

**(2003) 07 JH CK 0013**

**Jharkhand High Court**

**Case No:** CWJC No. 10223 of 1998 (P)

Jharu Napit

APPELLANT

Vs

State of Bihar and Others

RESPONDENT

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**Date of Decision:** July 11, 2003

**Acts Referred:**

- Constitution of India, 1950 - Article 226

**Citation:** (2003) 3 JCR 424

**Hon'ble Judges:** Tapen Sen, J

**Bench:** Single Bench

**Advocate:** Anjani Kumar Verma, for the Appellant; Rupesh Kumar Singh, JC to SC-I, for the Respondent

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### **Judgement**

Tapen Sen, J.

Heard Mr. Anjani Kumar Verma, learned counsel for the petitioner and Mr. Rupesh Kumar Singh, learned J.C. to the Standing Counsel No. 1 for the State-Respondents.

2. This is a transferred matter from Patna and it appears that the private respondent No. 5 against whom the petitioner has made serious allegations had already appeared at Patna before the Patna High Court through his advocate and he has also filed a counter affidavit.

3. The only documents on which the petitioner relies upon are rent receipts and from perusal thereof it appears that the petitioner's father paid rent to the State of Bihar.

4. The case of the Petitioner is that, his father Gopal Napit was given/settled two decimals of land-on Plot No. 1469, JB No. 24/2883-Ja within Mouza Hirna by the then Ghatwal of the Rohini Estate in the year 1950. Consequently the Petitioner's father built a "kuchcha" house in the year 1950 and started living on that plot and also started his family business. According to the Petitioner, he was in peaceful

possession of the area for about 7/8 years when a proceeding under the Public Land Encroachment Act was initiated by the Sub-Divisional Officer, Deoghar being PLE Case No. 7 of 1957-58. This, according to the petitioner, was instituted against the elder brother of the Petitioner, namely, Panchu Napit. After perusing the reports of the Kanungo and holding local inspection, the Sub-Divisional Officer, Deoghar came to a conclusion by his order dated 19.11.1963 (Annexure 2), that there was no encroachment and accordingly dropped the proceeding. Thereafter all was well till the respondent No. 5 purchased a piece of land just behind the petitioner's house and constructed a "pucca" house. Thereafter, he started disturbing the peace of the Petitioner with the intention to have a free frontage on the road. It is further stated that in order to achieve this, the respondent No. 5 filed a petition under the Bihar Public Land Encroachment Act, on 13.01.1987 and the Deputy Commissioner forwarded the same to the Executive Engineer (Roads). In the meantime the Sub-Divisional Officer, Deoghar also received a complaint in relation to encroachment and as a result thereof. Land Encroachment Case No. 8 of 1989-90 was initiated in which the Anchal Amin was also directed to send his report. However, according to the petitioner, neither did the Executive Engineer submit any report to the Deputy Commissioner nor did the Anchal Amin file any report before the Sub-Divisional Officer. At paragraph 12. the petitioner has stated that upon a petition of the respondent No. 5, the Sub-Divisional Officer directed/entrusted one Vishwanath Pandit to take measurement of the lands, and the said Vishwanath Pandit, in the absence of the petitioner, inspected and measured the land and submitted a "false/bogus" report in connivance with the respondent No. 5 whereafter the Sub-Divisional Officer passed an order of eviction on 02.09.1992 in L.E. Case No. 8 of 1989-90. 5. The petitioner is thoroughly aggrieved by this second order, inasmuch as, according to the petitioner, the first encroachment matter had already been dropped by the then Sub-Divisional Officer vide Annexure-2 in P.L.E. Case No. 7 of 1957-58 and therefore, there was no occasion for once again re-initiating/re-opening the matter as the same became barred by constructive res judicata by reason of passing of the order dated 19.11.1963 as contained in Annexure-2.

6. The petitioner has further made a grievance that against the forementioned order of eviction passed in L.E. Case No. 8 of 1989-90, i.e., order dated 02.09.1992 of the Sub-Divisional Officer, Deoghar (respondent No. 3), the petitioner filed an appeal being Revenue Miscellaneous Appeal No. 86 of 1992-93, but the said appeal was rejected by order dated 14.11.1998 and the Sub-Divisional Officer, Deoghar was directed to remove the encroachment by 16.11.1998.

7. The petitioner has a lot of grievance against the manner in which the aforementioned order dated 14.11.1998 was passed. According to him, after the appeal had been filed, the order of demolition was initially stayed by the Deputy Commissioner (respondent No. 2) by his order dated 20.11.1992. The petitioner submits that prior to the order of demolition that was passed on 02.09.1992, the

Certificate Officer, Deoghar had submitted his report before the Sub-Divisional Officer being report dated 18.03.1982 which is contained in Annexure-3. Upon perusal of the aforementioned report it appears that the Certificate Officer reported that there was dispute in between the petitioner and the respondent No. 5, who had made some constructions just behind the house of the petitioner and that the respondent No. 5 had also ordered the petitioner to remove his hutments.

