
(2010) 02 PAT CK 0028
In the Patna High Court

Md. Jamalluddin, Md. Sultan, Most. Chunni Khatoon and
Jamila Khatoon

APPELLANT

Vs

The State of Bihar and The Executive Officer-cum-Special
Officer, Kishanganj Municipal Council

RESPONDENT

Date of Decision : 18-02-2010

Acts Referred:

Constitution of India, 1950 — Article 21, 300A

Citation : (2010) 2 PLJR 518

Hon'ble Judges : Navaniti Prasad Singh, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Navaniti Prasad Singh, J.—On 08.01.2010, the writ petition was filed by the petitioners. They alleged that they are in peaceful possession of a piece of land appertaining to Khata No. 112, Plot No. 196, Thana No. 132 at Kishanganj. They are being threatened by the State to be dispossessed. Fearing dispossession in an unlawful manner, they had filed a Title Suit being Title Suit No. 12 of 2009 in the Court of Munsif, Kishanganj asserting their right, title and possession. In respect of the aforesaid lands, a public Land Encroachment proceeding was initiated against the petitioners for removal of their house from the piece of land allegedly on the ground that that land belongs to the Government and was required for some public project. The notice itself assumed peaceful possession of the petitioners and the house of the petitioners on the land in question. Petitioners filed their show cause stating that the land was settled to them by the ex landlord who, on abolition of zamindari, filed his returns showing ancestor of petitioners as the raiyat in respect of the said land. State and the authorities were all parties in the suit and had appeared in the suit which was for the same land but even though disputed questions of title were involved, authorities, in anxiety to get the land cleared so that the contractor could carry out his work, heard the matter, passed orders for eviction declaring it to be public land. The said order was passed on the 21st of December, 2009. No copy of the order was

served nor was it made available to the petitioners who had statutory right to appeal against the said order within 30 days. Directions were issued on 21.12.2009 for removal of encroachment by 25.12.2009. As noted above, the writ petition was filed on 08th of January, 2010. on 18th of January 2010, the writ petition was taken up and noticing the controversy, this Court ordered that till further orders, further proceedings of any nature in Encroachment Case No. 1 of 2009-2010 pending before the Circle Officer, Kishanganj shall remain stayed. Petitioners, thereafter, filed I.A. No. 722 of 2010 on 27.01.2010 after serving a copy thereof on the learned State Counsel. The matter was then taken up on 11.02.2010. The averments made in the interlocutory application was brought to the notice of the Court which disturbed the Court. This Court on 18.01.2010 had ordered that no further action be taken pursuant to the aforesaid encroachment proceedings. This order was passed in presence of the learned Counsel for the State. What is disclosed in the interlocutory application and not denied by the respondents is that on 19th of January 2010, with police force and Magistrate, the Circle Officer ensured that the house of the petitioners was raised to ground even though the petitioners, their lawyers protested specifically saying that High Court had passed interim orders, certified copy whereof was yet to be obtained. That did not deter the authorities. Right to property, though not specifically a part of fundamental rights being a right under Article 300A of the Constitution was brutally murdered in day light defying orders of this Court.

2. Without going into the question whether such an action of State would be deprivation of petitioners' life and liberty in terms of Article 21 of the Constitution, a fundamental right or not, suffice to say that even the respondents accept the fact that the house in question which was there for at least two years from before, on their own showing, was demolished. The orders of this Court having been violated with impunity, this Court took suo motu notice of the facts. One important aspect may also be mentioned here. When the matter was taken up on 11.02.2010, the learned State Counsel fairly stated that he had received instructions in the matter to file counter affidavit and has very fairly even today stated that though those instructions were received by him only recently, there were no mention about demolition of the house and throwing away the petitioners from the place in those instructions. He became aware of this only when this matter was taken up by this Court. If instructions were received later on and an event had taken place why it was sought to be concealed even from the State Counsel speaks volume of conducts of the respondents. A counter affidavit has now been filed in the writ petition by the Circle Officer. Without going into controversial facts which the Circle Officer himself admits with regard to title and possession as well as the fact that a Title Suit is pending in respect of the same very property in which they have already appeared and injunction petition was pending when they took such a drastic action virtually to make the suit infructuous and notwithstanding the aforesaid facts, they maintained that the proceedings were bona fide started and carried out in accordance with law, a suo motu contempt proceedings being there, the respondents were directed to

