

(2000) 11 PAT CK 0026

In the Patna High Court

Case No : C.W.J.C. No. 106 of 1991 (R) and M.J.C. No. 78 of 1993 (R)

Gopal Prasad and Others etc.

APPELLANT

Vs

Sub-Divisional Officer-cum-Collector under Bihar Public Land
Encroachment Act and Others

RESPONDENT

Date of Decision : 01-11-2000

Acts Referred:

Bihar Public Land Encroachment Act, 1956 — Section 2(3), 3

Citation : AIR 2001 Patna 146

Hon'ble Judges : R.N. Prasad, J;A.K. Prasad, J

Bench : Division Bench

Advocate : P. Gangopadhyaya, S.K. Singh and S.K. Agarwal, R.K. Marathia, for the Appellant; D. Prasad and B.P. Verma, for the Respondent

Final Decision : Dismissed

Judgement

R.N. Prasad, J.—Both the cases are inter-related, they have been heard together and are being disposed of by this common judgment.

2. In C.W.J.C. No. 106/91 (R) prayer has been made for quashing the order dated 17-9-1990 passed in B.P.L.E. case No. 73/90 whereby respondent No. 2 directed the petitioners to remove the encroachment from the land in question within two weeks. In M. J.C. No. 78/93 (R) prayer has been made by respondent No. 3 for initiating a contempt proceeding against the petitioners for violating the order dated 22-1-1991 whereby direction was given to maintain status quo with regard to the land in question.

3. The relevant facts of the case are that the land in question was acquired by the State of Bihar for establishment of industrial units. Subsequently, respondent No. 3 established iron and steel industry over the land acquired. The Bihar Land Reforms Act, 1950 came into force and a dispute arose whether the respondent No. 3 is estate and it vested in the State of Bihar. In 1961 Section 2B was inserted in the Bihar Land Reforms Act, 1950 and respondent No. 3 was saved

from vesting of the estate in the State of Bihar. However, the said provision was deleted in the year 1972 with retrospective effect and Section 7D was inserted. Respondent No. 3 challenged the amending Act, 1972 before the Supreme Court and the operation of the Amending Act, 1972 was stayed with respect to respondent No. 3. However, respondent No. 3 withdrew the case which was filed before the Supreme Court challenging the Amending Act, 1972. On 9-11-1984 an agreement was executed between the State of Bihar and respondent No. 3 and subsequently on 1-8-1985 a registered lease deed was executed by the State of Bihar in favour of respondent No. 3 and the terms of agreement was included in the lease deed, Annexure-6. In Clause XXI of lease/agreement it was stated that "the State being paramount owner of the land leased out to the company, the provision of Bihar Public Land Encroachment Act will apply to such land also and for the purpose of prevention and removal or regularisation of encroachment on lands an efficacious procedure will be set up by the Government in consultation with the company." In Clause XXV it was stated that the settlee will hold the land as tenant under the State Government.

4. In the year 1990 respondent No. 3 filed an application stating therein that the petitioners and others have encroached upon the land in question and as such encroachment may be removed. On the said petition, B.P.L.E. case No. 73/90 was initiated. The said proceeding was initiated against 51 persons including the petitioners. Notices were issued to them. However, except four persons, namely, Balbir Singh, Babu Lal, Nathuni Singh and Sri Singh all the persons filed show-cause. After filing of the show-cause they left the case and they were not attending the case on the date fixed. Ultimately except against the aforesaid four persons the case was decided vide Annexure-3 and it was held that it was a public land and the petitioners have encroached over the public land. Accordingly, direction was given to remove the encroachment, Against the said order the writ petition has been filed.

5. On 21-2-1991 a Bench of this Court directed to maintain status quo which was confirmed on 7-10-1991. M.J.C. application was filed by the respondent No. 3 for initiation of the contempt proceeding against the petitioners as they were making construction in spite of the order passed by this Court to maintain status quo. In M.J.C. on 27-8-1996 a Bench of this Court observed that in view of the order passed on 19-4-1993 in writ petition it has become infructuous. However, no order disposing of the M. J.C. application was recorded. Thus the writ petition and M.J.C. petition were heard together.

6. In the counter-affidavit filed on behalf of the respondents it has been asserted that land in question is public land. The writ petitioners have encroached upon the land in question. The claim/stand of the petitioners is not genuine.

7. It was pointed out by the learned counsel for the petitioners during the course of hearing, that the land in question is not public land and as such initiation of the proceeding including order impugned is bad in law. In this regard it would be pertinent to mention herein that the land in question was acquired by the State

Government for industrial unit. Respondent No. 3 established iron and steel industry over the same. After coming into force of the Bihar Land Reforms Act, dispute arose with regard to vesting of estate of respondent No. 3. By Act 1961 the respondent No. 3 was saved from vesting but the said provision was deleted vide Act 1972 with retrospective effect and Section 7D was inserted. The Amending Act 1972 was challenged by respondent No. 3 in the writ petition before the Supreme Court which was ultimately withdrawn and an agreement was executed on 9-11-1984. Subsequently, a registered lease deed was executed by the State of Bihar on 1-8-1985 in favour of respondent No. 2 in which terms of the agreement was Included. In the lease/agreement deed it was categorically mentioned that State is paramount owner of the land leased out to respondent No. 3 and the provision of Bihar Land Encroachment Act will apply. The lessee shall be tenant of the State Government. Therefore, it is evident that owner of the land in question is the State Government and its ownership would not change because of execution of the lease deed. The lease deed was executed by the State Government for certain purposes and reserved its right for cancellation of the lease in violation of the terms of the lease, Section 2(3) of Bihar Public Land Encroachment Act says that land vested in Union of India or State of Bihar is public land and as such in my view it can safely be held that the land In question was a public land and initiation of encroachment proceeding is not at all bad in law.

8. Learned counsel for the petitioners next contended that the petitioners are in possession over the land in question since 1962-63 and as such they acquired title over the land in question by adverse possession. The claim of the petitioners has been disputed in the counter-affidavit. However, the petitioners did not file any document in support of their claim/possession since 1962-63 either before respondent No. 2 or before this Court. Mere making claim is not sufficient to hold that they came in possession as claimed by them. It has already been held that the land in question is a public land. Section 25 of the Limitation Act deals with Acquisition of ownership by possession. Section 25(3) prescribed thirty years uninterrupted possession for acquisition of ownership over Government land. In the instant case even if the claim of the petitioners is assumed that they came in possession in 1962 it is evident that proceeding was initiated in 1990 i.e. within 30 years. Therefore, on consideration as indicated above I find no merit in the contention of the learned counsel for the petitioners.

9. Learned counsel for the petitioners next pointed out that initiation of the proceeding at the instance of respondent No. 3 is bad in law as respondent No. 3 is not State. In this regard it would be pertinent to mention herein that Section 3 of the Land Encroachment Act says that the proceeding can be initiated on petition filed by any person or upon information received from any source that any person has made encroachment upon any public land, therefore, if a proceeding is initiated on the petition filed by respondent No. 3 under the Land Encroachment Act the same cannot be said to be bad in law.

10. No other points was raised and as such on consideration as discussed above, I find no merit in this writ application. Therefore, writ petition is dismissed. Since the writ petition has been dismissed, in my opinion, there is no need to proceed with the contempt proceeding as dismissal of writ petition and implementation of the order would serve the purpose and as such M.J.C. petition is also dismissed as infructuous.