

(2010) 04 JH CK 0039
In the Jharkhand High Court

Jharkhand State Housing Board

APPELLANT

Vs

The State of Jharkhand and Others

RESPONDENT

Date of Decision : 20-04-2010

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 144

Citation : (2010) 04 JH CK 0039

Hon'ble Judges : Dabbiru Ganeshrao Patnaik, J

Bench : Single Bench

Judgement

D.G.R. Patnaik, J.—Heard counsel for the parties.

2. The petitioner Jharkhand State Housing Board while claiming the ownership over the disputed lands on the ground that after the land was acquired by the Bihar State Housing Board, the same was transferred in favour of the Jharkhand State Housing Board after the creation of State of Jharkhand, have prayed for a direction to the respondent State authorities to give due protection to the petitioner Housing Board against the attempted encroachments of the disputed lands by the Respondent No. 5.

3. From the counter affidavit of the Respondent No. 5 it appears that a definite stand has been taken by the Respondent No. 5 asserting that he is the grandson of the recorded Raiyat and the lands have been coming in his peaceful possession and occupation ever since the time of his ancestors and the lands have been mutated in the revenue records in his name and he has been continuously paying rent to the Government. The Respondent No. 5 has relied upon the revenue records as also the rent receipts in support of his claim of possession over the lands.

4. Learned Counsel for the respondent No. 5 would inform that the pleading of the petitioner that the land was acquired in an acquisition proceeding, appears to be misleading because even in the land acquisition proceeding there appears no reference to the Plot No. 424 of Khata No. 8 which bears the description of the

present disputed land and as a matter of fact, it is this aspect of the case of the Respondent No. 5 that was looked into by the Sub-Divisional Magistrate in the proceeding u/s 144 Cr.P.C. and the proceeding was dropped in favour of the Respondent No. 5.

5. Upon hearing the rival submissions of the learned Counsel for the parties and upon going through the documents on record, I find that both the parties have claimed their respective right, title and interest over the disputed lands. The grievance of the petitioner is against the alleged act of trespass made by the Respondent No. 5 over the lands in question whereas the claim of the Respondent No. 5 is that he has been continuously coming in peaceful possession over the disputed lands ever since the time of his ancestors. Apparently, the controversy involves disputed questions of facts. Even otherwise, if the petitioner Housing Board is aggrieved by the alleged act of trespass over the disputed lands by the Respondent No. 5, the appropriate remedy available to them is under the Bihar Public Land Encroachment Act and another analogous laws. The invocation of the extra ordinary writ jurisdiction of this Court for preventing the Respondent No. 5 from the alleged trespassing of the land in question, appears to be misconceived. I am satisfied that this writ application is not maintainable. As such, this application is dismissed. If the petitioner feels aggrieved, he would be at liberty to seek his remedy before the appropriate forum, if the law so permits.