

(2014) 03 JH CK 0084
In the Jharkhand High Court
Case No : L.P.A. No. 110 of 2013

Nawal Kishore Singh and Another

APPELLANT

Vs

State of Jharkhand and Others

RESPONDENT

Date of Decision : 13-03-2014

Acts Referred:

Citation : (2014) 2 JLJR 176

Hon'ble Judges : R. Banumathi, C.J;S. Chandrashekhar, J

Bench : Division Bench

Advocate : Ananda Sen, Advocate for the Appellant; L.C.N. Sahdeo, Advocate for the Respondent

Final Decision : Disposed Off

Judgement

1. Seeking quashing of a part of Notice Inviting Tender (NIT) dated 18.12.2012, that is, serial No. 10 in the said NIT showing proposed construction of a road from "Manya Palace" to "Sanskar", W.P. (C) No. 838 of 2013 was filed by the appellants. The writ petition was disposed of by order dated 27.2.2013 with the following observation and directions:

Be that as it may, the respondent-Municipal Corporation, is not permitted to make construction of a road over the Raiyati land of the petitioners, if it is so. It may do so on verification of the claims of the parties and if it is a raiyati land only through the process of acquisition in public interest or the voluntary donation of such lands. At the same time the petitioners are not entitled to make access into the Park area by using it in the nature of road to access the main road. The respondent-Corporation would be entitled to develop the park by putting up such erection as boundary wall or barbed wire to fence the Park area in question, which is said to be developed for the benefit for the public at large.

Aggrieved by the observations that the appellants are not entitled to access the park area by using it in the nature of road to access the main road and the respondent-Ranchi Municipal Corporation would be, entitled to develop the park

by putting up boundary wall or barbed wire for fencing the park area, the appellants have approached this Court by filing this Letters Patent Appeal.

2. The appellants claimed that they purchased land in plot Nos. 132 and 138 in Village-Hatma, Thana-Bariatu and constructed their residential houses over there. Initially, the said plots belonged to Vijay Kant Sen and Vijay Bhushan and the said plots were divided into small plots and sold to several other persons. A notice inviting tender was issued vide memo dated 18.12.2012 in which at serial No. 10 a road was proposed to be constructed on the land which according to the appellants belongs to them and it was used by the appellants for accessing the park and the main road.

3. In the writ proceeding, a counter affidavit was filed on behalf of the respondent Nos. 2 and 3 stating that a 20 feet wide road in front of the house of the appellants would be constructed by the Ranchi Municipal Corporation. The said road would be constructed on the Government land which has to be developed as a park for the people in the vicinity. It is stated that on verification of the records, it was found that the land in question was encroached by the appellants. The appellants filed sale deed, rent receipt, tax receipt, probate order, correction slip etc. to substantiate their claim that the land on which a 20 feet wide road is proposed actually belonged to them.

4. Mr. Ananda Sen, the learned counsel appearing for the appellants has submitted that the observations of the learned Single Judge that the appellants are not entitled to make access into the park area by using it in the nature of road to access the main road, would seriously affected the rights of the appellants. It is further submitted that the permission granted by the learned Single Judge to the respondent-Ranchi Municipal Corporation to fence the park area by constructing boundary wall or with barbed wire, would amount to depriving the appellants of their claim of ownership over the land in question, and therefore, the observations/directions of the learned Single Judge is liable to be interfered with by this Court.

5. Mr. L.C.N. Sahdeo, the learned counsel appearing for the respondent-Ranchi Municipal Corporation submits that the sketch map annexed with the counter affidavit filed in the present proceeding and from the report dated 13.2.2013 of the Circle Officer, Ranchi, it is apparent that a part of the land in plot Nos. 137 and 156 is under encroachment by private persons.

6. We have heard the counsel appearing for the parties and perused the documents on record.

7. From the materials brought on record, it appears that there is a dispute with respect to nature of the land as well as the ownership of the land in question and therefore, the learned Single Judge observed that the respondent-Ranchi Municipal Corporation is not permitted to make construction of a road over the Raiyati land and liberty was granted to the respondent-Ranchi Municipal Corporation to verify the claim of the parties before "construction of the

proposed road. However, it appears that the appellants are aggrieved by the following observations made by the learned Single Judge:--

At the same time the petitioners are not entitled to make access into the Park area by using it in the nature of road to access the main road. The respondent-Corporation would be entitled to develop the park by putting up such erection as boundary wall or barbed wire to fence the Park area in question, which is said to be developed for the benefit for the public at large.

8. Since disputed questions of fact relating to nature of the land and the ownership/title of the land in question are involved, we are not inclined to interfere in the matter and the appellants would be at liberty to work out their remedies before the Civil Court. It is made clear that we have not expressed any opinion on the merits of the case and if the appellants approach the Civil Court, the matter would be decided without being influenced by the observations of the learned Single Judge which is extracted above. With these observations, this Letters Patent Appeal is disposed of.