
(2012) 08 JH CK 0182

In the Jharkhand High Court

Case No : Writ Petition (C) No. 6524 of 2006

Dr. Sharda Prasad Sinha and Another

APPELLANT

Vs

State of Jharkhand and Others

RESPONDENT

Date of Decision : 27-08-2012

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 145

Citation : (2012) 4 JLJR 332

Hon'ble Judges : Aparesh Kumar Singh, J

Bench : Single Bench

Advocate : S. Shrivastava, for the Appellant; Srijit Choudhary, for the Respondent

Final Decision : Allowed

Judgement

Aparesh Kumar Singh, J.—Heard learned counsel for the parties. The petitioner had approached this court seeking quashing of the order contained in letter no. 4394 dated 4.10.2006 (Annexure-5), whereby the respondents-Forest Officials of the State had initiated proceeding under the Bihar Public Land Encroachment Act, 1956 adopted by the State of Jharkhand treating it to be forest land.

2. The case of the petitioner is that in the said plot no. 337 under Khata no. 48, he is the owner of an area of 18 decimals at Village-Kamaldih, P.S.-Chas, District-Bokaro purchased by the petitioner from the petitioner's vendor, Kameshwar Prasad in whose name "jamabandi" earlier had been opened. It is stated that petitioner no. 2 by virtue of 2 sale deed nos. 5336 and 5337 executed by the vendor, Kameshwar Prasad purchased the said 18 decimals of land in the year 1979 and got her name mutated vide Mutation Case No. 76(VII)/1984-85 and is paying rent thereof, as per Annexures-1 and 2 series.

3. Learned counsel for the petitioner further submitted that the proceeding u/s 145 Cr. P.C. in M.P. Case No. 537 of 1979 was initiated at the instance of Forest Department in which the petitioner possession was confirmed by the learned

court restraining the Forest Department from interfering with the possession of the petitioner vide order dated 11.3.1980 passed in M.P. Case No. 537 of 1979 (Annexure-3).

4. It is further case of the petitioner that the Forest Department filed title suit being T.S. No. 17 of 1980 in the Court of learned Munsif, Baghmara against the order passed in M.P. Case No. 537 of 1979 and sought injunction over the petitioner's possession over the same piece of land. By referring to the order contained in Annexure-3A in Misc. Appeal No. 43 of 1980 dated 12.5.1980, it is submitted that the order granting injunction in favour of the Forest Department was set aside and Civil Revision No. 302 of 1980(R) preferred by the Forest Department was also dismissed by the High Court vide Annexure-3B. It is stated that the Forest Officials purportedly took steps by initiating the acquisition of said land in Forest Case No. 55 of 63-64, wherein the raiyats were found in possession of the said land. However, the proposal of the department was turned down by the order of the Forest Settlement Officer, Dhanbad (Annexure-3-C) and the Land Acquisition Case No. 43 of 60-61 was ultimately dropped vide order dated 2.6.1972. It is submitted that the petitioner's vendor had approached the court in C.W.J.C. No. 418 of 1978(R), which was allowed to be withdrawn on the assurance of the learned counsel for the State that he will instruct his client to give effect to and release the lands mentioned in the order of the Forest Settlement Officer dated 28.11.1964 in Forest Case No. 55 of 63-64, unless they are acquired in accordance with law. It is submitted that no acquisition proceeding was proceeded, thereafter. However, it is submitted that by the impugned order proceeding for removal of alleged encroachment of 10 decimals out of 18 decimals has been initiated -at the behest of Divisional Forest Officer, Dhanbad Forest Division, which is contrary to the facts as well as law. Learned counsel for the petitioner further submitted by referring to Annexure-4 that in the B.P.L.E. Case No. 179 of 1996-91 by the Divisional Forest Officer, Dhanbad against the petitioner, preliminary objection has been filed clearly stating the aforesaid fact and also making categorical assertion that Title Suit No. 17 of 1980 instituted before the Munsif, Baghmara by the Forest Department was ultimately dismissed by the order passed by the court.

5. Based upon the aforesaid facts supported with documents, it is submitted that the possession of the petitioner over the said piece of land is based upon undisputed title and ownership as per the order passed in several proceedings as indicated hereinabove, which only confirmed the aforesaid possession.

