
(2009) 01 JH CK 0093
In the Jharkhand High Court
Case No : W.P (C) No. 3242 of 2008

Vivek Sarawgi (Minor)

APPELLANT

Vs

State of Jharkhand and Others

RESPONDENT

Date of Decision : 16-01-2009

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2009) 57 BLJR 1133

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

Bench : Single Bench

Advocate : P.P.N. Roy and Lalit Kumar Lal, for the Appellant; Ray Rajat Nath and Gautam Rakesh, for the Respondent

Judgement

D.G.R. Patnaik, J.—Petitioner in this writ application has prayed for the issuance of a direction restraining the respondents from demolishing the building structures, including the boundary wall, erected by the petitioner over the land bearing raiyati plot No. 615 and 616 within ward No. 18 Purani Piri Tola, Buti Road, Karamtoli, Ranchi.

2. The case of the petitioner is that the land under reference in this case bearing revisional survey plot No. 615-616 (municipal survey plot No. 461) under khata No. 95, khewat No. 2, village, Hatma, P.S. Ranchi corresponding to M.S. No. 46, P.S. Hatma, (Ranchi), was purchased in the year 1963 by virtue of a sale deed registered and executed in favour of the petitioner's ancestor namely Manik Chand Sarawagi by the previous owner Maulvi Qamural Hoda with the existing house structures, boundary wall, trees and plants. The entire land measuring 49 decimals 167 sq ft, on a family partition held in 1995, came to be allotted to the exclusive share of the petitioner's father, late Surendra Kumar Sarawagi. Thereafter, the petitioner's father constructed two multistoried buildings over a portion of the aforesaid land in accordance with the building plan sanctioned by the Ranchi Regional Development Authority (RRDA).

Subsequently, by virtue of a family settlement between Surendra Sarawagi and his

grand son Vivek Sarawgi recorded by a deed of settlement dated 29.5.2000, the vacant piece of land in plot No. 615 measuring 11 katha 5 chhatak was allotted to the petitioner Vivek Sarawgi. Upon such settlement, the petitioner had got his name mutated in the revenue records pursuant to an order passed by the competent authority in Mutation Case No. 240 R.27/ 2004-05 and the petitioner has been regularly paying rent for the same to the State of Jharkhand. The petitioner's name was mutated in the municipal records also and he has been paying taxes to the Ranchi Municipal Corporation.

Since the boundary which was originally existing suffered damage, the same used to be repaired from time to time.

3. On 8.7.2005, a notice upon the petitioner through his grand-father, was served by the Office of the Circle Officer town Anchal, Ranchi, intimating therein that the land of the municipal plot No. 344-345 was scheduled to be measured on 9.7.2004 and all persons were required to be present at the time of measurement along with their respective documents. Though the land was measured in presence of the Circle Officer, the villagers and the petitioner's grand father, but no papers or documents were demanded by the Circle Officer from the petitioner pertaining to his land. Even after the measurements, no findings were supplied to the petitioner, nor was the demarcation of his land done and neither did the Circle Officer find any encroachment by the petitioner in any portion of public land. Yet, to the utter surprise of the petitioner, on 18.8.2005, a fresh measurement was carried out by the Ranchi Municipal Corporation even without giving any prior notice or information to the petitioner about the proposed measurement. In the process of measurement, the authorities of the Ranchi Municipal Corporation drew a line within the petitioner's campus in spite of the protest by the petitioner. The petitioner filed a protest petition before the concerned authorities of the municipal Corporation and demanded that measurement of his land be conducted by a qualified engineer/surveyor and had also assured that if, on such measurement, the petitioner is found to have made any encroachment of any portion of the public land, he would promptly remove such encroachment. Further-more, the petitioner got his land measured on 25.8.2005 through a qualified surveyor in accordance with the revisional survey map and was confirmed that there was no encroachment of any public land from his side. The petitioner submitted the surveyor's report on 29.8.2005 before the respondent No. 2 namely the Deputy Chief Executive Officer of the Ranchi Municipal Corporation along with the certificate issued by the surveyor and a copy of the super-imposed map prepared by the surveyor.

Yet, all of a sudden, on 12.9.2005, the petitioner was served with a notice dated 9.9.2005 issued by the respondent Municipal Corporation directing the petitioner to remove an alleged encroachment within 24 hours on receipt of the notice threatening therein that if the purported encroachment was not removed by the petitioner, the Municipal Corporation shall remove the alleged encroachment at the petitioner's cost.

