

**(2008) 02 JH CK 0037**  
**In the Jharkhand High Court**

Zeyaul Hoda

APPELLANT

Vs

State of Jharkhand and Others

RESPONDENT

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**Date of Decision :** 21-02-2008

**Acts Referred:**

**Citation :** (2008) 2 JCR 695

**Hon'ble Judges :** R.K. Merathia, J

**Bench :** Single Bench

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### Judgement

R.K. Merathia, J.—Petitioner has challenged the notice dated 18.11.2005 issued under Bihar Public Land Encroachment Act and the proceedings pursuant thereto.

2. Petitioner's case is that the area of 27 decimals and 4 decimals, total 31 decimals under plot Nos. 35 and 20 in Khata No. 471 of village-Chitarpur, P.S. Ramgarh was settled to his father in the year 1961 in Settlement Case No. 4/1961-1962. A proceeding being Encroachment Case No. 22/1988-1989 was started for removal of encroachment over plot No. 2347 of Khata No. 471. Petitioner appeared and said that he has got no concern with plot No. 2347 and moreover on measurement it was found that there was no encroachment on plot No. 2347 and accordingly in the year 1988, the proceeding was dropped. But without specifying plot number, the impugned notice dated 18.11.2005 was issued to the petitioner. However, petitioner filed show cause but without passing any order, the respondents started demolishing the construction made over plot No. 2347. Mr. Rohit Roy further submitted that the petitioner did not make any further construction on his own plots i.e. plot Nos. 35 and 20 after 1988 and therefore there was no occasion for starting a fresh proceeding. Relying on 2000 (1) PLJR 209, he submitted that for deciding complicated questions of title, State should file suit.

3. Mr. Manjul Prasad, appearing for the State, submitted that by the impugned notice, a fresh proceeding was not started, rather the earlier proceeding which was kept in abeyance was restarted when it was found that plot No. 2347, which was recorded as Bazar, has been encroached. He further pointed out from the

show cause filed by the petitioner that he knew that the proceeding was with regard to plot No. 2347 as he specifically said in his show cause that his house stands on plot Nos. 35 and 20 and not in plot No. 2347. His stand in the show cause was that plot Nos. 35 and 20 was settled to him and he has got no concern with plot No. 2347.

4. In the said case 2000(1) PLJR 209, the petitioner therein was claiming settlement and possession under Basjit Parcha from about 40 years. But in the present case, when the petitioner is not claiming any right, title, interest and possession over plot No. 2347, why the State should be directed to file suit.

5. It is true that the number of plot was not mentioned in the notice but in the show cause petitioner mentioned that he has got concern with plot No. 2347 and thus he knew the plot involved in the proceeding. The proceeding in question is with regard to plot No. 2347. Petitioner's specific case is that he has got no concern with plot No. 2347 and he has not made any encroachment over plot No. 2347. On this, Mr. Rohit Roy, appearing for the petitioner, submitted that petitioner's aforesaid plot Nos. 35 and 20 are adjacent to plot No. 2347 and therefore at least there should be proper measurement before demolishing the alleged encroachment made by the petitioner on plot No. 2347.

6. In the circumstances, petitioner is directed to appear before the Sub-divisional Officer, Ramgarh (respondent No. 3) at 11 a.m. on 3rd March, 2008, when he will fix date for measurement in presence of the petitioner and the Circle Officer. Petitioner will be at liberty to engage his own Amin. If it is found that petitioner has encroached over plot No. 2347, the encroachment will be removed. If petitioner does not co-operate, the measurement may be held ex parte.

7. With these observations and directions, this writ petition is disposed of.

8. Let a copy of the order be given to Mr. Manjul Prasad, as prayed.