
(2023) 08 JH CK 0064

In the Jharkhand High Court

Case No : Writ Petition (C) No. 761 Of 2023, I.A. No. 3877, 7468 Of 2023

Bishnu Lohra

APPELLANT

Vs

State Of Jharkhand And Others

RESPONDENT

Date of Decision : 31-08-2023

Acts Referred:

Land Acquisition Act, 1894 — Section 16, 17(1)

Citation : (2023) 08 JH CK 0064

Hon'ble Judges : Gautam Kumar Choudhary, J

Bench : Single Bench

Advocate : Indrajit Sinha, Aditya Raman, Jayant Franklin Toppo, Amrit Raj Kisku, Neil Abhijit Toppo

Final Decision : Dismissed

Judgement

Gautam Kumar Choudhary, J

I.A. No.3877 of 2023 is dismissed as withdrawn in view of prayer made in I.A. No.7468 of 2023.

I.A. No.7468 of 2023 has been filed for carrying out necessary amendment in the writ petition by addition of prayer in the main writ petition as detailed in para 8 & 9 of the interlocutory application by which the petitioner seeks to challenge the entire proceeding initiated under Misc. Case No.05/2022-23 and the decision of initiating the cancellation of long running Jamabandi under challenge.

I.A. No.7468 of 2023 is allowed and the amendment as proposed in para 8 and 9, is allowed which will form part of the writ petition.

1. The instant Writ Petition (Civil) has been filed for quashing the Notice as contained in Memo No.131(ii) dated 04.02.2023 (Annexure-10) issued by the Circle Officer, Sisai (Respondent No.8) directing the petitioner to remove encirclement (Gherabandi) from the Raiyati Land being Khata No.86, Plot No.907, Mouza- Kudra, Area 0.73 acres.

Further direction has been sought for restraining the Circle Officer, Sisai to create a new Jamabandi in the name of Government in Register II, over the land in question which is being claimed by the petitioner to be his Raiyati land.

CASE OF PETITIONER

2. The facts of the case as it appears from the instant petition as well as counter-affidavit filed on behalf of the State, is in a narrow compass. The petitioner claims the land in question to be Raiyati land which was recorded in the name of great grand-father (Sukhan Lohar, S/o Late Ghuran Lohar), whereas the State claims the land to be acquired way back in 1956 and compensation having been paid to Sukhan Lohar.

3. Petitioner claims to be in 'Juridical Possession' of the land in question as Jamabandi continued in his name and up-to-date rent receipts till 2022-23 has been issued in his favour.

CASE OF STATE

4. The case of the State is that the said land was acquired way back in the year 1956 by Declaration No.4497 R dated 03.05.1956, whereby it will be apparent from the Letter bearing No.6521/ B/ L- 1-1631/55 dated 18.05.1956 by which 14.10 acres of land was acquired for construction of Anchal -cum-N.E.S. Block Head Quarters in the Village- Bhudauli and Kudra, District-Ranchi at present Gumla which was published at Page No.1766 Part II of the Bihar Gazette dated 30.05.1956. The Land Acquisition Officer, Ranchi was also authorized under Section 17(1) of the Land Acquisition Act to take immediate possession of the part of the land. It is submitted that in Raghbir Tiwary Versus State of Jharkhand & Others, 2019 SCC OnLine Jhar 1508 in another similar matter this Court had declined to give relief to the petitioners as his land was acquired by the State.

5. By way of supplementary counter-affidavit in Para-13, it has been averred on behalf of the State authority that Plot No.907, Khata No.86 was acquired in Land Acquisition Case No.16/1956-57. The Photocopy of the Land Possession Certificate has been enclosed whereby and whereunder the possession of the Plot No.907, Khata No.86 is mentioned.

6. Further, the amount of compensation was also received and the same will be apparent from Annexure-H by Sukhan Lohar. The DCLR, Gumla in Misc. Case No.05 of 2022- 23 vide order dated 18.07.2022 directed the Circle Officer to create a new Jamabandi of the land in question, and other acquired land in the name of the Government vide Letter No.105(ii) RA dated 28.01.2023.

7. It is submitted that inadvertently the Jamabandi was running in the name of the petitioner on which they are trying to make capital out of the wrong Jamabandi that was running and rent receipts were being issued.

