
(2004) 05 JH CK 0036
In the Jharkhand High Court
Case No : Writ Petition (C) No. 749 of 2004

Nepal Singh

APPELLANT

Vs

State of Jharkhand and Others

RESPONDENT

Date of Decision : 18-05-2004

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2004) 3 JCR 623

Hon'ble Judges : P.K. Balasubramanyan, C.J.;Tapen Sen, J

Bench : Division Bench

Advocate : K.K. Sahay, for the Appellant; Manjul Prasad, SC (L and C) and Atanu Banerjee and D.C. Mishra, for the Respondent

Final Decision : Allowed

Judgement

P.K. Balasubramanyan, C.J.—This writ petition challenges the order passed by the Court of the Deputy Commissioner-cum-District Magistrate, Bokaro in Misc. Case No. 52/ 2003.

2. The complaint raised is about the decision dated 16.12.2003 as rendered by the Deputy Commissioner, pursuant to the direction issued by this Court in CWJC No. 3613 of 2000 (R). By that judgment, one of us (Mr. Justice Tapen Sen) had directed, on the agreement of all the parties before him, including the intervenor, to decide the issue afresh.

3. Pursuant to that direction, instead of issuing notices to the Director, Project Land Rehabilitation, Bokaro and the Intervenor, the Deputy Commissioner proceeded to pass the order, Annexure-10 in the writ petition. This is clear from the proceeding sheet, produced along with it. The said proceeding sheet does not show that any notice was issued to Director, Project Land Rehabilitation, Bokaro or the intervenor who has come forward challenging the order passed by the Deputy Commissioner, essentially on the ground that the direction issued by this Court in CWJC No. 3613 of 2000 (R) has not been complied with and all the

parties concerned, including himself, were not heard. It is also submitted that the reasons given in the order for intervention were all untenable.

4. The learned counsel for respondents 6 and 7 submitted that the writ petitioner has no locus standi, since he was not having any right in the property and the Deputy Commissioner rightly did not issue notice to him. But he could not show that notice was issued to the Director, Project Land Rehabilitation, Bokaro.

5. Even assuming that that part of the argument regarding notice to the intervenor is correct, we find that the Director, Project Land Rehabilitation was a necessary party to the proceeding as it is seen that the land was acquired for the purpose of the project and possession was handed over to it. Obviously, the Director, Project Land Rehabilitation, has interest in the land, acquired and handed over to it. Therefore, on finding that no notice was issued to the Director, Project Land Rehabilitation, the order under challenge has to be set aside, on the ground that the direction of this Court has not been complied with. Even then a question arises whether in absence of a challenge by the Director, Project Land Rehabilitation, this Court will be justified in interfering with the order at the instance of the writ petitioner, who was the Intervenor in CWJC No. 3613 of 2000 (R).

6. Earlier, in CWJC No. 3613 of 2000, filed for removal of encroachment in Plot No. 523, the intervenor had also been heard by this Court while this Court directed the Collector to decide the issue after hearing "all the parties concerned". According to the Intervenor, he was also one of the parties in CWJC No. 3613 of 2000 or in any event one of the parties concerned, with respect to the dispute and it was the intention of this Court that he should also be heard before a final decision is rendered.

7. Even if we leave out this submission, we feel that the Deputy Commissioner has not properly applied his mind to the relevant aspects and has just passed some sort of a mechanical order without application of mind and without reference to the relevant facts arising for consideration. He has not even answered the aspects urged by the Government counsel on behalf of the State. This is in addition to the fact that he did not give an opportunity of hearing to the Director, Project Land Rehabilitation, and the Intervenor in CWJC No. 3613 of 2000. Since, we are of the view that the Deputy Commissioner has failed to comply with the direction of this Court by not issuing notices to all parties concerned, meaning all the parties there before Court including the intervenor, the order is unsustainable. Moreover, the order also seems to be non speaking, in the sense, that the Deputy Commissioner has not considered all the relevant aspects arising therein. In that view, we think that the order, Annexure-10, dated 16.12.2003 passed in Misc. Case No. 52 of 2003 requires to be quashed. We, therefore, allow this writ petition, quash the order in Misc. Case No. 52 of 2003 dated 16th December, 2003 and remit the matter to the Deputy Commissioner-cum-District Magistrate, Bokaro for a fresh consideration and disposal on merits, after issuing notice to the State, the Director, Project Land Rehabilitation, and the

writ petitioner herein, and pass an order considering all the relevant aspects and after due application of mind. The Deputy Commissioner-cum-District Magistrate, Bokaro will also give an opportunity to others, who appear before him and claim to have a grievance, relevant to this proceeding.