
(2018) 03 JH CK 0109
In the Jharkhand High Court
Case No : W.P.(C) No.3108 of 2017

RAVINDER SINGH MAND AND OTHER	Vs	APPELLANT
STATE OF JHARKHAND AND OTHER		RESPONDENT

Date of Decision : 28-03-2018

Acts Referred:

Citation : (2018) 03 JH CK 0109

Hon'ble Judges : ANUBHA RAWAT CHOUDHARY, J

Bench : Single Bench

Advocate : Rahul Lamba, Varsha Ramsisaria, Atanu Banerjee

Final Decision : Disposed Of

Judgement

1. The present interlocutory application has been filed for substitution of petitioner no.2 who has expired on 22.12.2017 during the pendency of this case. Counsel for the petitioners further submits that the petitioner no.1 is the son of the deceased petitioner no.2 and petitioner no.3 is the wife of the petitioner no.2 and accordingly, the name of petitioner no.2 be deleted from the cause-title as his interest devolves upon petitioner nos.1 and 3.

2. Counsel for the respondents has no objection to the prayer made by the counsel for the petitioners in I.A. No.2774 of 2018 and accordingly, I.A.

No.2774 of 2018 is hereby allowed.

3. Counsel for the petitioners is directed to delete the name of petitioner no.2 in red ink during the course of the day.Â

Â Â Â Â Â W.P.(C) No.3108 of 2017

1. Heard Mr. Rahul Lamba, counsel assisted by Ms. Varsha Ramsisaria, counsel appearing on behalf of the petitioners.

2. Heard Mr. Atanu Banerjee, G.A. appearing on behalf of the respondents.Â Â

3. This writ petition was filed on 07.06.2017 for the following reliefs:

a) For quashing the notice dated 24.04.2017 issued by respondent no.3 in relation to Encroachment Case No.4/201314 and also quashing the

notice dated 13.05.2017 bearing no.736 issued by respondent no.3 to the petitioner.

b) For a direction upon the respondents not to take any coercive action against the petitioners in relation to the alleged encroachment until and unless

the petitioners are given sufficient opportunity of making their defense and after hearing the petitioners the respondent passes an order in accordance

with law.

c) For quashing the order dated 28.05.2017 passed by the respondent no.3 wherein the respondent no.3 has found that the petitioner no.2 has

encroached 4.25 decimals of land.

4. The main challenge to the aforesaid two notices dated 24.04.2017 and 13.05.2017 in the writ petition has been mentioned in para 24 of the writ

petition alleging that without providing any sufficient opportunity of hearing to the petitioners the said notices have been issued. The counsel for the

petitioners has referred to order dated 24.04.2014 passed in W.P.(PIL) No.1931 of 2013 wherein in the Public Interest Litigation relating to

encroachment it was observed that the said Public Interest Litigation was disposed of directing the Circle Officer, Chas to afford sufficient opportunity

to all the alleged encroachers and pass orders in accordance with law. This Court did not express any opinion on the merits of the matter. Thereafter,

pursuant to this order dated 24.04.2014 the impugned notices as contained in Annexures- 6 and 7 of the writ petition were issued. The notice as

contained in Annexure-6 related to Mauza-Chas, Khata No.752, Plot No.7732 area 01 decimal wherein it was mentioned that the said property is on

Government land. So far as notice as contained in Annexure-7 is concerned, counsel for the petitioners submits that although the Khata No., Plot No.

and Mauza of the property is same but the area has been shown to be 4.25 decimals. These two notices are dated 24.04.2017 and 13.05.2017

respectively and the date fixed in the matter was 20.05.2017.

5. The counsel for the petitioners submits that in reply to the aforesaid notices a petition, as contained in Annexure-8 to the writ petition was filed

before the Circle Officer, Chas on 20.05.2017.

19.05.2017 wherein the petitioners have referred to various sale-deeds relating to other plot numbers and so far as this property is concerned, it has been stated by the writ petitioners that the writ petitioners are in peaceful possession of the alleged encroached land since 1977 i.e. almost for the last 40 years to the knowledge of the Government and other concerned persons. The writ petitioners also had made a request to the Circle Officer, Chas to conduct a measurement in their presence so that the exact position of the property could be ascertained.Â

6. Counsel for the petitioners submits that although this representation or petition was filed before the Circle Officer, Chas on 19.05.2017, the respondent no.3 without considering even a word of the said representation dated 18.05.2017 and in complete disregard to the order of the Honâ??ble Court started the forceful demolition of the properties of the alleged encroachers on 01.06.2017.

7. This writ petition was taken up on 15.06.2017 and an interim order of maintaining status quo was passed on 15.06.2017. The respondents thereafter filed a counter-affidavit in this case and brought on record the order dated 28.05.2017 passed in Encroachment Case No.4 of 2013-14. They have annexed a copy of the interim order dated 28.05.2017 passed in Encroachment Case No.4 of 2013-14, which the petitioners by way of amendment have challenged and the amendment petition has already been allowed and the prayer regarding challenge to order dated 28.05.2017 has been incorporated in the writ petition.Â

8. Counsel for the petitioners submits that the order dated 28.05.2017 has been passed in gross violation of principles of natural justice particularly in view of the fact that the representation dated 18.05.2017 which was filed before the Circle Officer, Chas on 19.05.2017 has not been considered by the Circle Officer, Chas while passing the impugned order. Counsel for the petitioners further submits that he has made a specific statement in paragraph no.29 (d) that the petitioners have not encroached any land public or otherwise including the land at Plot No.7732, Khata No.752, Thana No.30, Mauza-Chas at Bokaro as alleged in the aforesaid notices issued by the respondent no.3 and accordingly, he submits that it would be in the interest of justice if a direction for measurement is issued.

