

(2004) 01 JH CK 0074
In the Jharkhand High Court
Case No : W.P (PIL) No. 2659 of 2003

Palamau District Bar Association

APPELLANT

Vs

State of Jharkhand and Others

RESPONDENT

Date of Decision : 30-01-2004

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2004) 1 JCR 525

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

Bench : Division Bench

Advocate : N.N. Tiwary, Vishal Kumar Tiwary and R.R. Tiwary, for the Appellant;
Majual Prasad and A. Allam, for the Respondent

Judgement

P.K. Balasubramanyan, C.J.—The prayer in this writ petition filed by the Palamau District Bar Association is for the issue of a writ of mandamus directing respondent No. 5, the Deputy Commissioner, Palamau, to take a final decision on the petitioner's application for settlement of an extent of 0.67 acres of land in Plot No. 951 allegedly lying adjacent to the land held by the Association. It is contended that the application was kept pending and it was not being disposed of. The petitioner had earlier filed CWJC (PIL) No. 2843 of 1998 (R) and this Court had directed the Secretary, Revenue Department, and Government of Bihar, to take a final decision in the matter within a period of three months. No decision having been rendered pursuant to that direction, the petitioner was constrained to move this writ petition. The extent in question lies within the Court compound and according to the petitioner, the members of the Association were using it for accommodation of the lawyers, Advocate Clerks and the public in general. In the circumstances, the direction sought (sic) was liable to be issued.

2. In the counter affidavit filed on behalf of the respondents No. 3 and 5, the Secretary, Revenue Department and the Deputy Commissioner, it is submitted that an extent of 0.05 acres had been given to the Palamau Bar Association and

on that piece of land, an old building stands and it is being used by the Bar Association. Besides that, the petitioner Bar Association has unauthorisedly encroached upon 0.27 acres of land and had even put up unauthorized constructions thereon. Steps for removal of the encroachment in respect of that extent of 0.27 acres of land is liable to be taken and is being contemplated. In addition to that illegal encroachment, now the petitioner is claiming a further extent in Plot No. 951. It was an unauthorized attempt to annex the lands and that should not be countenanced by this court in a so-called public interest litigation. Plot No. 951 has been used for putting up some stalls and some stalls have been settled to hotels and betel shopkeepers for the convenience of the public and also the members of the Bar. These shops are being settled on an annual basis and was being so done for a long time. The petitioner Bar Association had never been in possession of Plot No. 951 and it is not in possession of that plot. It has no right or possession over that plot. Its claim that it is in possession is denied. This is an attempt to try and grab this land and thereafter allot it to persons for putting up stalls so as to make financial gain. The land in question was a Qaiser-e-Hind land and it was so recorded in the last cadastral survey. It could not be dealt with by the Deputy Commissioner. It was not liable to be assigned to the petitioner Bar Association. Any direction in that regard would send a wrong signal to persons who do not respect law and who believe in encroaching into Government land unauthorisedly. The Bar Association did not, in fact, need this land. This writ petition was liable to be dismissed.

3. A counter affidavit sworn to by a Deputy Collector on behalf of respondent No. 2 has also been filed. Therein also, pleas raised in the counter affidavit filed on behalf of respondents 3 and 5 are reiterated. It is submitted that Plot No. 951 situated at Daltonganj Collectorate compound is recorded as Qaiser-e-Hind land in the record of rights during the last cadastral survey. The petitioner Bar Association was given only 0.05 acres of land and the Association is not entitled to claim anything more. The unauthorized occupation of 0.27 acres of land adjacent to the 0.05 acres by the Association was liable to be terminated by recourse to law. Certain constructions put up by the Association were also illegal and unauthorized and without sanction and they were also liable to be pulled down. No relief should be granted to such violators of law and the writ petition was liable to be dismissed.

4. There is a dispute regarding the claim of possession made by the petitioner regarding 0.67 acres of land in Plot No. 951. It is pleaded that the petitioner Association has no possession over it, no right over it, and no control over it, though the petitioner claims that it is being used by it. It is also pleaded that plot is recorded as Qaiser-e-Hind land in the record of rights. There is also an allegation that the petitioner Association is in unauthorized occupation of 0.27 acres of land adjacent to 0.05 acres of land which alone it was permitted to use. Prima facie, the Association has not put forward any right over the 0.27 acres of land which is allegedly in its illegal occupation.

5. Government land is not intended to be distributed indiscriminately and especially it is not expected that encroachers should be favoured. The doctrine of public trust should Inform the Government while dealing with Government land and it cannot assign those lands, even if those lands are assignable, except for market value.

6. It is true that in the earlier writ petition, this Court directed the Secretary, Revenue Department, Government of Bihar to take a final decision on the claim of the petitioner Association. The State of Bihar has apparently taken the stand that the matter is now to be disposed of by the State of Jharkhand after the Bihar Reorganisation Act, 2000. Thus, it is for the Government of Jharkhand to take a decision and it is in that context that we have to consider the pleas raised in the counter affidavits filed on behalf of the respondents. What we find is a disputed claim by the petitioner of being in occupation with a further assertion by the respondents that even apart from the land now claimed, the petitioner is already in illegal occupation of some extent in respect of which proceedings are liable to be taken. In this state of the pleadings, we do not think that it is just or proper to issue any direction regarding the claim of the petitioner for settlement of a portion of land from Plot No. 951. The petitioner is a Bar Association consisting of members of a noble profession. It represents a body of citizens who are expected to be law abiding and who help to maintain the rule of law given unto ourselves by or Constitution. In our view, the action of the Association should always be legal and it should always endeavour to fulfill the legal and procedural requirements in respect of any claim that it may make. We are somewhat disappointed to find that it is being charged with Illegal occupation of a substantial extent of land and of a further attempt to grab some more extent of land. It is for the Association to ponder over its stand on those matters. Suffice it to say that we are not Inclined to exercise our discretionary jurisdiction under Article 226 of the Constitution of India at this stage. Nor do we Intend to say anything about the stand of the respondents that they propose to take action for removal of unauthorized occupation of land by the petitioner for removal of the unauthorized structures allegedly put up by the petitioner Association.

7. At the same time, we notice that from time to time constructions have been put up by the respondents in the compound and let out or granted on licence to shop keepers and betel shop owners. Obviously, it is the premises of the Court and the Collectorate. The respondents are not expected to convert this compound into a commercial area. Such a conversion is sure to affect the working of the Courts and of the Collectorate. The respondents are not expected to put up constructions indiscriminately without reference to the use to which the area is being put and the future needs of the Collectorate and the judiciary. The respondents are therefore restrained from putting up further constructions within the compound for commercial exploitation. Respondents 1 and 3 to 5 are directed to consider whether even the constructions now standing and let out for running hotels and betel shops, are really needed and whether at least their number should not be straightaway reduced. Therefore, the said respondents

will, on the expiry of current term of the licences of the shopkeepers now using the structures will take a fresh decision on the need to have those shops within the compound and would not review the licences of those shops which are not found necessary or conducive to the atmosphere that should prevail in such a complex. In other words, the renewal of the licences should be confined to the minimum number of hotels and/ or shops that are absolutely needed to serve the public that come to the compound, The tendency to use public premises, like the Collectorate compound and the compounds in which the judiciary is functioning for purposes unconnected with the Collectorate and the judiciary, cannot be encouraged. The respondents are, therefore, directed to look into these aspects and implement the directions given as above.

8. This writ petition is thus disposed of with the above directions.