

(2003) 04 JH CK 0017

Jharkhand High Court

Case No: Writ Petition (PIL) No. 6127 of 2002

Baljit Singh Bedi

APPELLANT

Vs

State of Jharkhand and Others

RESPONDENT

Date of Decision: April 25, 2003

Acts Referred:

- Cantonments Land Administration Rules, 1925 - Rule 3
- Constitution of India, 1950 - Article 226

Citation: (2003) 2 BLJR 1554 : (2003) 3 JCR 312

Hon'ble Judges: Vinod Kumar Gupta, J; Lakshman Uraon, J

Bench: Division Bench

Advocate: Kalyan Roy, P.P.N. Roy and Praveen Kumar, for the Appellant; Nilesh Kumar, JC to AG, for the Respondent

Final Decision: Dismissed

Judgement

Vishnudeo Narayan, J.

In this writ application filed under Article 226 of the Constitution of India the petitioner has sought for a direction against Respondent No. 6 to auction Keshare Hind Land recorded in the Survey Record of Rights bearing Khata No. 358, Plot No. 1178 having an area of 7.32 acres situate at Ramgarh in pursuance of the Auction Notice No. P/4/29 dated 13.6.2002 published in the dally newspaper "Hindustan" dated 8th November, 2002, regarding proposed and under construction shops over the same and also direction to Respondent Nos. 1 to 4 to get the encroachment removed over the said land.

2. The brief facts leading to the filing of this application are that R.S. Plot No. 1178 appertaining to Khata No. 358 having an area of 7.32 acres situate at Ramgarh is Keshare Hind Land recorded as such in the Khatian and the said land has not been settled by the Government in favour of Ramgarh Cantonment Board and as such Executive Officer of Ramgarh Cantonment Board has got no right to auction

Keshare Hind Land in pursuance of the auction notice published in "Hindustan" on 8.11.2002. It is alleged that Respondent Nos. 5 and 6 have illegally encroached upon the said Keshare Hind Land in respect of which they have got no right and they have also no right to auction the said land. The petitioner claims to have made representation to the Sub- Divisional Magistrate, Ramgarh Sub-Division at Hazaribagh on 18.9.2002 and the copy of the same was sent to the Commissioner as well as Deputy Commissioner, Hazaribagh and also to the Circle Officer, Ramgarh, Hazaribagh wherein it has been requested that the Executive Officer, Ramgarh Cantonment Board be directed to stop construction over Keshare Hind Land aforesaid and on representation that matter was enquired into by the Sub-Divisional Officer through Circle Inspector and Karamchari and they have submitted their report to the Circle Officer wherein they have categorically stated that the said land is a Keshare Hind Land recorded in the Khatian and inspite of the said report the Sub-Divisional Magistrate, Ramgarh did not restrain Respondent Nos. 5 and 6 for making construction over the said land. Lastly it has been alleged that the citizens of Ramgarh have been seriously affected by the encroachment made by Respondent Nos. 5 and 6 over the land aforesaid and the petitioner being a social worker and active member of All India Congress Committee as well as President of Ramgarh Chamber of Commerce & Industries in the interest of citizen of Ramgarh has filed this writ application.

3. In the counter-affidavit filed by the Circle Officer on behalf of Respondent Nos. 1 to 4, it has been stated that R.S Plot No. 1178 of Khata No. 358 situate in Mauza Ramgarh, Thana No. 82 is recorded as Keshare Hind Land in the record of rights and no Jamabandi has ever been recorded in the name of Ramgarh Cantonment Board. It is also stated that the Executive Officer, Ramgarh Cantonment Board has auctioned the said land for the construction of commercial shops without any right and the said land is the property of Government of Jharkhand and Ramgarh Cantonment Board has not taken any prior permission from the Government of Jharkhand for the auction and construction of the shops on the said land and inspite of several letters sent to Respondent Nos. 5 and 6, no document evidencing their ownerships on the said land has been produced before him.

