
(2019) 08 JH CK 0110
In the Jharkhand High Court
Case No : Writ Petition (c) No.1388 Of 2016

Dilip Kumar Mishra And Ors	Vs	APPELLANT
State Of Jharkhand And Ors		RESPONDENT

Date of Decision : 05-08-2019

Acts Referred:

Bihar/Jharkhand Public Land Encroachment Act, 1956 — Section 3, 3(1)(a), 4, 5, 5(1), 6, 6(1)
Constitution Of India, 1950 — Article 226

Citation : (2019) 08 JH CK 0110

Hon'ble Judges : Sujit Narayan Prasad, J

Bench : Single Bench

Advocate : Manoj Kumar, Piyush Chitresh, Jayant Franklin Toppo, Vijay Kant Dubey

Final Decision : Disposed Of

Judgement

1. This writ petition is under Article 226 of the Constitution of India whereby and whereunder the notice dated 29.02.2016 passed by the Circle Officer, Nirsa, Dhanbad as contained under Memo No.249 is under challenge, by which, the petitioners have been directed to remove the encroachment upon the said land, failing which, the action would be taken for removing the encroachment from the land in question.
2. It is the case of the petitioners that although in the notice impugned there is reference of an order passed under sub-section (1) to Section 6 of the Bihar/Jharkhand Public Land Encroachment Act, 1956 (hereinafter referred to as the Act, 1956) but according to him, no such order has been passed giving declaration to the effect for removing the encroachment and therefore, in absence of an order, the issuance of notice by taking aid of an order passed under Section 5(1) of the Act, 1956 is not sustainable in the eye of law.
3. This Court after hearing the learned counsel for the petitioner has passed an order on 10th July, 2019 wherein the learned State counsel was directed to bring

on record the copy of the order passed along with order-sheet said to have been initiated under the provision of Act, 1956, in pursuance thereto, the present Circle Officer, Nirsā, Dhanbad namely Mr. Modassar Nazar Mansuri has appeared along with the original record.

4. Mr. Jayant Franklin Toppo, learned SC. (L&C)- III representing the State of Jharkhand is fair enough to submit that reference made of an order passed under sub-section (1) to Section 5 of the Act, 1956 has wrongly been made since as would appear from the record that no such order has been passed by the competent authority.

However, he submits that a title suit pertaining to the same land is going on before the competent court of civil jurisdiction.

5. Having heard the learned counsel for the parties and on appreciation of their rival submissions and without going into the other aspects of the matter, this Court deem it fit and proper only to scrutinize the order on the basis of the ground agitated by the petitioners to the effect that there is no order passed under sub-section (1) of Section 5 of the Act, 1956.

6. It is necessary to refer that the impugned notice dated 29.02.2016 wherein the reference of an order passed under sub-section (1) of Section 5 has wrongly been made since the Section 5 of the Act, 1956 provides the provision for providing opportunity of hearing and in consequence thereof, final order to be passed under Section 6 of the Act, 1956.

It is evident from the provision of the Act, 1956 that when it came to the notice of the competent authority with respect to the encroachment made by any person over the public land, a proceeding as contemplated under Section 3 to the Act, 1956 would be initiated if it appears to the Collector from an application made by any person or upon information received from any sources that any person has made or is responsible for the continuance of any encroachment upon any public land, the notice is required to be issued to the concerned person alleged to have encroached the public land who in terms of the said notice, would submit his defence by putting his appearance before the Collector as stipulated under the provision of Section 4 to the Act, 1956 and thereafter under the provision of Section 5 an opportunity of hearing is to be provided to such party who has come out with his defence as contemplated to be filed under Section 4 the Act, 1956 and thereafter, the final order would be passed under Section 6 to the Act, 1956.

7. Section 6 to the Act, 1956 provides that if the case is not covered by the proviso to sub-section (2) of Section 3, the Collector shall after hearing the persons concerned and taking evidence, if any, under Section 5 and after making such enquiry as the deems necessary the Collector may, as the circumstances of the case require -

(a) either drop the proceedings, or

(b) make the temporary injunction issued under sub-clause (a) of sub-section (1) of section 3 absolute against the person making encroachment of the public land, or

(c) [xxx]

(d) where the temporary encroachment on public land has been removed by the person making encroachment after some time the Collector shall order payment of damages for the use of the land during the period of encroachment

(e) in the cases not covered by the foregoing sub-clauses, the Collector shall direct the person making encroachment of the public land to remove the encroachment within specified period which shall not in any case be more than two weeks in case the encroachment is not removed within the specified time the crops standing or all types of structures existing on the encroached land shall be forfeited by the Collector.

The aforesaid provision clearly provides that the final order under Section 6 of the Act, 1956 is to be passed after providing an opportunity of hearing to the party against whom the allegation of encroachment has been levelled and notice under Section 3 has been issued.

8. The impugned notice dated 29.02.2016 suggests that the same has been issued in contemplation of an order passed under sub-section (1) of Section 6 of the Act, 1956 and therefore, the petitioners have raised serious objection to the same by taking specific ground in the writ petition that no such order said to have been passed under sub-section

(1) of Section 6 for removal of encroachment.

9. The State although has filed counter affidavit but no such averment has been made to the effect that as to whether any order said to have been passed under sub-section (1) of Section 6 or not.

10. Therefore, this Court by an order passed on 10th July, 2019 has directed the learned State counsel to bring on record the copy of the order passed under the provision of the Act, 1956 as has been referred in the impugned notice dated 29.02.2016, the said order reads hereunder as:

अंचल अधिकारी का कार्यालय निरसा।

ज्ञापांक 249/ दिनांक 29/2/16

प्रेषित,

नाम- न्रीदीप पाल रेडीमेड दुकान

पिता/पति-.....

