

(2012) 03 JH CK 0040

Jharkhand High Court

Case No: Writ Petition (C) No.7429 of 2011

Sri Lal Babu Sao and Anr

APPELLANT

Vs

State of Jharkhand

RESPONDENT

Date of Decision: March 23, 2012

Citation: (2012) 3 JCR 418 : (2012) 3 LJLR 570

Hon'ble Judges: Narendra Nath Tiwari, J

Bench: Single Bench

Advocate: Saibal Kr. Laik, for the Appellant;

Final Decision: Allowed

Judgement

Narendra Nath Tiwari

1. In this writ petition, the petitioners have prayed for setting aside the orders dated 26.5.2011 passed by the Circle Officer, Jharia in Encroachment Case No.3/2011-12 and Encroachment Case No.4/2011-12, contained in Annexure-5 and 6, whereby the petitioners have been directed to remove the alleged encroachment from the land in question. It has been submitted that the said orders are wholly arbitrary, unjust and illegal in as much as the same have been passed before the date when the time was granted for producing their documents. It has been stated that both the cases were fixed for 26.5.2011. The petitioners had appeared and produced their documents. Thereafter, the case was fixed for 2.6.2011. In the meanwhile the Circle Officer without waiting for the next date i.e. 2.6.2011, passed the impugned orders directing them to remove the encroachment on the same date i.e. on 26.5.2011.

2. Learned counsel for the petitioners submitted that the impugned order is wholly illegal and violative of principle of natural justice in as much as the same has been passed ante dated, before the next date fixed, behind back of the petitioners and without giving them opportunity to produce their evidences.

3. Learned J.C. to S.C.(L&C) appearing on behalf of the respondents, on the other hand, submitted that there was a proceeding against the petitioners and

opportunity for hearing was given to them. On 26.5.2011, further opportunity was given to the petitioners fixing 2.6.2011. The impugned order was passed on the next date i.e. on 2.6.2011. However, since the subsequent order was not separately dated, the same allegation has been made against the petitioner due to the said clerical error. The petitioners have no valid ground for challenging the said orders and their writ petition is liable to be dismissed.

4. I have heard learned counsel for the parties and perused the facts and materials on record. On perusal of the order sheets of the case contained in Annexure-5 and 6, I find that on 26.5.2011 the petitioners were present and in their presence 2.6.2011 was fixed as the next date. The Circle Officer has signed the order thereafter. However, just below the said order dated 26.5.2011 an order has been passed directing the petitioners to remove alleged encroachment on the land in question. Though the order does not bear any date, according to the petitioners, the said order was passed on 26.5.2011 itself.

5. However, the said plea has been disputed by the respondents. The petitioners have claimed that the said order was passed behind their back and without giving them opportunity of producing their evidences and that the said order is violative of principle of natural justice. The said claim and contentions have been disputed by the respondents. Though the said claim has been disputed by the respondents, the grievance of the petitioner cannot be said to be unreasonable and without basis.

6. It is well settled that if a party claims that the principle of natural justice has been complied with, that party has to satisfy the court to that regard.

7. Since the petitioners have stated that no opportunity was given to them before passing the said order and since the order also does not speak so, the respondent's version cannot be simply accepted.

8. In view of the above, the impugned order passed directing the petitioners to remove encroachment from the land in question is unreasonable and is tainted due to non-compliance of principle of natural justice. For the said reason, this writ petition is allowed. The impugned orders are held to be not sustainable and are hereby quashed. The matter is remitted to the Circle Officer, Jharia to proceed with the case from the stage, as the same was on 26.5.2011, and dispose of the same in accordance with law after observing the principle of natural justice.