

(2012) 04 JH CK 0148
In the Jharkhand High Court
Case No : Writ Petition (C) No. 750 of 2012

M/s Jharia Firebricks Pvt. Ltd.

APPELLANT

Vs

M/s Bharat Coking Coal Ltd. (B.C.C.L), General Manager,
Area VI, Kusunda Area and The Estate Officer, Area VI,
Kusunda Area

RESPONDENT

Date of Decision : 11-04-2012

Acts Referred:

Chotanagpur Tenancy Act, 1908 — Section 3, 84(3)

Citation : (2012) 2 JCR 625 : (2012) 3 JLJR 252

Hon'ble Judges : Poonam Srivastava, J

Bench : Single Bench

Advocate : P.K. Prasad and Rohit Roy, for the Appellant; Ananda Sen, for the Respondent

Final Decision : Allowed

Judgement

Hon"ble Mrs. Justice Poonam Srivastav

1. Sri P.K. Prasad, Sr. Advocate assisted by Sri Rohit Roy, Advocate appears on behalf of the petitioner and Sri Ananda Sen, Advocate appears on behalf of the respondents. Pleadings are complete and as agreed between the respective parties, the writ petition is being decided finally at the admission stage. Controversy involved in the instant writ application is whether the Estate Officer, Respondent no, 3 has jurisdiction to continue with the proceeding of Case No. 369 of 1988, pending before him under the provisions of the Public Premises (Eviction of Unauthorized Occupants) Act, 1971 (hereinafter referred to as the P.P. Act). The proceedings commenced at the instance of respondent nos. 1 and 2 for eviction of the petitioner from the land comprised of plot nos. 32, 33. 153, 166, 167, 168, 183, and 203 of Mouza Dhansar, Thana no. 52.

2. The assertion on behalf of the respondents is that the aforesaid land vests with the respondents under the Nationalization Act and notice was issued to him under the P.P. Act. The petitioner appeared to show cause and submitted his

objection on 12.8.1988 to which a rejoinder has also been preferred, but after a considerable delay.

3. Learned counsel has annexed the entire order sheet of case No. 369 of 1988 as Annexure 8 to the writ petition in support of his contention that the proceedings have lingered for a very long time. However, during the pendency of the aforesaid proceedings, the petitioner applied for coal linkage from Coal India Limited for its factory standing over the land in question and produced the documents relating to right, title and interest in respect of the land over which factory is situated. The linkage was sanctioned by respondent nos. 1 and 2 in favour of the petitioner vide order dated 6/6.12.1994. Subsequently the respondents published notice in the daily newspaper showing the name of the petitioner in the list of unauthorized occupants after an order was passed in W.P. (PIL) No. 1783 of 2011.

4. The claim of the petitioner for quashing the entire proceedings initiated before the Estate Officer, under the provisions of the Act, is not maintainable, since according to the petitioner, he has right, title and interest in the land on which his factory is standing. The submission is that the petitioner's firm was initially established in the name and style of Jharia Firebricks and Pottery Works, which was subsequently incorporated on 19.01.1995 under the provisions of the Companies Act, 1913 as M/s Jharia Firebricks and Pottery Works Ltd. on 17.01.1959. The name of the factory has been changed subsequently on 3.2.2007 to M/s Jharia Firebricks Pvt. Ltd. Further submission on behalf of the petitioner is that Shree Shree Shiva Prasad Singh of Jharia Raj Estate sold and transferred 16.50 acres of land falling under different plots of khata no. 1, 30 and 28 of Mouza no. 52 of Mouza Dhansar to Hari Prasad Agarwal for a valuable consideration by means of registered sale deed no. 3592 dated 30.10.1933. It is further contended that by means of another registered sale deed no. 6474 dated 23.07.1941 one Charku Mochi of Dhanbad sold and transferred his right, title and interest over plot no. 183 under khata no. 2 of Mouza Dhansar having an area of 2.56 acres in favour of Hari Prasad Agarwal. Before the aforesaid sale due permission of Additional Deputy Commissioner, Dhanbad, in Revenue Case No. 2 of 1940-41 was obtained. It is further submitted that by means of a registered indenture of lease in permanent Tikuri right bearing no. 1167 dated 18.02.1948, the then landlord of Jharia Raj Estate Sri Kali Prasad Singh, settled 10.18 acres of land under different plots including plot no. 203 of Mouza Dhansar in favour of said Hari Prasad Agarwal. He subsequently sold his entire right, title and interest acquired by means of the aforesaid deeds in favour of Jharia Firebricks and Pottery Works Ltd. by means of a registered deed no. 8340 dated 22.8.1955 for a valuable consideration. Further contention on behalf of the petitioner is that he was never involved in mining lease and he has been peacefully carrying out his business on payment of rent to the Government and the Municipality. Annexure-3 is a letter issued by the Deputy Commissioner, Dhanbad dated 25.11.1963 vide letter no. 4868/R, which is a non-encumbrance certificate at the time when the petitioner had applied for loan in the year 1962 from the Bihar

