

(2013) 06 JH CK 0068
In the Jharkhand High Court
Case No : C.W.J.C. No. 4269 of 2000

Mahendra Pal Bhatia and Others

APPELLANT

Vs

Bharat Coking Coal Limited and Another

RESPONDENT

Date of Decision : 20-06-2013

Acts Referred:

Public Premises (Eviction of Unauthorised Occupants) Act, 1971 — Section 4(1)

Citation : (2013) 3 JLJR 368

Hon'ble Judges : Aparesh Kumar Singh, J

Bench : Single Bench

Advocate : R.S. Mazumdar, for the Appellant; Ananda Sen, for the Respondent

Final Decision : Allowed

Judgement

Aparesh Kumar Singh, J.—Heard learned counsel for the parties. The order passed in appeal being M.A. No. 33 of 1989 dated 28.9.2000 (Annexure-7) by me learned District Judge, Dhanbad arising out of the Public Premises (Eviction of Unauthorized Occupants) Act, 1971 (hereinafter referred to as the "Act, 1971") is under challenge by the petitioners.

2. The Estate Officer, in the original proceeding being Eviction Case No. 210 of 1984, by order dated 8.3.1989 had decided the case in favour of the petitioners and also dropped the proceedings under the Act, 1971 initiated against them by the respondent-Bharat Coking Coal limited.

3. There is background to the present controversy, which is briefly stated herein-under;

4. The proceedings u/s 4(1) of the Public Premises (Eviction of Unauthorized Occupants) Act, 1971 in respect of Plot Nos. 553 to 564 of Khata No. 14 of mouza Dhanbad being Mouza No. 53 measuring an area of 20 Kathas of land were initiated before the court of Estate Officer for eviction of certain persons. The Estate Officer vide his order dated 18.9.1985 held that the premises in question belong to Bharat Coking Coal Limited (hereinafter referred to as

"B.C.C.L.") and the respondents therein were directed to remove the encroachment over the same. In appeal before the District Judge, Dhanbad, the matter was remanded by order dated 4.12.1986 to the court of the Estate Officer, B.C.C.L. with a direction to dispose of the case afresh after impleading necessary parties. Thereafter the Estate Officer after impleading the parties, who are the petitioners herein, passed an order dated 8.3.1989 in favour of the petitioners dropping the original proceedings initiated under the Act, 1971. The respondent-B.C.C.L. preferred a miscellaneous appeal being M.A. No. 33 of 1989 against the said order dated 8.3.1989, which has been decided by the learned District Judge, Dhanbad by the impugned order dated 28.9.2000 (Annexure-7) which is under challenge by the writ petitioners.

5. The case of the writ petitioners is that the lands in question were originally purchased through a sale deed No. 728 dated 5.2.1945 by one Jamini Mohan Mazumdar from the original owner for valuable consideration. The said lands continued in the possession and ownership of the said person till these four petitioners purchased the same by virtue of four separate sale deeds dated 17.1.1984. These petitioners got the land in question mutated in their favour and are paying rent to the State continuously thereafter and also having possession over the same.

6. Learned counsel for the petitioners submits that the respondent-B.C.C.L. after nationalization under the Coal Mines Nationalization Act, 1973 (for short the "Act, 1973"), claimed to be the owners of the lands in question as the said lands being a part of the Godhar Colliery, were vested in the Central Government and thereafter in nationalized Coal Company i.e. respondent-B.C.C.L. The respondent-B.C.C.L. thereafter initiated the impugned proceedings in Eviction Case No. 210 of 1984 treating these properties/lands in plots described herein-above as a public premises over which, the petitioners were treated to be encroachers. It is submitted that as per the Estate Officer the first party who are the respondent herein failed to prove their ownership and neither filed any document to prove their ownership nor produced any witness in support of their claim. The petitioners, on the other hand had filed copies of the registered sale deed dated 5.2.1945 executed by Chirku Mahato and others in favour of one Jamini Mohan Mazumdar and copies of the registered sale deed executed by the said Mr. Jamini Mohan Mazumdar in favour of these four petitioners and others also. They also produced photo-copies of the judgment passed in a proceeding initiated u/s 144, by the Sub-Divisional Magistrate, Dhanbad and copies of the rent receipts granted by the State Government as well as order sheets of the Mutation Case Nos. 46, 47, 48 and 49 of 1983-84. The Estate Officer after considering the contention of the rival parties came to a conclusion that the lands in question were never purchased by East Godhar Colliery (a private Colliery) and as such never got vested in the Central Government and thereafter also never vested in the nationalized Coal Company i.e. B.C.C.L. On the other hand, it was purchased by one Jamini Mohan Mazumdar in personal capacity and, therefore, the second party/writ petitioners herein who had purchased the lands in question from the

said Jamini Mohan Mazumdar were authorized occupants of the said lands. He also took into account the report of the Court Commissioner appointment by the appellate Court earlier who did not find any evidence of mines in the area in question.

7. Being aggrieved by the said order, the respondent-B.C.C.L. preferred an appeal being M.A. No. 33 of 1989 before the learned District Judge, Dhanbad and once again failed to substantiate their ground for claiming the property as a public premises. But the learned appellate court has completely acted on misconceived motions and proceeded to record that the lands in question were public premises from which, these writ petitioners being encroachers, need to be evicted.