4. Being aggrieved, the petitioner moved this Court by filing Writ Petition No. 5240 of 2005 for quashing the aforesaid notice (annexure 3) issued by the Ranchi Municipal Corporation. Pending, disposal of the writ petition, this Court passed an interim order on 16.9.2005 staying the operation of the impugned notice. In spite of such notice, the respondent Municipal Corporation filed a counter affidavit in the aforesaid writ petition declaring that the boundary wall of the petitioner was demolished on 9.9.2005 i.e. prior to the passing of the interim order of stay. By considering the above statement as averred in the counter affidavit, this Court disposed of the aforementioned writ petition on the ground that since the purported encroachment had already been removed, no further order was required to be passed. The Court further observed that the petitioner was at liberty to take appropriate steps against the erring officers if the petitioner could establish that any such officer had committed contempt of Court and may also move before the court of competent jurisdiction for appropriate relief.

The petitioner thereafter filed another writ petition vide WP No. 6306 of 2005 claiming compensation for damages and repairs of cost of the demolished boundary wall. This Court by order dated 28.3.2006 had disposed of the writ petition by holding that the dispute concerning right, title and interest over the land in question can not be decided under Article 226 of the Constitution.

5. Refuting the claim of the respondent Corporation that the petitioner had encroached upon a public nullah/drain, which was never shown in revisional survey No. 615-616, the petitioner submitted his representation before the Administrator, Ranchi Municipal Corporation complaining against the illegal demolition of the boundary wall which existed over his land.

In reply, the petitioner was informed by the Administrator that in the municipal survey map prepared according to the revisional survey of 1929, a nalla was shown over the land in plot No. 458 and that if the Corporation found any illegal structure raised on the nulla in municipal survey plot No. 458, the Municipal Corporation would be bound to demolish the same.

Considering the dispute as raised by the Corporation on a mistaken belief that the petitioner's land constituted a part of municipal survey plot No. 458 which, according to the petitioner, constitutes the corresponding Municipal Plot No. 461, the petitioner filed a fresh representation before the concerned authority of the Corporation on 10.6.2006 (annexure 7) to the proposal that a joint measurement of the plot be made afresh in accordance with the revisional survey settlement map of the year 1935 so as to decide whether the boundary wall of the petitioner was by way of encroachment of the public land or not.

Conceding to the petitioner's proposal, the Deputy Administrator, Ranchi Municipal Corporation, intimated that the measurement would be carried out on 12.12.2007 in presence of the petitioner. But notwithstanding the petitioner producing all the requisite documents in relation to his right to claim over the

land and his possession since 1963 and also his request for carrying out the measurements in accordance with the revisional survey map of 1935, the respondents carried out the measurements in accordance with the Municipal Survey Map prepared admittedly on the basis of the survey of the year 1929 and upon such measurement, a fresh notice was again served on the petitioner for removal of the boundary wall which allegedly was on the encroached portion of the public land.

Being convinced that the respondent Corporation is bent upon demolishing the petitioner's boundary wall, the petitioner filed the instant writ petition praying for an order restraining the respondent Corporation from demolishing the petitioner's boundary wall. However, as noticed above, even before this Court could pass an interim order of stay of the impugned notice of demolition, the boundary wall was demolished by the respondents and when this fact was brought to the knowledge of this Court, the writ petition was disposed of as being infructuous.

6. During the course of arguments advanced by the petitioner at the stage of admission, learned Counsel for the petitioner while asserting that the petitioner had not encroached upon any municipal land had submitted that such fact can be confirmed by measurements with reference to the revisional survey done in the year 1935 and not with reference to the municipal survey conducted in the year 1929. Referring in this context to the judgment of the Supreme Court in the case of Shri Raja Durga Singh of Solan Vs. Tholu, , the order dated 12.5.2004 in the case of Arjun Khalko v. Ranchi Municipal Corporation WP (C) No. 3075 of 2002, learned Counsel submitted that according to the settled principles of law, the latest survey would prevail. The learned Counsel in this context also relied upon the judgment in the case of Dwarika Sonar and Others Vs. Most Bilguli and Others, .

Considering the above submissions as also the admitted fact that the petitioner's name stands mutated in the Government revenue record in respect of the land claimed by him along with its measurement and also considering the fact that the revisional survey of the lands within the area was conducted in the year 1935 and also considering the fact that the dispute revolved only on the question of ascertaining the actual area of demarcation of the boundary wall of the petitioner's land which could possibly be settled by making a fresh measurement of the land on the basis of the revisional survey map of 1935, this Court by its order dated 22.8.2008 had directed the Deputy Commissioner, Ranchi, to carry out measurements of the petitioner's land through a Survey Amin authorized by the Deputy Commissioner, in accordance with the revenue records pertaining to the land recorded in the petitioner's name and to demarcate the boundary on the basis of the revisional survey of the year 1935.

