

(2013) 02 JH CK 0039

In the Jharkhand High Court

Case No : C.W.J.C. No. 2795 of 1999 (R)

Veer Krishna Sahay and Another

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 28-02-2013

Acts Referred:

Citation : (2013) 2 AJR 736

Hon'ble Judges : Aparesh Kumar Singh, J

Bench : Single Bench

Advocate : Sumeet Gagodia, for the Appellant;

Final Decision : Allowed

Judgement

Aparesh Kumar Singh, J.—Heard counsel for the parties. By the impugned notice dated 03.05.1999 as contained in memo No. 312, Annexure-1, issued under the signature of Circle Officer, Town Anchal, Ranchi, respondent No. 5, the petitioner No. 2 was asked to remove the materials from the piece of land described as Khas Mahal Plot No. 119 and also to show-cause as to why legal proceeding be not drawn against him for unauthorized entry. The same was challenged in the writ petition by two petitioners. Petitioner No. 1 claimed to be an owner of the land while petitioner No. 2 was the person with whom the development agreement has been entered by the petitioner No. 1. However, learned counsel appearing on behalf of the petitioner No. 1 submits that petitioner No. 2 has lost interest in pursuing the matter as the development agreement has already been effected and multi-storeyed building has been constructed upon the land in question. In the meantime, the impugned notice was stayed by this Court by interim order dated 03.02.2000, and the respondents were restrained from interfering with the peaceful enjoyment of the property in question. Counsel for the petitioner No. 1, therefore, submits that the writ petition is being prosecuted on his own behalf in the aforesaid background. Learned counsel for the petitioner has argued that the ancestor of petitioner No. 1 had acquired and came into possession of the lands, which are forming part of the present writ petition in

respect of which, the impugned notice has been issued. It is stated on behalf of the petitioner that in the year 1929, the Municipal Survey was done, records were framed and published u/s 10(1) of the Bihar and Orissa Municipal Survey Act, 1920 on 25.09.1929 and the property in question being MS Plot No. 1480 was recorded in the name of Shyam Krishna Sahay, late grandfather of the petitioner No. 1. The total area of MS Plot Nos. 1480 and 1676 was 5.506 acres. In the year 1941 out of 5.506 acres of land appertaining to MS Plot Nos. 1480 and 1676, area of 1.490 acres of land was sold by said Shyam Krishna Sahay to one Panna Lal Modi by a registered sale deed date 18.07.1941. The remaining area left thereafter in their ownership was 4.016 acres. It is also stated that the said 1.490 acres of land was subsequently sold to Modi and Sons Private Limited on 16.09.1950 by Panna Lal Modi and then to Chotanagpur Engineering Works Private Limited on 18.1.1961. Shyam Krishna Sahay, grand father of petitioner No. 1, died in the year 1963 and at the time of his death the entire area of 4.016 acres of land being MS Plot Nos. 1480 and 1676 was standing in his name. In the year 1966, his two sons namely Hari Krishna Sahay and Dev Krishna Sahay i.e. father of petitioner No. 1, got the property mutated in their respective names, vide Mutation Case No. 152 R27/1965-66, vide order dated 3.3.1966. However, it is stated that under some mistaken impression, father of petitioner No. 1 filed an application for renewal of the lease treating the property as lease hold property for which a Lease Case No. 1 of 1972 was registered. Counsel for the petitioner submits that on 8.8.1973, the Land Reforms Deputy Collector, Ranchi, however, held in the said case that the land is not a lease hold property but is a Chapparbandi land, acting upon the report of the Anchal Adhikari, Town Anchal, Ranchi. It is further submitted that in the year 1976, an Urban Land Ceiling Case No. 64 of 1976 was initiated in relation to the said property in question and it is argued that if the land was a Khas Mahal property then there was no occasion to initiate a land ceiling case for the same land in question. The Deputy Commissioner by his order dated 19.03.1997, as contained in Annexure-4, held that 189.9 Sq. Meter of land was surplus and the same was published in the Gazette by way of the publication made under the Urban Land Ceiling Act vide notification dated 24.09.1997. It is further submitted that if the land was a Khas Mahal land then again there was no occasion for initiation of an Urban Land Ceiling Case against the same property of the petitioner. It is further submitted that on 09.1.1998, six members of the family of late Hari Krishna Sahay and late Dev Krishna Sahay, father of petitioner No. 1, applied for mutation and the same was granted in Succession Mutation Case No. R 292 of 1997-98, dated 9.1.1998. Thereafter, petitioner No. 1 had entered into a development agreement with petitioner No. 2 on 1.10.1998 with respect to a portion of the land allotted to him and his family members measuring 33 Khatas appertaining to MS Plot No. 1480. The impugned notice was issued thereafter during the midst of the construction proceeding on 03.05.1999, Annexure-1, directing the petitioners to stop the construction. Thereafter, the writ petition was preferred and on 3.2.2000 an interim order was granted in the manner indicated hereinabove. It is further submitted that the respondents were directed by the orders passed in the instant

