

(2013) 08 JH CK 0075
In the Jharkhand High Court
Case No : WP (C) No. 5166 of 2013

Ranjit Sahni and Others

APPELLANT

Vs

State of Jharkhand and Others

RESPONDENT

Date of Decision : 27-08-2013

Acts Referred:

Citation : (2013) 4 JLJR 309

Hon'ble Judges : Narendra Nath Tiwari, J

Bench : Single Bench

Advocate : Rohit Roy and Vaibhav Kumar, for the Appellant; Arbind Kumar Mehta and Navin Kr. Singh, for the Respondent

Final Decision : Allowed

Judgement

Narendra Nath Tiwari, J.—Learned counsel appearing on behalf of the petitioners prays for and is allowed to delete the name of respondent No. 5 from the cause title. Defect pointed out in W.P.(C) No. 5176/2013 is ignored.

2. Though these writ petitions have been listed under the heading "For Orders", learned counsel addressed this Court on merit of the case and prayed for hearing and disposal thereof at this stage itself, in view of the nature of the impugned order.

3. After hearing learned counsel for the parties at length and with their consent, these writ petitions are being disposed of by this order.

4. The petitioners are aggrieved by the order dated 26.7.2013 and the subsequent follow-up orders passed in purported exercise of power u/s 3 of the Bihar/Jharkhand Public Land Encroachment Act (hereinafter to be referred as "the said Act").

5. The petitioners have assailed the said order mainly on the ground that the order has been passed without complying with the mandatory provisions of Sections 3, 4 and 5 of the said Act as well as the principle of natural justice.

6. Learned counsel for the petitioners submitted that notices were issued to the petitioners, under purported provisions of Section 3 of the said Act by order dated 27.4.2013 fixing next date 8.5.2013. On that date fixed in the notice, the petitioners had appeared and prayed for time to file their defence and documents. The case was thereafter fixed for 14.5.2013. On that date out of 117 persons, against whom notices u/s 3 were issued, large number of persons were absent. The Anchal Adhikari, thus, directed to issue notices on all the persons fixing 22.5.2013. From the order sheet of 22.5.2013 it would appear that the case was adjourned and time was granted for filing-revenue document-fixing 15.6.2013. On 15.6.2013 the Anchal Adhikari again granted time for filing documents, but no further date was fixed for hearing. Suddenly on 26.7.2013 the impugned final order was passed holding that the land of Plot Nos. 221, 220 and 222 under Khata Nos. 1 and 2 is public land and has been encroached upon by the petitioners and others. They were directed to remove the encroachment and vacate the land. They were also warned that in case of noncompliance of the order, encroachment shall be got removed by the respondents and cost of removal shall be realised from them (the petitioners and others).

7. Learned counsel for the petitioners submitted that the said order is violative of the mandatory provisions of Sections 3, 4, 5 and 6 of the said Act and is per se illegal. Section 3 provides for a clear notice of not less than two weeks for appearance from the date of service of notice to show cause. But in the instant case, two weeks time was not given for appearance and filing reply to show cause notice as required by the said provision of law. The petitioners were also not allowed to raise their defence in accordance with Section 4 and date of hearing was not fixed and no opportunity of hearing was given to the petitioner, as required by Section 5 of the said Act. Suddenly impugned final order dated 26.7.2013 has been passed u/s 6 of the Act.

8. Learned counsel submitted that the Bihar/Jharkhand Public Land Encroachment Act provides a clear procedure for initiation of proceeding, giving notice and opportunity of defence and for hearing under Sections 3, 4 and 5 respectively, before passing final order u/s 6. In the instant cases the said provisions have been by-passed. The impugned order is, thus, wholly illegal and unsustainable.

9. Learned counsel submitted that admittedly the appellants are in possession of their respective land for a long time and by the impugned order they have been sought to be displaced without giving them sufficient opportunity of hearing. The order has been passed in blatant violation of the principle of natural justice as well and the same is a nullity.

10. Learned J.C. to S.C. (Mines) appearing on behalf of the respondents initially tried to defend the order. However, faced with the clear provisions of law and apparent non-compliance thereof could not support the same. On perusing the order sheet of the case, he conceded that no date for hearing was fixed before the impugned final order was passed on 26.7.2013 and the order is violative of

Sections 5 and 6 of the Act.

11. After hearing learned counsel for the parties, I find from the order sheet-Annexure-2-that the proceeding was initiated by order dated 27.4.2013 and final order was passed on 26.7.2013. In between no specific date was fixed for hearing. From order sheet dated 8.5.2013 it is evident that on that date some of the persons out of 117 had appeared and prayed for time for filing documents. On their prayer, next date 14.5.2013 was fixed for that purpose. On 14.5.2013, since some of them were not present, the Anchal Adhikari issued fresh notice to all the 117 persons fixing 22.5.2013. The order sheet dated 22.5.2013 shows that all the persons appeared but proper documents were not produced by them except one Ishwar Singh who filed sale deed and rent receipts in respect of his land. Thereafter, 15.6.2013 was fixed for further proceeding. On 15.6.2013 the aforesaid Ishwar Singh was directed to produce the document in support of his right, title acquired by his vendor and the related revenue document. No specific date was fixed by that order. The date was kept blank by putting dots in that place. The last lines read as follows:--

IS SAMBANDH RAJSVA KAGZAT KI MANG KAREN ABHILEKH DINANK.....KO RAKHEN.

(Emphasis supplied)

It is manifest from the last line of the order dated 15.6.2013 that no further date was fixed.

12. Suddenly on 26.7.2013, the impugned order has been passed holding the land in question as public land encroached upon by the petitioners; directing them to remove encroachment or to face forcible removal at their cost.

13. After going through the entire order sheet, I find that date of hearing was not fixed in the case and no opportunity of hearing was given to the petitioners, as required by Section 5 of the said Act.

14. On conjoint reading of Sections 3, 4, 5 and 6 of the said Act, it is clear that specific procedures have been laid down from initiation of proceeding up to final hearing and decision of the proceeding under the said Act.

15. The procedure prescribed by the said special law has to be strictly followed.

16. Non-compliance of the said special provisions renders the proceeding and the order passed in that process wholly illegal and unsustainable.

17. The scheme and object of Sections 3, 4 and 5 is to provide sufficient opportunity of representation and hearing before holding a person "encroacher of public land" and his removal from the land.

18. The said provisions stem from the basic human right and the principle of natural justice and fair play well placed and guaranteed under Articles 14 and 21 of the Constitution of India.

19. The impugned order is also vitiated, being violative of Articles 14 and 21 of the Constitution.

20. In the light of the above discussion, the impugned order dated 26.7.2013 passed in Ramgarh District Case No. 1/2013-14 by Anchal Adhikari, Ramgarh alongwith follow-up orders are quashed. The writ petitions stand allowed.