
(2021) 04 JH CK 0001

In the Jharkhand High Court

Case No : Writ Petition (C) No. 4002 Of 2020

Rajeshwar Prasad @ Rajesh Prasad Saw

APPELLANT

Vs

State Of Jharkhand And Ors

RESPONDENT

Date of Decision : 05-04-2021

Acts Referred:

Bihar (now Jharkhand) Public Land Encroachment Act, 1956 — Section 3, 4, 5, 6

Citation : (2021) 04 JH CK 0001

Hon'ble Judges : Rajesh Shankar, J

Bench : Single Bench

Advocate : A. K. Sahani, Rakesh Roy

Final Decision : Disposed Of

Judgement

1. This case is taken up through video conferencing.
2. The present writ petition has been filed for quashing the eviction notice dated 17th November, 2020 (Annexure-4 to the writ petition), whereby the Circle Officer, Gola- respondent no.2 has called upon the petitioner and his father to vacate the part of the land, appertaining to plot no.305, Khata no.92, measuring an area of 5 decimals of village Sosokalan, District Ramgarh, without affording any opportunity of hearing or following mandatory provisions of Bihar (now Jharkhand) Public Land Encroachment Act, 1956 (hereinafter to be referred as 'the Act, 1956').
3. Learned counsel for the petitioner submits that on 20th June, 1929, a piece of land appertaining to plot no.305/572, Khata no.92, Mauja Sosokalan, measuring an area of 3.21 acres was settled in favour of the petitioner's grandfather. At the time of vesting, the name of the petitioner's grandfather, namely, Mathura Sahu was recorded in Register-II and, accordingly, he had been paying rent to the State Government. The rent receipts for the said land were being issued since 1965. The petitioner made an application before the respondent no.2 on 14th September, 2019 for issuance of rent receipt for the said land. The respondent

no.2, however, issued notice to the petitioner on 6th January, 2020, observing inter alia that the Jamabandi of the land in question created in favour of the petitioner's grandfather is suspicious and, thus, he was directed to appear before him on 17th January, 2020 with relevant documents. Accordingly, the petitioner submitted his reply before the respondent no.2 along with supporting documents. Thereafter, another notice dated 5th September, 2020 was issued by the respondent no.2 against Mathura Sahu (grandfather of the petitioner) and others in Suspicious Case no.02 of 2020-21, directing them to appear on 23rd September, 2020 and produce documents relating to the said land measuring an area of 3.21 acres. Thereafter, no communication was made by the respondent no.2 in relation to Suspicious Case no.02 of 2020-21. However, on 17th November, 2020, a notice was issued by the respondent no.2 in the name of the petitioner's father as well as the petitioner (wrongly mentioning his name as 'Rajesh Prasad Saw' instead of his actual name 'Rajeshwar Prasad') calling upon them to appear before him on 2nd December, 2020 along with relevant documents after removing the alleged encroachment made over an area of 5 decimals appertaining to plot no.305, Khata no.92. It is also submitted that no notice under Section 3 of the Act, 1956 has ever been served upon the petitioner or his father. Moreover, no opportunity of hearing as mandated under Sections 4 and 5 of the Act, 1956 has been afforded to the petitioner or his father. Learned counsel for the petitioner, on instruction, submits that no final order has been passed by the respondent no.2 in pursuance of the impugned notice dated 17 th November, 2020 and the petitioner is still in possession of the land in question.

4. Mr. Rakesh Roy, learned A.C. to G.A.III, appearing on behalf of the respondents submits that since the land occupied by the petitioner is public land, he has rightly been directed to vacate the same vide impugned notice issued by the respondent no.2.

5. Heard learned counsel for the parties and perused the contents of the writ petition.

6. The main submission of learned counsel for the petitioner is that the petitioner cannot be forced by the respondent no.2 to vacate his land without following the due procedure as prescribed under the Act, 1956.

7. A detailed procedure has been prescribed under Act, 1956 empowering the Collector under the said Act (respondent no.2 herein) to take steps for removal of encroachment from the public land. As per Section 3 of the Act, 1956, if it appears to the Collector from an application made by any person or upon information received from any sources that any person has made or is responsible for continuance of any encroachment upon any public land, the Collector may cause to be served upon such person a notice in the prescribed form requiring him to appear on a date which shall not be less than two weeks from the date of service of notice.

Section 4 of the Act, 1956 provides that the person to whom notice under

Section 3 has been served or any person concerned with the alleged encroachment made over the public land has the right to appear before the Collector and to put forth his case in defence.

Section 5 of the Act, 1956 provides that the Collector shall provide opportunity of hearing to the applicant or the person to whom the notice has been served or any other person who may be interested either in the encroachment or in the removal thereof and the said authority may take such other evidence as may be adduced in that behalf. As per the proviso to Section 5, if the person on whom notice has been served under Section 3 or any other person concerned in relation to the encroachment case fails to appear and to file show cause reply on the date specified in the said notice or any other date to which hearing is adjourned, the Collector may proceed to hear the matter ex-parte.

Section 6 of the Act, 1956 empowers the Collector to pass final order after providing due opportunity of hearing to the concerned person.

8. On perusal of the contents of the writ petition it appears that the respondent no.2 by reasons of the impugned notice issued under Section 3 of the Act, 1956 has straightway directed the petitioner to remove the alleged encroachment from the land in question, which is not permissible under law. The respondent no.2 is under statutory obligation to follow the procedure prescribed under the Act, 1956 as detailed herein above.

9. Hence, the petitioner is directed to appear before the respondent no.2 in the concerned land encroachment case by 26th April, 2021 and to file show cause reply in his defence. On filing of the such reply, the respondent no.2 after due consideration of the same and on making enquiry, if so required, shall take appropriate informed decision, as mandated under Section 6 of the Act, 1956.

10. Till the said decision is taken by the respondent no.2, no coercive action shall be taken against the petitioner in pursuance of the impugned notice (Annexure-4 to the writ petition).

11. The writ petition is, accordingly, disposed of.