case to produce the documents to substantiate their case that the land in question is a Khas Mahal property. It is submitted that during the pendency of the instant writ petition, the constructions were completed which however became a subject-matter of arbitration proceeding, which was referred by this Court to be decided by a sole arbitrator, namely, Hon"ble Mr-Justice P. K. Sarkar (Retired). It is further submitted that the part of the property was purchased by Chhotanagpur Engineering Works Pvt. Ltd. through conveyance deed executed by Panna Lal Modi, and transferred to Chotanagpur Engineering Works Pvt. Ltd. on 18.1.1961, were also subjected to interference by the respondents-authorities. In the meantime M/s. Chotanagpur Engineering Works Pvt. Ltd. instituted a suit bearing Title Suit No. 56 of 1996 in the Court of Sub-Judge-III, Ranchi for declaration that the suit land is not a Government land and the plaintiff is the sole owner of the land in question. It is submitted that one of the issues framed in the said suit was whether the lands in question belonging to MS Plot Nos. 1480 and 1676 were Khas Mahal property or not. Counsel for the petitioner submits that the said suit was decreed vide judgment and order dated 30.03.2001, which has been brought on record as Annexure-9 to the supplementary affidavit. It is submitted that in respect of the very same issue No. 5, the learned Court has categorically held that the property is not a Khas Mahal property but the own property of the plaintiff. It is submitted that the decree and judgment in the said suit has attained finality. Learned counsel for the petitioner further submits by referring to paragraph 11 of the said judgment that the witness adduced on behalf of the respondents being a Karamchari of Ranchi Circle in his deposition has categorically stated that Plot Nos. 1676 and 1480 both are comprising in Khas Mahal Plot No. 119, which has been treated to be a Khas Mahal land by the respondents.

2. Counsel for the petitioner further submits that subsequently a part of portion of the land was sold to Pankaj Kumar Harlalka and the registration of the said land was being refused by the District Sub-Registrar, Ranchi on the ground that the property is a Khas Mahal property. It is submitted that said person approached this Court in W.P. (C) No. 2446 of 2002, which was disposed of by this Court vide order dated 14.05.2002, which is annexed as Annexure-10 to the supplementary affidavit. Relying upon the said judgment, learned counsel for the petitioner submits that this Court had also taken into account the fact that the respondent-State could not produce any document to establish that the land in question was a Khas Mahal property and moreover went on to record findings that if the property is a Khas Mahal land then there was no occasion to initiate Urban Land Ceiling proceeding in respect of the same property. This Court, therefore, directed the concerned authorities to register the deed in question. Counsel for the petitioner further submits that L.P.A. No. 594 of 2002 preferred by the State of Jharkhand against the same was dismissed on 11.12.2002 vide Annexure-11 to the said supplementary affidavit. It is further submitted that lately the petitioner No. 1 himself had filed an application for mutation of the property in his name, which was registered as Mutation Case No. 10 of 2007-08

and in the said application, the Circle Officer, Ranchi himself has discussed the entire evidences chronologically, which have been narrated hereinabove in brief and thereafter granted mutation in favour of petitioner No. 1 vide order dated 22.01.2008. Learned counsel for the petitioner, therefore, submits that the respondents have failed to establish that the property is a Khas Mahal property and they have no basis to issue the impugned notice interfering in the enjoyment of the property lying in his own name. Counsel for the petitioner has further submitted that even though without admitting that the property is a Khas Mahal property if the State wanted to resume the property, the only recourse available to the respondents-authorities is in terms of Rules 21 and 22 of the Khas Mahal Manual, 1953, which provides the manner in which the resumption of Khas Mahal land can be made. Learned counsel for the petitioner has relied upon the judgment of the single Judge of the Patna High Court, reported in 1988 BLT 540 and submitted that the said provisions of the Khas Mahal Manual were interpreted by the learned single Judge and it was categorically held that if the Khas Mahal property is required for a public purpose then resumption of such property can be done only by resorting to the procedure of the competent civil Court as provided under Rule 22 of the Khas Mahal Manual. In that view of the matter, learned counsel for the petitioner submits that the impugned notice is wholly arbitrary, illegal and unsustainable in law and, therefore, is required to be set aside.