ग्राम- भमाल, पो0-निरसा,

थाना-निरसा।

विषय:- मौजा-भमाल, मौजा सं0-82, खाता सं0- 32, प्लॉट सं0-428 के आंशिक रकवा को अतिक्रमण मुक्त करने के संबंध में।

उपर्युक्त विषय के संबंध में कहना है कि मौजा-भमाल, मौजा सं0-82, खाता सं0-32, प्लॉट सं0- 428, कुल रकवा-2.20ए0 भूमि जो गतसर्वे खतियान के अनुसार गैर आबाद खाते की भूमि है। उक्त भूमि के आंशिक रकवा पर आपके द्वारा पक्का दुकान बनाकर अतिक्रमण किया गया है। अतिक्रमण वाद के तहत मौजा-भमाल, मौजा सं0-82, खाता सं0-32, प्लॉट सं0-428, कुल रकवा-2.20 ए0 भूमि पर अतिक्रमण वाद के तहत बिहार/झारखण्ड लोक भूमि अतिक्रमण अधिनियम 1956 की धारा 5 के उपधारा (1) अतिक्रमण से मुक्त करने हेतु पारित आदेश के आलोक में अपर जिला दण्डाधिकारी (वि0 व्य0), धनबाद से निदेश प्राप्त है।

अतः आपको निदेश दिया जाता है कि दिनांक- 08.03.2016 तक उक्त गैर आबाद भूमि को अविलंब स्वेच्छा से अतिक्रमण मुक्त करना सुनिश्चित करें। अन्यथा प्राप्त निदेश के आलोक में दिनांक-10.03.2016 को अतिक्रमणित भूमि को मुक्त कराने की कारवाई की जायेगी।

इसे सख्त ताकिद समझें।

अंचल अधिकारी

निरसा।

11. Supplementary affidavit has been filed in pursuance to the last order by serving the copy of the same upon the learned counsel for the petitioners, the same be kept on record.

12. The matter has been adjourned on 24th July, 2019 and again on 31st July, 2019.

13. Mr. Modassar Nazar Mansuri, the present Circle Officer is present along with the original records.

14. Mr. J.F. Toppo, learned counsel representing the State of Jharkhand has fairly submitted that no such order has been passed under sub-section (1) of Section 6 of the Act, 1956, however, he further submitted that a title suit is going on over the land in question.

15. Now the question fell for consideration before this Court is that whether the State functionary can act by issuing a notice in absence of an order passed under the provision of law treating the petitioners to be encroacher.

16. So far as the declaration to the effect as to whether the person is encroacher or not, the full-fledged self-contained proceeding has been provided under the Act, 1956 and the object of the said Act is to save the land being the public property from its encroachment causing the loss to the State but before holding the encroachment having been done by a party, procedure has been provided and it is only after resorting to the aforesaid provision of law, a final order is to be passed in pursuance to the provision of Section 6 of the Act, 1956.

If the authority is proceeding in absence of an order directing one or the other

person to remove the encroachment, it will be said to be without any authority of law and not in consonance with the statutory provision.

17. Admittedly, as would appear from the original record having been produced by the learned counsel for the State, that no such order has been passed under Section 6 of the Act, 1956, however, a notice has been issued to the petitioner for giving his defence as on 02.12.2012, therefore, this Court is of the view that the impugned notice dated 29.02.2016 passed by the Circle Officer, Nirsa, Dhanbad is without any application of mind and as such the same is quashed.

In the result, the matter is remitted before the Circle Officer, Nirsa to proceed from the stage of the notice and take decision after providing an opportunity of hearing to the petitioners within a period of three months from the date of receipt of copy of the order.

18. Before parting with the order, this Court is further constrained to hold that the action of the Circle Officer, Nirsa, in issuing the notice dated 29.02.2016, as has been informed that at that time, one Prashant Kumar Layak was the Circle Officer, is not proper for the reason aforesaid and hence, this Court has failed to understand that in absence of an order why and under what authority, the reference of an order has been made in the notice dated 29.02.2016, therefore, the matter is referred before the Secretary, Personal, Administrative and Raj Bhasha, Department of State of Jharkhand to conduct an inquiry in this regard and if required to initiate a departmental proceeding against the said Circle Officer.

19. The conduct of the present Circle Officer has also not been appreciated by this Court in not responding the order passed by this Court in consequence thereof, order dated 31.07.2019 has been passed which reads hereunder as:-

Reference may be made to the order dated 10.07.2019, whereby and whereunder the affidavit has been directed to be filed by the Circle Officer in a case pertaining to the Public Land Encroachment.

The matter was listed on 24.07.2019, wherein time was sought for by the learned counsel appearing for the State-Respondent, considering the reason, the matter was adjourned and directed to be listed on 31.07.2019 and accordingly, the matter has been listed today.

Mr. Vijay Kant Dubey, learned A.C. to S.C.(L&C)-I, has sought for time, since he has got telephonic instruction from the concerned Circle Officer, Nirsa-Respondent No.3.

This Court, failed to understand that the authorities are not filing the affidavit in spite of the repeated judicial orders passed by this Court and taking serious view of the matter, let the Circle Officer, Nirsa-Respondent No.3 physically appear on 05.08.2019 at 10:30 a.m. and explain to this Court why the affidavit has not been filed and why the matter is not reported to the Secretary, Personal, Administrative and Raj Bhasha, Department of the State of Jharkhand for

initiating departmental proceeding against him.

Accordingly, list this case on 05.08.2019.

Let a copy of this order be communicated to the learned Advocate General.

20. However, he submits that in future, he will not repeat this kind of act, therefore, this Court is accepting his oral explanation with the caution that the same may not be repeated in future.

21. In view thereof, the writ petition stands disposed of.