
(2003) 07 JH CK 0123
In the Jharkhand High Court
Case No : CWJC No. 3741 of 1993 (R)

Mrs. Arti Gupta and Others	Vs	APPELLANT
State of Bihar and Others		RESPONDENT

Date of Decision : 21-07-2003

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2003) 4 JCR 493

Hon'ble Judges : S.J. Mukhopadhaya, J

Bench : Single Bench

Advocate : S.K. Ughal and P. Kumar, for the Appellant; R.S. Mazumdar and A. Banerjee, for the Respondent

Final Decision : Allowed

Judgement

S.J. Mukhopadhaya, J.—The writ petition was preferred by one Subroto Kumar Gupta and 5 others against the order dated 19th October, 1993/27th October, 1993 passed in Encroachment Case No. 77/1993-94 and common appellate order dated 29th October, 1993 passed in Encroachment Appeal No. 9/1993.

2. In the Encroachment Case the Deputy Collector Land Reforms, Hazaribagh ("DCLR" for short) declared the land in question as public land and ordered to remove the petitioners. The appellate authority while observed that Encroachment has already been removed in the light of order passed by the lower Court, refused to restore possession of petitioners but given them liberty to seek redressal at proper forum, if they have any grievance.

3. During the pendency of the writ petition the first petitioner, Subroto Kumar Gupta died and the heirs and legal representatives were substituted in his place.

4. The case of the petitioners is that the land in question was homestead/Lakhe Raj land having leased to one Beni Ram Bhagat. The heirs of Beni Ram Bhagat, namely, Olan Ram and Anant Ram sold plot No. 37, 38, 39 and 40 of Mauza, Nawada, Thana and Municipality, Hazaribagh having Thana No. 139, Khewat No.

2. 4/2 and 5 to Babu Baidya Nath Gupta and Glindra Kumar Gupta i.e., the predecessor-in-interest of (deceased) Subroto Kumar Gupta by a registered deed dated 11th May, 1985/19th July, 1985.

5. In the year 1955 Raja Bahadur Kamakhya Narain Singh, the sole proprietor of Ramgarh Raj filed a Title Suit No. 14/1955 in the Court of the learned Subordinate Judge, Hazaribagh, impleading the predecessor-in-interest of Subroto Kumar Gupta as defendants. In the said suit the plaintiff, Raja Bahadur Kamakhya Narain Singh prayed for his khas possession by evicting the defendants including predecessor-in-interest of Subroto Kumar Gupta, over land in question bearing plot No. 37, 38, 39 and 40. In the said Title Suit No. 14/1955 the State of Bihar was also a party who filed its written statement and pleaded that Maharaja of Ramgrah Raj ceased to be the proprietor of the lands in question which vested with the State of Bihar. At paragraph 21 of the written statement the State of Bihar pleaded that the suit was not maintainable in view of decision in an earlier Title Suit No. 6/49. On 14th July, 1964, Title. Suit No. 14/1955, filed by Raja Bhadur Kamakhya Narain Singh was dismissed with cost; the Court held that the predecessor-in-interest of Subroto Kumar Gupta were in possession of the land in question.

6. Another Title Suit No. 13/23 of 1955/57 was filed by Hari Narain Singh and others for declaration of their right, title and interest over various properties including the land and the pond in question having plot No. 38 and 39. They having lost in the suit preferred Title Appeal No, 77/1960/10/1962 which was also dismissed on 19th July, 1963 followed by Second Appeal No. 887 of 1963, preferred by Hari Narain Singh and others compromised on 11th October, 1971 on the terms and conditions mentioned in the trust deed, which formed part of the compromise petition. Six persons including Subroto Kumar Gupta were named as founders and trustees of the trust and were accepted as owners of the land and pond in possession, as shown in the scheduled of the appeal.

7. It will be evident from the order dated 19/27th October, 1993, passed in Encroachment Case No. 77/1993-94 that DCLR, Hazaribagh though noticed that there was disputed question of right and title involved in the case, still he ordered to evict the petitioners. The appellate authority vide order dated 29th October, 1993, passed in Encroachment Appeal No. 9/1993 did not choose to determine the case on merit on mere statement of the lawyer of the State that the encroachment had already been removed.

8. It is a settled law that in cases where there is a genuine dispute of right, title and possession in respect to a land, it should not be determined by any authority in a summary proceeding. Parties should be allowed to move before a Civil Court of competent jurisdiction. Even in respect to a Government land, if a person is in possession for a long period, instead of summary proceeding one should take recourse of a civil Court of competent jurisdiction.

9. In the present case there appears to be a genuine dispute relating to right and

title. The registered deed brought to the notice of the authority is of 19th July, 1985; there are decisions of Court in Title Suit No. 14/55 wherein the predecessor-in-interest of the deceased petitioner Subroto Kumar Gupta was a party. The aforesaid facts having noticed by DCLR in Case No. 77/1993-94 and the appellate authority in Appeal No. 9/1993, they should not have taken action for eviction in summary proceeding.

10. For the reasons aforesaid, the order dated 19th/27th October, 1993 passed in Case No. 77/1993-94 and the appellate order dated 29th October, 1993 passed in Appeal No. 9/1993 cannot be upheld. They are, accordingly, set aside with liberty to the aggrieved party to move before a Court of competent jurisdiction for appropriate relief.

11. The writ petition is allowed. However, there shall be no order as to costs.