3. Learned counsel for the respondent-State has appeared and filed counter-affidavit as well as supplementary counter-affidavit. It is the contention of the counsel for the respondent-State the notice in any case, does not seem to have any effect now in view of the subsequent developments as the constructions have already been made over the property in question in pursuance to the interim order passed by this Court on 03.02.2000. At best, the petitioner may approach the respondents to show cause in respect of the ownership for their property. Counsel for the respondents have also relied upon the extracts of the Register-II, which is Annexure-A to their supplementary counter-affidavit to submit that in the description of the land, it has been indicated that it is a leasehold land.

4. Counsel for the respondents has also submitted that the issuance of the rent receipts or mutation in favour of the petitioners would not entitle them to make a claim that the property has become Rayati land instead of leasehold property. However, it also appears that the respondents were allowed enough time to produce documents to substantiate their case that the property in question is lease hold land on the basis of which the impugned notice has been issued but they have failed to do so till date.

5. I have heard counsel for the parties at length and gone through the relevant materials on record including the impugned notice.

6. The notice, which is impugned herein seeks to restrain the petitioners from interfering in the enjoyment of the land in question being Plot No. 1480, which

has been treated to be a Khas Mahal Plot No. 119 on the ground that the said plot is Khas Mahal plot. The facts, which have been stated hereinabove, however, disclose that even in the year 1972 when an application was moved by the father of petitioner No. 1 on a mistaken belief for renewal of lease, the Land Reforms Deputy Collector, Ranchi, in his order dated 08.08.1973 himself recorded that the property is not a leasehold property rather a Chhaparbandi land. Even thereafter Urban Land Ceiling Case No. 64 of 1976 was initiated appertaining to the same property in which certain portions of the land were declared surplus by the order of the competent authority-cum-Deputy Commissioner, Ranchi dated 19.03.1997 and the final publications were made in the Gazette on 24.9.1997. Even thereafter the property was mutated in the name of the family members of the petitioners and the sons of late Hari Krishna Sahay, uncle of the petitioner in Succession Mutation Case No. R 292 of 1997-98 vide order dated 9.1.1998. It further appears that a portion of the land, which was earlier sold in favour of Panna Lal Modi by the grand-father of petitioner No. 1 and subsequently, transferred to Chhotanagpur Engineering Works Pvt. Ltd. through registered sale deed on 18.1.1961, was also subjected to interference by the respondents on the ground that the property in question is Khas Mahal property. A Title Suit No. 56 of 1996 was instituted by Chhotanagpur Engineering Works Pvt. Ltd. in the Court of Sub-Judge, Ranchi for declaration of the right, title and ownership of the property in question. Amongst several issues, which were framed, issue No. 5, was specifically relating to the question whether the land was a Khas Mahal Property or not. The said suit was decreed by the judgment and decree dated 30.03.2001, which has been brought on record as Annexure-9 to the supplementary affidavit. The perusal of the aforesaid judgment shows that learned Court has categorically held that the land in question is not a Khas Mahal property but the own property of the plaintiff in question. It further appears that portion of the said property, which was sold to one Pankaj Kumar Harlalka was being refused registration by the District Sub-Registrar on the same ground that the property was a Khas Mahal property. This Court, in a writ petition preferred by said Pankaj Kumar Harlalka being W.P. (C) No. 2446 of 2002, has discussed the contention of the respondents and found that the respondent-State could not produce any documents to establish that the land was a Khas Mahal property. It was also found that an Urban Land Ceiling Case was initiated by the respondents-authorities in respect of the same property in question, as such mere was no basis for treating the property as a Khas Mahal property. The concerned authorities were directed to register the sale deed. In view of the aforesaid fact and finding, the said judgment was not interfered by the Letters Patent Court, which dismissed the appeal filed by the respondent-State on 11.12.2002. It further appears that the Circle Officer, Ranchi, respondent No. 5 himself has permitted the mutation of the land in question in favour of petitioner No. 1 in Mutation Case No. 10 of 2007-08 vide his order dated 22.1.2008, which is also brought on record by way of Annexure-12 to the supplementary affidavit of the petitioner. The said mutation order itself deals the facts chronologically, most of which have been narrated hereinabove and thereafter proceeded to allow

mutation in favour of petitioner No. 1. In the present proceeding also, the respondents have been granted enough time to produce any documents to substantiate their contention that the land in question is a Khas Mahal land but they have failed to do so. In any case, even though the respondents have treated the property to be a Khas Mahal Property, the only recourse available to them in law was to initiate a proper proceeding before the competent civil Court for resumption of the land in question on established ground as are available in the Khas Mahal Manual or the Khas Mahal lease in question. The respondents have, however, straightway issued the impugned notice threatening the petitioner's enjoyment over the land in question, which does not appear to be sustainable in law as well as on facts for the reasons as discussed hereinabove. Accordingly, the impugned notice is quashed and this writ petition is allowed.