
(2008) 08 JH CK 0052
In the Jharkhand High Court

Vivek Sarawgi (Minor)

APPELLANT

Vs

Ranchi Municipal Corporation and Others

RESPONDENT

Date of Decision : 22-08-2008

Acts Referred:

Citation : (2009) 1 JCR 149

Hon'ble Judges : D.G.R. Patnaik, J

Bench : Single Bench

Judgement

D.G.R. Patnaik, J.—By earlier order dated 14.7.2008, a point was raised by the learned Counsel for the petitioner that the respondent Municipal Authorities have wrongly claimed that the petitioner had made encroachment on the disputed land without carrying out on spot measurement on the basis of the revisional survey map of 1935 and instead by placing wrong reliance upon the survey carried out in the year 1929, the respondent municipal authorities have been claiming that the boundary constructed by the petitioner is an encroachment. Learned Counsel had relied in this context on the judgment of the Supreme Court in the case of Shri Raja Durga Singh of Solan Vs. Tholu, , and another judgment passed by this Court in Dwarika Sonar and Others Vs. Most Bilguli and Others, as also the case of Rajendra Khalko v. The Ranchi Municipal Corporation, Ranchi and Ors. passed in WPC No. 3075 of 2002. It further appears that on the above issue, learned Counsel appearing for the municipal corporation had sought for time for obtaining instruction and to file supplementary counter-affidavit.

2. Counsel for the respondent municipal corporation submits now that the petitioner had earlier filed a writ application raising virtually the same issue as raised by him in the instant writ application and the same was dismissed on the ground that the dispute relating to the question of right and title over the land cannot be determined by this Court and the petitioner should move before the Civil Court of competent jurisdiction for appropriate relief and therefore, the present writ application suffers from vice of res judicata.

3. It is not disputed that the petitioner's name has been mutated in the

Government revenue record in respect of the land in question along with its measurement. It is also not in dispute that after the year 1929, survey of the land within the area was conducted by the Revenue Department in the year 1935. It is not understood as to why respondent municipal authorities are insisting upon conducting measurement of the petitioner's land in accordance with the survey map of 1929 and why are they feeling shy to rely on the revised survey of 1935. The petitioner's claim that he is the owner of the disputed land is *prima facie*, acknowledged by the revenue authorities of the State Government and the issue involved in the present writ application is only relating to the ascertainment of the actual area and demarcation of boundary which needs to be finally settled between the parties.

4. In view of the aforesaid facts and circumstances, it appears that the respondent municipal authorities are not showing any inclination to carry out the measurement in accordance with the revisional survey map of 1935. It is therefore deemed appropriate that the measurement be carried out by the Survey Amin duly authorized by the Deputy Commissioner, Ranchi. Accordingly, Deputy Commissioner, Ranchi is directed to get the disputed land measured in accordance with the revenue record pertaining to the land which has been recorded in the name of the petitioner and demarcate the boundary on the basis of the revisional survey of 1935. This exercise must be carried out in presence of both parties after giving them advance notice of a fixed date, preferably within two months from the date of this order.

5. Put up this case after eight weeks on 24th October, 2008.

Till the next date, the interim order dated 14.7.2008, as passed by this Court, shall continue.

6. Let a copy of the order be given to the learned Counsel for the respondent municipal corporation and the petitioner also.

Needless to state that in the event it is found on measurement being taken, that there is any encroachment made by the petitioner over the land, belonging to the municipal corporation, then the municipal corporation may take necessary steps in accordance with law for demolition of such illegal construction, if any.