
(2015) 07 PAT CK 0122

In the Patna High Court

Case No : Civil Writ Jurisdiction Case No. 9486 of 2001

Prabhu Nath Singh

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 28-07-2015

Acts Referred:

Bihar Public Land Encroachment Act, 1956 — Section 2(1), 3
Constitution of India, 1950 — Article 226

Citation : (2015) 07 PAT CK 0122

Hon'ble Judges : Birendra Prasad Verma, J

Bench : Single Bench

Advocate : Shashi Shekhar Dvivedi, Senior Advocate and Ranjan Kumar Dubey, for the Appellant; Manoj Kumar Jha, AC to GP 26, Advocates for the Respondent

Final Decision : Partly Allowed

Judgement

Birendra Prasad Verma, J—Heard the parties.

2. The petitioner has approached this Court in a proceeding under Article 226 of the Constitution of India assailing the validity and correctness of the order dated 03.01.1987 (Annexure-3) passed in Case No. 64 of 1986-87 by the respondent D.C.L.R., Gopalganj, whereby the petitioner has been held to be encroacher over a plot of land bearing khata No. 86 plot No. 220, area 5 katha 8 dhurs situate at village Sukrauli, P.S. Kateya, District Gopalganj (hereinafter to be referred to as the land in question) and a direction has been issued for removal of such encroachment. The petitioner is also aggrieved by the order dated 06.01.1999 (Annexure-1) as also the order dated 27.11.2000 (Annexure-2), both passed in Encroachment Appeal No. 11 of 1987 by the respondent District Collector, Gopalganj, whereby the aforesaid appeal preferred on behalf of the original respondent No. 5 Sitaram Singh (since deceased and substituted by his heirs and legal representatives) against the order of stay dated 09.03.1987 passed in Case No. 64 of 1986-87 by the respondent D.C.L.R., Gopalganj, staying his own impugned original order dated 3.1.1987, has been allowed and a direction has

been issued for removal of the alleged encroachment made by the petitioner from the land in question.

3. Learned Senior counsel appearing on behalf of the petitioner submits that the original respondent No. 5, being at loggerheads with the petitioner, as both of them were co-sharers/Gotias, after his election as Mukhiya of the local Gram Panchayat at the relevant time, filed an application before the respondent D.C.L.R. alleging therein that the petitioner has encroached upon the lands in question, which is a public land, and on the basis of his application respondent D.C.L.R., Gopalganj initiated Encroachment Case No. 64 of 1986-87. It is contended that notices were never actually served upon the petitioner with respect to the aforesaid encroachment case, though on papers it was shown to have been served "Bala-bala" or on refusal by the petitioner. It is pleaded that without giving reasonable opportunity of hearing to the petitioner and without following the procedures prescribed under The Bihar Public Land Encroachment Act, 1956 (In short "Act 1956") final ex parte impugned order was passed on 03.01.1987 (Annexure-3) declaring the petitioner to be encroacher over the lands in question and a direction was issued for removal of such encroachment allegedly made by the petitioner. It is further contended that the petitioner, after having come to know about the impugned final order dated 03.01.1987, filed a petition on 09.03.1997 before the respondent D.C.L.R. seeking review/recall of the aforesaid impugned final order dated 03.01.1987, whereafter the respondent D.C.L.R. by his order dated 09.03.1987 stayed the operation of the impugned final order dated 03.01.1987. It is pointed out that the original respondent No. 5, being aggrieved by the aforesaid order dated 09.03.1997, though copy of the aforesaid order is not on record, preferred Encroachment Appeal No. 11 of 1987 before the respondent District Collector, Gopalganj. The petitioner also claims to have filed separate Encroachment Appeal No. 1 of 1987 assailing the validity and correctness of the impugned final order dated 03.01.1987 (Annexure-3). As per his submissions, the aforesaid Encroachment Appeal No. 1 of 1987 was admitted by the respondent District Collector, Gopalganj on 27.05.1987 and the operation of the impugned final order dated 03.01.1987 (Annexure-3) was stayed and aforesaid appeal is still pending and has not been disposed of till date. He raises a grievance that the Encroachment Appeal No. 1 of 1987 filed by the petitioner has not been disposed of, but the appeal preferred by the original respondent No. 5 has been allowed by impugned order dated 06.01.1999 (Annexure-1) and further direction has been issued by the impugned appellate order dated 27.11.2000 (Annexure-2) for removal of the encroachment allegedly made by the petitioner from the lands in question. According to him, in the factual matrixes of the case, the impugned original order dated 03.1.1987 (Annexure-3) and the impugned appellate order dated 06.01.1999 (Annexure-1) as also the order dated 27.11.2000 (Annexure-2) are not sustainable in law and are fit to be quashed by this Court.

