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(2011) 02 JH CK 0011

In the Jharkhand High Court

Case No : Writ Petition (C) No. 1214 of 2010

Hare Lal Mahato — APPELLANT

Vs

The State of Jharkhand and Others — RESPONDENT

Date of Decision : 17-02-2011

Acts Referred:

Citation : (2011) 02 JH CK 0011

Hon'ble Judges : Dhirubhai Naranbhai Patel, J

Bench : Single Bench

Judgement

D.N. Patel, J.—Counsel for the Petitioner submitted that the orders, passed by the Circle Officer, Chandil dated 6th March, 2010 as well as 15th March, 2010 are exparte orders for the removal of the encroachment and it is further submitted by the counsel for the Petitioner that no notice was ever served upon the Petitioner for removal of the encroachment and therefore, let the matter be remanded to the Circle Officer, Chandil for its afresh decision and the Petitioner shall not be asked for any unnecessary adjournment and shall cooperate the hearing. It is further submitted by the counsel for the Petitioner that since 25th March, 2010, there is a stay operating in favour of the present Petitioner and therefore, if within stipulated time a direction is given to decide the matter afresh it will be in the interest of justice. Admittedly, the notice was served upon the brother of the Petitioner. Thus, the Petitioner was never informed about the notice of the encroachment.

2. Counsel for the Respondents submitted that the Petitioner was aware about the encroachment proceedings and a detailed counter affidavit has been filed to the effect that notice was issued prior to passing of the order for removal to the encroachment and the said notice was received by the brother of the Petitioner. Hence, the correct order has been passed by the Circle Officer, Chandil

3. Having heard counsel for both the sides and looking to the facts and circumstances of the case, I hereby, quash and set aside the order, passed by the Circle Officer, Chandil dated 15th March, 2010 mainly for the reason that the

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Petitioner has not been heard by the said Circle Officer, Chandil. Admittedly, the notice which was issued by the Circle Officer, Chandil was not served upon the Petitioner, but, it was served upon the brother of the Petitioner. Even otherwise also, from 25th March, 2010 there is an stay operating in favour of the present Petitioner. In view of this fact, I hereby, remand the matter to the Circle Officer, Chandil for its afresh decision within the period of fifteen days from the date of receipt of a copy of an order of this Court. The Petitioner shall remain present before the Circle Officer, Chandil on 23rd February, 2011 at 11.30 am. The Circle Officer, Chandil may hear the Petitioner on the very same day or any suitable date fixed for hearing for afresh decision on Encroachment Case No. 22 of 20092010 instituted against the present Petitioner. The decision will be taken by the Circle Officer, Chandil in accordance with law and without being influenced by the earlier decisions. It goes without saying that the Petitioner is permitted to lay any evidence or evidences on which he is putting reliance.

4. In view of the aforesaid observations, this writ application is disposed of.

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