officer, Bagodar by filing representation for removal of the construction/encroachment and issued further directions to the authorities; C.O., S.D.O. to look into the matter and stop construction without any delay and pass reasoned order in accordance with law.

10. In "Rajunder Narain Rae vs. Bijai Govind Singh" reported in (1836)1 Moo PC 117, the Privy Council has held that the Courts possessed the same power which the Courts of record and the Statutes have all rectifying the mistakes.

11. In S. Nagaraj and Others Vs. State of Karnataka and Another, , the Hon"ble Supreme Court has observed basic philosophy inherent in power of review is the universal acceptance of the human fallibility.

12. In Lily Thomas, Vs. Union of India and Others, , the Hon"ble Supreme Court taking note of the earlier decisions the Privy Council has observed thus:--

52. ----It cannot be denied that justice is a virtue which transcends all barriers and the rules or procedures or technicalities of law cannot stand in the way of administration of justice. Law has to bend before justice. If the Court finds that the error pointed out in the review petition was under a mistake and the earlier judgment would not have been passed but for erroneous assumption which in fact did not exist and its perpetration shall result in a miscarriage of justice nothing would preclude the Court from rectifying the error----

In view of the aforesaid facts and circumstances, since the essential facts were not placed before the Court, we deem it appropriate that, the order passed by

the Court in W.P. (P.I.L.) No. 3621 of 2007 is recalled. This Civil Review petition is allowed and consequently, W.P. (C) No. 2502 of 2010 is dismissed.