
(2016) 02 JH CK 0100
In the Jharkhand High Court
Case No : W.P. (C) No. 7303 of 2013

Girish Tiwary

APPELLANT

Vs

The State of Jharkhand and Others

RESPONDENT

Date of Decision : 23-02-2016

Acts Referred:

Bihar Public Land Encroachment Act, 1956 — Section 11, Section 3, Section 6(2)
Limitation Act, 1963 — Section 27

Citation : (2016) 2 AIRJharR 598 : (2016) 2 JCR 599

Hon'ble Judges : Aparesh Kumar Singh, J.

Bench : Single Bench

Advocate : Sanjay Kr. Dubey and R.S. Bahadur, Advocate, for the Appellant; Jai Prakash, A.A.G. and Chaitali C. Sinha, JC to A.A.G., for the Respondent

Final Decision : Dismissed

Judgement

Aparesh Kumar Singh, J.—1. Heard counsel for the parties.

2. Proceeding initiated under Bihar Public Land Encroachment Act, 1956 by the Circle Officer, Ramgarh Sadar, district Ramgarh in respect of Plot No. 1378 having an area of 2.50 acres, village Marar, thana No. 144, has been challenged by the petitioner. He has also challenged the final order passed under section 6(2) of the Act of 1956 (Annexure-6). He has also sought restraint upon the respondents from interfering in his peaceful possession.

3. Petitioner claims to have acquired title on the basis of a settlement of plot in question from ex-landlord in the name of his father in the year 1939-40, as per settlement paper (Annexure-1). It is his contention that the ground rent was assessed in his name and revenue demand was also opened in the serista of ex-landlord in the name of settlee. According to the petitioner, respondent revenue department acknowledged the tenancy of the settlee Bikram Tiwary in the revenue record in Register - II at page-76/7 and he has paid rent up to 2010 with respect to the land. Petitioner contends that the name of his late father is still running in the record of the State and rent have been assessed from time to

time and on payment of the same, receipts are being issued. Annexure-2 series are annexed in support of it. It is further contended that the land is situate within the jurisdiction of the Cantonment Board, Ramgarh and father of the petitioner had constructed residential house structure and boundary wall around 30-35 years ago after approval of building plan by the Cantonment Board. Electricity connection is also running in his name and Annexure-3 is the latest electricity bill dated 13.01.2013. Based on these facts, petitioner has alleged that notice under section 6(2) of the Act of 1956 did not conform to the requirement of law as it did not give minimum two weeks time to respond. Therefore, the proceeding from its inception, is suffering from procedural irregularity which has vitiated the final order. Petitioner however responded to the notice, as per his reply at Annexure-5. Thereafter, respondents have issued the notice for removal of encroachment under section 6(2) of the Act of 1956, finding the petitioner liable for encroachment over plot No. 1378 having an area of 2.50 acres under thana No. 144, village Marar district-Ramgarh.

4. Learned counsel for the petitioner submits that not only the proceedings are vitiated on account of such irregularity, but question of right and title could also not be decided in the impugned proceeding under BPLE Act which is a summary proceeding. Petitioner having acquired title over the land by prescription and remained in possession over the same for more than 30 years, State is precluded from taking steps for his removal. Title of the petitioner to the land in question has become absolute in view of the provisions of section 27 of Indian Limitation Act, 1963 also. Learned counsel has placed reliance upon the judgment rendered by the learned Single Judge of this Court in the case of Kamal Kumar Singhania & another v. State of Jharkhand & others reported in , 2003 (3) JLJR 178 and in the case of Pashupati Mandal v. State of Jharkhand & others reported in , 2010 (4) JLJR 414 in support of the aforesaid submissions.

5. Respondents have filed more than one counter affidavit. It is their categorical case that a large area of land comprising 70.69 acres of village Marar, thana No. 144 khata No. 1 under plot No. 1347, 1378 (with which the petitioner is concerned), 1388, 1416, 1417, 1421 and 1423 have been confirmed as Government land after due proceeding initiated under section 4(H) of Bihar (Jharkhand) Land Reforms Act, 1950. Annexure-B letter No. 2227 dated 19.07.2012 issued by the Joint Secretary, Revenue and Land Reforms Department addressed to the Deputy Commissioner, Ramgarh is evidenced in support of the contention that the proceeding under section 4(H) initiated by the Deputy Commissioner, Ramgarh culminating in the order dated 11.01.2011 in Record No. 34/94 has been confirmed as Government land by the State Government also under the provisions of the Act of 1950. Petitioner is claiming title and possession of the land bearing plot No. 1378 in which declaration under section 4(H) of the Act of 1950 has already been made by the State Government. It is further urged that the petitioner on being found to be encroacher on the Government land, has been issued notice by Annexure-4 dated 18.08.2013 under the provisions of section 3 of the Act of 1956.

