

(2000) 07 PAT CK 0043
In the Patna High Court
Case No : C.W.J.C. No. 4848 of 1999

Jata Shankar Mishra

APPELLANT

Vs

State of Bihar and Others

RESPONDENT

Date of Decision : 07-07-2000

Acts Referred:

Citation : (2000) 4 PLJR 319

Hon'ble Judges : R.N. Prasad, J

Bench : Single Bench

Judgement

R.N. Prasad, J.—The writ petition has been filed for issue of a direction to the respondents not to disturb the peaceful possession over the land covered by judgment in Title Suit No. 71 of 1976/21 of 1977 over which delivery of possession was effected in favour of the petitioner in Title Execution Case No. 1 of 1978. A lease was executed in favour of the petitioner by respondent-municipality in the year 1972 for twenty years. The petitioner was dispossessed from the land in question forcibly in the year 1974. Title Suit No. 71 of 1976 was filed for recovery of possession. The suit was decreed. Execution Case No. 1 of 1978 was levied by the decree Holder, the petitioner for effecting delivery of possession. The delivery of possession was effected on 11.12.198(sic) and since then the petitioner was coming in peaceful possession over the land question. The respondents filed an appeal against the said judgment and decrease. The said appeal was dismissed but the appellate judgment and decree was the challenged by the respondents. In the year 1999 the respondent-municipality was trying to dispossess the petitions and as such the writ petition has been filed. On 1.6.1999 a Bench of this Court restrained the respondents from dispossessing the petitioner from the suit land.

2. The stand of the respondent in the counter affidavit was that the petitioner had abandoned the possession over the land in question in the year 1992 an 1 the land is in possession of the municipality.

3. On 17.1.2000 a Bench of the Court directed the District Judge, Deogha to

submit a report with regard to actual nature of possession of the land in question and also as to whether the petitioner had abandoned the possession over the land in question. The District Judge submitted his report that from topography any nature of the land it cannot be said that the petitioner is in cultivating possession over the disputed land. However, stated that the petitioner had not abandoned the possession over the disputed land and the stand of the municipality that the petitioner had abandoned his possession in the month of May, 1992 does not (sic) good. The said finding was recorded after examining the witnesses on behalf of the parties. One of the witnesses of the municipality, namely, Rajeshwar Mishra Assistant Sanitary Inspector, Deoghas Municipality stated that the petitioner Jata Shankar Mishra and his son had protested throwing garbage over the disputed land. Therefore, it appears that the stand of the respondent that the petitioner had abandoned the possession over the land in question was not found correct by the District Judge. The District Judge has reported that the petitioner is not in cultivating possession. At this juncture, it would be pertinent to mention herein that cultivating possession is different from possession. A person may be in possession through another person or a person may be in possession over the vacant land. Moreover, the witness of the respondent itself stated that the petitioner and his son protested throwing garbage on the land in question. Therefore, it cannot be said that the petitioner is not in possession over the land in question.

4. Admittedly, the lease was executed in favour of the petitioner by the respondent for a period of twenty years. The lease has, no doubt, expired but the lessee, who is in possession cannot be dispossessed by use of force. The law has already been settled by the Apex Court that even after expiry of the lease, a lessee cannot be dispossessed by use of force. In the case of Smt. Sushila Srivastava vs. State of Bihar & ors. 2000 (1) PLJR 301, Single Bench of this Court after considering the decision of the Apex Court has also come to the same conclusion that a lessee cannot be evicted by use of force after expiry of the lease. Thus, on consideration, this writ petition is disposed of with an observation that the petitioner cannot be dispossessed from the land in question by use of force and if any person/authority wants to recover possession must seek remedy before the civil court.