
(1999) 04 PAT CK 0076
In the Patna High Court
Case No : C.W.J.C. No. 3720 of 1998

Sri Rajbanshi Singh

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 05-04-1999

Acts Referred:

Bihar and Orissa Municipal Act, 1922 — Section 196

Citation : (1999) 2 PLJR 164

Hon'ble Judges : Aftab Alam, J

Bench : Single Bench

Advocate : Md. Shahjehan Ali, Jai Shankar Pathak and Abdul Wadoo, for the Appellant; Ram Suresh Roy, Kundan Bahadur Singh and Anant Kumar Bhaskar, for the Respondent

Final Decision : Allowed

Judgement

Aftab Alam, J.—The Petitioner seeks a direction for the removal of the lock put by the officials of the Chapra Municipality over certain room(s) where the Petitioner was residing after his forcible ejectment from there.

2. The dispute relates to a portion of Holding No. 26 situate in Ward No. 6, Circle No. 3 of the Chapra Municipality. According to the Municipality the subject matter of dispute in this case was municipal land over which the Petitioner had made some unauthorised construction(s) and was in its illegal occupation.

3. It appears that earlier in the year 1976 a proceeding u/s 196 of the Bihar and Orissa Municipal Act was initiated for the Petitioner's removal from the disputed land. In that proceeding the Executive Magistrate Chapra passed an order of demolition of the structure(s) built by the Petitioner holding them as encroachment over the municipal land. An appeal filed against that order was also dismissed by the District Magistrate, Chapra by order dated 2.3.1976. The Petitioner then came to this Court in CWJC No. 921/1976 which was allowed by a bench of this Court by order dated 23.11.1978. The relevant portion of the order

is as follows:

The grievance of this Petitioners is that on the date of hearing on
5th February 1976/6th February 1976

the prosecution agency first party was not present. The second party (i.e. the Petitioners) moved the court for granting adjournment. The Executive Magistrate rejected the prayer of adjournment and directed the Chapra Municipality to remove the encroachment as alleged. In our opinion, when the prosecution agency was absent, the Executive Magistrate ought to have granted time to the Petitioners second party. The order suggested that no opportunity was given to the Petitioners to explain their position. In fact no enquiry was held. Hence, we quash the order contained in Annexure 2 as also the order of the District Magistrate (Annexure-3). The case is being sent back to the Executive Magistrate, Chapra for a fresh hearing and order after giving due notice to the parties concerned.

4. Thereafter the matter seems to have remained dormant for about six years when instead of taking up the earlier proceeding a fresh proceeding was initiated against the Petitioner by issuing to him a show cause notice in September, 1984. In that notice, it was stated that it was reported that the Petitioner was unauthorisedly constructing boundry wall around a piece of municipal land measuring 40' 3" x 4". He was accordingly asked to file his show cause by the specified date failing which, the notice said that an order will be passed for his removal from the municipal land.

5. It is not clear whether the Petitioner filed any show cause or not but on the basis of that notice the Sub-divisional Officer finally passed an order dated 2.4.1984 in Encroachment Case No. 38/1984. It is an order in not more than five sentences and translated into English reads as follows:

Hazri has come from O.P. Hearing was held. Approval is granted. The encroachment squad may take action according to rules.

6. One fails to understand how can this order be justified.

7. The Petitioner then filed a suit being T.S. No. 79/1984 in the court of Munsif IV, Chapra. In that suit he asked for a declaration that the order dated 2.4.1984 passed by the Sub-divisional Officer, Sadar, Chapra in Encroachment Case No. 38 of 1984 was invalid, illegal, inoperative and without jurisdiction. He also sought a decree for permanent injunction restraining the Defendant the Chapra Municipality and its officials from interfering with his possession over the disputed land. The trial court dismissed the suit by judgment and decree dated 30.6.1997 holding as follows:

7. Issue No. 2. Admittedly, it is the second initiation of Encroachment Case which the Plaintiff has disputed. It is an admitted position that in accordance with directions of the Hon''ble High Court parties have to bear the result of

Encroachment Case No. 73 of 1975 which is pending. The initiation of second encroachment case is with respect to another matter i.e. against construction of wall. Therefore, it is not the same matter in which the Hon"ble High Court has asked the parties to get their dispute decided. In the result, a prayer for declaration that the Defendants have passed illegal order is not available to the Plaintiff since the order is within jurisdiction and against which an appeal is available. Accordingly, it is held that the Plaintiff had course of action, if any, it was preferring appeal and not to move this Court. This issue is decided against the Plaintiff.

