

(2004) 01 PAT CK 0090
In the Patna High Court
Case No : C.W.J.C. No. 7605 of 1999

Dr. Tribhuwan Singh

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 06-01-2004

Acts Referred:

Bihar Public Land Encroachment Act, 1956 — Section 2(1A), 2(3), 5, 6
Criminal Procedure Code, 1973 (CrPC) — Section 133

Citation : (2004) 1 PLJR 778

Hon'ble Judges : Chandramauli Kr. Prasad, J

Bench : Single Bench

Advocate : Ram Suresh Roy and Arun Kumar Singh, for the Appellant; V.N. Sinha, Shailesh Kumar Sinha for Respondents Nos. 1 to 4, Asghar Hussain and Dhananjay Kumar, for the Respondent

Final Decision : Allowed

Judgement

Chandramauli Kr. Prasad, J.—This application has been filed-for quashing the order dated 20.7.1998 (Annexure-12) whereby the Circle Officer, in exercise of his power u/s 6 of the Bihar Public Land Encroachment Act, had directed the Petitioner to remove the encroachment within seven days, failing which it has been threatened that encroachment shall be removed by use of police force. Further prayer made by the Petitioner is to quash the order dated 31.7.1999 (Annexure-16) passed by the appellate authority whereby the appeal preferred against the aforesaid order has been dismissed.

2. Shorn of unnecessary details, facts giving rise to the present application are that the land bearing Khata No. 233 Plot No. 416 having an area of 0.1 katha at village Mairwa in the town of Siwan was originally recorded in the cadestral survey in the name of the District Board, Siwan. According to the Petitioner, aforesaid land was settled on 9.2.1953 by a registered Kabuliyat in the name of Babu Ram Singh, uncle of the Petitioner at the annual rental of Rs. 15. Petitioner's case further is that his family members paid the rent of the District

Board which gave rent receipts and he and his family members are in peaceful possession of the same since then. After the death of original settle, namely Babu Ram Singh, according to the Petitioner, he is in possession thereof till date. It has been stated by the Petitioner that at the time when settlement was made, the land was in the form of ditch and after filling it construction was made and it does not create any hindrance in smooth flow of traffic.

3. It is relevant here to state that a proceeding was initiated against the predecessor-in-interest of the Petitioner under the provisions of Bihar Encroachment of Land Act, 1950 and a show cause notice dated 4.8.1958 (Annexure-2) was issued stating therein that he had unauthorisedly occupied the land in question and in the aforesaid premise, he was directed to show cause as to why he be not evicted from the land in question. As directed, show cause was filed and according to the Petitioner, the then Sub-divisional Officer dropped the proceeding, inter alia, holding that the land in question does not come within the definition of Public Land as defined u/s 5 of the Bihar Encroachment of Land Act, 1950 which assertion has not been denied by the Respondents in the counter affidavit. Further assertion of the Petitioner, which" has also not been denied, is that in the year 1972, a proceeding, i.e. Case No. 102 of 1972 (Trial No. 63 of 1973) was initiated u/s 133 of the Code of Criminal Procedure, and by order dated 4.8.1973, same was dropped. Later on notice dated 14.4.1981 (Annexure-3) was issued again alleging that he has made pucca construction with tiled roof by encroaching the land having an area of 90" x 40" and he was asked to file show cause as to why the said encroachment be not removed by force. Petitioner challenged the said notice before this Court in a writ application which was registered as C.W.J.C. No. 1453 of 1981 (Dr. Tribhuwan Singh v. The State of Bihar and Ors.) and by order dated 6.5.1981, the writ application was directed to be heard and by way of interim order, it was directed that neither the house nor any portion thereof shall be demolished by any authority. The writ application ultimately came up for consideration before this Court on 9th of January, 1986 and finding that the writ application was preferred against the show cause notice, this Court directed the Petitioner to appear before the Circle Officer who, in turn, was directed to dispose of the proceeding within a period of six months-of the said order. While doing so, this Court observed as follows:

Under the circumstances, Petitioner is well advised to appear before the Circle Officer and to file his show cause raising all the points made out herein the writ application and on hearing the Petitioner on relevant points raised before him, will proceed to dispose of the proceedings in accordance with law. In order to avoid further delay in the matter, it is hereby ordered that the Circle Officer will dispose of the proceeding within a period of six months and the Petitioner is directed to appear within three weeks from today and will co-operate with the officer concerned for the disposal of the case.