In compliance of the direction, a fresh measurement was reportedly conducted and report has been submitted by the Deputy Commissioner.

7. A counter affidavit has been filed on behalf of the Municipal Corporation. The main stand taken by the respondent is that the present writ petition is not maintainable in as much as the petitioner on a previous occasion had filed similar writ petitions [WP(C) Nos. 5240 of 2005 and 6306 of 2005] for the self same relief and both the writ petitions were dismissed by this Court. It is further submitted that though this Court in the earlier writ petition No. 5240 of 2005 had passed an interim order of stay on 16.9.2005 against the order of demolition of the petitioner's boundary wall, but such demolition had been carried out on 9.9.2005 even prior to the passing of the interim order. The second Writ Petition No. WP 6306 of 2005 in which the petitioner had claimed for payment of compensation for damage/demolition of the eastern boundary wall and entrance gate of his premises, was also disposed of by this Court with a direction to the petitioner to move before the civil court for redressal of his grievance since the issues raised therein related to the petitioner's claim of right, title and interest over the land in question. Further contention of the respondent is that even though admittedly the boundary wall was demolished by the corporation on 9.9.2005, yet, the petitioner had re-erected the boundary wall without sanction from the competent authority which, according to the learned Counsel for the municipal Corporation, is an act of encroachment of the public drain by the petitioner. Since the petitioner has reconstructed the boundary wall, the respondent corporation has issued the impugned notice directing the petitioner to remove encroachment. The respondents have disputed the petitioner's claim that the boundary wall was originally in existence on the land ever since the purchase of the land in the year 1963. It is further submitted that on insistence of the petitioner, the measurement of land was carried out on 12.12.2007 and from the measurement report dated 14.12.2007 submitted by the Circle Officer, it was found that the boundary wall was erected upon the public drain by way of encroachment.

8. An Intervention Application has been filed on behalf of an Association namely Basti Bikas Manch Samiti, Karamtoli, Ranchi, seeking permission to intervene in the writ petition on the ground that the decision in this writ petition is likely to adversely affect the interest of the members of the samiti. Through in the IA petition, it is sought to be explained that the Intervenor Association had filed WP (PIL) 47 of 2004 praying for a direction to the respondent authorities to provide an approach road to the residents of Purani Piritola of Karamtoli, Bariatu Road, Ranchi. The land involved in the dispute in the instant writ petition is the only land providing an approach road to the residents of Purani Piritola of Karamtoli, Bariatu Road, Ranchi, which has been encroached by the petitioner. The contention of the Intervenor is that the petitioner must confine to his own land and not over any public land and that the petitioner is bound to abide by the municipal survey map which declares that the land under dispute is in fact a public land.

By filing rejoinder to the IA petition, the petitioner has denied and disputed the claim of the Intervenor stating that the intervenors are tools of the municipal

Corporation and in the dispute in the present writ petition, they are not necessary party at all and that such intervenors themselves appear to be encroachers of public land.

9. From the facts which emerge from the rival submissions of the learned Counsel for the parties, it appears that the petitioner's consistent case is that his ancestor had purchased the land of plot No. 615-616 which was numbered as per the municipal Survey of 1935, bearing municipal plot No. 461 way back in the year, 1963 corresponding to sale deed specifying not only the revisional survey plot No. but also specifying the area of land together with its boundaries in accordance with revisional survey map of 1935. It further appears that accepting the aforesaid transfer of land by virtue of the registered sale deed, the name of the purchaser, who was the petitioner's ancestor, was mutated not only in the Government revenue record, but also in the municipal records.

After finding the petitioner to have remained in occupation of the entire area of land since the date of its purchase, the respondent municipal authorities for the first time in the year 2005, raised a dispute alleging that the petitioner had encroached upon a piece of public land which, according to them, was detected on the basis of the measurement of the land carried out on the basis of municipal survey map. The petitioner has denied and disputed the correctness of the municipal survey map on the ground that it was prepared on the basis of the revisional survey map of 1929 instead of the subsequent survey map of 1935.

10. On an earlier occasion, the petitioner had raised a dispute in the writ petition being WP No. 5240 of 2005 before this Court against the threatened demolition of his boundary wall. The writ petition was dropped on account of the fact that the boundary wall stood demolished by the respondent authorities even before any decision on the petitioner's prayer in the writ petition could be taken. In the subsequent writ petition No. 3075 of 2002 filed by the petitioner against the earlier impugned notification of the municipal Corporation under which the petitioner was directed to remove the alleged encroachment, this Court had directed the respondent authorities to conduct a fresh measurement of land in question within the stipulated period and if the petitioner is found to have encroached upon any public land, to remove the encroachment in accordance with law. Direction was further made that until such measurement, no demolition of the structures on the plot in question should be made. The above order was passed on 12.5.2004.

