

(2015) 07 JH CK 0014
In the Jharkhand High Court
Case No : W.P. (C) No. 2400 of 2013

Kamdeo Yadav

APPELLANT

Vs

State of Jharkhand and Others

RESPONDENT

Date of Decision : 03-07-2015

Acts Referred:

Citation : (2015) 3 JLJR 625

Hon'ble Judges : S. Chandrashekhar, J.

Bench : Single Bench

Advocate : R.S. Mazumdar and M.K. Dubey, for the Appellant; Saket Upadhyay, for the Respondent

Judgement

S. Chandrashekhar, J.—Objecting to encroachment by the Department of Fisheries over the petitioner's land, the present writ petition has been filed. The petitioner claiming himself owner of the land comprised in Mouza-Shyamganj, Thana No. 413, Jamabandi No. 3165/ within Municipal Ward No. 6 at Deoghar asserts that the said land was transferred in the name of his father by Amalnama dated 17.3.1951 and the father of the petitioner was put in possession of the aforesaid land by the then Ghatwal of Rohini Estate. The petitioner continued to pay rent and accordingly, rent receipt was issued by the ex-landlord. After Bihar Land Reforms Act, 1950 came into force, the ex-intermediary filed return showing Shashi Mahto as co-owner and his name was recorded in Register-II. Vide Jamabandi No. 3165/ the petitioner after the death of his father came in peaceful possession of the said land and he sold 1999.5 sq.ft. of land in favour of one Parmila Devi. After the Sub-Registrar refused to register the sale deed in the name of said Parmila Devi, she moved this Court in W.P.(C) No. 4346 of 2012 in which after this Court issued directions, sale deed executed by the petitioner in favour of said Parmila Devi was registered by the registering authority. The respondent-Department of Fisheries started encroaching upon a part of the petitioner's land and therefore, the petitioner approached this Court.

2. The learned Senior Counsel for the petitioner referring to various documents

issued by the revenue authorities and letter dated 11.6.2012 of the Additional Collector submits that, the Circle Officer found the name of petitioner's father recorded in the revenue record and it has also been found that rent receipts have been issued since 1962-63 however, the Department of Fisheries has tried to encroach upon the petitioner's land.

3. The learned counsel for the respondent-State of Jharkhand submits that, the claim of the petitioner that rent receipt was issued since 1962-63 and the name of the father of the petitioner is recorded in Register-II have been found not true. In the revenue record there is no such entry in the name of the father of the petitioner. It is stated that the land claimed by the petitioner forms part of Jalsar Tank and the petitioner has illegally encroached upon the same.

4. From the pleadings in the present proceeding, it appears that the petitioner has claimed right, title, interest and possession over a piece of land admeasuring about 2 kathas whereas, the respondents have claimed that the said land is part of Jalsar Tank which is a Khas Tank which vested in the then State of Bihar. In the counter-affidavit the respondents have asserted that Jalsar Tank is lifeline to the town Deoghar. However, I find that the respondents have not denied that the petitioner is in possession over the said land since long. Since a serious dispute as to title over the said land has arisen, I am of the opinion that the said issue cannot be adjudicated in the present proceeding. Vide order dated 8.5.2013, the parties were directed to maintain status quo existing as on 8.5.2013. The petitioner has not complained of dispossession by the respondents. Since the respondents have not disputed possession of the petitioner over the said land, this writ petition stands disposed of with liberty to the respondents to approach the civil court and/or to initiate appropriate proceeding, in accordance with law. Order dated 8.5.2013 stands confirmed however, the same shall be subject to decision in the case, if any, filed by the respondents. It is further clarified that this order would not prevent the respondents from initiating a proceeding against the petitioner, in accordance with law. I.A. No. 3659 of 2013 stands disposed of.