8. The Petitioner filed an appeal against the judgment and decree passed by the trial court dismissing his suit which was registered as Title Appeal No. 55/1997 in the court of Addl. Dist. Judge II, Saran at Chapra. It was presumably at this stage that he was forcibly evicted from the disputed premises and a lock was put over it by the Municipality. He accordingly prayed for an interim mandatory injunction directing the Municipal authorities to open the lock during the pendency of the appeal. The appellate court allowed the prayer and by order dated 5.12.1997 directed the Municipal authorities to open the lock put by them on the residential unit of the Petitioner being the subject matter of dispute in appeal.

9. The Chapra Municipality then came to this Court in Misc. Appeal No. 3/1998 against the order of mandatory injunction passed by the lower appellate court. In the appeal it was somehow represented before this Court that the disputed room(s) was not the subject matter of the suit and the appeal whereupon this Court allowed the Misc. Appeal and passed the following brief order:

Heard the parties.

Since the house in question was neither the subject matter of the suit nor of the appeal, a prayer for granting mandatory injunction, in my opinion, was misconceived and the trial court committed an error in granting such prayer.

The impugned order, therefore, is set aside and this appeal is allowed.

10. It was then that the Petitioner filed this writ petition seeking the relief as stated above.

11. From the judgment passed by the trial court dismissing the Petitioner's suit and from the order passed by this Court allowing the Misc. appeal filed by the Municipality, it is clear that before the trial court and this Court the Municipality took the stand that the Petitioner's suit was against the order passed in Encroachment Case No. P. 38/1984 which was in respect of his unauthorised construction of the boundry wall. It further appears to be the case of municipality that the unauthorised construction of the room(s) over the municipal land was the subject matter of the earlier case being Encroachment Case No. 73 of 1975, the proceedings in which were still pending after being remanded from the High Court. The municipality thus got the Petitioner's suit defeated and the order of

mandatory injunction passed by the lower appellate court passed in his favour set aside by this Court by taking the plea that the order in Encroachment Case No. 38/1984 (against which the suit was filed) being only in respect of the boundary wall, no order in that suit or appeal could be passed concerning the room(s) which was the subject matter of another encroachment case, proceedings in which were still pending and in which a final order was yet to be passed.

12. Leaving aside for the present the validity of such plea, it is quite evident that according to the case of the municipality itself no order was passed in respect of the unauthorised room(s) and the proceedings in Encroachment Case No. 73/1975 concerning the room(s) were still pending after removal from this Court. This being the position the action of the municipality in forcibly evicting the Petitioner from the room(s) and putting a lock over there becomes completely untenable on its case.

13. Even assuming that the Petitioner is a rank trespasser and is in unauthorised occupation of a piece of land belonging to the Municipality, he can be ejected from there only after following a procedure established by law. In *Rajesh Bhakta and Anr. v. State of Bihar and Ors.* 1995 P.L.R. 7 a bench of this Court held as follows:

The only question for determination is as to whether the Respondents can take possession of the shops in question in the manner as has been done in this case without following any procedure known in law. Even assuming that the Petitioners' possession is unauthorised as asserted by the Respondents, it is settled that unauthorised possession can be taken away by the State authorities in an authorised manner and not by taking law in their own hands. It is stated that in similar circumstances this Court in CWJC Nos. 10836 and 11572 of 1993 disposed of on 10.1.1994 had directed for reopening of the shop with a direction that it will be open for the authorities to initiate a proceeding under the provisions of the Bihar Government Premises (Rent, Recovery and Eviction) Act and other provision for taking possession of the shop or land.

14. The facts of this case appear to be quite similar to the case in *Rajesh Bhakta*.

15. I am therefore constrained to hold that the action of the Municipal authorities in putting lock over the disputed premises was completely illegal and untenable. The Respondent authorities are accordingly directed to remove the lock from the disputed premises forthwith. It will be, however, open to the Municipality to take steps for the Petitioner's removal from the disputed premises by holding a proper proceeding in accordance with law.

16. In the result, this writ petition is allowed.