
(2021) 04 JH CK 0033

In the Jharkhand High Court

Case No : Writ Petition(C) No. 3236 Of 2020

Surendra Mahto @ Ritu Mahto

APPELLANT

Vs

State Of Jharkhand And Ors

RESPONDENT

Date of Decision : 06-04-2021

Acts Referred:

Code Of Criminal Procedure, 1973 — Section 144

Bihar (now Jharkhand) Public Land Encroachment Act, 1956 — Section 3

Citation : (2021) 04 JH CK 0033

Hon'ble Judges : Rajesh Shankar, J

Bench : Single Bench

Advocate : Deepak Kumar Prasad, Mohan Kumar Dubey

Final Decision : Disposed Of

Judgement

The present writ petition is taken up today through Video conferencing.

The present writ petition has been filed for quashing notice dated 08.09.2020 (Annexure-1 to the writ petition) issued by the respondent no. 5 - the Circle Officer, Mandu, Ramgarh under Section 3 of the Bihar (now Jharkhand) Public Land Encroachment Act, 1956 (hereinafter referred to as "the Act, 1956") in Encroachment Case No. 7/2020-21.

2. The learned counsel for the petitioner submits that the petitioner is in peaceful possession of the land appertaining to Khata No. 241, Plot Nos. 2310 and 2311, Thana No. 153, Village-Bongabar, measuring an area of 0.10 acre. It is further submitted that the land appertaining to Khata No. 241 came in possession of Gopi Nath Panda, S/o Sudhir Chandra Panda by way of family settlement. Thereafter, he had been in peaceful possession of the said land. The name of Sudhir Chandra Panda was also entered in Register-II, part-I, Page No. 352 maintained in Circle Office, Mandu. It is also submitted that the rent for the said land was regularly paid and the rent receipts were also issued in the name of Sudhir Chandra Panda. The petitioner purchased the land from Gopi Nath Panda

vide agreement dated 02.08.2019 with a stipulation that sale deed of the said land shall be executed subsequently. The petitioner also constructed a house over the land in question. On 20.01.2020, a proceeding under Section 144 Cr.P.C. was initiated by the respondent no. 4 - the Sub-Divisional Magistrate, Ramgarh to the extent of 0.5 acre of Plot No. 2310 under Khata No. 241. The said proceeding was disposed of by the respondent no. 4 vide order dated 18.03.2020 directing the respondent no. 5 to initiate a land encroachment proceeding. It is thus submitted by the learned counsel for the petitioner that the impugned notice dated 08.09.2020 has been issued by the respondent no. 5 with a pre-conceived notion to evict the petitioner from the land in question. In fact, the said land is "raiya" and it cannot be said to be "public land" so as to initiate a land encroachment proceeding under the provisions of the Act, 1956.

3. The learned counsel for the petitioner, on instruction, submits that no final order has been passed by the respondent no. 5 in the land encroachment case pursuant to the impugned notice dated 08.09.2020.

4. Mr. Mohan Kumar Dubey, AC to AG appearing on behalf of the respondents, submits that the matter is required to be factually examined as to whether the land in question is "raiya" or is "public land" under the provisions of the Act, 1956.

5. Having heard the learned counsel for the parties and keeping in view that Encroachment Case No. 7/2020-21 is still pending before the respondent no. 5, wherein final order is yet to be passed after following due procedure as prescribed under the Act, 1956, the respondent no. 5 is directed to fix a date in the present land encroachment proceeding by giving prior information to the petitioner and after providing due opportunity of hearing to him/his representative, to take an informed decision in accordance with law expeditiously. Till the said decision is taken by the respondent no. 5, no coercive step shall be taken against the petitioner for eviction from the land in question.

6. The writ petition is accordingly disposed of with aforesaid observation and direction.