4. The contesting Respondent Nos. 5 and 6 in their counter- affidavit have stated that R.S. Plot No. 1178 of Khata No. 358 aforesaid having an area of 7.32 acres of land stands recorded in the survey record of rights as Keshare Hind Land and the said land was transferred in favour of Ministry of Defence in the year, 1951 and thereafter it has become the defence land and said plot was shown as camping ground from the very beginning and the extract of Military Land Register, Annexure-G to the second supplementary counter-affidavit, shows the details of the transfer of the said land and the then market value of the concerned land was Rs. 150/- per acre vide Land Acquisition Officer, Hazaribagh No. 5468 G dated 27.6.1952 (File No. 0-1/8/A) and apart from Plot No. 1178 aforesaid, the other plots are also included in the Government Land Register and altogether 1535 acres was included

in the G.L.R. The entire land measuring 7.32 acres of Plot No. 1178 was divided into two plots in the year 1951 and numbered as Class A1 and A2 and G.L.R. Survey No. 142 and 142/1. The area of G.L.R. Survey No. 142 under Class A2 comprised of 2.95 acres and G.L.R. Survey No. 142/1 under Class A1 comprised of 4.37 acres of land. It is stated that there is furniture yard of the Military Engineering Service over 4.37 acres of land under Class A1, G.L.R. Survey No. 142/1 for the last more than 50 years (Annexure-B) and there is camping ground over the area of 2.95 acres of land bearing G.L.R. Survey No. 142 under Class A2 (Annexure-B). It is also stated that Ramgarh Cantonment Board proposed to construct the shopping complex on Class A2 land comprised of 2.95 acres of land under G.L.R Survey No. 142. According to Rule 3 of the Cantonment Land Administration Rules, 1925 framed in exercise of the power u/s 280 of the Cantonment Act, 1924 the Military Estate Officer of the Cantonment shall prepare and maintain General Land Register of all lands in the Cantonment in the form prescribed in Schedule 1 and no addition or alteration shall be made except as provided therein and Rules 4 and 5 deal with the classification of the land, Rule 10 of the said Rules provides that M.B.O. will register all the mutation in Column No. 1 of the G.L.R. and shall enter every transfer of right or interest in the land in the Cantonment on information u/s 287(2) of the Cantonment Act, 1924 or by the Board when such transfer necessitates an alteration of the entries in any column of the said register. Rule 10 of the said Rules further provides that Military Estate Officer shall also make entry in the said register respecting the transfer of any right or interest as aforesaid which he has reason to believe has taken place and of which no report has been made to him. It is also stated that the General Land Register as per Rules shall be re-written on every 5th year so as to include all the changes to the rights or interests in land and a fresh register of mutation shall be opened simultaneously. It is stated that the re-classification of the land aforesaid under Rule 7 of the C.L.A. Rules, 1937, was done with the concurrence of the President of India and 2.95 acres of land aforesaid was handed over in favour of Ramgarh Cantonment Board for the purpose of construction of new bus stand and shopping complex by the Ministry of Defence and the Central Command vide letter dated 21.3.2002 has sanctioned, to construct 172 shops on self-finance basis and the Cantonment Board by earlier two phases of auction has approved 39 shops to the highest bidder among those allotment of 21 shops has already been approved by the G.O.C. in Central Command, Lucknow to those persons who had deposited the security money as per the terms of the auction. It is stated that the Cantonment Board has already proposed to construct 40 shops - 20 in the ground floor and 20 in the first floor - on self-finance scheme on the said land near the Subhash Chowk. It is also stated that third phase of the auction was scheduled to be held on 22nd November, 2002 and on earlier occasion the Cantonment Board had invited tenders from 27th May, 2002 to 31st May, 2002 and the second phase auction was also held from 25th June, 2002 to 27th June, 2002 and at that point of time no objection was raised by the writ petitioner. It is stated that the writ petitioner is one of the interested part to get some allotment of shops from the Cantonment Board but since the Cantonment

Board refused to oblige him this writ petition has been filed with mala fide motive in the garb of public interest litigation. It is stated that the construction of a bus stand as well and the shopping complex cannot be treated against the interest of the public rather it is a public interest of which the Cantonment Board is taking steps for such construction and the land stands transferred in favour of Cantonment Board with concurrence of the President of India and the Cantonment Board was sanctioned for construction of the new bus stand and shopping complex and no relief can be granted to the petitioner as G.L.R. Survey Plot Nos. 142 and 142/1 carved out of R.S. Plot No. 1178 is the land under the Ministry of Defence and the Government of India being the landlord and the said land stands transferred in favour of the Cantonment Board under the C.L.A. Rules, 1937.

