
(2016) 04 PAT CK 0175

In the Patna High Court

Case No : Letters Patent Appeal No. 1318 of 2010 in Civil Writ Jurisdiction Case No. 236 of 1994

Sri 108 Shyamajee

APPELLANT

Vs

State of Bihar

RESPONDENT

Date of Decision : 19-04-2016

Acts Referred:

Bihar Public Land Encroachment Act, 1956 — Section 6
Constitution of India, 1950 — Article 226

Citation : (2016) 2 BBCJ 121 : (2016) 3 BLJud 6 : (2016) 4 PLJR 122

Hon'ble Judges : Mr. Navaniti Prasad Singh and Smt. Nilu Agrawal, JJ.

Bench : Division Bench

Advocate : Sri Ram Suresh Roy, Senior Advocate and Sri Ramesh Jha, Advocate, for the Appellant; Mrs. Nivedita Nirvikar, G.A.10 and Mr. Manish Dhari Singh, A.C. to G.A.10, for the Respondents

Final Decision : Dismissed

Judgement

Mr. Navaniti Prasad Singh, J. (Oral)—This Intra-Court Appeal is arises against the order dated 29.06.2010, passed by learned Single Judge of this Court in C.W.J.C. No. 236/1994, by which the writ petition was virtually dismissed as against the encroachment proceeding, directing the writ petitioner/appellant to move the Civil Court. The learned Single Judge held that there were serious disputes with regard to question of title.

2. We have heard Sri Ram Suresh Roy, learned Senior Counsel for the writ petitioner/appellant and Mrs. Nivedita Nirvikar, G.A.10 for the State.

3. Though, prima facie, facts appeared to be complicated, certain issues are not in dispute. It is not in dispute that writ petitioner/appellant is an endowment to deity and had received settlement of substantial lands from the then Maharaja of Darbhanga, Sri Kameshwar Singh. The case of the writ petitioner/appellant was that this endowment having been made, the deity was in possession of the land in question. A notice was issued to the appellant/writ petitioner by District

Administration alleging that there was an encroachment of public land. It was alleged that earlier, in respect of the said land, State had sought to charge land revenue which was contested in a civil suit, and it was held that it was a homestead land and not an agricultural land. State was a party to the said suit and these lands were part of the suit land.

4. A plea was taken that, in view of the judgment, it was too late on the date for the State to claim that the land in occupation of the deity was in encroachment on public land. The authorities below consistently held that as per cadastral survey, the lands were shown as "Kaiser-e-Hind", and as such they were not the lands of Maharaja. It could not be settled or no endowment could be made to the deity. This is being said in the year 1989, and the endowment was in the year 1948-49 .

5. Various questions arises. As the very initiation of the proceedings admit that the writ petitioner/appellant is in a long standing possession, and has rightly been held by the learned Single Judge that there are some serious disputes with regard to title. In our opinion, if this is correct, then the very initiation of the encroachment proceedings is misconceived. It is a settled position in law that where there are serious disputes in right, title and interest or possession of the property, the summary procedure under encroachment law cannot be taken or resorted to by the State. State must, in such a situation, resort to the regular proceedings of suit and then get a decree for evicting a person from unauthorized occupation.

6. We do not like to comment upon various pleas taken or available to the writ petitioner/appellant as were urged by Sri Ram Suresh Roy that may prejudice either of the parties. We would leave it there, that there being serious dispute of title, resort to encroachment proceeding under the Public Land Encroachment Act (herein after referred to as the "Act") is not the proper remedy.

7. In that view of the matter, this appeal has to be allowed, and the orders passed by the authorities in Encroachment Case No. 2/1988 - 89 as pending before the Deputy Collector Lands Reforms (Sadar), Madhubani, cannot be continued by either party. It could be open to the either party i.e. State or the writ petitioner/appellant, as the case may be, to move before Civil Court for execution of the proceeding.