8. The petitioner has also submitted that he filed a detailed representation before the Deputy Commissioner on 29.10.1998 (Annexure-4) wherein he stated the entire facts, but the Deputy Commissioner, instead of considering the same and only in order to help the respondent No. 5, verbally ordered that the house of the petitioner should be demolished. Apprehending trouble on account of the aforementioned oral directions of the Deputy Commissioner, the petitioner filed CWJC No. 9425 of 1998, but by order dated 10.11.1998 (Annexure-5) the said Writ Application was disposed off directing the Deputy Commissioner to dispose off the appeal. The High Court also observed that the apprehension was premature considering the fact that the Deputy Commissioner while admitting the appeal had already passed an order of interim relief.

9. The aforementioned order dated 10.11.1998 was produced by the petitioner before the Deputy Commissioner on 34.11.1998, but according to the learned counsel for the petitioner, the Deputy Commissioner acted in haste and disposed off the appeal on the ground that the petitioner had not been able to file any Purcha in support of the statement that the land had been settled to him by the erstwhile ex-landlord and therefore his claim was not maintainable. Learned counsel for the petitioner, however, has submitted before this Court that the Deputy Commissioner had taken all papers from the petitioner on 10.11.1998 itself and he drew attention of this Court to the Order sheet dated 10.11.1998 showing filing of documents. According to the learned counsel for the petitioner, the said Purcha was also filed but the Deputy Commissioner has wrongly mentioned that no Purcha was filed.

10. From the counter affidavit filed on behalf of the respondent No. 5 it has been stated that the petitioner had encroached upon the Jasidih-Deoghar PWD Road which is situated south to a public drain which lies south of Plot No. 1469. The petitioner's case is that he was settled only Plot No. 1469 and according to the report of the Circle Officer vide Annexure-3, he exercised all acts of possession including payment of rent to the State and that his father's name was recorded in Register II of the Revenue Records.

11. Paragraph 6 of the Counter affidavit of respondent No. 5 also shows that his father (father of the respondent No. 5) had purchased 1340 S.ft. of land out of the said plot No. 1469 (i.e., the same plot) by registered deed of sale dated 22.02.1981.

12. Thus, from perusal of the aforementioned facts and statements which have been pleaded, both by the petitioner as also by the respondents, it appears that there is a

serious dispute existing interse between the parties, although the report, of the Circle Officer shows that there was an earlier proceeding which was dropped and that the name of the petitioner's father had already been entered in Register II. It is also apparent from the statements made in paragraph 9 of the counter affidavit of the respondent No. 5 that the Amin, who had been appointed by the Court, took measurement in absence of both the parties and submitted his report on 04.04.1991. wherein he reported that the petitioner had encroached 900 S.ft. on public road.

13. The respondent No. 5 has also challenged the validity of the Circle Officer's Report and has stated at paragraph 18 that the same is a collusive report.

14. The report of the Circle Officer, which, according to the respondent No. 5, is collusive, has not been brought on record in its original form because Annexure-3 is merely a photocopy of a typed document. However, Annexure-2 appears to be a photocopy of the certified copy and it shows dropping of encroachment proceeding on 19.11.1963. Similarly the enclosures to Annexure-1 show that they are rent receipts paid by the father of the petitioner. The petitioner's case also is that he has been living in his own confined area which was granted in settlement to him for the last 50 (fifty) years, but from the statement made in paragraph 3 of the counter affidavit of the respondent No. 4 it has been slated that the house of the petitioner which is a kuch-cha House has been constructed after encroaching PWD Road which was removed by the Department earlier during emergency in the year 1976-78 and thereafter many times during the Shrawani Fair of Deoghar, the petitioner who is a habitual encroacher. repeatedly encroaches the said PWD land.

15. Taking into consideration the facts in its entirety it is evident that there are serious and disputed questions of facts which cannot be adjudicated by this Court. Consequently, the petitioner is given liberty to file a Suit before an appropriate Court. In case the petitioner takes appropriate steps and files such a Suit within a period of three months from today, then that Suit will not be dismissed or rejected on the ground of delay because the petitioner was pursuing his remedy before this Court. The petitioner is also given liberty to file an application for interim relief. Till orders arc passed on the said application, the petitioner shall not be disturbed. This interim relief shall protect the petitioner only till orders are passed on the application for interim relief. Thereafter whatever order is passed by the appropriate Civil Court, the same shall govern.

With the aforementioned observations therefore, this Writ Application is disposed off. However, there shall be no order as to costs.