
(2005) 09 JH CK 0027

In the Jharkhand High Court

Case No : C.W.J.C. No. 4657 of 1993 (P)

Gorakh Prasad Bhagat and Another

APPELLANT

Vs

State of Bihar (Now Jharkhand) and Others

RESPONDENT

Date of Decision : 29-09-2005

Acts Referred:

Citation : (2006) 1 JCR 97

Hon'ble Judges : R.K. Merathia, J

Bench : Single Bench

Advocate : Rajiv Sharma, for the Appellant; I Sen Chaudhary, S.C. III for the respondent Nos. 1 to 3, V. Shivnath and Birendra Kumar, for the respondent No. 4, for the Respondent

Final Decision : Dismissed

Judgement

R.K. Merathia, J.—Heard the parties.

2. The petitioners have prayed for quashing the order dated 13.04.1993 passed by the Deputy Commissioner, Sahibganj in R.M.A. Case No. 32 of 1991-92 as well as the order dated 02.08.1991, passed by the Deputy Collector, Land Reforms Sahibganj in R.E. Case No. 20 of 1988-89/7 of 1988-89 directing them to remove the encroachment over the land in question.

3. Petitioners case is that their ancestral house was constructed on Plot No. 1067 for more than 65 years and the same is recorded in the Survey Record of 1935. This encroachment case has been initiated by the respondent No. 4, who is the neighbour due to jealousy. A blind road measuring 70 fts. in length and 8"10" in width exists adjacent to the petitioners' house on plot No. 1068, which is being used only by the petitioners and the respondent No. 4. The "chhajja" (projected balcony), the septic tank and the water pipes underground the road do not cause any obstruction to the public. Erection of "chhajja" (projection) is no encroachment in the eye of law. The construction of septic tank was never objected by any authority.

Petitioners were not given opportunity of hearing by the L.R.D.C.; he passed an ex parte order by antedating; their case was not properly considered by the Deputy Commissioner. The dispute over the land in question being a bona fide land dispute, cannot be decided under the Bihar Public Land Encroachment Act, 1956 as has been held in the case of Smt. Rekha Singh and Others Vs. State of Bihar and Others, ; the learned Land Reforms Deputy Collector relied on the Amin's Report, which was filed by the respondent No. 4.

4. Mrs. Sen Chaudhary, learned S.C. III appearing for the respondent No. 1, 2 and 3 submitted that it is the admitted position by the petitioners that they encroached upon the public land. Petitioner No. 1 himself filed an application before the Sub-Divisional Officer, Rajmahal, District-Sahibganj, in the year 1960 saying that the said plot No. 1068 is public road which had been encroached by the respondent No. 4. Encroachment was found and it was upheld up the Revisional Authorities. Plot No. 1068 is a public road and is being used by the public of the locality and encroachment is causing difficulties. She further submitted that petitioners never objected to the filing of the reports of the Amin by the respondent No. 4 before the Land Reforms Deputy Collector. Moreover, the correctness of the said Report was never questioned by the petitioners either before the Land Reforms Deputy Collector or before the Deputy Commissioner.

5. Mr. Birendra Kumar Assisting Mr. Shivnath, learned Counsel appearing for the respondent No. 4 adopted the submissions of Mrs. Chaudhary and submitted that petitioner No. 1 himself admitted in his deposition made in Criminal Case No. 460 of 1962 that a plot No. 1068 is a Road and if the same is encroached, the public shall be put in difficulties as the said road has gone up to Bararwa Hatia, which is most important place of Bararwa. Mr. Birendra Kumar further submitted that a notice was given to the petitioner and the respondent No. 4 by the Circle Officer. An enquiry was made and joint measurement was done in which encroachment on public land was found. He further submitted that as per the report of the Anchal Amin on the northern side of the said road, the house of the respondent No. 4 is situated over plot No. 1064 and on the southern side of the said road, petitioners' house is situated on plot No. 1068 which is confirmed by the extract copy of Parcha in respect to plot No. 1067 filed by the petitioners (Annexure-3), in which on the northern side of plot No. 1067, "Rasta" in question is shown. He further submitted that the encroachment having been admitted, petitioners have not been prejudiced if the report of the Anchal Amin was filed by the respondent No. 4 before the Land Reforms Deputy Collector.

6. The Land Reforms Deputy Collector found that the petitioners have encroached upon the land in question. In appeal, the Deputy Commissioner found that petitioners were given several opportunities and the Land Reforms Deputy Collector was left with no option than to pass the order ex parte. The contention of the petitioners that the Land Reforms Deputy Collector antedated the order, was also found incorrect.

However the Deputy Commissioner heard the parties and perused the

documents. He found that petitioners produced nothing to show that there was no encroachment of the land in question or that the road was not a public road. He held that Plot No. 1068 is a public land and is encroached by the petitioners through balcony and Latrine tank etc. However, while directing the petitioners to remove the said encroachments, he permitted them to have water connection underground provided it does not disturb and affect the public and if due permission of the authorities concerned, is obtained.

7. From the facts and circumstances, noticed above, it is clear that petitioners admitted that the road over Plot No. 1068 is a public road. Their contention is that the balcony and the construction of septic tank does not cause any obstruction to public is denied and disputed by the respondents. Moreover, they are encroachments as per the definition in the Bihar Public Land Encroachment Act. The case of Smt. Rekha Singh (*supra*) is not applicable to the case petitioners. In the said case, there was dispute regarding the title over the Government land. In the present case, there is no dispute regarding the title over plot No. 1068 on which the public road exists.

8. After hearing the parties and carefully perusing the materials available on record, I am satisfied that no interference is required in the impugned orders. The order of status quo passed on 21.05.1993 is hereby vacated. As prayed petitioners are permitted to remove the encroachment within sixty days from today, failing which the respondents will be entitled to get it removed and recover the cost from the petitioners.

9. With these observations and directions, this writ petition is dismissed. However, there will be no order about the costs.