
(2003) 04 JH CK 0075
In the Jharkhand High Court
Case No : C.W.J.C. No. 1872 of 2001

Manohar Lal Jain

APPELLANT

Vs

State of Jharkhand and Others

RESPONDENT

Date of Decision : 16-04-2003

Acts Referred:

Bihar Public Land Encroachment Act, 1956 — Section 2(3), 2A, 3
Constitution of India, 1950 — Article 226

Citation : (2003) 2 JCR 701

Hon'ble Judges : Tapen Sen, J

Bench : Single Bench

Advocate : Ram Balak Mahto and Vikash Kishore Prasad, for the Appellant; B.S. Lall, Addl. A.G., for the Respondent

Final Decision : Allowed

Judgement

Tapen Sen, J.—In this writ application, the petitioner has prayed for quashing the order dated 8.3.1999 (Annexure-8) passed by the respondent No. 3 (Divisional Forest Officer-cum-Magistrate, Giridih Forest Division, Giridih) in B.P.L.E. Case No. 73 of 1997, whereby and whereunder he held that Plot No. 248 of the Madhuban Notified and Demarcated Forest Land was a public land and accordingly directed the encroachments to be removed within fifteen days. The petitioner is further aggrieved by the order dated 4.11.2000 (Annexure-10) passed by the respondent No. 2 of (Deputy Commissioner, Giridih) in B.P.L.E. Appeal No. 3 of 1999/13 of 1999, whereby and whereunder although he held that possession had been granted to the petitioner by the Civil Court, yet he directed that the parties should approach the competent authority to resolve the matter in relation to possession granted by the Civil Court on the plot in question. He further directed the petitioners not to carry out any non-forest activities such as construction etc. and directed compliance of the Hon'ble Supreme Court's Order.

2. The main ground of attack of the petitioner is that the lands are admittedly

raiya lands belonging to the petitioner, having been acquired by a registered "Patta" in the year 1913 and on the basis of a judgment of a Civil Court, raiya right and title was declared as far back as in the year 1969, whereafter the petitioner was granted possession through Civil Court and as such summary proceedings under the Land Encroachment Act was not maintainable.

3. The short facts which are necessary to be recorded for purposes of adjudication of this case is that the Petitioner is the Manager of the Samadh Shikhar Digambar Jain Bispanthi Kothi situated at Madhuban which is a religious and charitable society (hereinafter referred to as the Society). The said Society established various Dharmshalas through out the country, one of which is situated at Madhuban and is known as the Digambar Jain Bispanthi Kothi.

4. According to the petitioner, by reason of a registered raiya settlement dated 3.6.1913, the said Society was granted settlement of a total area of 165 acres of Gair Mazurwa Khas land situated on Plot No. 248 and 146 under Khata No. 36 of Village Madhuban by the then Landlord.

5. Accordingly, the Society became a raiya in respect of the said land and continued to be in possession thereof on payment of rent, firstly to the ex-landlord and then to the State, after vesting.

6. By reason of a Notification u/s 29 of the Indian Forest Act, dated 11.8.1948, bearing No. 9533-VI F-48-R, the State of Bihar took forcible possession of these lands. Thereafter the Society claimed for release of the same on the ground that it was their raiya land which could not have been made a subject matter of Notification u/s 29 of the Indian Forest Act because, under the provisions of the said Section 29, the State Government could have taken recourse thereto only in relation to a forest or a waste land or a land which was the property of the Government. According to the Petitioner, the land had already been settled as a raiya land of the Society and therefore, the provisions of Section 29 of the Indian Forest Act declaring the area to be a protected forest could not have been applied.

7. In spite of such claims being put forward, the same were not entertained as a result whereof the Society filed Title Suit No. 117 of 1957 claiming declaration of raiya rights over the lands in question as also a declaration that the State of Bihar had no right to illegally demarcate the said lands in terms of the provisions of the Indian Forest Act. In the said Suit, the State of Bihar appeared, contested and filed a Written Statement wherein they inter alia contended that the suit was not maintainable and whatever right or title the settlee had acquired, became superseded and lost by reason of the provisions of the Bihar Protected Forest Act, 1957. They further claimed that consequently possession had been rightly taken as no objection had been raised. The aforementioned Title Suit No. 117 of 1957 was initially dismissed by a judgment and decree dated 3.6.1960, whereafter a Title Appeal No. 74/68 of 1961 was filed and by judgment dated 6.7.1961 the same was allowed and the matter was remanded for afresh

decision. Upon such remand, the said Title Suit was ultimately decreed on contest and raiyati right was declared in favour of the Society. The defendants therein (i.e., the State of Bihar) were directed to hand over khas possession of the suit property to the Society within one month failing which, it was ordered that the Society shall be entitled to recover possession from the defendants through the process of law at their cost. This judgment was delivered on 15.12.1962 by the learned Munsif at Giridih.

