

(1986) 01 PAT CK 0012

In the Patna High Court

Case No : Civil Writ Jurisdiction Case No. 1465 of 1985 (R)

Mohammad Samsuddin Gaddi

APPELLANT

Vs

The State of Bihar and others.

RESPONDENT

Date of Decision : 10-01-1986

Acts Referred:

Constitution of India, 1950 — Article 226, 227

Citation : (1987) PLJR 126

Hon'ble Judges : U.P. Singh, J

Bench : Single Bench

Advocate : B.C. Ghosh, Kalyan Roy and R.N. Ghosh, for the Appellant; R.B. Mahto, Advocate General and Mr. S.K. Chattopadhyaya, G.P.I., for the Respondent

Final Decision : Dismissed

Judgement

V.P. Singh, J.—In this writ application, the petitioner has prayed for a writ of mandamus commanding the respondents to settle plot nos. 102 of khata nos. 213 and 218 situated in Doranda. Further, the order passed by the Additional Collector contained in Annexure 18 is also challenged and sought to be stayed. A proceeding u/s 30f of the Bihar Public Land Encroachment Act was in (sic) against the petitioner by the Circle Officer of the town Anchal. After hearing the parties, the Circle Officer dropped the said proceeding in May, 1980. In July, 1985, the Sub-divisional Officer preferred an appeal u/s 11of the Act on the ground that they acquired the knowledge of the said order passed by the Circle Officer only in July; 1985. The Additional Collector after hearing both the parties, condoned the delay allowed the appeal and directed the Circle Officer to pass orders in accordance with law. The order of the Additional Collector is Annexure 8. The Additional Collector while considering the question of limitation held that the Land Reforms Deputy Collector (L.R.D.C.) had no knowledge about the orders passed by the Circle Officer as the same was not communicated to him and that the Circle Officer was not competent to try the case since he was himself the reporting authority.

2. At the very outset, the learned Advocate General questioned the maintainability of this writ application and contended that the order contained in Annexure 8 had been previously challenged in another writ application (C.W.J.C. No. 1317 of 1985(R)) and the said annexure was annexure 5 in that writ application. The said writ application had been dismissed as withdrawn by a Division Bench of this Court on 16.10.1985. Even earlier to that, the petitioner had sought the same (sic) on the same set of facts as in the present case and that C.W.J.C. No. 598 of 1984(R) was dismissed in limine on 24.4.1984. These facts are not controverted. It has now been held in a Bench decision of this Court in the case of Kishori Singh Vs. State of Bihar and Others, that (sic) withdrawal of the writ application would operate as bar to the (sic) of the second writ application on the same set of facts and in respect of the same cause of action. In view of this, this writ application must fail and in my opinion the present writ application is not maintainable.

3. In short, the facts for consideration in this case are that the petitioner claimed protection of section 6 of the Bihar Public Land Encroachment Act which provides that if the encroachment was made prior to 10th October, 1985, by a landless person having no homestead land on the date of encroachment and that it does not extend 1/10th of an area, then no action would be taken under the aforesaid Act. The petitioner, in order to get protection of section 6 of the said Act, claimed to be a landless person having no means of income other than the income derived from the shop premises situated on Gair Majarua land measuring 7 kathas and odd over a portion of plot nos. 100, 102 and 103 of khata nos. 213 and 218 of Doranda. In so far as plot no. 101 of khata no. 214 is concerned, it is recorded as Gair Majarua Malik land. The petitioner claimed to be in occupation of the premises for more than sixty years prior to 10.10.1955. The petitioner's contention is that the Additional Collector while considering the appeal u/s 11 of the Act could not condone the delay. It was further alleged that during the pendency of the case, the structure of the petitioner was partially demolished.

4. In the counter affidavit filed on behalf of the respondents, the claim of the petitioner that he is a landless person within the meaning of the explanation of section 6(e) of the Act has been controverted. It is stated that the petitioner possesses landed property in the town of Ranchi. Since the land in question is a Gair Majarua land, the petitioner has no right to claim the settlement of land in question as a matter of course. Plot nos. 102 and 103 of khata no. 213 all along remained a public land and there was no construction over either plot nos. 100 and 102 or 103. Plot no. 100 is a public road which runs between the Fire brigade office and the kabristan. Plot no. 101 of khata no. 214 is recorded in the record of rights as Gair Majarua Aam land and is thus a public land used as kabristan. It could not be encroached upon by any one and could be used only for public purpose. The total area of plot no. 101 is 556 kari out of which 197 kari was acquired under the Land Acquisition Act and remaining portion of 359 kari is being used as kabristan. Without obtaining any permission from any competent Authority, the petitioner illegally encroached upon some portion of

the public land of plot no. 101. It is asserted that the varying statement of the petitioner on different occasion shows that he attempted to grab the land of the Government in order to make illegal construction over it. Referring to the record of the Land Acquisition Case No. 6 of 1971, it was urged that the petitioner had claimed compensation on the ground of having constructed some structure over some part of plot no. 101 which had been acquired by the Government under the Land Acquisition Act. The petitioner claimed Rs. 15,000/- as compensation on account of the said acquisition. In the year 1981, in his application filed before the Additional Collector, the petitioner admitted that there is no construction over plot no. 101 and he claimed the existence of some construction over plot nos. 102 and 103. In these circumstances, the respondents urged that the petitioner himself did not have the knowledge as to on which part of plot nos. 101, 102 and 103 the so called construction was made by him. In fact, according to him, there is not a single construction over plot nos. 102 and 103 or plot no. 100 which is a public road.

5. There is also an intervenor's application filed by the president of Sunni Wakf Board (kabristan and Mosque) Committee, Doranda. They claim that since the petitioner has encroached upon the intervenor Committee's "kabristan land", they are directly concerned with the subject matter of the writ application. Intervener's application was therefore, allowed and they were heard. They have also supported the contention of the other respondents that the land of plot nos. 101, 102 and 103 were acquired under the Land Acquisition Act for construction of the over-bridge and the award was made in respect thereof According to them the Kabristan is situated over plot no. 101 and it is adjacent to plot nos. 102 and 100 having a common boundary line. Thus, the land of the intervenor is on the adjacent land of the petitioner. They have also disputed the claim of construction made by the petitioner over a part of either plot no. 102 or 103. According to them, plot no. 102 is a Nala and plot no. 103 is Parti Kadim of the main road of Doranda. No settlement of plot no. 101 was ever made or could be made to the petitioner since it falls on the main road and the encroachment made by the petitioner disrupts the traffic and also obstructs the Nala.

6. In view of the averments made by the parties, the question regarding the construction made by the petitioner over plot nos. 100, 101 or 102 is very much disputed and these disputed question of facts cannot be decided by this Court in this writ application under Articles 226 and 227 of the Constitution of India. The prayer for commanding the respondents to settle plot nos. 102 and 103 with the petitioner cannot be entertained and the writ of mandamus cannot be issued to compel the Government to grant settlement of such land in favour of a particular individual. The State Government is the Only competent Authority and it is within their competence and jurisdiction to make these settlements. Such relief cannot be entertained in a present writ application. In the result the application is dismissed but there will be no order as to costs.