5. In the supplementary affidavit in reply to the counter- affidavit of Respondent Nos. 5 and 6, it has been stated that the writ petitioner has never made any application for allotment of any shop as stated by the respondents nor does he ever intend to take allotment of the shop and thus the question of refusal by the Cantonment Board to allow any shop to the writ petitioner does not arise at all and the allegation regarding entering by the petitioner into the office of the Cantonment Board and abusing its officers and employees on 26.12.2001 is also not correct and the FIR lodged by the Cantonment Board against the writ petitioner is only to deter him from raising any voice for the illegal action of the Cantonment Board. It has also been stated that the land over which the Cantonment Board is constructing shops is the Keshare Hind Land and it does not stand transferred to the Cantonment Board by the Central Government or the State Government and the Cantonment Board can never have the right over the land aforesaid and the said land is not the property of the Cantonment Board in view of the provision u/s 108 of the Cantonment Act, 1924 in the absence of any document to show regarding the transfer of the said land in favour of the Cantonment Board by the Central Government or the State Government and the entire construction on the said land is illegal and the President of India has never given concurrence for transfer of the Keshare Hind Land in favour of the Cantonment Board and there is total absence of any document brought by Respondent Nos. 5 and 6 regarding the transfer of the said land in favour of the Cantonment Board.

6. In the supplementary counter-affidavit of Respondent Nos. 5 and 6 it has been categorically stated that the letter dated 20.2.2001 (Annexure-C) has been issued by the Ministry of Defence for re-classification of the land aforesaid with the sanction of the President of India which was addressed to the Director General. Defence Estates, New Delhi and the copy thereof has been sent to Respondent No. 6.

7. Mr. P.P.N. Roy, learned counsel appearing for the petitioner has submitted that R.S. Plot No. 1178 having an area of 7.32 acres of Khata No. 358 situate at Ramgarh is a Keshare Hind Land recorded in the Survey Record of Rights and the said land was not settled by the Government in favour of Cantonment Board, Ramgarh and

respondent Nos. 5 and 6 have illegally encroached upon the said land and issued an auction notice (Annexure-3) for the auction of the shops which are being construed illegally on the said land and the citizens of Ramgarh stand seriously affected by the encroachment over the said land by Respondent Nos. 5 and 6. It has also been submitted that Respondent Nos. 5 and 6 have not brought any document on the record to show that the said land stands transferred to the Cantonment Board, Ramgarh u/s 108 of the Cantonment Act, 1924 and the Cantonment Board, Ramgarh has got on right to auction the Keshare Hind Land aforesaid for the construction of the shops. It has also been submitted that prior to the filing of this writ application he has moved authorities concerned but of no avail and with a view to safeguard the interest of the public in general this writ application has been filed. It has also been submitted that in the counter-affidavit filed on behalf of Respondent Nos. 1 to 4, it has been admitted that the said land is a Keshare Hind Land and no Jamabandi has ever been recorded in the name of Cantonment Board, Ramgarh and the said land is the property of the Government and Ramgarh Cantonment Board has not taken any permission from the Government of Jharkhand for the auction and construction of the shops over the said land. Lastly it has been submitted that the map and the entries in the General land Register of the Ramgarh Cantonment Board in respect of the said Keshare Hind Land has no relevancy in this case which cannot be a document of title of the Cantonment Board, Ramgarh in respect thereof.

