
(2019) 12 JH CK 0075
In the Jharkhand High Court
Case No : Writ Petition (C) No. 5445 Of 2014

Mohan Prasad

APPELLANT

Vs

State Of Jharkhand And Ors

RESPONDENT

Date of Decision : 05-12-2019

Acts Referred:

Jharkhand Public Land Encroachment Act, 1956 — Section 5

Citation : (2019) 12 JH CK 0075

Hon'ble Judges : Sujit Narayan Prasad, J

Bench : Single Bench

Advocate : Ayush Aditya, Brij Bihari Sinh, Sanket Khanna

Final Decision : Allowed

Judgement

1. Heard Mr. Ayush Aditya, learned counsel appearing for the petitioner and Mr. Sanket Khanna, learned A.C. to G.A.-II appearing for the respondents.

2. The petitioner has preferred this writ petition for quashing the order dated 04.10.2014 issued by the Circle Officer, Garhwa in Encroachment Case

No.6/14-15 whereby and whereunder the petitioner has been directed to remove the encroachment over Khata No.246, Plot No.01 area 0.33½ acres.

3. Mr. Ayush Aditya, learned counsel appearing for the petitioner submits that the petitioner is the grandson of Chatura Sao, who had been granted settlement of 31 decimals of land of plot no.217 under khata no.246 by the ex-landlord by virtue of two Hukumnamas and after grant of said Hukumnamas the ancestor of the petitioner namely Chatura Sao came in possession and also paid rent in lieu of aforesaid settlement and in a family

partition, the said 31 decimals of land was allotted to the share of the petitioner.

He further submits that petitioner had also purchased 1 (one) decimal of land of plot no.217, khata no.246 by terms of registered sale deed dated

14.06.2004 and rent receipts were also issued and the petitioner had also sold 3 decimals of land in favour of his wife by terms of registered sale deed

dated 08.07.2009 of khata no.246 plot no.249 the said sale deed is annexed as Annexure-2 of the writ petition.

He further submits that the petitioner is residing with his family members since more than 20 years in the aforesaid plot in question but all of a sudden

the notice issued by the Circle Officer, Garhwa dated 24.04.2011 as contained in Annexure-3 whereby the petitioner was called upon to vacate the

land in question.

He further submits that in pursuant to the said notice, petitioner has appeared and filed his show cause on 06.05.2011 as contained in Annexure-4 to

the writ petition stating inter alia showing the possession of the petitioner as rightful possession. He further submits that the Circle Officer, Garhwa

without providing any opportunity of hearing and without considering the show cause, directed to vacate the land in question in which the petitioner is

residing with his family since more than 20 years.

Vide order dated 15.10.2014, this Court directed the respondent no.4 to file a separate and specific affidavit disclosing under what circumstances he

has passed order dated 04.10.2014 but till date no such affidavit has been filed.

4. Mr. Sanket Khanna, learned A.C. to G.A.-II appearing for the respondents submits that the land in question is public land that's why the Circle

Officer, Garhwa has rightly invoked provision of Jharkhand Land Encroachment Land Act. By way of referring to the counter affidavit filed on behalf

of the respondents he submits that the land in question is near Sarsatiya River.

5. Having heard the learned counsel for the parties, this Court finds that the Circle Officer, Garhwa without providing any opportunity of hearing to the

petitioner, passed the impugned order dated 04.10.2014 as contained in Annexure A/1 to the counter affidavit wherein it transpires that on 11.06.2014

the proceeding on the complaint of one stranger has been initiated. On 21.07.2014 some letter has been issued by the Sub-Divisional Officer, Garhwa,

and on 04.10.2014 the impugned order has been passed and the plot number was modified by the subsequent order dated 07.10.2014.

On perusal of Section 5 of the Jharkhand Land Encroachment Act, which provides for hearing which is a condition precedent of passing any order

under that Act that has not been complied with in this case.

6. In that view of the matter, the impugned order passed by the Circle Officer, Garhwa cannot be sustained in the eye of law as it is without

compliance of Jharkhand Public Land Encroachment Act, as well as against the well settled principle of audi alteram partem, accordingly, the

impugned order dated 04.10.2014 passed in Encroachment Case No.6/14-15 is quashed.

7. Accordingly, the writ petition stands allowed and disposed of.

8. However, if the authorities chose to proceed further, they may proceed in accordance with law.