8. Learned counsel for the petitioners submits that the learned appellate court erroneously also accepted the contention of the respondent-B.C.C.L. that the lands purchased by Jamini Mohan Mazumdar were in fact a part of the Godhar Colliery and a "Benami" transaction being guided by such inference. The learned appellate court has held that the lands in question is a public premises. It is further submitted that no proof of such vesting of lands in Godhar Colliery has been adduced by the respondent-B.C.C.L. before the courts below. No notification, payment of compensation or any document showing description of the lands in question, which comprised in the Godhar Colliery, have been shown, which they claimed to have vested.

9. Learned counsel for the petitioners has relied upon the judgment rendered by the Hon'ble Supreme Court in the case of New Satgram Engineering Works and Another Vs. Union of India (UOI) and Others, , and in support of his contention submits that the issue relating to particular property having vested or not being a civil dispute could only be resolved by a suit. Therefore, in a summary proceeding under the Act, 1971, the petitioners being lawful purchasers and owners of the property in question and continuing in their possession could not be evicted. Learned counsel for the petitioners has also relied upon a judgment rendered by the Division Bench of this Court in the case of M/s Bharat Coking Coal Limited, Dhanbad Vs. M/s Bharat Fire Bricks and Pottery Works (P) Limited, Jharia, Dhanbad, . By relying upon the said judgment, it is submitted that in the instant case also the Company has failed to show any evidence that the property vested in their favour and the lands in question were a mining land. In view of the aforesaid facts, it is also submitted that the petitioners cannot be evicted in a summary proceeding initiated under the Act, 1971 and the appellate order required to be quashed.

10. Learned counsel for the respondent-B.C.C.L. on the other hand supported the impugned order. He vehemently argues that the property in question had vested in the Bharat Coking Coal Limited by operation of the Act of 1973 upon issuance of the notification by the Central Government. It is also submitted that Godhar Colliery was a part of the lands, which were vested under the Nationalization Act, 1973 in the Central Government. Therefore, lands in question, being also a part

of Godhar Colliery, accordingly, vested in the B.C.C.L. and assume a character of a public premises. Learned counsel for the respondent-B.C.C.L. further submits that the recital of the sale deed by which the lands were purchased by one Jamini Mohan Mazumdar on 5.2.1945, contains reference that Jamini Mohan Mazumdar was acting as a Manager of Godhar Colliery and the lands were actually purchased for Colliery purposes. In that view of the matter, no further evidence was required for the appellate authority to come to a finding that the lands were public premises. Learned counsel for the respondent in support of his contention relied upon a judgment rendered by the Hon"ble Supreme Court in the case of Bharat Coking Coal Ltd. Vs. Madanlal Agrawal, .

11. In these circumstances, it is submitted that the impugned order does not suffer from any error of law or fact and need not to be interfered in writ jurisdiction.

12. I have heard learned counsel for the parties and have gone through the impugned order as well as other relevant materials available on record. The facts, which have been narrated hereinabove do portray a picture that while on the one hand, the respondent-B.C.C.L. claims the lands in question, to be a public premises, being part of the Godhar Colliery, which had vested in the Central Government and thereafter in the respondent-Company but no notification or any evidence to that effect has been adduced on their behalf either before the Estate Officer/Appellate Court or before this Court. Whereas the petitioners themselves produced the documents of purchase of the property in question on valuable consideration through registered sale deeds from the erstwhile vendor namely Jamini Mohan Mazumdar and the said Jamini Mohan Mazumdar had purchased the property in question from one Chirku Mahato and others through registered sale deed dated 5.2.1945. Thereafter the said person executed four separate sale deeds in favour of these petitioners and others against whom the present proceedings were initiated. These petitioners also got the lands in question mutated in their favour and are paying rent to the State Government throughout thereafter. The appellate authority while arriving at a finding in the impugned order has referred to the findings of the appellate court on the earlier occasion when the matter was remanded to the Estate Officer in M.A. No. 88 of 1985 as per which the appellate court on the earlier occasion had come to a clear finding that the respondent-B.C.C.L. undisputedly was the owner of the property in question. However, on that occasion, the matter was remanded to the original authority to implead the necessary parties who are the present petitioners and decide the matter afresh. Therefore, any finding on merits recorded earlier by the appellate authority regarding the ownership of the property in question is of no consequence otherwise, it would amount to pre-determining the issue before hearing the affected parties. This finding, therefore, did not come to any help for supporting the impugned order. The facts, which have been narrated hereinabove in detail, therefore, show that the question of title of the lands is involved in this matter, which require detailed adjudication through adducing of evidence before the competent court having civil jurisdiction.

13. In any case, the present issue is not one which should have been decided in a summary proceeding. The judgment relied upon by the respondent-B.C.C.L. in the case of Bharat Coking Coal Ltd. Vs. Madanlal Agrawal, is in-applicable to the present case as in the said case the property, which comprised the offices, residential lands and buildings, which formed part of the property of colliery were treated to have vested by virtue of Section 3 of Act, 1973. In the present case the question as to whether the instant property itself was a part of the Colliery, is in serious doubt because no evidence to that effect has been adduced on behalf of the respondent-B.C.C.L.

14. In view of the aforesaid facts and circumstances, I find serious infirmity in the impugned order. Therefore, the impugned order is unsustainable in law and facts and is, accordingly, set aside. The present writ petition is, accordingly, allowed.