

(2003) 12 JH CK 0009

Jharkhand High Court

Case No: CWJC No"s. 1251 and 3648 of 1997 (R)

Shiv Kumar Pramanik @
Sukumar Pramanik and Dulal
Chandra Pramanik and Others

APPELLANT

Vs

State of Bihar and Others

RESPONDENT

Date of Decision: Dec. 3, 2003

Acts Referred:

- Constitution of India, 1950 - Article 226

Citation: (2004) 1 JCR 427

Hon'ble Judges: Amareshwar Sahay, J

Bench: Single Bench

Advocate: P.K. Prasad and D.K. Chakraverty, for the Appellant; R.N. Sahay, Senior Standing Counsel II and R. Prasad, J.C. to Sr. S.C. II, for the Respondent

Final Decision: Dismissed

Judgement

@JUDGMENTTAG-ORDER

Amareshwar Sahay, J.

Both the writ applications were heard together as the common question is involved in both the applications and therefore by common Judgment this two writ applications are being decided.

The facts of the C.W.J.C. No. 3648 of 1997 (R)

2. The petitioner has challenged the order dated 5.4.1997 passed by Deputy Commissioner, East Singhbhum, Jamshedpur in B.P.L.E./Appeal No. 57/97-98 as contained in Annexure 9 by which he dismissed the appeal filed by the petitioner and confirmed the order dated 17.8.96, contained in Annexure 6 to the writ application passed by the respondent No. 2 in B.P.L.E. Case No. 25 of 1996-97, whereby the learned Circle Officer-cum-Collector under the Act, Jamshedpur held

that the petitioner had no right and title to encroach upon the lands in question measuring 0.02.20 Hectares of land in Mouza Sakchi, being Plot No. 1880, Khata No. 218, which was a public land and therefore the petitioner was directed to remove the structures from the aforesaid land.

3. The petitioner claims this land, on the basis of fact, that his father, late Banamali Pramanik, made pucca structure over the land in question in the year 1960 and he used to run hotel and Sweetmeat Shop in the name and style of Subhankari Mistanna Bhandar and he remained in possession till he was alive and thereafter the petitioner being his son continued in possession"and thereby acquired right and title by adverse possession.

The facts of the C.W.J.C. No. 1251 of 1997 (R)

4. The petitioners in this writ application, are own brother and sister of Shiv Kumar Pramanik. The petitioners in the C.W.J.C. No. 1251 of 1997 (R) being the son and daughter of late Banamali Pramanik. These two petitioners have challenged the order of the Deputy Commissioner, Jam-shedpur passed in B.P.L.E./Appeal No, 96 of 1996-97 dismissing the appeal of the petitioner and confirming the order of the Circle Officer-cum-Collector under the Act dated 17.8.1996 in B.P.L.E. Case No. 24 of 1996-97, whereby it also held that the petitioner has no right to encroach the public land. Therefore they were directed to remove the encroachment over the land in question i.e. Plot No. 1880 in Khata No. 218 measuring 294 square feet of land Mouza Sakcht

5. In this case also the petitioner"s claim over the land in question is by way of adverse possession since the time of their father.

6. Mr. P.K. Prasad, learned counsel appearing for the petitioners in both the cases has vehemently argued that the order passed by the learned Deputy Commissioner, as well as the Circle Officer are absolutely bad in law being without jurisdiction as because, with regard to the same very land, earlier also a proceeding being Misc. Case No. 89 of 1968 was initiated against the father of the petitioners in both the cases, which was ultimately dropped and since no appeal was filed against the said order passed by the L.RD.C. Tata Zamindari in B.L.E. case No. 80 (R) of 1968-69 dated 31.12.1982, and therefore, the said order has now become final and as such no fresh proceeding under the B.P.L.E. could have been initiated against the petitioners. Consequently, the impugned order passed by learned Deputy commissioner as well as Circle Officer are absolutely illegal and are liable to be quashed. On this point he has relied on the decision in the case of Shri Kali Prasad Seal v. The State of Bihar and Ors. reported in 1969 PLJR 23 and an unreported decision of this Court in the case of Mritynjay Mandal v. State of Jharkhand, in W.P. (C) 5037, of 2001 disposed of on 5.11.2003.

