

(2012) 08 JH CK 0035
In the Jharkhand High Court
Case No : WP (C) No. 3660 of 2006

Kamal Kishore and Others

APPELLANT

Vs

The State of Jharkhand and Others

RESPONDENT

Date of Decision : 07-08-2012

Acts Referred:

Citation : (2013) 1 AJR 487 : (2012) 4 JLJR 122

Hon'ble Judges : Aparesh Kumar Singh, J

Bench : Single Bench

Advocate : Ananda Sen, Amit Kr. Verma, for the Appellant;

Final Decision : Allowed

Judgement

Aparesh Kumar Singh, J.—Heard learned counsel for the parties. This writ petition has been preferred for quashing the notice dated 3.6.2005 issued by the respondent no. 3 whereunder the petitioners have been directed to vacate the portion of plots which they are occupying, failing which they will be evicted by force. Petitioners have also prayed for quashing of notice published in the paper dated 21.6.2006 whereby the petitioners have been directed to remove their construction and for issuance of further direction to the respondents not to take any coercive steps against the petitioner.

2. It is submitted by learned counsel for the petitioner that these petitioners are resident of PWD Colony, Adarsh Nagar, Sakchi, Jamshedpur since more than 40 years and the said area is huge area having vast tract of land which was vacant. It is further submitted that the case of the petitioners is that they have been residing by constructing temporary structures, which were constructed by their ancestors more than 40 to 45 years back. It is submitted by learned counsel for the petitioners that there are 54 families residing in the same area and petitioners have been given voter identity cards issued by the Election Commission of India in which house number has also been indicated. It is further stated that petitioners have been allotted Ration Card showing them to be the

residents of the said Peon Colony. Petitioners have been suddenly informed by the notice dated 3.6.2005 that they should remove their structures over the land in question otherwise they will be forcefully evicted. It is further stated that suddenly a paper notification was issued on 21.6.2006 informing the petitioners to remove their structures from Khata No. 242 Plot No. 1030 i.e. Peon Colony. Thereafter, on 26.6.2006 steps were taken by the district administration for removing and demolishing the entire colony, but due to public protest they could not succeed.

3. During the course of argument learned counsel for the petitioners has not been able to show any documents which establish their claim that petitioners have been residing in the area since last 40 years. The Voter Identity Cards furnished by them is of the year 1995 and different periods including 2003 and 2004. On the other hand, they have also stated that Ration Cards were issued to them (Annexure-2 series containing the photocopies of the Ration Cards). It appears that the Ration Cards have been issued sometime in the years 1991, 1997, 2001 and 2003 and as such, period obviously does not relate to 40 years as claimed by the petitioners. However, it is submitted by learned counsel for the petitioners that no proceeding under the Bihar Public Land Encroachment Act (now adopted by the State of Jharkhand) has been initiated against the petitioners before issuance of the impugned notice and for removal of the encroachment.

4. The respondents have appeared and filed their counter affidavit wherein it has been categorically stated that the aforesaid piece of land being Khata No. 242 Plot No. 1030 is a Government land belonging to Public Works Department. They have further categorically denied the claim of the petitioners that the petitioners are in possession of land in question since last 40 years. It has also been submitted that the District Administration is launching anti-encroachment drive from time to time as per the order of this Hon'ble Court in C.W.J.C. No. 2290 of 1990 and C.W.J.C. No. 241 of 1999(R) to remove the encroachers, in support of which order dated 18.5.1999 vide Memo No. 504 passed by the Sub-Divisional Officer, Dhalbhum, Jamshedpur has been annexed as Annexure-A. The respondents have stated that from the beginning, there are many Government building constructed for different uses over the said piece of land and it is not a vacant land. The respondents have also stated that proceeding under the Bihar Public Land Encroachment Act being B.P.L.E. Case No. 86/96-97 had been initiated wherein orders were passed on 20.1.1998 against several persons and thereafter several encroachments exercise have been under taken by the administration and the concerned authorities demolished the structures/ foundation in the area of P.W.D., but the habitual encroachers have encroached over the land again and again and for such persons, it has become essential to evict them after giving prior notice to them. Order passed in B.P.L.E. Case No. 86/96-97 dated 20.1.1998 is annexed as Annexure-B to the counter affidavit. It is further stated that the ancestors of the petitioners never constructed any structure more than 40 to 45 years back and the story of construction by their

ancestors is fully concocted. Government land cannot be ancestral property of any one in any case and no title over the Government land can be established by any one. Even petitioners have not been able to produce any piece of evidence relating to living in the said piece of land for the last 40 to 45 years. It is further stated that some persons have taken water connections unauthorizedly and without the knowledge of the Public Works Department. Issuance of identity card by the Election Commission of India does not establish any right, title to the land, but is simply a right to cast vote during election. Accordingly, the respondents submit that they have taken steps for removal of encroachments by public notice.

5. I have heard learned counsel for the parties and carefully gone through the records as well as impugned notice. It is not in dispute that the petitioners have not been able to show any document or evidence to establish that they have been living in the said piece of land for more than 40 to 45 years. The documents annexed to the writ petition being Ration Cards, Voter Identity Cards have already been referred to hereinabove do not show that petitioners have been living over the said piece of land for more than 10 to 15 years. On the other hand, it is also not in dispute that the aforesaid piece of land being Khata No. 242 Plot No. 1030 Sakchi, Jamshedpur is a Government Land undertaken by the Public Works Department. It further appears that earlier proceeding for eviction of encroachment under the Bihar Public Land Encroachment Act was initiated by the Court of Circle Officer, Jamshedpur being B.P.L.E. Case No. 86/96-97 which is annexed as Annexure-B. However, from perusal of the aforesaid order and from the submissions of counsel for the parties, it does not appear that the said proceeding was conducted against these petitioners by passing any order by the competent authorities under the BPLE Act. It appears that respondents have in their zeal to remove the encroachers from the Public Land by issuing notice straightway in the manner as contained in impugned Annexures directed the petitioners and other persons to vacate the land in question peacefully failing which steps would be taken for forceful eviction against the said persons. From the aforesaid facts, it appears that no proceeding under the BPLE Act in order to remove the encroachment of unauthorized encroachers over the public land, has been initiated before issuance of the impugned notice. Although the contention of the petitioners that they were living since last 40-45 years on the PWD land is not substantiated by any piece of evidence, but at the same time, forcible eviction has been sought as per the impugned notice. In the aforesaid facts and circumstances even though the petitioners are the encroachers over the public land, their eviction can only be undertaken in accordance with law by initiating a proceeding in a proper manner before the competent authorities as provided under the BPLE Act by following the procedure established by law. In the circumstance, since it appears from the face of the record that the aforesaid proceedings have not been initiated in accordance with law for removing petitioners, the impugned notices are set aside and respondents are directed to take steps in accordance with law by initiating appropriate proceeding under the

BPLE Act, 1956 as adopted by the State of Jharkhand against unauthorized occupants including the petitioners after giving proper opportunity and following due procedure under the said Act. It is also expected that when the proceedings under the BPLE are concluded finally against the unauthorized occupants and the unauthorized occupants are evicted from the Government land or property, it is the responsibility of the respondent authorities to ensure that no further encroachment over the said public land is made by the encroachers and such situation does not arise again and again which is clearly against the larger public interest. In the circumstances, the said writ petition is allowed with observations given hereinabove with liberty to the respondents to proceed against the petitioners and other persons under the provisions of Bihar Public Land Encroachment Act adopted by the State of Jharkhand in accordance with law for unauthorized occupation of public land. The said proceedings should be concluded within a reasonable time by following mandate of the law.