
(2019) 07 JH CK 0056

In the Jharkhand High Court

Case No : Writ Petition (C) No. 2711 Of 2019

Mangra Bhuiyan And Ors

APPELLANT

Vs

State Of Jharkhand And Ors

RESPONDENT

Date of Decision : 01-07-2019

Acts Referred:

Constitution Of India, 1950 — Article 226

Citation : (2019) 07 JH CK 0056

Hon'ble Judges : Sujit Narayan Prasad, J

Bench : Single Bench

Advocate : Awnish Shankar, Shweta Singh

Final Decision : Disposed Of

Judgement

1. The writ petition is under Article 226 of the Constitution of India, whereby and whereunder notice dated 27.05.2019 contained in memo No. 248 (Annexure 5) issued under the signature of respondent no. 4- the Circle Officer, Daroo, Hazaribag is under challenge, by which, the petitioner has been directed to remove the encroachment made on land appertaining to Khata No. 124, Plot No. 3934 measuring area 1.52 acres of village Harli, P.O-Daroo, District - Hazaribagh without giving an opportunity of hearing to the petitioner.

2. It is the case of the petitioner that land in question was settled in his favour in the year 1974 and since then he is in possession of the same. Respondent No. 4 issued notice upon the petitioner no. 1 for removing the encroachment over the above land vide memo no. 248 dated 27.05.2019 treating the possession of the petitioner over the land in question as encroachment. Upon receiving the notice, the petitioner brought the fact of settlement of the land by the competent authority of the State Government by filing reply before the respondent no. 4- Circle Officer, Daroo, Hazaribag but till date no final order has been passed.

3. Ms. Shweta Singh, A.C to learned S.C. (L & C) II submitted that the petitioner has not brought any document showing that the land in question is actually

settled in favour of petitioner, save and except a document which is under the signature of Additional District Collector, Hazaribagh dated 20.12.2018, wherein only recommendation has been made for settlement of land in question in favour of petitioner and it is well-settled proposition of law that recommendation cannot be said to be final order of settlement; as such contention raised by petitioner that the land has been settled in his favour is not correct.

4. Upon such submission, learned counsel for the petitioner submitted that if writ petition is disposed of giving liberty to the petitioner to submit reply in addition to reply submitted by him on 31.05.2019 (Annexure 6), including the document showing settlement of land in his favour, before the Circle Officer, Daroo, Hazaribag and further direction be issued upon the Circle Officer, Daroo, Hazaribag to take a final decision in the matter, the grievance of the petitioner shall be redressed.

5. Considering the submissions advanced by learned counsel for the parties, this Court is of the view that since the notice has been sought to be quashed by this Court in exercise of power conferred under Article 226 of the Constitution of India, which cannot be exercised by this Court keeping the fact into consideration that the petitioner has made reply before the Circle Officer, Daroo by virtue of Annexure 6 wherein there is a reference of Title Suit No. 26 of 2015 and Eviction Suit No. 01 of 2014. However, according to the petitioner in the said suits, the State is not a party rather it is between the private parties.

6. Be that as it may be, the question herein is with regard to the removal of encroachment in pursuance to issuance of impugned notice.

7. Hence, it is upon the petitioner to satisfy the concerned authority that they are in possession of the land in question on the basis of legal document showing therein their perfect title over the land.

8. In view thereof, the writ petition is disposed of giving liberty to the petitioner to make reply in addition to the reply made vide Annexure 6 to the writ petition, within a week before the Circle Officer, Daroo, Hazaribag, enclosing therewith the copy of order of settlement made by the competent authority, if any, so that the final decision may be taken by the competent authority.

9. After receipt of such additional reply, the competent authority/Circle Officer, Daroo shall take a final decision within a period of two weeks.

10. With the liberty aforesaid, the writ petition stands disposed of.