
(2002) 05 JH CK 0070
In the Jharkhand High Court
Case No : CWJC No. 748 of 2000 (R)

Jai Bhagwan Agarwal and Another

APPELLANT

Vs

State of Bihar and Others

RESPONDENT

Date of Decision : 07-05-2002

Acts Referred:

Citation : (2002) 05 JH CK 0070

Hon'ble Judges : M.Y. Eqbal, J

Bench : Single Bench

Advocate : Tapas Kabiraj, for the Appellant; G.P. II, for the Respondent

Judgement

M.Y. Eqbal, J.—Heard the parties.

2. Reference may be made to the order dated 25.4.2002, which reads as under :--

"A counter affidavit has been filed by respondent Nos. 1 to 5, which was sworn by one Rajendra Prasad. Assistant Engineer. National Highway Sub-Division No. 2. Chas, Bokaro.

2. In para 6 of the counter affidavit, it is stated that plot No. 436, which is a disputed plot is Gairmazurwa Khas land and the nature of land is "Darkha tan Sakhoo Baksarat". Learned JC to GP 2 is not in a position to explain the meaning of the word used in the said paragraph. It further appears that the averments made in the counter affidavit is not supported by any documentary evidence. I, therefore, direct Mr. Rajendra Prasad to appear in court on 6th May, 2002. The Circle Officer, Kasmar, Bokaro is also directed to produce the Khatiyan and Register-II and tenant ledger on the date fixed.

3. Put up this case on 6th May, 2002. Let a copy of this order be handed over to JC to GP 2."

3. Pursuant to the aforesaid order the Assistant Engineer filed affidavit and the Circle Officer, Kasmar, Bokaro appeared in Court and produced the original

Register II and the record of Khatiyān.

4. From perusal of a Khatiyān, it appears that the name of Ali Imam was entered as a raiyat and also finds place in Register II in respect of the plot in question.

5. Mr. R.K. Marathiya, learned counsel appearing for the respondents submitted that the respondents are widening and strengthening the road in the light of the order dated 7.3.2000, passed in a Public Interest Litigation being CWJC No. 3684 of 1998 (R). I have perused the order dated 7.3.2000. The order does not say that for widening and strengthening the road private land shall be forcefully taken by the Government from the people without following due process of law. The Government or its agency have no authority in law to forcefully take possession of any private land or to demolish the structure standing on the private land without following the Rule of Law.

6. In the instant case as it appears that the Deputy Commissioner passed the impugned order dated 3rd March, 2000, directing to handover the possession of the land in anticipation of approval of the Government for the purpose of widening the road. It further appears that the Land Reforms Deputy Collector directed the petitioner and other interested persons to appear before him and, to produce documents of title in order to find out the title over the land in question.

7. In such circumstances the Deputy Commissioner is not supposed to issue the impugned order for taking possession of the land without recording a clear finding with regard to title over the said land. The Land Reform Deputy Collector Bermo at Tenughat is therefore directed to consider the claim of the petitioner and after considering all the documents, pass a reasoned order. If it is found that the land in question belongs to the Government, then further action may be taken for dispossession of the petitioner and other persons. The impugned order dated 3rd March, 2000 issued by the Deputy Commissioner is therefore, set aside and the Land Reforms Deputy Collector, Bermo at Tenughat is directed to pass a reasoned order in the light of the observation made hereinabove.

8. This writ application is accordingly disposed of.