
(2019) 12 JH CK 0048
In the Jharkhand High Court
Case No : Writ Petition (C) No. 5066 of 2015

Sanjiv Kumar Sinha

APPELLANT

Vs

State of Jharkhand And Ors

RESPONDENT

Date of Decision : 03-12-2019

Acts Referred:

Citation : (2019) 12 JH CK 0048

Hon'ble Judges : Sanjay Kumar Dwivedi, J

Bench : Single Bench

Advocate : Rakesh Kumar Sinha, Atanu Banerjee, Ashwini Bhushah

Final Decision : Allowed

Judgement

Heard Mr. Rakesh Kumar Sinha, learned counsel appearing for the petitioner and Mr. Atanu Banerjee, learned counsel appearing for the respondent-State.

Pursuant to order dated 06.11.2019, the Circle Officer Deoghar is present with the original record before this Court.

The petitioner has preferred this writ petition for quashing the Notice dated 12.09.2015 contained in Annexure-6 whereby, the Circle Officer Deoghar has directed the petitioner to vacate the land in question. The prayer in this writ petition is made for a direction upon the respondents not to disturb the possession of the petitioner.

Mr. Rakesh Kumar Sinha, learned senior counsel appearing for the petitioner submits that the grand-father of the petitioner namely, Late Ishwari Prasad Sinha was working as Munshi in the Estate of the Ex-Landlord Rohini Estate in the District of Santhal Pargana now (Deoghar). Late Ishwari Prasad Sinha, had requested Ex-Landlord to settle some land for construction of residential house whereupon, considering his requirement, the Ex-Landlord after complying all necessary requirements settled 12 Katha and 7 Dhur of Land at village Janakpura under Plot No.58 (part), by virtue of Basaouri Amalnama and the Ex-Landlord put

the grand-father of the petitioner in possession over the said land. A copy of the Basaouri Amalnama dated 02.03.1943 is annexed as Annexure-1 to this writ petition. He further submits that after taking possession over the land in question, the grand-father of the petitioner constructed a house over the said land and also bounded the land by constructing boundary wall.

By way of referring to Annexure-2 of this writ petition, Mr. Sinha, learned counsel submits that in the Records of Right, the land was recorded as Gairmajaruwa Land, which was belonging to the Ex-Landlord and not a Gochar land. He further submits that pursuant to inquiry report of the Karamchari, the name of grand-father of the petitioner was mutated by way of Annexure-4/1. Thereafter, the then Circle Officer, Deoghar has passed an order to mutate the name of the grand-father of the petitioner vide order dated 10.12.1968. The said order is annexed as Annexure-4/1 to the writ petition. It was also stated that Annexure-5 is a document to suggest that the rent in question was fixed by the Circle Officer, Deoghar. He further submits that possession of this petitioner was already finalized in the year 1969 and all of a sudden he has been served with Annexure-6, wherein without assigning any reason, he has been asked to vacate the land in question.

Mr. Rakesh Kumar Sinha, learned counsel for the petitioner submits that the matter has already attained finality in the year 1969 which has been sought to be opened by issuance to Annexure-6 that too on an application of a stranger. He further submits that Administrative order which involves civil consequences must be made in conformity with the rule of natural justice which at least requires notice, an opportunity of hearing to the person affected thereby. He further submits that without following the principles of natural justice the notice in question has been issued which is against the mandate of law.

On the other hand, Mr. Atanu Banerjee, learned senior S.C. - III submits that when the complaint was received by the Circle Officer, of one Murari Mishra, the encroachment case was initiated against the petitioner. By producing the original records, Mr. Banerjee, learned counsel submits that it is under the Jharkhand Public Land Encroachment Act.

On perusal of the record, it transpires that there is no mention of Jharkhand Public Land Encroachment Act in the said records and there is no basis as to how Circle Officer, Deoghar came to the conclusion that the land in question is Gochar. It appears that without any enquiry etc. he has initiated the proceedings that too on a complaint of a stranger.

In view of the facts and submissions of the learned counsel for the parties, this Court finds that the proceedings was initiated without having any enquiry on the subject as to whether the land in question is Gochar or not?. Merely on an application of a stranger the proceeding has been initiated by the Circle Officer, Deoghar. This Court further finds that by issuing notice which is under challenge questioning the right of the petitioner which is of a civil consequence the Circle

Officer was required to provide every opportunity to the petitioner. In that view of the matter, the impugned Notice dated 12.09.2015 contained in Annexure-6 is, hereby, quashed.

The Circle Officer, Deoghar is set at liberty to inquire into the matter de novo and if he is satisfied that the matter requires consideration, he may call the petitioner after issuing the notice and will proceed in accordance with law. Accordingly, the writ petition stands allowed and disposed of.

The appearance of the Circle officer, Deoghar is dispensed with.