be present in Court. The learned Circle Officer produced the original file of the land encroachment proceedings which have been perused by this Court. That again shows a very disturbing trend. It clearly shows that having noticed the petitioners and having received the show cause, petitioners were heard, reports were called for from the Anchal Amin and the Anchal Nirikchak. These reports were not received on 14.10.2009 and the matter was adjourned. The matter was then fixed for 10.12.2009 and on that day, the order records that the reports have been received and the petitioners had already been heard earlier, orders would be passed now meaning thereby that the parties were heard without the reports and reports having been received behind their back, without disclosing them the reports, orders would be passed. Orders were, as such, passed on 21.12.2009. The proceedings end thereafter and there is no further order. From various communications found in the records and what is specifically pleaded in the counter affidavit in the writ petition, it is clear that on 15.01.2010, the Anchal Adhikari requested the Subdivisional Officer, Kishanganj that police force and Executive Magistrate be requisitioned on 17th and 18th of January, 2010 for removal of petitioners who were encroachers.

3. One wonders if what the respondents maintained that it was a small hutment why did they need such a big police force, Magistrate for two days to remove such encroachment. The fact of the matter is that neither on 17th nor on 18th January 2010 was any action taken. As noticed above, on 18th January 2010, this Court restrained the authorities from taking any action and, thus, hell broke loose on the petitioners on 19th January, 2010 after the stay was granted by this Court. There are no communications on record available to show that police force and Magistrate were required on 19th January, 2010 and no action could be taken on 17th or 18th January, 2010. There is no justification in either the show cause or the counter affidavit for this. To the contrary, the records of the encroachment proceedings which also contains a fax copy of the certified copy of the order of this Court bears an endorsement of having received it at 7 pm on 19.01.2010 as if the authorities knew that they would have to lead this in evidence in future, time was duly recorded. The plea is, before they got fax copy of the order, demolition has already taken place. It is not understandable as to if the High Court had passed the order on 18.01.2010, certified copy having been applied and obtained on the very next day why would no one bring this fact to the notice of the authorities till after demolition. Petitioners' grievance is also that though they had 30 days' time to file statutory appeal to the knowledge of the authorities, they had already filed a writ petition still only to overreach judicial process having come to know that stay order has been passed, they took these steps to frustrate the order of this Court and deliberately did so. It was only to facilitate the contractor whose work was getting hampered because of the petitioners' presence.

4. From all these facts, what is clear and apparent is the petitioners were undisputedly in peaceful possession of land on which they had their house. That is the assumption of the State itself. A Title Suit was pending to the knowledge of

the authorities in respect of declaration of title and confirmation of petitioners" possession in respect of the said property. Authorities had appeared and filed their written statement therein. Still they chose to proceed with the encroachment proceedings and demolish the house, thus, took upon themselves to decide the matter which was pending in a competent Court of civil jurisdiction. That is what they themselves admit in the counter affidavit. They have admitted that the matter was adjudicated in the Civil Court but still they had the authority to overreach the Civil Court to demolish the house. I may only note that they have not only overreached the Civil Court but they have deliberately overreached the orders of this Court as well.

5. In such circumstances, keeping in view the line of cases from Apex Court to this Court which have consistently held that where disputed questions of title and possession involved, public land encroachment proceedings are not to be resorted to and the matter has to be left to the decision of the Civil Court. I direct that no further steps would be taken by the State in respect of the said public land encroachment proceedings and the State would not disturb the possession of the petitioners in any manner till final decision of the Civil Court. The order passed being order dated 21.12.2009 in public land encroachment Case No. 1 of 2009-2010 which has now been brought on record by the respondents themselves, as copies thereof were not either given to the petitioners nor certified copy thereof given to the petitioners, is set aside. The writ petition is, accordingly, allowed.

6. As the State admits that the house of the petitioners was demolished on 19th of January, 2010 after the orders of restrain passed by this Court on 18th of January 2010, the petitioners would be entitled to cost by way of compensation of Rs. 10,000/- which the respondent-Collector of Kishanganj would ensure is paid to them within one week from today. The respondents have showed me a photograph purported to be a photograph taken on 16th of February, 2010 that they have reconstructed the hutment and, pursuant to order of this Court, restored the possession. The petitioners dispute the full restoration. In these matters, the Court would not like to go inasmuch as authorities would not now stop petitioners or interfere with petitioners" right which they were enjoying prior to demolition in any manner including provision for drinking water and toilet facilities which allegedly existed and have been removed by the authorities in the demolition move.

7. In regard to the two criminal cases that have been instituted as against the petitioners, in view of the facts as admitted above by the respondents-district authorities that the petitioners were in possession of that piece of land and that their house therein which had become eye sore to the contractor and had to be removed, the criminal prosecution apparently is only a device to get the petitioners out of the way. They are not for any bona fide purpose and are mala fide as such. Police would not proceed further in those investigations in any manner.