
(2001) 04 JH CK 0028

In the Jharkhand High Court

Case No : CWJC No's. 3338 and 3344 of 1999 (R)

Harmohendra Singh Lamba , Amar Singh Bedi

APPELLANT

Vs

State of Bihar and Others

RESPONDENT

Date of Decision : 25-04-2001

Acts Referred:

Citation : (2001) 04 JH CK 0028

Hon'ble Judges : S.J. Mukhopadhaya, J

Bench : Single Bench

Advocate : Anil Kr. Sinha, Ananda Sen, R. Krishna, S. Arun and T.N. Verma, for the Appellant; R.K. Merathia, GP 2, Sailesh Kumar, JC to GP 2 and Rajesh Kumar, JC to GP 5, for the Respondent

Judgement

S.J. Mukhopadhaya, J.—In both the cases, as similar orders both dated 2nd November. 1999 are under challenge and relate to common plot No. 6382. they were heard together and are being disposed of by this common order.

2. In CWJC No. 3338/99(R) (petitioner-Harmohendra Singh Lamba), the dispute relates to land measuring 11 decimals of Plot No. 6882 under Khata No. 566 situated under Mouza-Chas, within the district of Bokaro. In other case, te., CWJC No. 3344 of 1999(R) (Amar Singh Bedi), the dispute relates to land measuring 15.67 decimals; 7 decimals and 7-1/2 decimals, out of same Plot No. 6882. under Khata No. 566 of Mouza-Chas. Bokaro.

3. The petitioner (Harmohendra Singh Lamba) claims right and title in pursuance of a registered sale-deed. According to him. belonged to one Jytoindra Nath Mishra. who by sale-deed No. 151, dated 12th April. 1938 sold the land to Shri Bibhuti Pal and others. Said Bibhuti Pal transferred the land. In question, to one Govinda Dey by sale-deed No- 1554. dated 9th February, 1951. where-in after, the petitioner purchased 11 decimals of land from said Govinda Dey by registered sale-deed No. 705. dated 22nd January. 1960 and since then he is in peaceful possession and occupation of the land and having made construction over the same.

4. The other petitioner claims his title having purchased the lands from Tinkori Upadhaya. Chatrabhah Pastel and Ranjbhan Patel by three registered sale deeds dated 23rd December. 1961; 14th July. 1965 and 8th April. 1964 and is in peaceful possession over the lands.

5. Both the petitioners claim to have mutated their lands and are paying rent to the State regularly.

6. It appears that the respondents earlier took steps for demolition of portion of their building situated over the land on the ground that the petitioners encroached over them. At that stage, the petitioner (Harmohendra Singh Lamba) moved this Court in CWJC No. 2862/96(R). wherein a counter-affidavit was filed by the respondents that they were not taking any step for such demolition and in view of statement made in paragraphs 11 and 12 to the counter affidavit. CWJC No. 2844/96(R) was withdrawn by petitioner (Harmohendra Singh Lamba) and others on 21st January, 1997.

7. Again when step was taken for demolition, petitioner (Harmohendra Singh Lamba) preferred another case. CWJC No. 1586/96(R), wherein this Court passed certain order on 1st January, 1998 and directed the respondents to pass order after giving opportunity to the petitioner.

8. In the aforesaid background, the respondents issued the impugned orders both dated 2nd December, 1999 holding the petitioners-encroachers over their respective lands and ordered to remove encroachment.

9. The respondent taken plea that the lands, in question, were acquired for widening of road; the petitioners are encroachers over the lands: and the impugned order has been passed after notice and measurement made in presence of petitioners, though the petitioners have disputed the aforesaid fact.

10. In the counter-affidavit, though the respondents have taken plea that Plot No. 6882 and several other plots measuring 79.70 acres has been acquired by following due process of law and publication of Notification Nos. DHAN-39/58-9238 I dated 2nd September, 1958 and DLA-DHAN-3958/9238 I dated 8th September. 1958, published in the Bihar Gazette on 24th September. 1958, but neither copy of such publication enclosed, nor It is made clear as to whether the lands, in question, which are portions of big Plot No. 6882 they were acquired or not. Neither details of land acquisition case(s) mentioned in the counter-affidavit, nor it is stated as to who are the land-holders In favour of compensation, if any. paid.

11. No evidence brought on record to substantiate the right and title as claimed by the State that the lands, In question, were acquired for widening of road.

12. Admittedly, no land encroachment case has been initiated against one or other petitioner under Bihar Public Land Encroachment Act. There is a disputed question of title in both the cases.

13. The Patna High Court in the case of Apna Grih Nirman Sahyog Samiti and Another Vs. Lalit Narain Mithila University and Others, . held that while title and possession of land is disputed, the summary proceeding is not maintainable. Such dispute can be decided by a civil Court of competent Jurisdiction in a civil suit.

14. The Special Bench of Patna High Court in Bhuvaneshwar Prasad Vs. State of Bihar and Others, , held that if a person has on account of efflux of time acquired title by adverse possession to a property which was at one time a public property, further held that such property cannot be taken by the State without payment of compensation. Further, it held that a private individual can acquire a perfect title by being in adverse possession for more than the statutory period and such title by adverse possession can be acquired even on so-called public lands, road or path-way.

15. In the facts and circumstances, as no land encroachment case was initiated against the petitioners and there is a disputed question of title and impugned orders dated 2nd December, 1999 have been Issued without verifying the records relating to land acquisition, the map, etc.. both the orders are set aside.

16. Liberty is given to aggrieved person, including the State, if they so choose, to move before a civil Court of competent jurisdiction for appropriate relief.

17. Both the writ petitions stand disposed of.

18. Petitions disposed of.