8. Thereafter, the State of Bihar preferred Title Appeal No. 9/33 of 1963-66, which was dismissed by judgment delivered by the Additional Subordinate Judge, Hazaribagh on 4.3.1967, thereby upholding the judgment of the Trial Court to the effect, inter alia that the Suit land was the raiyati land of the Society which belonged to the entire Digambar Jain Community, and that it was not a forest land and, therefore, the State had no right to take forcible possession of the same.

9. Thereafter, the Society levied Execution Case No. 2/68 and as consequence thereof, the suit properties were delivered unto the Society through the processes of the Civil Court on 18.5.1969 by beat of drums in the presence of persons including the Forest Guards and Chowkidar. After delivery of possession, the Nazir submitted a report vide Annexure-3 to the effect that the delivery of possession had been effected and consequently the learned Munsif by his order dated 26.5.1969 confirmed the said execution report.

10. No appeal by the State or by any other authority was filed against the judgment of the Additional Subordinate Judge, Hazaribagh, either before the High Court or before any other Court of Law. The only Appeal that appears to have been filed, was Title Appeal No. 9/33 of 1963-66 which was preferred by the State against the judgment dated 15.12.1962 passed by the learned Munsif, Giridih. By reason of dismissal of the said Title Appeal, the judgment of the Civil Court stood affirmed and consequently the decree passed by the said Court has become final and binding between the parties.

11. In the meantime, the Bihar Land Reforms (Fixation of Ceiling Area and Acquisition of Surplus Land) Act, 1961 was enacted and as a result thereof, the Society, being the land holder, filed returns surrendering 54.46 acres of excess land and claimed retention of 119.31-1/2 acres of land. This Return was also accepted and the land holder, meaning thereby the Society, was allowed to retain 119.31-1/2 acres of land under the provisions of the said Ceiling Act. Finally, rent in respect of the said retained area was also assessed in favour of the Society whereafter they have been paying rent and receipts have been issued by the State also. Two such receipts are Annexure-4 to the writ application.

12. According to the Petitioner, the aforementioned 119.31-1/2 acres of land is situated adjacent south to the existing building and the Dharamshala of the Petitioner, out of which 3 (three) acres of land was surrounded by building a compound wall some time in the year 1963-64 for purposes of performing

religious ceremonies. In the year 1997, the Society desired to erect a Pandal within the aforementioned 3 (three) acres to facilitate the performance of the Panch Kalnayak Ceremony, but came to learn that on 6.8.1997, the Forest Guard had sent a Report on the basis whereof a proceeding under the provisions of the Bihar Public Land Encroachment Act, 1956 (hereinafter referred to as the B.P.L.E. Act) was initiated in respect of this 3 (three) acres of land situated on Plot No. 248 and a notice dated 15.9.1997 (Annexure-5) to that effect was issued u/s 3 of the B.P.L.E. Act, by which the petitioner came to learn that B.P.L.E. Case No. 73 of 1997 had been instituted.

13. Upon being so noticed, the petitioner filed cause and contended amongst others, that the proceeding was not at all maintainable inasmuch as the land were raiyati land upon which exclusive title vested in favour of the Petitioner/Society. It was further contended that such raiyati right had been confirmed by the Civil Court and therefore, a summary proceeding could not be allowed to upset findings of the said Civil Court. It was also contended that the lands were not public land and the petitioner-Society could not be said to be either encroacher or unauthorised occupants for purpose of initiating a proceeding under the B.P.L.E. Act, It has been stated by the petitioner in this Writ Application that no evidence was recorded in the said B.P.L.E. Case, but however, the parties filed their respective documents and the Petitioner also filed Written Notes of Arguments relying upon several decisions, holding that summary proceedings under the B.P.L.E. Act was not maintainable in cases of disputed questions of title and possession. The Written Notes of Argument has been marked as Annexure-6 to the writ application.

