

(2010) 03 PAT CK 0098
In the Patna High Court

Mohan Pandey and Kailash Pandey

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 10-03-2010

Acts Referred:

Bihar Bhoodan Yagna Act, 1954 — Section 11(4), 17, 17(4)

Citation : (2010) 03 PAT CK 0098

Hon'ble Judges : Ramesh Kumar Datta, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Ramesh Kumar Datta, J.—Learned Counsel for the petitioners is permitted to correct the number of the Land Encroachment Appeal in para-1(i) of the writ petition in the course of the day.

2. Heard learned Counsel for the petitioners and learned Counsels for the State and respondent No. 8.

3. The petitioners seek quashing of the order dated 16.9.2002 (Annexure-7) passed by the Collector, Gopalganj in Land Encroachment Appeal No. 29 of 1997 by which he has directed for removal of encroachment from land appertaining to Thana No. 155, Khata No. 76, Plot No. 324 area 3 decimals situated in village Rajapur, PO & PS Kateya, District-Gopalganj and further for quashing the order dated 18.10.97/1.11.97 (Annexure-4) passed by the Circle Officer, Kateya by which he has directed for removal of encroachment from the said land and also for direction to the respondents not to disturb the possession of the petitioners over the said land.

4. The short facts relevant for the decision in the present matter are that the aforesaid land was donated to the Bhoodan Yagna Committee, Gopalganj by Hathwa Raj. The petitioners claim that the donation of the present land was made by mistake along with large chunk of other lands as they claim prior settlement of the said Gair Majarua Malik land from the Hathwa Raj to their

ancestors on 2.1.1943.

5. Be that as it may, the fact remains that the donation to the Bhoodan Yagna Committee by the Hathwa Raj was the subject-matter of Case No. 135/70-71 and by order dated 16.12.1970, the Deputy Collector, Land Reforms, Hathwa had confirmed the donation of the said land in favour of the Bhoodan Yagna Committee u/s 11(4) of the Bihar Bhoodan Yagna Act, 1954. Admittedly the said order dated 16.12.1970 (Annexure-2) was not challenged in any proceedings either before the appellate authority u/s 17 of the Act nor any suit was filed for setting aside the order u/s 17(4) by any person. Thus, the order of confirmation acquired finality. Subsequently, it appears that the petitioners had approached the concerned Administrator of the Bhoodan Yagna Committee for the said land and the matter was under consideration of the authorities.

6. In the meantime, respondent No. 8, Suresh Baitha filed Encroachment Case No. 9/1997-98 before the Circle Officer, Kateya claiming encroachment of public land by the petitioners. The petitioners appeared before the Circle Officer and ultimately the aforesaid impugned order dated 18.10.1997/1.11.1997 was passed directing removal of encroachment. Aggrieved by the same, the petitioners filed Encroachment Appeal Case No. 29/1997 before the Collector, Gopalganj who by the impugned order dated 16.9.2002 upheld the order of the Circle Officer directing removal of the encroachment from the aforesaid plot No. 324.

7. Learned Counsel for the petitioners before this Court has sought to argue only on the basis of the land having been donated to the Bhoodan Yagna Committee by the Hathua Raj and confirmation of the said donation by order dated 16.12.1970 in Case No. 135/1970-71 by the DCLR, Hathwa. It is alleged by learned Counsel that the said order of confirmation has acquired finality not having been challenged by any person and the same is not open to challenge at this belated stage. Learned Counsel also refers to letter No. 9 dated 30.11.1997 sent by the Administrator, Bhoo Vitaran Abhyan Kendra, Bhore, District-Gopalganj written to the Circle Officer, Kateya with a copy to the Collector, Gopalganj and Sub-Divisional Officer, Hathwa claiming that the land belongs to Bhoodan Yagna Committee which has been confirmed in the aforesaid case and also referring to the dispute between the petitioners and Suresh Baitha with respect to the same for which steps were being taken by the Bhoodan Yagna Committee and a request was made to drop the encroachment proceedings in the matter. It is submitted by learned Counsel that once it is found that the land belongs to the Bhoodan Yagna Committee, having been duly confirmed under the provisions of Section 11(4) of the Bihar Bhoodan Yagna Act and the order has acquired finality, it was not open to the authorities of the State to have entertained any encroachment proceedings with respect to the same at the behest of respondent No. 8.

8. It is contended that the factum of the confirmation of the said land u/s 11(4) has also been admitted in para-9 of the counter affidavit filed on behalf of the

State respondents although an uncalled for statement has been made that there was no publication at the spot and the confirmation order is a void order. It is submitted by learned Counsel that it was not open to the respondent-authorities to make any such statement in their counter affidavit regarding the order being void as the order has been passed by a revenue authority of the State which has been conferred statutory powers under the provisions of the Bihar Bhoodan Yagna Act and a provision has been made for getting such order set aside either by filing an appeal before the higher revenue authority or by filing a civil suit in the court of law. Since neither has been done, it is not open to the State-respondents on their own to treat the said order as a void order and proceed in the matter, as has been done.

9. Learned Counsels for the State and respondent No. 8 both submits that the petitioners are not owners of the land which has been recorded in the Khatian as gair majarua maiik and the authorities have rightly proceeded in the encroachment matter and directed removal of encroachment by the petitioners. It is submitted that no such stand regarding the land being belong to Bhoodan Yagna Committee was taken before the Circle Officer or the Collector and it is not open to them to raise such plea before this Court.

10. This Court does not find any force in the submission of learned Counsel for the State or learned Counsel for respondent No. 8. Even in the impugned order passed by the Circle Officer dated 18.10.97/1.11.1997 there is reference to the fact that attempt was made by the petitioners to get Bhoomi Praman Patra in the Land Distribution Camp from the Bhoodan authority and thus it is not the case that the respondent authorities were unaware of the fact that the land belongs to the Bhoodan Yagna Committee. Being aware of the said fact, it was not open to the Circle Officer or to the District Magistrate, being themselves custodian of the land records, to have proceeded in the encroachment matter and pass an order under the Bihar Public Land Encroachment Act.

11. Learned Counsels for the respondents have been unable to show before this Court any provision of the Land Encroachment Act in which land having been donated to the Bhoodan Yagna Committee, would be the subject matter of proceedings under the said Act, that too at the behest of a third party like respondent No. 8.

12. In the above circumstances, this Court is of the view that the impugned orders dated 16.9.2002 passed by the Collector, Gopalganj and 18.10.97/1.11.1997 passed by the Circle Officer, Kateya are both without jurisdiction. They are, therefore, quashed.

13. The writ application is accordingly allowed.