
(1999) 09 PAT CK 0140
In the Patna High Court
Case No : C.W.J.C. No. 3654 of 1990

Nagendra Mistry

APPELLANT

Vs

State of Bihar and Others

RESPONDENT

Date of Decision : 10-09-1999

Acts Referred:

Citation : (2000) 1 PLJR 209

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

Bench : Single Bench

Advocate : Yogendra Mishra and Birendra Kr. Tiwary, for the Appellant;

Final Decision : Allowed

Judgement

S.J. Mukhopadhaya, J.—The petitioner moves before this court against the notices dated 15th May, 1990 and 12th June, 1990 as contained in annexures 6 & 7, whereby and whereunder Notified Area Committee, Rafiganj (District-Aurangabad) directed the petitioner to remove encroachment from the land in question by demolishing his building/construction, or that otherwise the same would be removed by force and costs of such removal shall be recovered from the petitioner. As the case can be disposed of on short point, it is not necessary to discuss all the facts except the relevant ones.

2. The dispute relates to land being S.P. No. 709, appertaining to Khata No. 206 of mauza Imadpur, which was recorded as "Gairmazurva Am" in the cadestral survey as prepared in the year 1914.

3. According to petitioner, out of the total area 0.13 acres of plot no. 709, the petitioner is in possession over 0.05 acres since about last 40 years (now it is about 50 years), constructed a pucca house and residing over the same. He has no other land situated in the State of Bihar.

4. In the year 1977 on the recommendation of Halka Karmachari the third respondent issued Basgeet purcha to the petitioner for the purpose of collection

of rent from him on the ground that the petitioner is in possession of the land for much more than 20 years. The Anchal Adhikari by his order dated 24.2.78 ordered to issue Basgeet purcha, which was issued vide annexure-3. It appears that the Basgeet purcha already issued was subsequently cancelled, whereinafter the land encroachment case was also initiated against the petitioner being L.F. Case No. 11/84-85, 3/85-86. In the said case the petitioner appeared and filed show cause. The Circle Officer, who is the competent authority, after necessary enquiry and hearing the parties taking into consideration the fact that the petitioner was in possession over the land in question for more than 40 years, dropped the proceeding vide his order dated 18th of April, 1985.

5. The grievance of the petitioner is that 5th respondent Notified Area Committee, Rafiganj inspite of the aforesaid order passed in the Land Encroachment proceeding, issued the impugned notice on 15th May, 1990 followed by notice dated 12th June, 1990 for removal of encroachment from the land in question.

6. Inspite of notice issued to the respondents, they did not choose to appear, nor contested the case. The averments aforesaid have not been denied.

7. In the case reported in A.I.R., 1955, Patna, page-1, Special Bench of this Court held that a person on account of the afflux of time acquires title by acquiring possession to a property which was at one time a public property, that property cannot be taken by the State, even according to the continual of time of eminent possession, subsequently, without payment of compensation. It is further held that no private individual can take possession of Gairmazarua land and if such person acquires and perfects title to it by being in adverse possession for more that the statutory period even in respect of the so-called public lands like Gairmazarua Am etc.

8. The Supreme Court in the case of Government of Andhra Pradesh Vs. Thummala Krishna Rao and Another, , page-1081 held that person in unauthorized occupation of government land cannot be evicted in the summary proceeding, where complicated question of title arise for decision. The duration of occupation is relevant in the sense that a person who is in occupation of the property, upon which for appreciable length of time can be taken prima facie to have a bonafide claim to the property requiring an impartial adjudication according to the established procedure of law.

9. In the present case earlier proceeding was dropped in the year 1985 taking into consideration that the petitioner was in possession over the land in question for more than 40 years. In the aforesaid circumstances according to this court the respondent should not have proceeded in the matter, giving notice to the petitioner as made in this case.

10. This apart it has not been made clear by the Notified Area Committee, Rafiganj as to under which provisions such notices were issued.

11. In the facts and circumstances, I set aside the impugned notices dated 15th May, 1980 and 12th June, 1990 (annexures 5 & 7) with a liberty to the aggrieved person to move before Civil Court of competent authority. The writ petition is allowed with the aforesaid observations. However, there shall be no orders as to costs.