8. It is argued on behalf of the petitioner that the said plot of land was not

acquired by the State and the LRDC was not empowered to cancel the Jamabandi and to disturb settled possession of the petitioner over his ancestral land. There has not been any order of the competent authority for cancellation of the Jamabandi running in the name of the ancestor of the petitioner and the notice has been issued, which is under-challenge before this Court. The revenue records are not evidence of title, but they are evidence of possession which shows settled possession of the petitioner. In order to dispossess the petitioner, the procedure has to be adopted and cannot be removed summarily.

Reliance is placed on L.P.A. No.786 of 2016 with connected matter and L.P.A. No.142 of 2010.

9. The petitioner's claim title over the land in question on the basis of inheritance as the said land was recorded in the name of ancestors of the petitioner, namely, Sukhan Lohar and others whereas the State claims the land in question on the basis of acquisition vide Land Acquisition Case No.16 of 1956-57 and the compensation was received by Sukhan Lohar in pursuance to the acquisition.

10. After having considered the rival submissions, the pleadings and the materials on record, namely the order passed in land acquisition case, it cannot be disputed that land claimed by the State had been acquired way back in 1956, compensation paid and the possession had been delivered.

11. Claim of possession is precariously poised on the claim of continuing Jamabandi and of revenue being paid to the State by the petitioner.

12. It is settled principle of law that possession is an incidence of title and it follows title. A party who claims title on the basis of possession has to assert and prove it on the basis of adverse possession. In the present case, prima-facie, it appears that the land in question was acquired and compensation paid. Thus, the claim to possession on claim of a running Jamabandi and payment of revenue is a tenuous one particularly where the said land had been acquired long back. It has been held in Vishal Singh v. State of M.P., (1998) 9 SCC 90

4. We are unable to accept any of the aforesaid contentions. No doubt the entry in the revenue record was made in favour of the appellants and their men but such an entry could only give rise to a rebuttable presumption. Muddasani Venkata Narsaiah v. Muddasani Sarojana, (2016) 12 SCC 288

18. Her claim of an adopted daughter of Yashoda has not been found established. The entry of possession in some revenue records simpliciter does not confer any right to Defendant 3 to retain the possession of the property.

13. Even if it is accepted that petitioner had re-entered into possession after the completion of the acquisition process, it cannot give an indefeasible right to continue in illegal possession of the said land. It has been held in Sita Ram Bhandar Society v. Govt. (NCT of Delhi), (2009) 10 SCC 501

40. In Narayan Bhagde case [(1976) 1 SCC 700] one of the arguments raised by

the landowner was that as per the communication of the Commissioner the land was still with the landowner and possession thereof had not been taken. The Bench observed that the letter was based on a misconception as the landowner had re-entered the acquired land immediately after its possession had been taken by the Government ignoring the scenario that he stood divested of the possession, under Section 16 of the Act. This Court observed as under: (Narayan Bhagde case [(1976) 1 SCC 700] , SCC p. 712, para 29)

"29. ... This was plainly erroneous view, for the legal position is clear that even if the appellant entered upon the land and resumed possession of it the very next moment after the land was actually taken possession of and became vested in the Government, such act on the part of the appellant did not have the effect of obliterating the consequences of vesting."

To our mind, therefore, even assuming that the appellant had re-entered the land on account of the various interim orders granted by the courts, or even otherwise, it would have no effect for two reasons,

(1) that the suits/petitions were ultimately dismissed and

(2) that the land once having vested in the Government by virtue of Section 16 of the Act, re-entry by the landowner would not obliterate the consequences of vesting.

(Emphasis supplied)

It has been held in *Maria Margarida Sequeira Fernandes v. Erasmo Jack de Sequeira*, (2012) 5 SCC 370

"Possession is important when there are no title documents and other relevant records before the Court, but, once the documents and records of title come before the Court, it is the title which has to be looked at first and due weightage be given to it. Possession cannot be considered in vacuum".

14. Petitioner can file a suit for possession in the absence of a valid title, but proprietary or possessory title cannot be decided by a Writ Court. The authority relied upon on behalf of the petitioner is of no help as the facts are very different. This is a case where the land was acquired and none other than the predecessor-in-interest of the land had received the compensation amount. At no point of time any objection was raised on behalf of the petitioner and after more than six decades the claim over the land is staked on the basis of entries in revenue record which are not evidence of title or conclusive evidence of possession. This Court cannot issue writ in the nature of mandamus to give or secure possession to a party who has no title over it, for which efficacious remedy are available under General Law. A suit for title or possession or for both can be filed for the said relief. In the result, the writ petition fails.

Writ Petition stands dismissed. Interlocutory Application, if any, is disposed of.