14. The petitioner has stated that all of a sudden and without communicating any final order, the respondent No. 3, by his memo No. 570, directed the petitioner to remove the alleged encroachment (boundary wall) within fifteen days from Plot No. 248. This order is marked Annexure-7.

15. Being aggrieved, the petitioner filed C.W.J.C. No. 829 of 1999 (R) before the then Ranchi Bench of the Patna High Court challenging the order dated 19.3.1999 as contained at Annexure-7.

16. According to the petitioner, the respondents filed a counter affidavit in the aforementioned write application, wherein they brought on record the order dated 8.3.1999 which is impugned in this writ application.

17. By reason of the order dated 8.3.1999 (Annexure-8), which was the final order passed in B.P.L.E. Case No. 73/1997, the Divisional Forest Officer directed the removal of the encroachment (boundary wall) within fifteen days and held that the land in question was a public land. He also directed that this land, without taking prior approval of the Central Government, should not be encroached as, it was a forest/public land.

18. In view of the aforementioned final order, dated 8.3.1999, the Writ Petition referred to above, i.e., C.W.J.C. No. 829 of 1999 (R) was disposed off on

31.3.1999 (Annexure-9) by permitting the petitioner to file an Appeal before the Appellate Authority and till disposal of the Stay Application, the High Court directed that no coercive step/action shall be taken as against the petitioner pursuant to Annexure-4 of that Writ Application (corresponding to Annexure-7 of this writ application).

19. Consequently, an Appeal was filed by the petitioner before the respondent No. 2 vide Land Encroachment Appeal No. 3/13 of 1999-2000 and by order dated 4.11.2000 as contained at Annexure- 10, no relief was granted to the petitioner and instead, a prohibitory direction was issued relying on a decision of the Hon"ble Supreme Court directing the petitioner not to carry on any non-forest activity.

20. In the counter affidavit filed by the respondent Nos. 3 to 5, it has inter alia, been contended that the Plot in question was declared as a protected forest by the Government of Bihar vide Notification dated 1.12.1954 and 15.6.1961 under Sections 29 and 30 of the Indian Forest Act, respectively. They have further contended that Plot No. 248 still continues to be a forest land for all practical purposes and that the land has not been denotified. They have further stated that the land is also a public land and therefore, the B.P.L.E. Act will have application. They have further stated at paragraph 12 of their counter affidavit that the Hon"ble Supreme Court of India in Civil Writ Petition No. 202 of 1995 had made applicable the provisions of the different Forest Acts upon all forests irrespective of the nature of ownership or classification thereof. They have further stated that similar view has been taken by the Patna High Court in C.W.J.C. 350 of 1993(R) and in view of the fact that the land in question was recorded as a jungle in the last cadestral survey, the same therefore still continues to be a forest land. According to them, the lands being forest land, encroachments made by the petitioner by erecting a boundary wall will certainly attract the provisions of the B.P.L.E. Act and therefore, the order passed by the respondent Nos. 2 and 3 were not legal and proper, but were also in accordance with the directions of the Hon"ble Supreme Court given in Civil Petition No. 202/1995.

21. The aforementioned contentions of the respondents to the effect that the land continues to be a forest-land and therefore, the proceedings of B.P.L.E. Act are applicable, are not acceptable. One of the later Notifications, i.e., the Notification dated 1.12.1954, which has been referred to by the respondent Nos. 3 to 5 in their counter affidavit at paragraph 5, was taken into consideration by the learned Munsif in Title Suit No. 117/57 in his judgment dated 14.7.1962 which was affirmed by the Appellate Court. The relevant portion of the judgment of the learned Munsif is paragraph 13 of his judgment contained at Annexure-1 and the said paragraph records inter alia not only of the Notification dated 1.12.1954, but also of the earlier Notification of 1947. The Civil Courts having held that the land in question was a raiyati land, the authorities in the revenue side have no jurisdiction or authority to upset those findings and continue to