4. Per contra, learned State counsel appearing on behalf of the respondent No. 1 to 4 and the learned counsel appearing on behalf of the substituted respondent

No. 5 have opposed the prayer made on behalf of the petitioner and have supported the impugned orders passed by the original authority as also the appellate authority. Though, respondents No. 1 to 4 have filed their counter-affidavit controverting the averments made in the writ petition, but admittedly the respondent No. 5 has not filed any counter-affidavit. However, learned State counsel and the learned counsel appearing on behalf of the respondent No. 5, by referring to the averments made in the counter-affidavit filed on behalf of the respondent No. 1 to 4 are unanimous in their submissions that after initiating the encroachment proceeding under Section 3 of the Act, 1956, notices were issued to the writ petitioner, but he refused to accept the same. Therefore, it is contended that the respondent D.C.L.R. had no option, but to proceed in the matter ex parte. According to them, once final order was passed by the respondent D.C.L.R. declaring the writ petitioner as encroacher, then the respondent D.C.L.R. had no power to stay his own order by order dated 09.03.1987. Therefore, the respondent No. 5, being aggrieved by the said order, preferred Encroachment Appeal No. 11 of 1987 before the respondent District Collector, Gopalganj. It is further contended by them that, in fact, Encroachment Appeal No. 1 of 1987 filed by the writ petitioner and the Encroachment Appeal No. 11 of 1987 preferred by the respondent No. 5 were subsequently amalgamated and thereafter final impugned appellate order was passed on 06.01.1999 (Annexure-1) allowing the appeal preferred by the respondent No. 5. It is pleaded by them that the plea raised on behalf of the petitioner that his encroachment appeal is still pending is not correct. According to the learned counsel appearing on behalf of the respondents, the orders impugned are fit to be affirmed by this Court and the writ petition is liable to be dismissed.

5. After having heard the parties and on consideration of the materials available on record, this Court finds that it is true that on the basis of the petition filed on behalf of the respondent No. 5, Encroachment Case No. 64 of 1986-87 was started by the respondent D.C.L.R., Gopalganj in which the petitioner was impleaded as opposite party. Though, he is alleged to have encroached upon a public land bearing plot No. 220, but from the tenor of the impugned order dated 03.01.1987 this Court finds that the procedures prescribed under Act, 1956 have not been followed as reasonable opportunity of hearing was not given to the petitioner before passing the impugned final order dated 03.01.1987. Admittedly, the impugned final order dated 03.01.1987 is an ex party order. It is also not in dispute that the respondent D.C.L.R. himself stayed the impugned final order dated 03.01.1987 by order dated 09.03.1987 against which the respondent No. 5 preferred appeal, which was allowed by the impugned appellate order dated 06.01.1999 (Annexure-1). It is also not in dispute that the petitioner also filed Encroachment Appeal No. 1 of 1987 against the impugned final order dated 03.01.1987 (Annexure-3) and if the contention of the learned counsel appearing on behalf of the respondents is accepted that appeal preferred by the writ petitioner and the appeal preferred by the respondent No. 5 were amalgamated, then it is surprising that in the impugned appellate order dated 06.01.1999

(Annexure-1), there is no reference at all about the appeal preferred by the petitioner and the ground taken by him for assailing the validity and correctness of the impugned original order dated 03.01.1987 (Annexure-3). It appears that the respondent District Collector, Gopalganj has failed to apply his independent judicial mind to the factual matrixes of the present case. In the considered opinion of this Court, the entire matters require reconsideration and a fresh decision from the stage of Section 3 of the 1956 Act by the Collector under the Act.

6. For the reasons recorded above, the impugned original order dated 03.01.1987 (Annexure-3) passed in Case No. 64 of 1986-87 by the respondent D.C.L.R., Gopalganj, and the impugned appellate order dated 06.01.1999 (Annexure-1) passed in Encroachment Appeal No. 11 of 1987 as also the impugned appellate order dated 27.11.2000 (Annexure-2) passed in aforesaid Encroachment Appeal No. 11 of 1987, both by the respondent District Collector, Gopalganj are hereby set aside and quashed, and the matter is remitted back to the respondent D.C.L.R., Gopalganj, the Collector under the meaning of the Act, 1956 with a direction to proceed in the aforesaid Encroachment Case No. 64 of 1986-87 afresh strictly in accordance with law.

7. In order to expedite the matter, the petitioner as also the substituted respondent No. 5 are hereby directed to appear before the respondent D.C.L.R., Gopalganj with a certified copy of the present order on 25th August, 2015. Thereafter, he shall fix a firm date for proceeding in the matter afresh in accordance with law as also in the light of the observations made above. The parties shall be at liberty to raise all the issues of facts and law, which are available to them.

8. It is clarified that if either party fails to appear on the date/dates fixed without reasonable cause, then the respondent D.C.L.R., Gopalganj himself or any other officer authorised to act as the Collector under the meaning of Section 2(1) of the Act, 1956 and may be in seisin of the case shall be at liberty to proceed further in accordance with law, and in that case such defaulting party shall not be allowed to raise the plea of violation of rules of natural justice.

9. In the result, the writ petition stands allowed to the extent indicated above, but the parties are left to bear their own costs.