6. Learned counsel for the respondent-State, on the other hand submitted that the said plot no. 337 comprises those 18 decimals of protected forest land as well in respect of which B.P.L.E. proceeding was initiated. It is further submitted referring to the statement made in the counter affidavit that "jamabandi" opened in the name of the petitioner's vendor and petitioner has been prohibited by the letter of the Land Reform Section and Revenue Department dated 18.1.1960 by strictly prohibiting the collection of Rent by Karmacharies and Circle Officers for

the lands comprised within the area as Demarcated Protected Forest Land. However, learned counsel for the respondent has not been able to dispute the contention of the petitioner that the Title Suit preferred by the Forest Department in respect of the petitioner's possession of the land got ultimately dismissed and the injunction order passed by the learned. Munsif was also set aside by the appellate court in Miscellaneous Appeal vide order contained in (Annexure-3A), which was also subsequently confirmed in Civil Revision No. 302 of 1980(R) by the order dated 2.12.1983 passed by the Patna High Court.

7. Learned counsel for the petitioner by referring to Annexure-6, order passed by the Court of Charge Officer, Dhanbad in Remand Case No. 17197 of 1994 dated 27.4.2007 pursuant to the remand of the case from the Court of Commissioner, North Chotanagpur Division, Hazaribagh in respect of several piece of lands including that of the petitioner, submitted that the Charge Officer after referring to the objections of the Forest Department and the notification cited in their behalf, thereafter has proceeded to hold that the concerned plot is raiyati plot and recorded it such in the present revisional survey. Accordingly, the revision application was allowed and by entry made at para 9 Serial No. 1 in the said order, petitioner's piece of land of 18 decimals have been ordered to-be recorded in the name of petitioner no. 2 in the record of right under Sections 83 and 89 of Chotanagpur Tenancy Act. Learned counsel for the petitioner, therefore, submits that the order referred to in Annexure-6 are conclusive proof of the ownership, title and possession of the petitioner over the said piece of land having an area of 18 decimals in plot no. 337 under Khata No. 48, at Village-Kamaldih, P.S.-Chas, District-Bokaro.

8. I have heard learned counsel for the parties. From the impugned order including the relevant materials on record and from the facts and documents submitted" on behalf of the parties and also brought on record, it appears that the area of 18 decimals of land in plot no. 337 itself was the subject matter of dispute between the petitioners and the Forest Department. The Title Suit No. 17 of 1980 was preferred by the Forest Department, which as per the categorical statement made by the petitioner was ultimately dismissed and the order of injunction passed by the learned Munsif in favour of the Forest Department was set aside by the Appellate Court in Miscellaneous Appeal No. 43 of 1980 dated 12.5.1980, which got confirmed in Civil Revision by the High Court vide order contained in Annexure-3B. The said Title Suit No. 17 of 1980 was also dismissed. From the order contained in Annexure-6, it further appears that in survey settlement exercise the objection of the Forest Department was considered and on Revision the name of the petitioner was ordered to be recorded as raiyat in the record of rights in a proceeding under Sections 83 and 89 of the C.N.T. Act vide order dated 27.4.2007 passed by the Court of Charge Officer, Dhanbad in Remand Case No. 17197 of 1994. It is "also apparent that both the petitioner's vendor and petitioner paid rent of the said land and petitioner got her name mutated as per Annexure-2 dated 30.1.1985 wherein also the objections of the Forest Department was taken into account. Moreover, the proceeding initiated u/

s 145 of the Cr. P.C. in respect of the said land between the Forest Department and the petitioner leading to the institution of Title Suit No. 17 of 1980 by the Forest Department was finally dismissed as per the categorical statement made by the petitioner in preliminary objection before the Divisional Forest Officer, Dhanbad in B.P.L.E. Case No. 179 of 1990-91, para 7 thereof. It is, therefore, apparent that these consistent facts and judgments of different courts have not been taken into account while initiating a proceeding in respect of the petitioner's piece of land over an area of 10 decimals out of 18 decimals of land in plot no. 337, which does not appear to be sustainable in law as well as facts. It is all the more clear that in matters involving complicated and significant questions relating to right, title and ownership, a person should not be -evicted in summary manner under the provision of the Bihar Public Land Encroachment Act, 1956 adopted by the State of Jharkhand as also in view of the judgments rendered by this court. In this regard learned counsel for the petitioner has relied upon the judgment delivered in 2004(1) J.C.R. 88(Jhr.) [: 2003(4) JLJR 55] in the case of M/s Usha Martin Black (wire-Rope) now Usha Martin Industries vs. Union of India & Others.

9. In view of the these aforesaid facts and reasons recorded hereinabove, I find that the initiation of the proceeding against the petitioner under the B.P.L.E. Act vide order dated 4.10.2006 is not sustainable in law and accordingly, the said order, so far as the petitioner is concerned, is quashed. This writ petition is allowed. However, no order as to cost.