

(2015) 01 JH CK 0142
In the Jharkhand High Court
Case No : WP(C) No. 5642 of 2009

Gopal Mahto

APPELLANT

Vs

The State of Jharkhand and Others

RESPONDENT

Date of Decision : 08-01-2015

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 144

Citation : (2015) 2 JLJR 497

Hon'ble Judges : S. Chandrashekhar, J

Bench : Single Bench

Advocate : A.K. Das, for the Appellant

Final Decision : Dismissed

Judgement

S. Chandrashekhar, J—Seeking a direction for payment of compensation and other benefits to the petitioner by the respondent-BCCL for forcefully acquiring the land of the petitioner, the present writ petition has been filed. Briefly stated, the facts stated in the writ petition are summarised thus;

The petitioner claims that he is the owner of land situated at Thana No. 239, Khata Nos. 63 and 64, Khesra Nos. 2006, 2009, 2010, 2011, 2012, 2014 and 2015 at Sakhin Rajhbari Road, Katras Bazar, Dhanbad, admeasuring 2.39 acres and the said land was acquired for expansion of New Akash Kinari Colliery without following the acquisition process. The petitioner approached the respondents several times however, the respondent-B.C.C.L. continued mining activities and therefore, the petitioner made a complaint under Section 144 Cr.P.C. which was registered as M.P. Case No. 1289 of 1991. However, the said proceeding was dropped on the ground that the respondent-B.C.C.L. was in possession of the land in question. The petitioner submitted several representations to the respondents and though the respondent-B.C.C.L. has framed Land Loser Scheme under which employment is provided to one member from the family whose land has been acquired however, the respondent-B.C.C.L. has neither paid compensation nor provided employment to the petitioner.

2. A counter-affidavit has been filed on behalf of the respondent-B.C.C.L. stating that the land in question was vested in M/s. B.C.C.L under the Coal Mines (Nationalization) Act, 1973 and it is being used by the respondent-B.C.C.L. for years together. Another affidavit was filed by respondent-B.C.C.L. stating that the land in question belonged to Raja Shakti Narayan Singh Bahadur and a lease dated 24.6.1924 was executed. Part of the land was also leased out in favour of New Katras Colliery, Katras. It is further stated that, the land in question forms part of North Akashkinari Colliery which was earlier owned by M/s. Khimji Dossa and Company. The name of New Akash Kinari Colliery figures at serial No. 90 of the schedule appended to the Coal Mines (Taking over of Management) Act, 1973 and at serial No. 138 of the Coal Mines (Nationalization) Act, 1973.

3. The petitioner filed rejoinder affidavit denying and disputing the stand taken by the respondent-B.C.C.L. It is stated that the ancestors of the petitioner had been paying rent to the State Government for the land in question and thus, the State Government has acknowledged right, title and interest of the petitioner over the land in question. By filing I.A. No. 3432 of 2014 the petitioner brought on record letter dated 7.12.2013 of Project Officer, New Akash Kinari Colliery whereby he requested the Regional Land Settlement Officer, Govindpur Area No. III to take appropriate action for compensation to the landowner. One Memorandum of Understanding dated 17.12.2013 was signed by the representative of the respondent authority including the General Manager, Govindpur Area, the Land Settlement Officer, Govindpur Area and the representative of the petitioner wherein the respondents undertook to give compensation and benefit of R and R Policy including pension to the petitioner however, no action has been taken by the respondent-B.C.C.L. A reply to I.A. No. 3432 of 2014 was filed by the respondent-B.C.C.L. disputing the validity of Memorandum of Understanding dated 17.12.2013.

4. Heard the learned counsel for the parties.

5. At the outset, Mr. Indrajit Sinha, the learned counsel for the respondent-B.C.C.L. questioning the maintainability of the writ petition submits that, the writ petition involves serious disputed questions of fact and therefore, it is not maintainable.

6. Mr. A.K. Das, the learned counsel for the petitioner referring to various documents relating to the land in question submits that, the right, title and interest of the petitioner over the land in question cannot be questioned in view of the Revenue Records and the rent receipts issued by the Government. The land in question was not acquired under the Coal Mines (Nationalization) Act, 1973 and the respondent-B.C.C.L. has unauthorisedly and illegally occupied the land of the petitioner. It is further submitted that, the respondent-B.C.C.L is the Government Company which works through its officers and therefore, it is not open to the respondent-B.C.C.L. to deny and dispute the Memorandum of Understanding dated 17.12.2013.

7. In reply, Mr. Indrajit Sinha, the learned counsel for the respondent-B.C.C.L. submits that, the decision whether the compensation has to be paid and employment including pension should be paid to a person or not, can be taken by the Management of the B.C.C.L. and not by individual officer. The Memorandum of Understanding signed by the Local Officers was never approved by the Management of B.C.C.L. and thus, not binding on it.

8. I have carefully considered the submission of the learned counsel for the parties and perused the documents on record.

9. From the documents brought on record, it is apparent that in so far as, ownership of land in question is concerned, there is serious dispute between the parties. The petitioner has brought on record rent receipts whereas, respondent-B.C.C.L. relied on the Coal Mines (Nationalization) Act, 1973 and Coal Mines (Taking over of Management) Act, 1973 and the schedule appended therein. It is also not in dispute that the respondent-B.C.C.L. is in possession of the land in question since several years and in that view of the matter the proceeding instituted by the petitioner under Section 144 Cr.P.C. was dropped.

10. In view of the serious factual dispute raised by the parties, I am not inclined to entertain the present writ petition and accordingly, it is dismissed. However, a liberty is reserved with the petitioner to approach the Civil Court for working out his remedy in accordance with law. It is also made clear that this Court has not expressed any opinion on the merits of the case and therefore, dismissal of the writ petition would not prejudice the case of either party. I.A. Nos. 3368/2014 and 3432/2014 also stand dismissed.