
(2013) 05 JH CK 0038

In the Jharkhand High Court

Case No : Writ Petition (Cr.) No. 44 of 2004

Kamal Kumar Singhania

APPELLANT

Vs

The State of Jharkhand and Others

RESPONDENT

Date of Decision : 07-05-2013

Acts Referred:

Forest Act, 1927 — Section 33

Citation : (2013) 3 EFLT 644

Hon'ble Judges : Prashant Kumar, J

Bench : Single Bench

Advocate : Dilip Jerath, for the Appellant; Ram Prakash Singh, J.C. to G.P.-II, for the Respondent

Final Decision : Allowed

Judgement

Prashant Kumar, J.—This writ application has been filed for quashing the order dated 06.01.2004 passed by Chief Judicial Magistrate, Ranchi, in Forest Case No. 69 of 2003, whereby and whereunder he took cognizance against the petitioner under Sections 33(C) & 63(C) of the Indian Forest Act. Petitioner further prays for quashing of entire criminal proceeding in connection with Forest Case No. 69 of 2003 pending in the court of Chief Judicial Magistrate, Ranchi. It is stated that petitioner purchased 7.78 acres of land pertaining to Plot No. 10 & 11 of Khata No. - 154, Village - Chakla, P.S. - Ormanjhi, District - Ranchi by way of four sale deeds, annexed with the application at Annexure-3 Series. It is stated that thereafter Forest Range Officer lodged a complaint against the petitioner that he encroached forest land and made construction over it. On the basis of aforesaid complaint, Forest Case No. 4 of 1998 instituted, which was subsequently numbered as Miscellaneous Case No. 837 of 1998. It appears that petitioner had filed a writ application in Patna High Court (Ranchi Bench) vide C.W.J.C. No. 1886 of 1998 (R) against aforesaid complaint case, which was disposed of by a Bench of Patna High Court vide order dated 19.02.1999. In the above case petitioner was directed to file a detailed representation before the Divisional Forest Officer,

Ranchi and the Divisional Forest Officer was directed to dispose of the same after hearing both the parties by a reasoned order. In compliance of above direction of Patna High Court, Ranchi Bench, petitioner filed his representation before the Divisional Forest Officer, Ranchi, who instituted Encroachment Case No. 01 of 1998. It further appears that the Divisional Forest Officer by his order dated 27.09.1999 (Annexure-11) concluded that petitioner encroached forest land. Accordingly, he directed Officer In-charge to get the encroachment removed and gave vacant possession to the Forest Department. Against the said order, petitioner filed an appeal before the Deputy Commissioner, Ranchi who vide his order dated 05.09.2001 (Annexure-12) dismissed the appeal of the petitioner. Then petitioner filed a revision before the Commissioner, South Chhotanagpur Division, Ranchi, which was also dismissed on 03.07.2002 (Annexure-13) as not maintainable. All the aforesaid three orders i.e. Annexures - 11, 12 & 13 challenged by the petitioner before this Court in W.P. (Civil) No. 4714 of 2002. The said writ application disposed of on 02.06.2003. The Hon''ble Single Judge had quashed the aforesaid orders and directed the aggrieved party to move before a Civil Court of competent jurisdiction for adjudication of right, title and possession/confirmation of possession or any other appropriate relief. The aforesaid order challenged by the State Government in a Division Bench of this Court vide L.P.A. No. 38 of 2004, which was dismissed on 22.02.2005 (Annexure-24). Against that order, State filed a SLP before the Hon''ble Supreme Court vide SLP (Civil) No. 8530 of 2005 corresponding to Civil Appeal No. 288 of 2006. The said Civil Appeal disposed of by Hon''ble Supreme Court vide order contained in Annexure-25. The Hon''ble Supreme Court passed following order:-

In this view, the judgment of the learned Single Judge, affirmed by the Division Bench, to the extent it sets aside the orders dated 27th September, 1999, and 5th September, 2001, is modified. The said orders would stand till annulled by the civil court. The civil court, uninfluenced by the observations made in those orders, would decide the controversy in respect of the land in question independently on merits. Till the civil court decides the case, the parties will maintain status quo, subject to any interim orders which the civil court may make. It would be open the writ petitioners to approach the civil court. The impugned judgements are modified to the above extent.

It further appears from the supplementary affidavit that after the order of Hon''ble Supreme Court, petitioner filed a suit for declaration of his right, title and interest over the land in question vide Title Suit No. 394 of 2007, which is still pending in the court of learned Civil Judge (Senior Division) Ranchi.

2. Sri Dilip Jerath, learned counsel for the petitioner submits that from the aforesaid facts, it is clear that there is a bonafide land dispute between the parties, which was also acknowledged by Hon''ble Supreme Court, therefore, Hon''ble Supreme Court directed both the parties to maintain status quo and gave liberty to the petitioner to get the matter resolved through a competent Civil Court. Under the said circumstance, the criminal proceeding for

encroachment of the same land cannot proceed.

3. On the other hand, Sri Ram Prakash Singh, J.C. to G.P.-II, submits that it is well settled that even if civil suit is pending, but from the facts of the case, a criminal liability is made out, then a criminal proceeding can proceed. Accordingly, he submits that the impugned order does not require any interference by this Court.

4. Having heard the submissions, I have gone through the record of the case. It is an admitted position that the entire area of disputed plot i.e. Plot No. 11 is 75.35 acres. It is also an admitted position that out of aforesaid area 69.70 acres of land notified as a Protected Forest Land, rest of the land belongs to Raiyats. Petitioner claims that he purchased rest of the land from Raiyats. According to petitioner aforesaid 5.65 acres of land of plot no. 11 is contiguous, whereas as per the Forest Department, the said land is not contiguous rather same are scattered and situated at different places. Thus, the main dispute between the parties is with regard to the boundary of the land. Under the said circumstance, unless the said dispute is resolved by a Competent Court, as per the direction of Hon"ble Supreme Court, it cannot be said that petitioner made construction and demolish pillar of forest land. For punishing a person under Sections 33 & 63(C) of the Indian Forest Act, it is necessary to show that said person made construction over a forest land and/or removed demarcation of forest land. In this case a lis is pending before the competent civil court for deciding a question as to whether the land in question is a forest land or not, thus in my view, before the decision of civil court continuation of present criminal proceeding against the petitioner is an abuse of the process of the Court. Thus, the order impugned cannot be sustained. In view of the findings and discussions made above, this writ application is allowed and impugned order is quashed. Consequently, the entire criminal proceedings in connection with Forest Case No. 69 of 2003, pending in the Court of Chief Judicial Magistrate, Ranchi is hereby quashed.