6. Petitioner has also responded and only thereafter a decision under section 6(2) has been taken. Annexure-A series is the order sheet of the proceedings in the said case which relates not only to the petitioner, but two other persons also. Counsel for the respondent, by referring to the orders passed in the proceedings, have tried to show that opposite party concerned including the petitioner had remained absent on 05.09.2013, thereafter again on 10.09.2013, whereafter determination under the relevant provisions of section 6(2) relating to encroachment of the petitioner on the Government land was made and that too after consideration of materials taken in objection by the petitioner. Respondents in their counter affidavit have also stated that no competent authority passed order to open jamabandi in the name of Bikrama Tiwary, petitioner's father. Petitioner did not submit any relevant paper in support of his claim in the proceeding initiated under BPLE Act, 1956, whereafter, impugned order has been passed. Learned counsel for the respondents further submits that there is an appellate remedy available under section 11 of the Act before the Deputy Commissioner which the petitioner has bye-passed by straightaway invoking the writ jurisdiction of this Court. It is further submitted that questions of fact relating to right, title and ownership raised by the petitioner after facing Public Land Encroachment. Proceeding also, cannot be adjudicated in writ jurisdiction of this Court. Learned counsel for the respondents further submits that the petitioner having consciously participated in the proceeding, cannot challenge initiation of the proceeding itself. In any case, he has jumped the alternative statutory remedy available under the law.

7. Learned counsel for the petitioner, upon being asked, has not been able to show any document by which mutation was ordered in respect of the land in question in favour of the father of the petitioner or the petitioner.

8. I have considered the submissions of the parties and gone through the relevant materials on record including the impugned order. It is evident from perusal of the relevant records, as referred to herein-above as well, that the petitioner after receipt of notice under section 3 of the Act (Annexure-4) dated 18.08.2013 duly responded by Annexure-5 reply made before the Circle Officer, Ramgarh in connection with the same proceeding, taking all objections available to him including that of devolution of title through settlement made by the erstwhile Jamindar in favour of the settlee Bikram Tiwary. Other grounds as urged in the writ petition also, appear to have been taken. In that sense, requirement of notice and opportunity to respond to the allegation of encroachment have been complied with in the matter. Principles of natural justice cannot be put in a straight jacket manner. Before making any determination in such matter on the grounds of violation of principles of natural justice or denial of opportunity, as provided under any statute like BPLE Act, it is to be seen as to whether any prejudice has been caused to the concerned person because of lack of adequate opportunity.

9. In the instant case, as is apparent, petitioner got due opportunity and

responded to the notice also and order has been passed after at least three hearing. Petitioner was found to be absent in the proceeding, as would appear from the order sheet dated 05.09.2013 and 10.09.2013. Thereafter, notice for removal of encroachment under section 6(2) has been issued as the petitioner's objection did not find favour with the Circle Officer, Ramgarh.

10. Facts of the instant case also show that the State Government confirmed the order of Deputy Commissioner in the proceeding under section 4(H) of the Act of 1950 in connection with a number of plots including that to which the petitioner claims title by way of settlement. Petitioner has not challenged the said confirmation order of the State Government (Annexure-B) dated 19.07.2012 in the instant proceeding. The claim of the petitioner that his right, title, ownership and possession have become absolute by prescription of law having remained on the said piece of land over a period of 30 years is concerned, this again as per the petitioner's own admission, involves questions of fact. Such questions of fact relating to title, ownership and possession cannot be gone into in writ jurisdiction of this Court where parties are on contest on the question of title as well as possession. Respondent State have asserted that the piece of land including that of the petitioner is a Government land as confirmed under the provisions of section 4(H) of the Act of 1950. Petitioner has not been able to show any order passed in a mutation proceeding relating to opening of jamabandi in his name. Such statement made by respondents in their counter affidavit, have also not been specifically denied by the petitioner by any rejoinder.

11. In totality of facts and circumstances of the case and the reasons recorded herein-above, the ground urged by the petitioner to challenge the initiation of the proceeding under BPLE Act, 1956, do not merit acceptance. Petitioner has an alternative statutory remedy of appeal before the appropriate forum under the Act of 1956 itself. From perusal of the judgment relied upon by the counsel for the petitioner, in the case of the Kamal Kumar Singhania (Supra), it is evident that the learned Single Judge found upon consideration of the rival submissions of the parties, that the said proceeding were related to removal of encroachment alleging that the land were forest land. However, upon consideration of the rival pleas, learned Single Judge found that there was a dispute about the location, situation or distribution of the particular area of the land. There appeared to be confusion in relation to the piece of land whether they belong to the forest area or not in which BPLE proceeding were initiated. In such circumstances, learned Single Judge found that the question relating to right, title over the land was shrouded in serious doubt in respect of which, summary proceeding for removal of encroachment was not proper. In the case of Pashupati Mandal (Supra), on consideration of rival pleas and materials on record, learned Single Judge found that there was no document of acquisition produced by the respondent State to justify the proceeding under BPLE Act against the said petitioner and to order removal of encroachment by a summary proceeding.

12. In the instant case, in the wake of the facts noticed on record specially the

order passed in 4(H) proceeding that the said plot of land is a Government land, which is not under challenge, it cannot be said that the impugned proceeding initiated by the respondent, are vitiated and that no proceeding under the BPLE Act could have been initiated. This Court on consideration of all the rival pleas, is not satisfied that any interference in the matter is required in writ jurisdiction of this Court. Petitioner is however at liberty to approach the appropriate forum i.e. appellate authority under the BPLE Act, 1956 or the competent court for declaration of his right, title, ownership and possession over the plot in question, in accordance with law. No observation made herein-above would however prejudice the case of the parties in such proceeding. Let original record of encroachment case produced by the Circle Officer, Ramgarh in Court and kept in the custody of the Registrar General of this Court, be returned to Mrs. Chaitali C. Sinha, learned JC to A.A.G. Mr. Jai Prakash, forthwith.

13. Personal appearance of Circle Officer, Ramgarh is dispensed with.

14. Writ petition is accordingly dismissed. I.A. No. 1187/2014 is closed.