8. Refuting the contention of the learned counsel for the petitioner it has been submitted by Mr. Kalyan Roy, learned counsel for Respondent Nos. 5 and 6 that the said plot was definitely the Keshare Hind Land and the said land has been acquired about 50 years ago as per order of the Government which contained in File No. 50/C&O-39 and the same is noted in Register B Part II of the Collector's and the present market value at the time of its acquisition was Rs. 150/- per acre vide Land Acquisition Officer, Hazaribagh No. 5468 G dated 27.6.1952 (File No. O-18/A) at page 117. In support of his contention Annexure-G has been brought on the record to the second supplementary counter-affidavit filed on behalf of Respondent Nos. 5 and 6. It has also been submitted that the said land was camping ground of the Eastern Command P & A District and Bengal Circle and the extract from the Military Land Register (Annexure-G) corroborates the said fact. It has also been submitted that thereafter as per Rule 3 read with Rules 4 and 5 of the Cantonment Land Administration Rules, 1925 the said land was sub divided in two Survey plots bearing G.L.R. Survey No. 142 and 142/1 in Class A1 land and the area of G.L.R. Survey Plot No. 142/1 is 4.37 acres which is the furniture yard of the Cantonment Board of Ramgarh for the last more than 50 years and the 2.95 acres of land bearing G.L.R. Survey No. 142, remained as camping ground. It has also been submitted that Annexure-B is the extract from the General Land Register which shows that Government of India is the landlord of the said land and the Ministry of Defence is the holder of the occupancy right. It has also been submitted that Annexure-C is the letter dated 20.2.2001 of the Government of India, Ministry of defence whereby and

whereunder the sanction of the President of India was communicated to the Director General, Defence Estates, New Delhi, a copy of which has been addressed to the Chief Executive Officer, Ramgarh, Cantonment Board and a direction was made to reclassify the area 2.95 acres comprising of G.L.R. Survey No. 142 from Class A-2 to Class C land under Rule 7 of the C.L.A. Rules, 1937 and vesting the said area u/s 108 of the Cantonment Act, 1924, read with Section 6 of the Cantonment Properties Rules, 1925 in the local Cantonment Board for the construction of the new bus stand and shopping complex. It has also been submitted that Annexure-E is the letter dated 7th June, 2000 of Director, Defence Estates, Central Command, Lucknow for making provision of the fund for construction of the new bus stand on the camping ground near furniture yard aforesaid. It has also been submitted that entire Survey Plot No. 1178. reclassified as G.L.R. Survey No. 142 and 142/1 stand vested in the Cantonment Board u/s 68 of the Cantonment Act, 1924, read with Rule 6 of Cantonment Property Rules, 1925 the Ministry of Defence has sanctioned for the construction of the new bus stand and shopping complex on G.L.R. Survey No. 142 over an area of 2.95 acres of land and the said land has been handed over to the Cantonment Board for that purpose vide Annexure-D to the counter-affidavit. It has also been submitted that for that purpose auction notice was published in the daily newspaper Hindustan and the petitioner has filed the writ application with malafide motive and intention on the ground of alleged public interest. The writ application filed by the petitioner is definitely not a public interest litigation and it is not maintainable and is fit to be dismissed.

9. It will admit of no doubt that Survey Plot No. 1178 appertaining to Khata No. 358 having an area of 7.32 acres situate at Ramgarh is Keshare Hind Land recorded as such In the Survey Record of Rights. The Cantonment Board. Ramgarh claims to have acquired the land about 50 years ago under the provision of 108 of the Cantonment Act, 1924. Any document of transfer or acquisition in respect of the said land has not been brought on the record by the contesting Respondent Nos. 5 and 6. However, Annexure-G of the second supplementary counter-affidavit of Respondent Nos. 5 and 6 is an extract from the Military Land Register which shows the manner of acquisition of R.S. Plot No. 1178 having an area of 7.32 acres. Annexure-G further shows that the said plot was acquired vide File No. 50/C&O-39 and is noted in B Part II in the Register of Collector and it also shows the present market value of the said land was Rs. 150/- per acre vide Land Acquisition Officer, Hazaribagh vide No. 5468 G dated 27.6.52 (File No. O-1/8/A) page 117. It also appears from Annexure-G that the entire area of Plot No. 1178 was the camping ground of the Easter Command P & A District and Bengal Circle. It therefore appears that the Cantonment Board acquired the entire land of R.S. Plot No. 1178 in the year, 1952 and since then it was used as camping ground. The said plot was reclassified under the provisions of Cantonment Land Administration Rules, 1937 as Class A land it was sub-divided as G.L.R. Survey No. 142 and 142/1. The area of G.L.R. Survey No. 142/1 is 4.37 acres and there is furniture yard of the Military Engineering Service