7. Mr. P.K. Prasad relying on the decision In the case of Smt. Rekha Singh and Ors. v. State of Bihar and Ors. reported in 1992 (2) PLJR 854 and also on the decision

reported in [Government of Andhra Pradesh Vs. Thummala Krishna Rao and Another](#), in the case of Government of Andhra Pradesh v. Thummala Krishna Rao and Anr. has submitted that in a summary proceeding under the B.P.L.E. Act, no order for eviction of the petitioner could have been made by the Circle Officer or the Deputy Commissioner.

8. So far as the decision in the case of Shri Kali Prasad Seal v. State of Jharkhand, (supra) and the decision of this Court in WP (C) 5037 of 2001 in Mrityunjaya Mandal v. State of Jharkhand are concerned, they are on the same line wherein it has been held that once a proceeding under the B.P.L.E. Act has been initiated with regard to the same very land and if on merit the decision has already been given by dropping the proceeding then on the same facts another proceeding cannot be initiated.

9. The facts of the present case are quite different. In the case of Mrityunjaya Mandal v. State of Jharkhand, the writ petitioner was claiming right title and interest over the disputed lands, by virtue of purchase by a registered deed of sale and on two earlier occasions B.P.L.E. proceeding, initiated against that very land-was dropped after a decision on merit. On those facts, this Court held that initiation of proceeding under the B.P.L.E. Act, on the same facts, over the same land was without jurisdiction. Similar is the position in the case of Shri Kali Prasad Seal v. The State of Bihar and Ors., (supra). Whereas in the present case, as stated in early paragraphs, the claim of the petitioner is only by way of adverse possession, being in continuous possession since time of their father. Therefore, the facts of the present case are quite different to that of the cases cited above and as such the decision in the case of Mrityunjaya Mandal v. State of Jharkhand, (supra) and Shri Kali Prasad Seal v. The State of Bihar and Ors., (supra) are not applicable In the facts and circumstances of this case.

10. From the perusal of the order dated 31.12.1982, passed in L.R.D.C.Tata Zamindari, Jamshedpur B.L.E. case No, 80 (R) of 1968-69, as Contained in Annexure 1 to the supplementary affidavit filed by the petitioner, it appears that L.R.D.C. Tata Zamindari, Jamshedpur, disposed of four B.L.E. proceeding by a common order but on merit no finding at all was given by him rather it was specifically stated in the order that it will not be lawful to give any finding on the basis of the facts of the case. However, learned L.R.D.C. advised the applicant to approach the competent Court for settling their dispute.

11. Therefore, it appears that the earlier proceeding initiated with regard to the land in question was not decided on merit but as a matter of fact it was dropped in absence of sufficient material without giving any finding on merit. Therefore, in my view, since the earlier proceeding was not decided on merit and therefore a subsequent proceeding under the B.P.L.E. Act was not barred under the law. In that view of the matter, in my view, the subsequent proceeding was maintainable in the facts and circumstances of this case.

12. No doubt that in the case of Government of Andhra Pradesh v. Thummala Krishna Rao and Anr., (supra) it has been held by the Supreme Court that if there is a complicated question of title involved in the case then in a summary proceeding a person who is said to be in unauthorized occupation cannot be evicted but in the present case the petitioner has not come forward with a single document for his valid and genuine claim, and therefore in my view, the petitioners, even prima facie, failed to establish their right of possession over the land in question and therefore, the above decision cited by the learned counsel of the petitioner is also not applicable in the facts and circumstances of this case.

13 From the order as contained in Annexure-6 passed by the learned Circle Officer as well as the appellate order passed by the Deputy Commissioner from which it appears that the two authorities, have elaborately dealt with the case of the respective parties and then have come to a definite finding that the lands in question were public land which were encroached by the petitioners and therefore, In my view, the petitioners have rightly been directed to remove the structures from the aforesaid public lands.

14. In view of the above discussions and findings, I find no merit in these two writ petitions, consequently the same are dismissed but without costs.