
(2014) 03 PAT CK 0018
In the Patna High Court
Case No : C.W.J.C. No. 24840 of 2013

Vijay Singh and Others

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 26-03-2014

Acts Referred:

Citation : (2015) 2 PLJR 796

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

Bench : Single Bench

Advocate : Amarnath Singh Binay Kumar, Advocate for the Appellant; Manoj Kumar Ambastha and Subodh Kumar, Advocate for the Respondent;

Final Decision : Allowed

Judgement

N.P. Singh, J.

1. Counter affidavit has been filed on behalf of the State sworn by the Circle Officer, Manpur, Gaya, who, in fact, has initiated the proceedings under challenge. Mr. Amarnath Singh, learned counsel for the petitioners states that there is no necessity to file a rejoinder. As per the counter affidavit itself, the stand of the petitioners is clear. That would decide the issue. With consent of parties, this writ petition has been heard at length for disposal at this stage itself.
2. By this writ petition, the petitioners challenge the very initiation of the proceeding under the Bihar Public Land Encroachment Act, 1956. The petitioners challenge the notice, as contained in Annexure-1 series to the writ petition, in Encroachment Case No. 3 of 2013-14 in respect of lands occupied by them appertaining to Plot No. 28, Khata No. 81, Revenue Thana No. 317, Village-Bhusunda at Manpur in the district of Gaya.
3. Mr. Amarnath Singh submits that to have a jurisdiction to initiate a proceeding, first State must be able to show that the lands on which proceedings are sought to be initiated are public lands. He further submits that though originally in the Cadastral Survey carried out over more than a (sic) back, these

lands were shown as "Pasu Mela" (Bag-Aam), but, thereafter the ex-intermediary made settlements in the name of petitioners. At the time of vesting, upon the Bihar Land Reforms Act being enacted, the ex-intermediary, in the returns filed, showed the petitioners as the settlees. It is on basis of this that in 1956, Jamabandies were created in the name of petitioners and they have continued to be in possession and even paying rent since then. It is further stated that recently these lands, having come within the municipal area, survey was started under the Bihar & Orissa Municipal Survey Act. These lands fall within the Ward No. 32 of Sursand Municipality of Gaya. Noticing that in course of time the nature of land having changed and recognizing the settlement of the petitioners, the survey entries were, accordingly, changed. In the survey proceedings, the order was passed as far back as on 9.9.1992 under the aforesaid Act.

4. From the counter affidavit, all that appears, is that the Circle Officer is proceeding on the basis of the solitary entry in the Cadastral Survey, which, as noted above, was done more than 100 years back. He ignores the municipal survey done recently. These facts, it is submitted by Mr. Amarnath Singh, learned counsel for the petitioners that firstly the land cannot be said to be Government land. Secondly, even if the assertion of the State is to be accepted then it is highly disputable whether it is a Government land. It is not disputed that the petitioners have been on the land for over 60 years. In such a situation, in view of settled decision of the Courts including the Apex Court in the case of Government of Andhra Pradesh Vs. Thummala Krishna Rao and Another, have clearly held that resort to such a summary proceeding cannot be made where there are serious questions of title involved. The proceedings can only be initiated where there is no dispute with regard to nature of land. The proposition is well settled, but unfortunately it appears that it does not bind the State or so does the State instrumentalities.

5. In the counter affidavit a complete order-sheet is annexed. The order-sheet shows that first a proceeding for cancellation of Jamabandies was taken up for small part of land. Notice having been issued to the petitioners, petitioners approached the Civil Court challenging the authority of the State to cancel the Jamabandies created over 60 years back. The matter is pending in which State is a party. The matter having gone to Civil Court did not deter the Circle Officer to continue with the proceeding. The proceeding, Annexure-1 series, would show that notices were issued on 28.11.2013 directing petitioners to vacate the land by 12.12.2013. This is what has brought the petitioners to this Court. Such a notice can only be issued after proceedings are culminated and taken to its end and not before.

6. I wonder how, for what purpose and for what motive the Circle Officer had issued such notice. When we refer to the order-sheet, as appended to the counter affidavit filed by the Circle Officer himself, it would clearly show that on 28.11.2013 the proceedings had not been concluded. There is no order

concluding the proceeding. The order-sheet would reveal that the matter was taken up on 12.12.2013 and the Circle Officer passes the order on 19.12.2013, noticing the series of controversies including the order passed under the Bihar & Orissa Municipal Survey Act, but then passes an order with regard to removal of encroachment from Plot Nos. 27 & 29. While ordering enquiry with regard to how Jamabandi was created in favour of the petitioners in respect of Plot No. 28 and, ultimately, he drops the entire proceeding holding that all encroachment from Plot Nos. 27 & 29 have been vacated with the help of State and proceedings are being terminated. I fail to understand how these proceedings are being conducted. Either the Circle Officer is incompetent not to know the procedures or he has deliberately acted in a manner for some other purpose. He has noticed the order passed in the municipal survey proceedings and just washes it away not being final. He notices the title suit pending in which State is party and then ignores the implications thereof. It is because of this I hold that the Circle Officer is incompetent in the matter both with regard to jurisdiction and incompetence to hold the office of the Circle Officer. State would be well advised to keep away such persons wherefrom they are threat to the citizens.

7. In view of the facts as noted above, the very initiation of the proceedings have to be held to be without jurisdiction. State cannot wash away an order passed under statutory powers under the Municipal Survey Act so long as the order is not set aside. That order has to be respected by the State and its Officers. State cannot ignore a suit duly instituted and pending merely because a particular entry was there in Cadastral Survey does not mean that the entry would remain unaltered or nature of land would remain unaltered for over century. The State and its officials must get over this mindset.

8. Thus, I have no hesitation in holding that the proceedings, as initiated in the facts and circumstances stated above, are wholly without jurisdiction and cannot be sustained. They are, accordingly, quashed. The petitioners cannot be proceeded against under the aforesaid Act. This writ petition is, thus, allowed.