9. Counsel for the respondents, on the other hand submits that the

encroachment case was related to Khata No.752, Plot No.7732 in Mauza-Chas and

the notices have nothing to do with the other properties which had been purchased by the petitioners through registered sale-deed. He further submits

that from the perusal of the representation dated 18.05.2017 said to have been filed on 19.05.2017 there is nothing to show regarding the title of the

petitioners so far as the aforesaid property is concerned.Â

10. Counsel for the respondents further submits that in paragraph no.20 of the counter-affidavit it has been mentioned that the representation dated

18.05.2017 of the petitioners was considered wherein the petitioners had denied any encroachment over the encroached area within Plot No.7732 and

7733 and the respondents also submit that the measurement regarding the property was done twice and it was found that the petitioner are in

possession of the Plot No.7732.Â However, the counsel for the respondents could not show any document that a joint measurement was ever

taken.Â

11. Counsel for the respondents also submits that so far as the initial notice as contained in Annexure-6 Page No. 44 is concerned, the Khata No.752

and Plot No.7732 and area one decimal is mentioned and so far as the notice under Annexure-7 is concerned, the Plot No.7732 only has been

mentioned although it should have been Plot Nos.7732 and 7733 and by that they comprise the total area of 4.25 decimals. Counsel for the

respondents could not point out any notice so far as the Plot No.7733 is concerned. However, counsel for the respondents submits that the impugned

order which has been passed as contained in order dated 28.05.2017, it relates to Plot No.7732 as well as Plot No.7733.

12. Counsel for the respondents submits that so far as Plot No.7732 is concerned, it is a specific case of the petitioners from the writ petition that they

have not encroached Plot No.7732 but could not satisfy this court regarding the measurement of this plot having been done in presence of the

petitioners. So far as Plot No.7733 is concerned, counsel for the respondents could not show any notice having been issued to the petitioners in

connection with Plot No.7733 and accordingly, he submits that an opportunity of hearing may be granted.Â

13. The counsel for the respondents also submits that from the perusal of the

Annexure-A to the counter-affidavit it appears that the list of encroachment in Khata No.752 bearing Plot No.7732 and 7733 has been mentioned therein and against the name of Mewa Singh the total encroached area has been shown as 4.25 decimal and the constructed area has been shown as 19 ft. X 97 ft. and 6 inches.Â

14. After hearing the counsel for the parties and after going through the materials on record this Court finds as follows:

(a) That the notices which have been issued to the petitioners, as contained in Annexure-6 and Annexure-7 of the writ petition relate only to Plot

No.7732 although the area which has been mentioned in notice as contained in Annexure-6 is one decimal and the area which has been mentioned in

notice as contained in Annexure-7 has been shown to be 4.25 decimals.Â

(b) It is specific case of the petitioners from paragraph no.29 (d) of the writ petition that the petitioners have not encroached any land public or

otherwise including the land at Plot No.7732 and Khata No.752, Thana No.30, Mauza-Chas at Bokaro as alleged in the aforesaid notices issued by the

respondent no.3.Â

(c) So far as the Plot No.7733 is concerned, no averment has been made by the writ petitioners in the writ petition as the notices itself do not relate to

Plot No.7733.Â

15. Considering the fact that the petitioners had filed a representation on 19.05.2017 and had prayed for a fresh measurement to ascertain as to

whether the petitioners have encroached any portion of the property as contained in Plot No.7732 and admittedly the measurement which was done

by the respondents was not done in presence of the petitionerÂ therefore, for the ends of justice the Circle Officer, Chas is directed to undertake

fresh measurement of the property in relation to Plot No.7732 and if the petitioners are found to be in possession of any portion of Plot No.7732, the

Circle Officer, Chas shall proceed to evict the petitioners in accordance with law.Â

16. So far as the property in relation to Plot No.7733 is concerned in connection with which admittedly no notice was issued to the petitioners, the

impugned order dated 28.05.2017, so far as it relates to Plot No.7733, appears to have been passed without issuing any notice in connection with Plot

No.7733. Accordingly, the impugned order dated 28.05.2017 to the extent it relates to evicting the petitioners from property in Plot No.7733 is hereby

quashed and the matter is remitted back to the Circle Officer, Chas for making a fresh measurement in connection with the property in Plot No.7733

in presence of the petitioners and proceed in connection with the property in accordance with law.Â

17. Counsel for the parties herein agree for the measurement to be undertaken by the Circle Officer, Chas on 02.05.2018 at 11.00 a.m. and the

petitioners shall appear in the office of the Circle Officer, Chas at 10.30 a.m. on that day.Â

18. If the petitioners are found to be in possession of any portion of Plot No.7732, the Circle Officer, Chas which according to the circle officer is

government land, the Circle Officer, Chas will be free to proceed against the petitioners in terms of order dated 28.05.2017 and on the other hand it

will also be open to the petitioners to get their right, title and interest declared through a competent court of civil jurisdiction.Â Â Â Â 19. So far as

Plot No.7733 is concerned, the Circle Officer, Chas upon measurement is free to issue fresh notices to the petitioners in connection with eviction of

Plot No.7733 if the property is government land and the petitioners are found to be in possession of the same and after giving an opportunity of hearing

to the writ petitioners the Circle Officer, Chas shall pass a fresh order in accordance with law in connection with Plot No.7733.Â The entire process

should be completed within a period of four weeks from the date of the measurement.Â

20. It is made clear that this order relates only to the petitioners and does not relate to any other person who might be found encroaching any of the

portion of Plot Nos.7732 and 7733.

21. The writ petition is disposed of with the aforesaid directions and observations.Â