
(2010) 06 JH CK 0014
In the Jharkhand High Court

Bulu Gope

APPELLANT

Vs

Bharat Coking Coal Ltd.

RESPONDENT

Date of Decision : 24-06-2010

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 114

Public Premises (Eviction of Unauthorised Occupants) Act, 1971 — Section 9

Citation : (2010) 06 JH CK 0014

Hon'ble Judges : Amareshwar Sahay, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Amareshwar Sahay, J.—Heard the parties.

2. The prayer of the petitioner in this writ petition is for setting aside the Judgment dated 03.06.2006 passed in Misc. Case No. 2/2003 refusing to review the Judgment dated 27.02.2003 in Miscellaneous Appeal No. 13/89.

3. The facts in short giving rise to this application are that M/s. Bharat Coking Coal Ltd. filed a case being Case No. 8/1987 before the Estate Officer, Bharat Coking Coal Ltd., Dhanbad under the Public Premises (Eviction of Unauthorised Occupants) Act, 1971 against Bulu Gope (Petitioner) for eviction from Plot No. 367 of Khata No. 76, area 0.01 Acres alleging therein that he had encroached upon the said land belonging to M/s. Bharat Coking Coal Ltd....

4. Notices were issued to the Second Party - Bullu Gope (petitioner) but in spite of service of notice, he remained absent and did not appear. Ultimately, the Estate Officer, by his Order dated 30th January, 1989, as contained in Annexure-1 to the writ petition, directed the opposite party i.e. the present petitioner to vacate the land so held by him illegally within the fortnight.

5. The writ petition, thereafter, preferred an appeal before the District Judge, Dhanbad against the said Order of eviction passed by the Estate Officer, which was registered as Misc. Appeal No. 13/1989. The Xth Addition District Judge,

Dhanbad, by his Judgment dated 27th February, 2003, by a detailed Judgment, dismissed the appeal filed by the writ petitioner as contained in Annexure-3 to this writ petition.

6. The writ petitioner, thereafter, filed an application u/s 114 read with Order 47 of the C.P.C. for review of the Order dated 27.02.2003 (Annexure-3) before the Xth Additional District Judge, Dhanbad, which was registered as Misc. Application No. 2/2003. The said Misc. Case No. 2/2003 was dismissed by the Court below on 03.06.2006 and, thereafter, the petitioner has filed this writ application challenging the aforesaid Judgment dated 03.06.2006 (Annexure-7) as well as Judgment dated 27.02.2003 (Annexure-3).

7. As it appears from the impugned Judgment contained in Annexure-7, dismissing the Review Petition, the said Review Petition was filed by the writ petitioner on the ground that there was no provision for appeal against the Order passed u/s 9 of the Public Premises (Eviction of Unauthorised Occupants) Act, 1971 and further that a Judicial Officer, having less than ten years standing, has no jurisdiction to decide any appeal u/s 9 of the Public Premises (Eviction of Unauthorised Occupants) Act, 1971 and, therefore, Shri Md. Mustaque Ahmad, 10th Additional District Judge, Dhanbad, who decided the appeal by his Judgment dated 27.02.2003, as contained in Annexure-3 to the writ petition, was without jurisdiction since he was having less than ten years standing as a Judicial Officer.

8. Learned Court below dismissed the review petition of the petitioner on the ground that the question as to whether the Presiding Officer was having jurisdiction to decide the appeal u/s 9 of the Public Premises (Eviction of Unauthorised Occupants) Act, 1971 was not a matter which could be decided in a review. The Court below further held that the petitioner has tried to challenge the findings of the appellate court under the garb of Review Petition, which is not permissible under the Law.

9. In the present writ petition, the writ petitioner has not only challenged the Judgment of the Court below dismissing the Review Petition, but has also challenged the Judgment/ Order of the appellate court by which his appeal against the Order of eviction passed by the Estate Officer under the Public Premises (Eviction of Unauthorised Occupants) Act, 1971 was dismissed.

10. I have perused the Judgment of the appellate Court as contained in Annexure-7 to the writ petition and find that the petitioner raised the question of right, title and interest of M/s. Bharat Coking Coal Ltd. over the land in question on the ground that the lands in question never vested with the State under the Coal Mines Nationalisation Act and, therefore, the land in question for which the proceeding was initiated under the Public Premises (Eviction of Unauthorised Occupants) Act, 1971, did not come within the purview of public premises so as to give jurisdiction to take action under the Public Premises (Eviction of Unauthorised Occupants) Act, 1971.

11. In the case of M/s. Shree Bajrang Hard Coke Manufacturing Corporation v. Shri Ramesh Prasad and Ors. reported in 2002(3) JLJR 241, by a Division Bench of this Court, it has been held that the authority under this Act has a very limited jurisdiction and it has to determine only a dispute that may arise, vis-a-vis a public premise. Upon an application made before it, it has to proceed in a summary disposal thereto.

12. The authority under the Public Premises (Eviction of Unauthorised Occupants) Act, 1971 has no jurisdiction to embark upon the domain of Civil Court for the purpose of adjudicating on the question of complicated title, which can only be done by a Civil Court.

13. In my view, the question as to whether land in question vested in the State of Bihar under the Coal Mines Nationalisation Act is a question in which complicated question of right and title, which was not required to be gone into by the Estate Officer in a summary proceeding under the Public Premises (Eviction of Unauthorised Occupants) Act, 1971, such jurisdiction is only with the Civil Court.

14. After perusal of the impugned Order passed by the Estate Officer as well as the appellate authority, I find that both the authority concerned have elaborately discussed the facts involved in this case and, thereafter, passed the order of eviction of the petitioner from the land in question. I do not find any error in their Judgments.

15. So far as the impugned Order as contained in Annexure-7 is concerned, I find that the same also does not require any interference by this Court since the question raised in the Review Petition was a question of jurisdiction of the Court and it could not have been determined and decided in a Review Petition. The scope of review is limited and it can only be exercised when the Order is found to be based on apparent error on record. Therefore, in my view, the impugned Judgment Annexure-7 dismissing the Review Petition does not suffers from any infirmity.

16. For the reasons stated hereinabove, I do not find any merit in this writ petition. Accordingly, this writ petition is hereby dismissed but without any costs.