thereon for the last more than 50 years. The petitioner in his writ application has deliberately not whispered regarding the existence of the furniture yard of the Military Engineering Service over 4.37 acres of land of R.S. Plot No. 1178 reclassified as G.L.R. Survey No. 142/1 for the reasons best known to him. The General Land Register regarding G.L.R. Survey No. 142/1 (Annexure-B) shows that Government of India is the landlord of the said plot and the Ministry of Defence is the holder of occupancy right in respect thereof. Annexure-B shows that 2.95 acres of land of R.S. Plot No. 1178 aforesaid reclassified as G.L.R. Survey No. 142 is the camping ground of which Government of India is the landlord and Ministry of Defence is the holder of the occupancy right in respect thereof. The writ petitioner has come with a case of encroachment by the Cantonment Board, Ramgarh in respect of 2.95 acres of land bearing G.L.R. Survey No. 142, which is a part and parcel of R.S. Plot No. 1178 when the Cantonment Board, Ramgarh published a notice for the auction sale of the shops proposed to be constructed on the said land. It is relevant to mention here that General Land Register prepared as per C.L.A. Rules, 1937 is a public document and the entries made therein are admissible in evidence unless rebutted by cogent and unimpeachable documents. No such document has been brought on the record by the writ petitioner. Even Respondent Nos. 1 to 4 have not come with any document to rebut the correctness of the entry made in General Land Register aforesaid. It is equally pertinent to mention here that Annexure-G with the second supplementary counter-affidavit of the contesting respondents shows regarding the manner of the acquisition of R.S. Plot No. 1178 in the year, 1952 and the details of the acquisition do figure therein and despite that Respondent Nos. 1 to 4 have illegally questioned the mode of acquisition in respect of the said plot in their counter-affidavit. The stand on the part of Respondent Nos. 1 to 4 in this regard is incorrect in the fact and circumstances of this case. Annexure-C to the counter-affidavit shows that 2.95 acres of land of G.L.R. Survey No. 142, which is camping ground has been transferred in favour of Cantonment Board, Ramgarh with the sanction of the President of India with a direction to reclassify the said G.L.R. Survey No. 142 from Class A-2 to Class C land under the relevant rules of C.L.A. Rules, 1937 and directing further the Ramgarh Cantonment Board for construction of new bus stand and shopping complex thereon. It is equally relevant to mention here that Annexure-C dated 20.2.2001 aforesaid is addressed to the Director General, Defence Estates, New Delhi and a copy of that letter has been addressed to the Chief Executive Officer, Cantonment Board, Ramgarh. Therefore, the character of R.S. Plot No. 1178 stands altered as a defence land on its acquisition about more than 50 years ago and since then it is the defence land and 2.95 acres of land reclassified as G.L.R. Survey No. 142 of the Property of the Cantonment Board, Ramgarh. Therefore, it cannot be said, in the facts and circumstances of this case, that Cantonment Board, Ramgarh has encroached upon the said land and the proposed construction of the shopping complex thereon by the Cantonment Board, Ramgarh is illegal. It is equally pertinent to mention here that construction is being made over the said land as per the sanction of the President conveyed to it by Annexure-C, read

with Annexure-A. And last but not the least the petitioner has come up with this writ application without any viable public cause and interest. P.I.L. is definitely not meant to circumvent and infringe the rights of a person or institution, which legally vests in it. Therefore, the notice of auction sale (Annexure-3) is legal and valid and issued in the exercise of legal rights by the Cantonment Board, Ramgarh and it does not stand vitiated on any score. Viewed thus, this writ application (PIL) has no merit and it is hereby dismissed.