Stats Financial Corporation, Patna. Further assertion made by the petitioner is that during the recent revisional survey operation, land measuring 10.47 acres of Mouza Dhansar has been recorded in the name of the petitioner under R.S. Khata no. 151, R.S. Plot nos. 108, 111, 112, 113 and 115 (old nos. 32 and 33) over which the factory, staff quarters etc. are situated. The Revisional Survey Record of rights was finally published on 25.2.2007 u/s 84(3) of the Chotanagpur Tenancy Act, 1908.

5. The facts detailed herein above have not been disputed by the counsel appearing on behalf of the respondents. No counter affidavit is on record controverting the factual assertions.

6. The prayer for quashing the entire proceedings is on the ground that the question of right, title and interest cannot be decided in a summary proceedings especially as envisaged under the provisions of the Act, The initiation of the proceedings at the instance of the respondents is without jurisdiction. In case, there was any doubt then the respondents could have required the petitioner to produce necessary documents and examine the same instead of initiating the proceedings under the provisions of Public Premises (Eviction of Unauthorized Occupants) Act, 1971. The documents already annexed with the writ petition, prima facie, support the contention of the petitioner that they are in occupation of the land in question on the basis of legal and valid right and various deeds and documents and thus continuous possession by the petitioner are sufficiently established. The assertion that land in question belongs to the petitioner is thus prima facie correct. The claim on behalf of the respondents that the land vests under the Coking Coal Mines under the Nationalization Act, 1972 is without any basis. After initiation of the case against the petitioner in the year 1988 the petitioner filed show cause but the contesting respondents made no effort to ascertain the actual facts.

7. The emphasis of the learned counsel is on the order sheet of the Case No. 369 of 1988 pending before the Estate Officer, Dhanbad. The case was instituted on 02.06.1988 and thereafter it has been kept pending till date. Order sheet up till 18.12.1997 is annexed as Annexure-8 to the writ petition. It is, thus, obvious that the proceedings were kept pending without any rhyme or reasons. The case did not proceed further. The documents were already produced by the petitioner at the time when an application for coal linkage was made for supply to the factory and only after the respondents were satisfied regarding right title and interest on the basis of documents, linkage was sanctioned vide order dated 5/6.12.1994. The petitioner was evidently under an impression that the Coal India Limited had granted coal linkage after complete satisfaction and the proceedings before Estate Officer stands dropped. It was only when the petitioner came across the notice issued pursuant to an order dated 27.6.2011 passed in W.P.(PIL) No. 1783 of 2011 and published in the newspaper "Hindustan". A representation was made, but it has failed to yield any result.

