
(1991) 11 PAT CK 0004
In the Patna High Court
Case No : C.W.J.C. No. 6406 of 1991

Mahtab Lal Singh

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 22-11-1991

Acts Referred:

Transfer of Property Act, 1882 — Section 112

Citation : (1992) 1 PLJR 108

Hon'ble Judges : S. Ali Ahmad, J;D. Sinha, J

Bench : Division Bench

Judgement

1. The prayer in this writ application is to quash Annexure 5 passed by the Sub-divisional Magistrate, Patna City directing the Petitioner to hand over possession of the lands in question to Respondent Nos. 4 to 10 by 3rd of September, 1991, failing which the Petitioner should be evicted by force. In order to appreciate the argument advanced by the learned Counsel for the parties, certain facts will have to be borne in mind. They are as follows:

2. The land undisputedly belonged to one late Sardar Bakshi Singh. He gave it to the Petitioner on lease for three years by a registered deed dated 5.8.1980. Having obtained the lease from Sardar Bakshi Singh, the Petitioner applied for licence under the Mineral Concession Rules for manufacture of bricks. That licence was granted on 20.9.1982 for three years. It was again renewed for another three years. Subsequently Respondent Nos. 4 to 10 purchased the lands in question from the heirs of Sardar Bakshi Singh. At that time, an application for renewal of the licence was pending with the authorities under Mineral Concession Rules. The authorities asked the Petitioner to produce written consent of the land holder before granting licence for further renewal. That was not done and as a result of that the licence was not renewed. Admittedly, the period of lease executed by Sardar Bakshi Singh is also over.

3. The question now advanced by Mr. Ghose is that he is holding over u/s 112 of the Transfer of Property Act but he lays that it is not necessary to go into that

question in this proceeding. learned Counsel says that taking a worst view in the matter, even if the Petitioner is a trespasser, he cannot be evicted by force on the strength of an, order passed by the Sub-divisional Magistrate, who is an executive officer. learned Counsel says that the only competent, forum to direct eviction of the Petitioner is a civil court.

4. Mr. Hussain appearing on behalf of the contesting Respondents does not dispute the proposition that, generally civil court is the only competent authority to direct eviction of a person holding the land in an illegal fashion. He however, says that in certain cases if under any special law the jurisdiction to enter upon the land is vested to the authority then that can be done. learned Counsel says that Clause 5 of Form D (in Part VI) of the Bihar Minor Mineral Concession Rules, 1972 provides that in case any rent or royalty due to the State is not paid then the Collector may enter upon the land and determine the lease. He says that the order Annexure 5 has been passed by the Sub-divisional Magistrate in pursuance of the order passed by the Collector in exercise of this power under this clause. That order is dated 14.8.1991 and has been marked as Annexure D to the counter affidavit filed on behalf of the private Respondents. We are quoting a part of a paragraph of this order.

The lease dated 13.9.1986 executed in favour of O.P. Mahtab Lal Singh for three years has expired long ago and the O.P. Mahtab Lal Singh has not vacated the lands under the said lease up till now even after the orders of the Supreme Court of India nor he has paid the rent and royalties etc. up till now which is due against him....

(Emphasis added)

Therefore the Collector directed that the Petitioner must be evicted and possession be handed over to the opposite party within a fortnight of this order, failing which the opposite party should approach the Sub-divisional Magistrate, Patna City for forceful eviction. Direction was also given to the Sub-divisional Magistrate, Patna City to take proper steps for realisation of rent and royalty under the Public Demands Recovery Act. It appears that after this order was passed the Petitioner did not hand over possession to the opposite parties as directed. In the circumstance an application was filed before the Collector complaining that the Petitioner did not abide by the order. The Collector in this circumstance endorsed that petition for necessary action to the Sub-divisional Magistrate and Sub-divisional Magistrate passed the order as contained in Annexure-5 which is sought to be quashed.

5. Mr. Ghose urged that the direction to enter upon the land has been made on the ground for non-payment of compensation to the owners of the land namely, Respondents 4 to 10. He rightly says that Clause 5 of Form D (in Part VI) does not authorise the Collector to enter upon the land in case of default in payment of compensation to the land owners. But Mr. Hussain submits that this is not a case where the order has been passed on that ground. No doubt, the fact of non-

payment of compensation to the land owners has been mentioned but the basis for passing the order is on account of non-payment of rent and royalties to the State Government. This is mentioned in the concluding portion of the order Annexure D. The Collector has directed the Sub-divisional Magistrate, Patna City to take proper steps for realisation of rent and royalties under the Public Demands Recovery Act. The jurisdiction, therefore, to enter upon the land in case of default, in payment of rent and royalty to the State, which was vested the Collector has been exercised by him. No doubt, he has also directed the Sub-divisional Magistrate to take steps for realisation of rent band royalty under the Public Demands Recovery Act. Undoubtedly, the two steps can be taken simultaneously. In spite of all these facts, we are not able to sustain the order as it stands. Neither Clause 5 of Form D (in Part-VI) nor Public Demands Recovery Act or any other law gives jurisdiction to the Collector or to any executive officer to direct any individual to hand over possession to any private person of any property held by him. The Collector or the Sub-divisional Magistrate, Patna City had, therefore, no jurisdiction to direct the Petitioner to hand over possession of the land in question to Respondent Nos. 4 to 10, although they could take possession of that land in view of Clause 5 of Form D (in Part-VI) of the Bihar Minor Mineral Concession Rules, 1972.

6. We, accordingly, quash that part of Annexures D, E and 5 by which the Petitioner has been directed to hand over possession to Respondents 4 to 10.

7. The writ application is accordingly; disposed of.