
(2010) 06 PAT CK 0049
In the Patna High Court
Case No : CWJC No. 236 of 1994

Sri 108 Shyamajee, Deity consecrated and installed through its Shevait Smt. Kamsundari APPELLANT

Vs

The State of Bihar and Others RESPONDENT

Date of Decision : 29-06-2010

Acts Referred:

Citation : (2011) 1 PLJR 532

Hon'ble Judges : J.N. Singh, J

Bench : Single Bench

Judgement

Jayanandan Singh, J.—In this Write application, the petitioner Deity has challenged the order dated 21.9.1993 passed by the Collector, Madhubani in Encroachment Appeal No. 218 of 1989-90, by which the appeal of the Petitioner, against order dated 11.9.1989 passed by the Deputy Collector Land Reforms (Sadar), Madhubani in Encroachment Case No. 2 of 1988-89, has been dismissed. The said order dated 11.9.1989 passed by the Deputy Collector Land Reforms (Sadar), Madhubani has also been challenged in which it has-been held that the Petitioner has encroached upon public land, namely, plot Nos. 277 and 278 to the extent of 10 dhurs and 2 kathas 18 dhurs respectively of the plots.

2. Case of the Petitioner is that the said two plots alongwith several other plots belonged to Maharaja Kameshwar Singh, which were, by a gift deed, gifted to the Petitioner Deity. Thereafter, the Deity through its Shevait came in possession of those plots and the entire land gifted was used as homestead of the Deity. In spite of the land being used as homestead, the Respondents raised a demand for land revenue of the land treating it as agricultural land. The same was contested by the Deity in a suit, namely, Title Suit Nos. 121 of 1967/6 of 1974. The said suit was decreed and it was held that, since the land comprised homestead of the Deity and was not being used as agricultural land, no land revenue was liable to be paid for the same to the revenue authorities.

3. Subsequently, Respondents received some complaints that the said two plots

to the said extent were recorded in the land records as "Gairmazarua Aam" and "Kaiser-e-Hind". Therefore, the erstwhile Maharaja was not legally authorized to give the said plots to the Deity and hence, the Petitioner Deity did not acquire title over the plots and was illegally encroaching upon the said plots to the said extent.

4. Land Encroachment Proceeding was therefore initiated after issuing notice to the Petitioner. In the land encroachment proceeding, Petitioner appeared and contested the matter. However, by judgment in the proceeding, as contained in Annexure-6, it was held that the Petitioner has not been able to establish that the title of the two plots to the said extent was with the erstwhile Maharaja and therefore, the gift deed in favour of the Deity was not a valid deed transferring title of the said two plots to the said extent to the Deity. Petitioner moved in appeal against the said judgment. Appeal was heard and by order contained in Annexure-9, the same was dismissed. Both the orders are under challenge in this writ application.

5. Learned Counsel for the Petitioner has submitted that the said judgment and decree of the civil court gives a seal to the claim of the Petitioner of title over said two plots to the said extent. He submits that this judgment and decree was not considered by the two authorities while rejecting the claim of the Petitioner and it was wrongly held that the plots to the said extent were public land.

6. Learned Counsel for the Respondents submits that in the said suit of the Petitioner issue raised before the trial court was with regard to the nature of the land and the right of the Respondents to charge land revenue. She referred to the issue formulated by the trial court to show that the only question before the trial court was as to whether the State of Bihar had a right to realize rent in respect of jamabandi No. 1900 or not and whether the demand made vide letter No. D.O. 1601 dated 12.2.1965 was legal and valid or not. Therefore, she submits that the question of valid title of the Petitioner to each and every plot gifted to it by the erstwhile Maharaja was not considered or examined by the trial court. She submits that the orders of the two authorities show that the two plots were recorded in the khatian and the land records as of the State of Bihar. Therefore, apparently, possession of the Petitioner over the said plots was an encroachment on the public land.

7. Learned Counsel for the Petitioner, in reply, submitted that the trial court, while examining the issue formulated, had found the land as homestead and in possession of the Petitioner and in those circumstances, it had been held that the revenue authorities were not legally authorized to demand land revenue in respect of the said two plots. He submits that this amounts to a finding with regard to title of the Petitioner with respect to the plots rendered on contest and therefore, it is not open to the Respondents now to go behind the same and question the title of the Petitioner.

8. This Court is unable to accept the submission of learned Counsel for the

Petitioner. Apparently, issue with regard to validity of the gift deed in favour of the Petitioner in respect of each and every plot included in the gift deed was not before the trial court. Therefore, mere finding that the plots were being used as homestead of the Petitioner cannot be treated as conclusive finding with regard to the title of Petitioner over the plots. Learned Counsel for the Petitioner has also made submissions that the judgment and decree of the trial court was not noticed and considered by the two authorities. But from perusal of the orders of the authorities, it appears that the judgment of the trial court was in the knowledge of the authorities and they did consider the same, which is apparent from the fact that the corrections made by hand in the decree of the trial court in respect of one plot without any seal and signature of the court has been doubted by the Deputy Collector Land Reforms. This shows that the authorities have not committed any error of record in not considering or not noticing the said judgment and decree of the trial court.

9. From the orders passed by the authorities, it appears that this is a case of bona fide dispute of title over the said two plots. This issue cannot be decided by a writ court in a writ jurisdiction. Appropriate remedy of the Petitioner lies in a properly constituted civil suit for declaration of its title over the said plots to the said extent. Liberty for the same is granted to the Petitioner.

10. With the aforesaid liberty, this writ application is disposed of.