

(1991) 04 PAT CK 0020
In the Patna High Court
Case No : C.W.J.C. No. 7048 of 1988

Mahanth Ramagya Giri

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 02-04-1991

Acts Referred:

Bihar Public Land Encroachment Act, 1956 — Section 3

Citation : AIR 1992 Patna 82 : (1991) 2 PLJR 249

Hon'ble Judges : U.P. Singh, J

Bench : Single Bench

Advocate : Rajendra Prasad Singh, Dilip Kumar Tondon, for the Appellant;
Jagannath Jha, G.P.I. and Kishore Kumar Thakur, J.C. to G.P.I., for the
Respondent

Final Decision : Allowed

Judgement

U.P. Singh, J.—The petitioner has challenged the validity of the order contained in Annexure 6 dated 8-8-1988 passed by the respondent No. 3, the Collector under the Bihar Public Land Encroachment Act, disallowing the claim of the petitioner and directing him to remove the structure from the land in question bearing Khata No. 20 Plot No. 123.

2. The land in dispute is a Bakast Malik land and the petitioner has the title and possession over the same and he is paying the rent to the State. According to the petitioner the land in dispute is 12 decimal out of plot No. 123 situated in village Gurhanwa, whereupon since 1946 the house of the petitioner exists for keeping catties and implements etc. for the purposes of agriculture and for keeping grains. The said land was recorded as Bakast land of Mahanth Ram Narain Giri, who was the ex-intermediary of the land in question. The ex-intermediary used to organise a mela over the said land in question, twice a year. After vesting of the land in the state of Bihar this land was settled with the petitioner vide Rent Roll Fixation Case No. 4 of 1972-73. At the time of fixation of rent an agreement was executed by the petitioner to the effect that the existing

house over the mela land from before the date of vesting would be allowed to remain intact (Annexure-2). After fixation of rent of the land in question, jamabandi was created in favour of the petitioner and he has been paying rent to the State for which the receipts are regularly granted.

3. In the year 1978 a Land Encroachment Case No. 10 of 1978-79 was initiated for removal of the alleged encroachment from the 12 decimal of the said land of survey plot. No. 123. After making due enquiry and after hearing the parties respondent No. 3. By his order dated 23-2-79 concluded and dropped the said proceeding after holding that the land encroachment case did not appear to be justified against the petitioner. In other words, the said land encroachment case was finally dropped on 23-2-1979 (Annexure-3). The State did not prefer any appeal against the said order, which they could have and were as such entitled to under the provisions of the Act. Thus, the order of respondent No. 3, the Collector under the Act, became final in the year 1979. After long nine years, thereafter, on 23-6-1988, a notice u/s 3 of the said Act was issued by the respondent No. 3 to the petitioner to show cause as to why the encroachment over the said area be not removed (Annexure-4). The petitioner filed show cause and on the same allegation, as was made earlier in the year 1979 under the Bihar Public Land Encroachment Act, this proceeding was revived again and a fresh proceeding was started (Encroachment Case No. 9/88-89) and thereafter, the impugned order contained in" Annexure-6 was passed by the respondent No. 3 ordering the demolition of the said construction.

4. Learned counsel appearing for the petitioner has contended that any fresh proceeding under the Bihar Public Land Encroachment Act could not be initiated afresh after long nine years when the earlier proceeding for the same cause had been dropped in the year 1979. In support of the said contention learned counsel relied on a Bench decision of this Court rendered in the case of Shri Kali Prasad Seal v. The State of Bihar 1969 PLJR 23 wherein it has been held that when the earlier order became final, the case of the alleged encroachment must also be taken to have been finally concluded and there was no jurisdiction in the officers concerned to re-agitate the matter over again on the same allegation.

5. After considering the matter on the record and the rival contention of the parties, admittedly the fresh proceeding after long nine years under the Act was initiated on the same allegation on which the earlier proceeding under the Land Encroachment Act had been finally concluded in the year 1979 and the proceeding had been finally dropped. I, therefore, hold that for the same reason and on the same allegation there was no jurisdiction in the officers concerned to initiate a fresh proceeding after long nine years when the matter had been finally concluded regarding the land encroachment. If the State was aggrieved by the earlier order of the Collector under the Act where by the proceeding had been finally dropped and concluded, they could have preferred an appeal or revision but nothing of the kind was availed and I do not see any reason how after long nine years for the same cause and on the same allegation another fresh

proceeding under the Land Encroachment Act could be initiated. Thus, there was no jurisdiction left with the respondent No. 3. The collector under the Act to pass the impugned order contained in Annexure-6. The orders contained in Annexure-6 as also the order in appeal dated 30-8-1988 are quashed and the application is allowed but without cost.