

(2011) 03 JH CK 0103
In the Jharkhand High Court
Case No : Cont. Case (C) No. 478 of 2010

Jan Kalyan Morcha

APPELLANT

Vs

The State of Jharkhand and Others

RESPONDENT

Date of Decision : 29-03-2011

Acts Referred:

Citation : (2011) 03 JH CK 0103

Hon'ble Judges : Bhagwati Prasad, C.J.;Dhirubhai Naranbhai Patel, J

Bench : Division Bench

Judgement

1. It has been indicated by the learned Counsel for opposite party No. 4 by filing affidavit, as under:

3. That it is stated that only on 16th March 2011, the State after evicting some unauthorized occupants have handed over some land to this Respondent for the purpose of construction of the landing towards the Jamshedpur side.

4. That the land which has been handed over to the answering Respondent is sufficient to make the bridge operational.

2. In response to the aforesaid statements of the Contractor, learned Counsel for the Petitioner submits that the entire occupation of the encroachers have not been removed and there is a notification by the State Government in a Newspaper for removal of the encroachments. According to the learned Counsel for the Petitioner, the stand of the Contractor is that the bridge can be made operational, but, this cannot be construed to be hundred percent operational, because the maps, as filed earlier by the Contractor, show a large scale of encroachments by a shaded delineation in Annexure R-4/D in the counter affidavit, filed by the Contractor on 8.3.2011. Today it is indicated by filing a map that that part of the encroachments, which is in green line, have been removed i.e. only a part of the encroachments has been removed, which has also been indicated. The map is taken on record and in view of the statement and the delineated maps, what can be conclusively established is that there are still large

scale of encroachments and the time given to the State Government to accomplish the task of removal of encroachments expired on 9.3.2011. Today the case has only been posted for evaluating the spot situation.

3. Learned Counsel for the State was not in a position to justify its stand and when the matter was at the juncture of dictating the order, she sought time for adjournment, which was refused. There is nothing to say on behalf of the State that the entire encroachments have been removed. The statements, made in paragraph Nos. 6 and 9 of the affidavit filed by the State, are as under:

6. That the present affidavit is being filed in pursuance of order dated 9.3.2011 passed by the Hon"ble Court in the aforesaid case.

9. That it is submitted and stated further that the District administration has taken all efforts to remove the encroachment and the aforesaid encroachments have already been removed and land has been handed over to Adityapur Toll Bridge Company Ltd. (hereinafter referred to as "ATBCL" in short).

4. The aforesaid two paragraphs of the affidavit, filed by the State, indicate only that the encroachments have been removed, which is falsified by the affidavit of the Contractor which only indicates that bridge can be made operational. The notification of the State Government, as published in the Newspaper also shows that there are still encroachment. However, the counsel for the Contractor says that the entire encroachment has not been removed.

5. Learned Counsel for the State admits that there is nothing on the record and in the affidavit that the entire encroachments have been removed. Such averment is not there in the affidavit of the State Government.

6. Thus, it is clear that there is only a partial removal of the encroachment, but, the learned Counsel for the State says that the removal of the encroachment may be sufficient for making the bridge operational, which is controverted by the learned Counsel for the Petitioner that it would not be operational and it may be a partial approach to the bridge.

7. Two copies of the photographs and Video graphics, as submitted by the Contractor, are taken on record.

8. In view of the aforesaid, a healthy situation is not reflected. The State Government has not been able to remove all the encroachments which make the situations difficult to make the bridge operational after its completion. When this matter was taken up by this Court on 6.1.2006, this was undertaken by the State Government that by April 2008, the bridge will be completed. We are in 2011 and so far the process is not complete. This clearly establishes that the undertaking given before this Court on 6.1.2006 has been violated and it is plus three years that the bridge is not completed. Even in the order dated 9.3.2011, this was the undertaking that the encroachments will be removed. This undertaking can only be said to be partially fulfilled. It is an insult to the injury. In that view of the matter, opposite party Nos. 1 and 2 are guilty of committing

serious contempt of this Court.

9. In that view of the matter, the order passed on 9.3.2011 has to come into operation i.e. the State will start paying fine at the rate of Rs. 1.00 lacs per day until completion and perfect operation of the bridge by removing all the encroachments and the officer concerned will get suitable entry as indicated in the earlier order.

10. This contempt petition is disposed of.

11. However, this case will be listed again if the State comes with a clear affidavit that they have removed the entire encroachment.