

(2002) 01 PAT CK 0126
In the Patna High Court
Case No : C.W.J.C. No. 11179 of 2000

Sushila Devi

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 02-01-2002

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 145

Citation : (2002) 1 PLJR 738

Hon'ble Judges : Shiva Kirti Singh, J

Bench : Single Bench

Advocate : Harshwardhan Sahay, for the Appellant; Paspati Pd. Sinha, for Respondent No. 6, A.K. Choudhary, for State and A.K. Singh, for Intervenor, for the Respondent

Final Decision : Allowed

Judgement

Shiva Kirti Singh, J.—Heard learned Counsel for the Petitioner, learned Counsel for the State, learned Counsel for the settle Respondent No. 6 and also learned Counsel for the intervener.

2. The intervener as well as Respondent No. 6 claim certain rights which are based upon the right and title of the State and are in any case controlled by the present judgment and decree of the civil Court contained in annexure-1. The said judgment and decree in favour of the Petitioner has been made the basis for filing of this writ petition wherein the Petitioner contends that after losing the dispute of title and possession in the civil Court, the State or its authorities again resorted to administrative orders or even proceeding u/s 145 Code of Criminal Procedure to get rid of the effect of civil Court's judgment and decree.

3. In the facts and circumstances of the case and considering the stand of the parties the aforesaid submission is well founded. This Court does not propose to go into the merit of the civil Court's judgment and decree. The correctness and legality of the said judgment and decree must be challenged through appeal or

review preferred in accordance with the provisions in the Code of Civil Procedure. Respondent No. 6 or the intervener may also, if so advised challenge the judgment and decree before the competent Court in accordance with law. At the present it appears that the State has already preferred an First Appeal before this Court as F.A. No. 301/2000. It will be open for the State also to file appropriate petitions in the said First Appeal but the administrative orders as contained in impugned annexures 3 and 8 cannot be said to be lawful once the civil Court has given a judgment and decree against the State and in favour of the Petitioner. Even if the State wants to challenge the finding with regard to possession it must do so in the proceeding before the appellate Court and seek appropriate directions.

4. The rule of law requires that the State or its authorities must honor the judgment and decree of the civil Court till they are able to get it set aside or modified by the appropriate Court or higher Courts in accordance with law. Accordingly, this Court finds the order issued by the circle officer as contained in annexure-3 whereby the process of settlement by open bid was initiated with regard to land covered by the judgment and decree of the civil Court to be bad in law and the same is therefore quashed. Further order by Sub Divisional Magistrate dated 22.8.2000 as contained in annexure-8 is also an apparent attempt to overcome the judgment and decree of the civil Court specially with regard to possession. For the said reason the impugned order as contained in annexure-8 is also hereby quashed. The entire proceeding u/s 145 Code of Criminal Procedure is also quashed and hence any order of appointment of Receiver etc. passed in such proceeding must be deemed to have been vacated.

5. This writ petition is allowed to the aforesaid extent.