4. In the light of the aforesaid, Petitioner filed his show cause and by order dated 20.5.1988 (Annexure-5), the Circle Officer dropped the proceeding; inter alia

observing that the land in question over which the construction has been made, was settled by the District Board in favour of the predecessor-in-interest of the Petitioner which has been transferred to the Public Works Department and hence, the dispute is of civil nature. According to the Petitioner, the Respondents accepted the said order and did not challenge the same before any superior Court but again notices dated 20.4.1995 (Annexures-6/1, 6/2, 6/3) were issued stating therein that he had encroached the land which comes within the definition of Public Land u/s 2(3) of the Bihar Public Land Encroachment Act and in the aforesaid premise, he was asked to show cause as to why the said encroachment be not removed. Petitioner challenged the said order before this Court in a writ application which was registered as CWJC No. 7074 of 1995 (Dr. Tribhuwan Singh v. The State of Bihar and Ors.) and in view of the stand taken in the counter affidavit, by order dated 28.3.1979 (Annexure-7), the writ application was permitted to be withdrawn. Said order reads as follows:

15. That with regard to the statements made in paragraph 11 of the writ application, it is submitted that on the requisition filed by the P.W.D. to the authority, Circle Officer had issued show cause notice to the Petitioner and other on 24.7.1995 stating therein to file show cause by 8.8.1995 but the Petitioner did not file show cause on due date and prayed for adjournment which was allowed. In the meantime, the Petitioner without filing show cause in circle officers Court, moved before the Hon"ble High Court through this writ application. During the pendency of the writ application, the Petitioner had filed show cause before the Circle Officer on 2.11.1995 indicating therein the details of the order of the previous Circle Officer on 20.2.1988. Accordingly, the present Circle Officer has dropped the proceeding on 10.11.1995.

Mr. Arun Kumar Singh No. 3 learned Counsel for the Petitioner seeks permission to withdraw this writ application. The prayer is allowed.

5. Success of the Petitioner in all the aforesaid proceedings did not leave him in peace and the Collector by his communication dated 9.7.1998 (Annexure-10) addressed to the Circle Officer, District Engineer, Zila Parishad, Executive Engineer, Road Division, Siwan informed them to initiate proceeding for removal of the house constructed over the land in question on the ground that the Zila Parishad had made settlement of the land in favour of the predecessor-in-interest of the Petitioner with the condition that they will not change the nature of the land and it further reserved the right to take possession of the land by giving one month's notice, which conditions have been breached by the Petitioner. In response to the said letter, the Circle Officer by its letter dated 20.7.1998 (Annexure-11) wrote to the Collector that earlier encroachment proceedings were dropped holding the dispute to be of a civil nature hence sought for the Collector's guidance in this regard. However, by order dated 20.7.1998, the Circle Officer observed that the construction of the building over the land in question, is illegal and comes within the expression of the encroachment as defined u/s 2(1A) of the Bihar Public Land Encroachment Act

and accordingly, directed the Petitioner to remove the encroachment. The District Engineer, Siwan also, by its letter dated 20.8.1998, wrote to the Petitioner to remove the encroachment in view of the order of the Circle Officer dated 20.7.1988 as also the order passed by this Court in C.W.J.C. No. 2290 of 1990 in which a direction had been given to remove the encroachment from the Government land, road and flanks. Petitioner challenged the order dated 20.7.1998 passed by the Circle Officer before this Court in C.W.J.C. No. 9655 of 1998 (Dr. Tribhuwan Singh v. The State of Bihar and Ors.) and by order dated 6.1.1999 (Annexure-14), the writ application was disposed off giving liberty to the Petitioner to avail the remedy of appeal and this Court further directed that till the disposal of the appeal, status quo shall be maintained. In the light of the liberty given to the Petitioner, he preferred appeal dated 16.2.1999 (Annexure 15) and the appellate authority, i.e. the Collector by the impugned order dated 31.7.1999 (Annexure-16), dismissed the appeal observing that the Petitioner's occupation has become illegal as he has not handed over the possession in spite of the notice dated 28.10.1998 given by the District Engineer.

6. Mr. Ram Suresh Roy, Senior Advocate, appears on behalf of the Petitioner, whereas Respondent Nos. 1 to 4 are represented by Mr. V.N. Sinha, G.P. IX. Mr. Asghar Hussain, Senior Advocate, appears on behalf of Respondent Nos. 5 and 6.

7. In support of the writ application, Mr. Roy has made several submissions and placed reliance on a large number of authorities but as the writ application is to succeed on a very short point, I deem it inexpedient either to refer or answer the same. Petitioner's claim that the land in question, which was a ditch was settled with his predecessor-in-interest by the District Board as also the fact that construction was made over the same by him has not been denied. In my opinion, service of one month's notice said to have been given by the District Board, even if believed, may render the status of the Petitioner as trespassers but he cannot be said to be an encroacher, so as to authorise the Respondents to initiate the proceeding for his removal under the provisions of the Bihar Public Land Encroachment Act. Not only this, in past, several proceedings were initiated alleging that the Petitioner had made encroachment but all those proceedings have been dropped. In such situation I am of the opinion that the proceedings initiated against the Petitioner for removal of the alleged encroachment under the Bihar Public Land Encroachment Act was absolutely misconceived and the same itself renders the impugned orders illegal in the eye of law, which cannot be allowed to stand.

8. From the stand taken in counter affidavit and the map attached thereto the Respondents seem to emphasise that construction made by the Petitioner is obstructing the flow of traffic. If that be so, in my opinion, Respondents instead of taking recourse to the provision of the Bihar Public Land Encroachment Act, should have taken recourse to the other remedies available to them in law.

9. In the result the application is allowed and the impugned orders are quashed with the liberty aforesaid. No cost.