

(2012) 02 JH CK 0081
In the Jharkhand High Court
Case No : Writ Petition (C) No. 5977 of 2011

Sita Ram Sharma

APPELLANT

Vs

State of Jharkhand and Others

RESPONDENT

Date of Decision : 17-02-2012

Acts Referred:

Constitution of India, 1950 — Article 226, 227

Citation : (2012) 02 JH CK 0081

Hon'ble Judges : Narendra Nath Tiwari, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Narendra Nath Tiwari

1. In this petition, the petitioner has prayed for mandatory direction, inter alia, against private respondent nos. 6 & 7, commanding upon them not to take coercive step and interfere with the petitioner's possession over the land in question. The said private respondents happen to be the landlord of the petitioner. According to the petitioner, the suit for eviction has been filed by the landlord and the same is pending in the court of Munsif, being Eviction suit no. 20 of 2004. In the meanwhile, the said respondents have got the map sanctioned from the Notified Area Committee for construction of market complex over the land of recent survey Plot no. 177 under Khata no. 37, corresponding to Revisional Survey Plot no. 958 of Khata no. 516 of Mouza-Jugsalai in the district of East Singhbhum.

2. It has been contended by the petitioner that the respondent nos. 6 & 7 have illegally got a plan sanctioned for construction of market complex over the aforesaid land and on that basis, they are threatening the petitioner to dispossess from their land. The petitioner has already appeared in the Eviction Suit and denied title of the said respondents by filing written statement. The said respondents have no right to interfere with the peaceful possession of the

petitioner. He is entitled for protection of his right till disposal of the suit.

3. Learned J.C. to AAG, appearing on behalf of the State-respondents, submitted that the writ petition is frivolous and is not at all maintainable. According to the petitioner himself, he has taken the said plea in the suit pending in the court of Munsif and those controversies are yet to be decided by the said court. Whether the petitioner has got independent title over the land or the landlord has got title over the land is a dispute of fact, which cannot be decided in a writ jurisdiction of this Court. This writ petition is, thus, liable to be dismissed.

4. Mr. V. Shivnath, learned senior counsel, appearing on behalf of the petitioner, in reply, submitted that though the eviction suit is pending in the court of Munsif, this writ petition is maintainable, as the petitioner has approached this Court for protection of his independent right and not as a tenant. It has been submitted that the petitioner is not the tenant of Gopal Singh or any other person and he has got his independent right, title over the land. In view of the above, the petitioner's right deserves to be protected by this Court by issuing appropriate writ to the respondents.

5. Learned counsel referred to and relied on the decision of the Supreme Court in *Shalini Shyam Shetty and Another Vs. Rajendra Shankar Patil*, .

6. I have heard learned counsel for the parties and considered the facts and materials on record. It is an admitted fact that the suit filed by the private respondents against the petitioner being Eviction Suit no. 20 of 2004 is pending before the Munsif, Jamshedpur. In the said suit, admittedly, the petitioner has taken all these grounds and has contested the suit. The contentious issues between the parties are yet to be adjudicated upon and decided by the civil court. Whether the petitioner has got right title over the land is an issue of fact and the same has to be decided on the basis of the evidences to be adduced by the parties. The same cannot be decided by this Court in its writ jurisdiction.

7. In the decision of *Shalini shyam Shetty and Another (supra)*, the Apex Court has held as follows:

We would like to make it clear that in view of the law referred to above In cases of property rights and in disputes between private individuals writ court should not interfere unless there is any infraction of statute or it can be shown that a private individual is acting in collusion with a statutory authority."(Paragraph-65 of the judgment)

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As a result of frequent interference by the Hon''ble High Court either under Article 226 or 227 of the Constitution with pending civil and at times criminal cases, the disposal of cases by the civil and criminal courts gets further impeded and thus causing serious problems in the administration of justice. This Court hopes and trusts that in exercising its power either under Article 226 and 227, the Hon''ble High Court will follow the time honoured principles discussed above.

Those principles have been formulated by this Court for ends of justice and the High Courts as the highest courts of justice within their jurisdiction will adhere to them strictly."(paragraph-67 of the judgment)

8. In paragraph-68, it has been concluded as under:

For the reasons aforesaid, it is held that the High Court committed an error in entertaining the writ petition in a dispute between landlord and tenant and where the only respondent is a private landlord. The course adopted by the High Court cannot be approved. Of course, the High Court's order of non-interference in view of concurrent findings of facts is unexceptionable. Consequently, the appeal is dismissed. However, there shall be no order as to costs.

9. From the decision of the Apex Court, it is clear that interference of this Court in the matter of pending suit, particularly between the landlord and the tenant has been highly deprecated.

10. In view of the above, I find no legal ground for entertaining this petition. This writ petition is, accordingly, dismissed.