11. Learned Counsel for the respondent municipal Corporation would inform that in compliance with the aforesaid direction, a fresh measurement was carried out wherein it was found that petitioner had encroached upon certain area of public land and therefore a fresh notice was served upon the petitioner to remove the encroachment. The petitioner being aggrieved, has filed this writ petition pointing out that although pursuant to the direction of this Court in the earlier writ petition, a fresh measurement was carried out by the Corporation but in doing so, the respondent had deliberately ignored the petitioner's request for carrying

out the measurements in accordance with the map prepared in the revisional survey of 1935 and had wrongly insisted upon carrying out the measurement on the basis of survey map prepared in accordance with the revisional survey of 1929.

12. Upon considering the petitioner's submissions and in the light of the ratio decided by the Supreme Court in the case of *Durga Singh v. Tholu* (supra) and *Dwarika Sonar v. Mostt. Bilguli* (supra), this Court by an interim order dated 22.8.2008 had directed the Deputy Commissioner to get a fresh measurement of the petitioner's land done through a Government Survey Amin on the basis of revisional survey map of 1935 and to submit report.

The report has since been submitted but the same has been disputed by the respondents as being incomplete and not sufficient to resolve the dispute raised in this case, since it does not indicate the specific measurements of the petitioner's land vis-a-vis the land adjacent thereto. It appears from the above that even pursuant to the earlier direction of this Court in the earlier writ petition, the respondent carried out the measurements but it was conducted only on the basis of the municipal survey map prepared admittedly on the basis of the revisional survey of 1929. The dispute therefore could not be resolved on the basis of such measurement and the petitioner had a genuine grievance against the findings recorded on the basis of such measurement. It further appears that even though pursuant to the direction of this Court, a fresh measurement was purportedly carried out on the basis of the revisional survey map of 1935 and a report has been submitted, but, as pointed out by the learned Counsel for the respondent Municipal Corporation, the same is incomplete inasmuch as it does not mention the demarcation of the petitioner's land as per the measurements specified in the sale deed with corresponding reference to the survey map of 1935.

The contention of the learned Counsel for the respondents and the learned Counsel for the Intervenor that in the survey map of 1929, a public nullah was shown in existence, cannot be accepted in view of the fact that no such nullah appears to have been shown in the subsequent revisional survey map of 1935. Even otherwise, as per the ratio laid down in the aforementioned two case of *Durga Singh* (supra) and *Dwarika Sonar* (supra), out of the two revisional survey maps, the one prepared in the subsequent survey would prevail.

13. The contention of the learned Counsel for the municipal Corporation that this writ petition is not maintainable in view of the decision by this Court in the earlier writ petition directing the petitioner to refer his grievance to a civil court, cannot be accepted in view of the fact that the question raised in the present case is concerned with the action of the respondent municipal Corporation in their wanting to demolish the existing building structures of the petitioner without first satisfying themselves according to the procedures of law that the petitioner has encroached upon any public land. Furthermore, the insistence of the respondent authorities of the municipal Corporation to carry out the

measurements only on the basis of the municipal survey map which was admittedly prepared on the basis of the revisional survey of 1929, has also been disputed and challenged by the petitioner.

14. Since the fresh report of measurement carried out pursuant to the order of this Court in this writ petition does not reflect the entire particulars of information, particularly the information relating to demarcation of the petitioner's land by specific measurement vis-a-vis the adjacent lands, in my opinion, it would only be proper for the municipal authorities in consultation with the Deputy Commissioner to carry out a fresh measurement of the petitioner's land as specified in the sale deed produced by him on the basis of the map of revisional survey of 1935 vis-a-vis the demarcation of adjacent lands which fall beyond the demarcated area of the petitioner's land. Such measurement should be carried out by the Government Amin in presence of an officer of the Government deputed by the Deputy Commissioner and in presence of the petitioner and all concerned persons after giving them adequate opportunity of hearing and, if, on such measurement and on considering the documents, it is found that the petitioner has raised any construction by way of encroachment upon any public land, then the municipal Corporation shall be at liberty to get such encroachment removed through due procedure of law.

With the above observations, this writ petition is disposed of.

Let a copy of this order be given to the learned Counsel for the respondent State and the municipal Corporation.