8. The proceedings under the provisions of the Public Premises (Eviction of

Unauthorized Occupants) Act, 1971 is a summary proceeding and the authority is not required to decide any complicated question of right, title and interest. In fact, proceeding under the said Act can only be initiated after declaring that the premises in occupation of an incumbent is unauthorized and falls within the definition of "public premises". The Estate Officer has to come to a conclusion regarding unauthorized occupation over public premises, otherwise he had no jurisdiction to initiate proceedings under the P.P. Act. In the case of M/s Shree Bajrang Hard Coke Manufacturing Corporation Vs. Ramesh Prasad (Shri) and others, 2002 (3) J.C.R. 700 (Jhr), it was ruled that premises regarding which the proceedings are commenced must be declared to be a "public premises". A piece of property cannot be identified and declared as a public premises without a preliminary enquiry to the said effect as it has been done in the instant case. The Estate Officer cannot embark upon domain of civil Court for the purpose of adjudicating a question of complicated right and title. The land validly belonging to a person, who is not the owner of the mines cannot come within the provisions of section 3 of the Act. Similar view was expressed in a decision viz Madan Mohan Vadehra Vs. Bharat Coking Coal Company Ltd. and Others, . This Court in the case of M/s Bharat Coking Coal Limited, Dhanbad Versus M/s Bharat Firebricks and Pottery Works (P) Ltd., Dhanbad in W.P.(C) No. 650 of 2010 decided vide order dated 18.03.2011 upheld in L.P.A. No. 147 of 2011 vide order dated 7th February, 2012, ruled that since the documents annexed with the writ petition, prima facie, support the contention of the petitioner that occupation of the land in question is on the basis of legal and valid right based on various deeds and documents, which are not controverted by the respondents. Besides, continuance uninterrupted possession by the petitioner are sufficient to establish the petitioner's ownership and title over the land in question.

9. The claim on behalf of the respondents that the land vests under the Nationalization Act, 1972 is without any substance. The only objection raised by Sri Ananda Sen is that instead of instituting the present writ petition, the petitioner is liable to raise this objection regarding jurisdiction before the Estate Officer and bring to his notice that he cannot proceed against the petitioner. This objection by the learned counsel is also not worthy of any consideration. Proceedings had started as far back as in the year 1988, which are continuing till today. The show cause was already filed in the year 1988 itself, but the notice to remove the factory treating it to be unauthorized construction was issued and published in the daily Newspaper "Hindustan" having full knowledge that the proceedings are continuing before the Estate Officer since the year 1988. The notice in the "Hindustan" daily Newspaper was published in the year 2011. Twenty three years have elapsed, not only this, the petitioner had applied for coal linkage, which was granted without any objection. This was only after examining all the documents in favour of the petitioner and, therefore, after lapse of such a long period the respondents cannot raise an objection of alternative remedy and that the petitioner should go and plead the question of jurisdiction before the Estate Officer. The writ petitioner has craved indulgence of

this Court by invoking extra ordinary jurisdiction u/s 226 of the Constitution of India. I am convinced that he is entitled for a full protection. Besides, this Court also exercises suo motu power u/s 227 of the Constitution of India. In fact, the respondents are not entitled to raise any objection regarding alternative remedy whatsoever. It is also settled principle of law that assuming an occupant is a trespasser or an unauthorized occupant yet the Apex Court as well as various. High Courts have ruled that one can be dispossessed or ousted of a settled possession otherwise in accordance with law. Evidently the petitioner had brought all the documents on record in pending case before the Estate officer to which apparently the contesting respondents had not filed any objection or tried to get the proceedings completed and, therefore, in my opinion the grievance of the petitioner is well founded especially since the Estate Officer is not empowered to decide the complicated question of right, title and it can only be adjudicated by the competent Court of Civil jurisdiction.

20. The writ petition is, therefore, allowed. Proceedings pending before the Estate Officer, Area-VI, Kusunda Area, district Dhanbad, in Case No. 369 of 1SS8 under the provisions of the Public Premises (Eviction of Unauthorized Occupants) Act, 1971 is hereby quashed. The writ petition is allowed.