
(2009) 01 PAT CK 0003
In the Patna High Court
Case No : CWJC No. 4177 of 2001

Md. Jilani and Others

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 21-01-2009

Acts Referred:

Bihar Land Encroachment Act, 1950 — Section 3

Citation : (2009) 2 PLJR 299

Hon'ble Judges : Mihir Kr. Jha, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Mihir Kr. Jha, J.—Heard counsel for the petitioners and the counsel for the State. In this writ application the petitioners have assailed a notice dated 13.3.2000, as contained in Annexure 1, whereby and whereunder all that was communicated to the petitioners was that they should appear on 14.3.2001 for measurement of certain piece of land in order to determine as to whether there has been any encroachment on plot No. 1533, 1532 and 1452, as detailed in the notice itself.

2. Prima facie for the relief of the nature seeking quashing an interlocutory order, the notice, the petitioner has to show only one thing that the notice was fully without jurisdiction or in excess of powers by the Bihar Public Land Encroachment Act or the proceeding was malafide. There is no denial to this fact that the notice has been issued by the Anchal Adhikari, who is the Collector under the Bihar Public Land Encroachment Act. There is also no denial to the aspect that such impugned order dated 13.3.2000 is only a further step in pursuance to the notice u/s 3 of the Bihar Land Encroachment Act dated 7.2.2000.

3. From the conjoint reading of Annexure 11 the initial notice initiating the proceeding of Public Land Encroachment Case No. 3/1999-2000 and its rejoinder by way of show cause filed by the petitioners on 19.2.2000 it would transpire

that the plea which were raised by the petitioners required the Anchal Adhikari, the Collector under the Act, to get the measurement made. That is how the impugned order came to be passed.

4. In the counter affidavit the respondents have enclosed the copy of such measurement report being Annexure "C which would show that the Anchal Amin has reported as with regard to certain encroachment made by the petitioners. The further order on this measurement report in the encroachment case has not been passed only because this Court by an order dated 4.4.2001 had restrained demolition on the disputed plots of land. Therefore, it is clear that because of the interim order proceedings of the land encroachment case initiated by the authorities have not been completed.

5. The submission of the counsel for the petitioners that earlier also certain enquiries were made with regard to the petitioners encroaching the land in question and therefore, the proceeding initiated under the Act was barred has to be noted only for its being rejected. Not a single order has been produced by Mr. Gupta to show that prior to initiation of the present proceeding any earlier proceeding under the Act has been dropped. How the petitioners came in the contact of Anchal Amin, how did the Anchal Amin call the petitioner for verification of his document, how an order was sought to be passed but could not be recorded in favour of the petitioner, cannot be subject matter of an enquiry in the writ petition, especially when the case of the respondents is that on earlier occasion certain misconduct were committed by the concerned Anchal Amin in submitting a false report. This aspect in fact has been clarified in paragraph No. 5 of the counter affidavit which for the sake of convenience is quoted hereinbelow:

"That the prayer made in the writ petition to restrain the respondents from demolition and interfering with the possession of the petitioner pucca- house, its Court's yard and ban situate at khata No. 1533, plot No. 6826, Khata No. 1532, Plot No. 6827, Khata No. 1532, plot No. 6848, Khata No. 1452 plot No. 6828 Area 0.14 acres in total, further prayer of the petitioner to quash the notice dated 13.3.2001 (annexure-1) issued by that time Anchal Adhikari (respondent No. 4), Madhepur in Encroachment Case No. 3/99-2000 by which the petitioner above mentioned land has been directed to be measured, in order to remove the encroachment, being wholly misconceived is fit to be rejected as the land in question is recorded in survey khatian cadastral survey plot No. 6826 as Gair Mazarua Aam Road land at present also being - used as road. Similarly plot No. 6848 is recorded as Gair Mazarua Khas Pokhara, which is used as Sairat from the very beginning and is settled by the Government, plot No. 6827 is recorded as Gair Mazarua Khas Garha (Khanta) land, which is used as public drainage, plot No. 6828 is recorded as Be Lagan in the name of Shive Sharan Dixit, the Ex-landlord handed over the charge of this land to Govt, as be lagan and this land was also used by the public as party land and as such the aforementioned land can not be settled to any one, and the petitioners reliance made over the

registered sale deed (Annexures-2 to 6) by virtue of which the petitioners came in the possession of aforementioned plots, is not sustainable in the eye of law. More over the petitioners reliance made over to the Annexure-8 and 10, which are the reports of the Halka Karamchari Cum Circle Inspector is also not reliable as the same is made by the revenue, lower staff in collusion with the petitioner, and this collusive report contained in Annexures-8 and 10 are came into the notice of that time Anchal Adhikari, and the Anchal Adhikari has taken a very serious view in the matter and enquired into the matter, having found the aforementioned reports forged the issued show cause notice dated to Sri Naresh Prasad Singh, Revenue Karamchari cum Incharge Circle Inspector asking therein that why he should not be dismissed from the service. That time Anchal Adhikari having found the aforementioned two reports collusive issued notice dated 13.3.2001 (annexure 1) which has been received by the petitioners and in their presence the lands in question has been measured by the Anchal Amin, a trace map has been sketch by the Anchal Amin both dated 16.3.2001, perusal of the enquiry report dated 18.12.99, measurement report dated 16.3.2001 and the sketch map dated 16.3.2001 would show that petitioner possession over the disputed land is illegal and petitioner should vacate the land in question. Moreover, petitioners should also be held responsible as it appears that they are indulged with the revenue Karamchari in making the illegal collusive reports as contained in (Annexures-8 and 10)."

6. It is very significant that the aforesaid paragraph being the gist the case of the respondents has been also answered by the petitioner in the reply to the counter affidavit in paragraph 7 which reads as follows:

"That the same part of statements made in paragraph No. 5 is reproduction of the relief of the petitioner prayed for in this writ application and same part of the statement regarding the lands in question are misconceived and hereby denied and in reply the statements made in paragraphs 17 to 27 of the writ application be taken into consideration."

7. From the conjoint reading of the stand of the respondents in the counter affidavit and its rejoinder two things become clear, namely, that the earlier some Anchal Amin or subordinate staff in collusion with the petitioner had submitted a false report and secondly that the authorities under the Act having found that there was a clear case of encroachment in view of the land in question being recorded as a public land in the revenue records of the State have initiated a proceeding under the Act.

8. In that view of the matter, this writ application must be held to be premature and in fact wholly misconceived.

9. Counsel for the petitioners finally has contended that the impugned order, as contained in Annexure 1, is malafide.

10. In the opinion of this Court the malice has to be attributed either on fact or in law but this Court would find that there is absolute want of any pleading either

with regard to malice inasmuch as no person has been made party by name much less the Circle Officer, who has initiated the proceeding and passed the impugned order. The question of malice in law is automatically ruled out when a finding has been recorded by this Court that as a matter of fact no proceeding under the Act was ever drawn against the petitioner and this is the first proceeding under the Act. Obviously if this is the first proceeding under the Act, there would be no issue as with regard to the proceeding being even malafide in law. That being so, the plea of malafide raised by the petitioner appears to be "the last refuge of a losing litigant" and must be rejected. The writ application thus is wholly misconceived and is accordingly dismissed with a direction to the authorities specially the Circle Officer, Madhepur (Respondent No. 4) to ensure that the remaining part of the encroachment proceeding initiated against the petitioners is completed within a period of three months from the date of receipt/production of a copy of this order and in case the petitioner does not cooperate such proceeding must be concluded ex-parte.