

(2009) 11 JH CK 0029
Jharkhand High Court
Case No: None

Pashupati Mandal

APPELLANT

Vs

The State of Jharkhand, Deputy
Commissioner and Sub
Divisional Officer, Road
Construction Department

RESPONDENT

Date of Decision: Nov. 27, 2009

Hon'ble Judges: Dabbiru Ganeshrao Patnaik, J

Bench: Single Bench

Judgement

D.G.R. Patnaik, J.

Heard the parties.

2. Challenge in this writ application is the order dated 2.11.1999 passed by respondent No. 2 in Misc. Case No. 21/98 which was initiated on the petition filed by the petitioner pursuant to the order passed by the High Court in the writ application being C.W.J.C. No. 3338 of 1999(R) with C.W.J.C. No. 3334 of 1999(R).

3. The dispute in this writ application is in respect of a piece of land appertaining to Plot Nos. 6873 and 6882 under Khata Nos. 197 and 577 in Mouza-Chas which was originally recorded in the name of Yatindra Nath Mishra who sold the same to Bibhuti Prasad on 12.4.1938 and the petitioner is the transferee of a portion of the said land from the earlier holder.

4. Earlier, the petitioner had entertained apprehensions that the respondents-State authorities would dispossess the petitioner from the land in view of the fact that the concerned authorities had sought to take measurement of the petitioner's land. Expressing his apprehension, the petitioner filed writ application before this Court vide C.W.J.C. No. 2838 of 1996(R). The writ application was disposed of with a direction to the respondents to ascertain the facts first about the encroachment made, if any, by the petitioner on public land and in case it is determined by the

authorities concerned after due notice to the petitioner that the structure or a portion of the structure is on public land, they shall be at liberty to proceed in the matter in accordance with law.

5. Pursuant to the aforesaid order of this, court, the petitioner filed an application before the Deputy Commissioner, Bokaro for, information and also to make their own ascertainment regarding the nature of the land. His petition was registered as Misc. Petition No. 21 of 1998. To the petitioner's utter surprise, the Deputy Commissioner passed the impugned order in the aforesaid Misc. Petition declaring that the land on which the petitioner's house situates, stands on public land and holding that the petitioner had encroached upon the land, a further direction has been given to the petitioner to remove the encroachment.

6. Learned Counsel for the petitioner submits that the impugned order is without basis and totally illegal inasmuch as it has been passed without conducting any enquiry whatsoever and without initiating any proceeding under the Land Encroachment Act against the petitioner and even without affording any opportunity of hearing to the petitioner.

7. Learned Counsel for the petitioner adds, further that the same order was also passed against occupants of two adjoining lands, namely H.S. Lamba and Amar Singh Bedi. Both the aforesaid persons had filed their writ applications before this court challenging the same order, of the Deputy Commissioner issued for removing the purported encroachment. Upon considering the submissions of the parties in both the writ applications, this Court had quashed the impugned orders of the Deputy Commissioner with liberty to the aggrieved persons, including the State Government to move before the competent Civil Court for appropriate relief. Learned Counsel adds that the facts of the case of the present petitioner are identical to the case of the aforesaid persons and the impugned order passed against the petitioner needs to be set aside.

8. A counter affidavit has been filed on behalf of respondent No. 2. Learned Counsel for the respondents explains, that as informed in the counter affidavit, the land in question was acquired by the State Government according to the prescribed procedures way back in the year 1952 and, as it appears, the petitioner has encroached upon the land and he is, therefore, liable to be evicted from such land.

9. Though counsel for the respondents claims that the land under reference was acquired by the State Government, but no document of acquisition has been produced. Furthermore, admittedly no proceeding under B.P.L.E. Act has been initiated against the petitioner at any time and merely by way of summary procedure, which is unknown to law, the respondent-Deputy Commissioner has passed the impugned order directing the petitioner to demolish the structure standing on the land.

10. The petitioner has claimed his right, title and interest over the disputed land and the structure standing thereon. He has claimed that he has been coming in possession of the disputed land ever since 1971. Accordingly, the petitioner claims himself to have acquired the disputed land by prescription. Such a claim can be adjudicated only by the Civil Court and not by way of any summary proceedings by the Deputy Commissioner.

11. I am satisfied that the impugned order is perverse, without basis and beyond jurisdiction of the Deputy Commissioner. As such, the impugned order passed by the Deputy Commissioner is set aside. The aggrieved person including the State Government, shall, however, be at liberty to seek appropriate relief before the Civil Court of competent jurisdiction in accordance with law.

12. With these observations, this writ application is disposed of.

13. Let a copy of this order be handed over to the counsel for the respondents.