

(2004) 04 BOM CK 0124

In the Bombay High Court

Case No : Writ Petition No's. 2612 of 2003 and 24 of 2004

Devlagan Sadloo Yadav and Others

APPELLANT

Vs

State of Maharashtra and Others

RESPONDENT

Date of Decision : 28-04-2004

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2004) 4 BomCR 836 : (2004) 3 MhLj 1008

Hon'ble Judges : C.K. Thakker, C.J.; S. Radhakrishnan, J

Bench : Division Bench

Advocate : A.A. Kumbhakoni and V.N. Singh, in W.P. No. 2612 of 2003 and V.N. Singh, in W.P. No. 24 of 2004, for the Appellant; R.M. Savant, Government Pleader for respondent Nos. 1 to 4 and Gautam Pate, for the Respondent

Final Decision : Dismissed

Judgement

C. K. Thakker, C.J.—In both these petitions, the petitioners have prayed for an appropriate writ, direction or order declaring the action of the respondents directing them to vacate from the land bearing S. No. 41 as illegal and contrary to law. A further prayer is made that action of proposed demolition and rehabilitation of the petitioners without demarcating boundary line between Survey No. 41 and 42A (Part) of village Poisar is bad in law, and ultra vires Articles 14, 19 and 21 of the Constitution.

2. It was the case of the petitioners that they are in possession of land bearing Survey No. 41 (Part) of village Poisar since more than two decades. Their possession is thus legal, valid and in accordance with law. The land was assessed by revenue authorities and had never been forest. No action, therefore, could have been taken against the petitioners.

3. It is the case of the petitioners that in pursuance of a judgment and order passed by this Court on 15th September, 2003 in Writ Petition No. 305 of 1995, a public notice was issued on 30th September, 2003 in respect of Survey No. 41

(Part) directing the persons occupying the property to deposit an amount of Rs. 7,000/- under the rehabilitation scheme. The petitioners replied the said notice by praying the respondents to demarcate the boundary between Survey Nos. 41 and 42-A of village Poisar. According to them, the judgment in Writ Petition No. 305 of 1995 would not apply to S. No. 41 and their possession is legal and valid. The claim of the petitioners can be established only after demarcation of boundary between Survey No. 41 and 42A of Village Poisar. The notice, in the circumstances, is unlawful and without authority of law.

4. An affidavit in reply was filed by Deputy Conservator of Forests, Sanjay Gandhi National Park, Borivli, Mumbai. It is contended that the petitioners who claimed to be in Survey No. 41 and thereby seeking directions that they are not liable to be removed without demarcation of land between Survey No. 41 and 42A (Part) of village Poisar is not well founded. According to the deponent, this is the last ditch attempt made by the petitioners to reopen issues which have already been finalised, settled and concluded by this Court in Writ Petition No. 305 of 1995, decided on September 15, 2003. It was also stated that the petitioners "appeared to be a front for some vested interest" indirectly seeking reliefs which those persons could not get directly from this Court in Writ Petition No. 305 of 1995 and companion matters. The point was finally adjudicated and this Court held in the light of relevant provisions of law as well as the orders passed from time to time by this Court that no demarcation was necessary.

5. It was also stated that the structure of the petitioners was found to be in Survey No. 42-A which was within the boundaries of Sanjay Gandhi National Park Division. It was, therefore, submitted that the Petitioners cannot claim protection.

6. In our opinion, the petitioners are not entitled to any relief. The contention raised in both the petitions by the present petitioners have been advanced before this Court when Writ Petition No. 305 of 1995 and companion matters were heard by this Court. It was specifically, expressly and explicitly contended that unless there is demarcation of boundaries and survey settlement, no order of eviction could be passed. This Court dealt with the contentions and negated them, observing that the area was already identified, and as per demarcation, the land was declared "forest". In the affidavit of Deputy Conservator of Forests, it has been stated that the land involved in the present petition is of S. No. 42A of Village Poisar.

7. In view of the finding recorded in those petitions, vide our judgment dated 15th September, 2003, in our opinion, the present petitions should be dismissed.

8. For the foregoing reasons, both the petitions deserve to be dismissed and are accordingly they are dismissed. In the facts and circumstances, however, there shall be no order as to costs.

Parties to act on an ordinary copy of this judgment duly authenticated by the Associate/Private Secretary.

9. The learned counsel for the petitioners prays that the order passed by us may be stayed for some time so as to enable the petitioners to approach the Hon''ble Supreme Court. Even at the initial stage, we had not granted ad-interim relief. At the time of the dismissal of the petitions, obviously, therefore, such relief cannot be granted. Hence prayer is rejected.