

(2006) 08 JH CK 0119
In the Jharkhand High Court

Mahendra Gayali

APPELLANT

Vs

Bharat Coking Coal Ltd.

RESPONDENT

Date of Decision : 28-08-2006

Acts Referred:

Constitution of India, 1950 — Article 226, 227

Public Premises (Eviction of Unauthorised Occupants) Act, 1971 — Section 4

Citation : (2006) 4 JCR 604

Hon'ble Judges : Permod Kohli, J

Bench : Single Bench

Judgement

Permod Kohli, J.—Petitioner claim to have acquired perfect Raiyati title to Plot No. 303 at Mauza Swahnidih, Police Station, Baghmara. This plot bearing 3.20. acre was later on re-numbered as Plot Nos. 523 and 524. A dispute arose with regard to the aforesaid plots and objections were filed u/s 83 of the Chhotanagpur Tenancy Act in respect to the new plot No. 523 being Case No. 23 of 1989. On rejection of the objections, Revisional Case No. 7120 of 1988 u/s 89 of the Chhotanagpur Tenancy Act was filed. This Revision petition was allowed vide order dated 27th of November, 1990. The respondent-BCCL-Company preferred an Appeal Case No. 76 of 1990 in respect to new Plot No. 523, which was dismissed and consequent Appeal Case No. 77 of 1992 was preferred before the Commissioner, North Chhotanagpur Division, Hazaribagh. This second appeal was allowed by the Commissioner on 27th of August, 1996. Petitioner preferred a writ application, being CWJC No. 3204 of 1996(R) before the Patna High Court. This writ petition was disposed of vide order dated 11th of August, 1997, which reads as under:

From perusal of the record it appears that serious disputed question of title and possession are involved in this writ application, which cannot be decided in writ jurisdiction under Article 226 and 227 of the Constitution of India. The appropriate remedy in my opinion for the petitioner is to bring a regular suit. The petitioner may, therefore, availed appropriate remedy for an adjudication of his title before appropriate forum. This writ application is dismissed.

2. It is stated that consequent upon the aforesaid observations, petitioner has preferred Title Suit No. 135 of 1997 for declaration of title and confirmation of possession along with others. The suit is under trial. In the meanwhile, petitioner received a notice dated 07.11.2005 issued by the respondent No. 3 u/s 4(i) of the Public Premises (Eviction of Unauthorised Occupants) Act, 1971. It is stated that this notice is in respect to the same land, which is subject matter of the suit. Petitioner has, accordingly, sought quashment of the notice dated 7.11.2005 primarily on the ground that the same dispute being with the civil Court where the respondent-Company has already appeared and filed a written statement, it has no authority to initiate the proceedings under the Public Premises (Eviction of Unauthorised Occupants) Act, 1971, which is of summary nature. This writ petition is opposed by the other side on the ground that petitioner has efficacious remedy Le. filing an application for temporary injunction under Order XXXIX, Rule 302, CPC before the civil Court where the title suit is pending. Accordingly, Respondents have sought dismissal of this writ application.

3. In the counter-affidavit filed, the fact that the same land is subject matter of civil suit, is not denied. The question that arises for consideration before this Court is whether during the pendency of the civil suit, which is pending for the last almost nine years and where the respondent-Company has already appeared and is contesting the suit can initiate proceedings under the Public Premises (Eviction of Unauthorised Occupants) Act, 1971. A similar issue came up for consideration before this Court in the case of Madan Mohan Vadehra Vs. Bharat Coking Coal Company Ltd. and Others, This Court on consideration observed as under:

It is a settled law that where a complicated questions of title arise for decision, the summary proceeding for eviction cannot be resorted. In this respect, one may refer the decision of the Supreme Court in Government of Andhra Pradesh Vs. Thummala Krishna Rao and Another, .

7. In the facts and circumstance in the present ease, there being disputed question of title, respondents/authority concerned are directed not to proceed with Eviction Case No. 91 of 1997, till the question of right and title is decided by the competent Court of law/in Suit No. 3675 of 2000 already preferred by respondents, as referred above.

8. The writ petition stands disposed of, with the aforesaid observations/directions.

4. In view of the ratio of the aforesaid judgment, this writ application stands disposed of with a direction to the respondents not to proceed under the Public Premises (Eviction of Unauthorised Occupants) Act, 1971 till the disposal of the Title suit pending in civil Court.

5. It has been brought to my notice that the suit is pending for the last about 9 years. Parties are directed to co-operate with the trial Court and expedite the proceedings in the suit. It is also observed that the trial Court will also conclude the trial with all promptness and decided the suit as early as possible.