harass the Petitioner by saying that notwithstanding the judgments of the Civil Court, the land continues to be a forest-land, thereby making the provision of the B.P.L.E. Act applicable. For the same reason, this Court deprecate the action of the Deputy Commissioner, Giridih (respondent No. 2) who, makes a weird statement to the effect that "the said plot of land was notified by the notification of Forest Department and this notification cannot be amended by the Court of learned Munsif." Such a statement coming from the Deputy Commissioner was wholly uncalled for and it amounts to virtually relegating the Civil Court to an inferior status. The Deputy Commissioner had not jurisdiction at all to make such comments against the learned Munsif. Additionally, the State of Bihar itself had filed an appeal against, the judgment of the learned Munsif, but that appeal was also dismissed by the Additional Subordinate Judge, Hazaribagh upholding the judgment of the learned Munsif. The matter ended finally there and thereafter in a B.P.L.E. proceeding the Deputy Commissioner, being a Revenue Authority, had absolutely no business to make comments against the judiciary as if he was its administrative superior. This Court would have taken action against the Deputy Commissioner, Giridih for having made such ridiculous comments against the judiciary of the State, but instead of doing so, this Court cautions the Revenue Authorities to be careful in future and not to venture into domains where they are forbidden by law to read. They are the executive wing of the Government and their actions/orders are confined within the executive domain and they no business nor any authority to make any comments against the judiciary or judicial officers. If such officers on the revenue side or on the administrative side of the Government are allowed to make comments on the judicial officers of the State, it would wreak havoc and would amount to direct interference in the administration of justice and injustice delivery system, which in its turn would have the effect of making unlawful inroads into the independence of the judicial system. This cannot be allowed and therefore, once again this Court cautions the officers from entering into such unwarranted controversies and misadventures.

22. Moreover, by applying a judgment of the Supreme Court, the Deputy Commissioner also committed a serious error and mechanically allowed himself to be misled because the judgment of the Hon'ble Supreme Court applied only to forest-lands. In the instant case, the lands were declared by two competent Courts of Civil Jurisdiction and it was finally held by the Appellate Court that "the suit land is the raiyati land of the Bishwapanthi Kothi which belongs to the entire Digambar Jain Community and it is not forest land and therefore the State has got no right to take forceful possession of the same." That being the position, the Revenue Authority had no jurisdiction whatsoever to say that the land continues to be forest-land. If they had wanted to say so, they could have very well challenged the judgment of the Additional Subordinate Judge dismissing the appeal of the State of Bihar in Higher Courts, but having not done so, they are clearly estopped from raising such pleas and that too in a summary proceeding.

23. Additionally, the long title of the B.P.L.E. Act clearly indicates that it is an Act for the prevention and removal of encroachment on public lands. The word

"public land" has been defined u/s 2 (3) of the B.P.L.E. Act and it means "any land managed by or vested in the union of India or the State of Bihar, or in any local authority or statutory body, public undertaking, educational institution, recognized by the Government or by any University established under any law for the time being in force, Railway Company or Gram Panchayat established u/s 3 of the Bihar Panchayat Raj Act, 1947 (Bihar Act VII of 1948), and includes any land over which the public or the community has got a right of user, such as right of way, burials, cremation, pasturage or irrigation."

From a plain reading of the long title of the B.P.L.E. Act and the definitions of "public land" above, the present land in question cannot by any stretch of imagination, be said to be a public land the same having already been declared by two Courts of competent Civil Jurisdiction to be the raiyati land of the Bishwapanthi Kothi which belonged to the entire Digambar Jain Community. Similarly, in view of conferment of the land unto the Society of which the Petitioner is the Manager and recognizing such conferment as raiyati right by the said Courts, neither the Petitioner nor the Society can be said to have made any encroachment within the meaning of Section 2 (A) of the B.P.L.E. Act which defines the word "encroachment" as unauthorised occupation of any public land. Thus, unauthorised occupation is sine qua non for attracting the applicability clause of the B.P.L.E. Act. The facts in this case clearly point to authorized occupation and not unauthorised occupation. In that view of the matter, it cannot be that either the Society or its Manager has encroached upon the land. Consequently, the impugned prohibitory direction directing the petitioner not to carry on any non-forest activity by relying on a decision of the Hon"ble Supreme Court, which in the facts and circumstances of this case, could not be said to have any application, primarily because the suit land in question was already declared to be a raiyatt land, and not a forest land, is wholly misconceived. For the same reason, the prohibitory direction issued by the respondent No. 2 per se illegal authority without jurisdiction and suffers from a complete non-application of mind.

For all the reasons stated above, this writ petition must succeed and it is accordingly allowed to do so. The impugned orders as contained at Annexures-8 and 10 are hereby set aside and quashed.