

(2008) 11 JH CK 0025

Jharkhand High Court

Case No: None

Haranganj Grih Nirman Sahyog
Samiti

APPELLANT

Vs

State of Jharkhand and Others

RESPONDENT

Date of Decision: Nov. 11, 2008

Citation: (2009) 1 JCR 13

Hon'ble Judges: Gyan Sudha Mishra, C.J; Dilip kumar sinha, J

Bench: Division Bench

Final Decision: Dismissed

Judgement

@JUDGMENTTAG-ORDER

1. This appeal has been, preferred by Haranganj Grih Nirman Sahyog Samiti against the order dated 3.7.2008 passed in W.P.(C) No. 6904/2007 by which the writ petition filed by the petitioner-appellant herein was dismissed holding therein that the land on which Encroachment Case No. 4/2003-04 was instituted was a raiyati land in the survey records of right which has been concurrently held by all the revenue authorities which include Circle Officer, Sub Divisional Officer, and the Deputy Commissioner and therefore, no action could have been taken under the provisions of Bihar Public Land Encroachment Act.

2. Counsel for the appellant assailing the order passed by the learned Single Judge has submitted that the land in question is used as a public road and according to their averment, the road was constructed by the respondent-State.

3. Mr. L.K. Lal, counsel appearing for the respondent-State however submitted that the land was constructed by the Cooperative Society itself and the land being raiyati land, the respondent-State has no concern with the said land. It is thus obvious that the land in question, according to the petitioner-appellant herein, is a public land due to which Encroachment Case No. 4 of 2003-04 was instituted at the instance of the petitioner-appellant and therefore, the land, according to the authority, is a

raiya land.

4. The learned Single Judge could not have been expected to enter into a scrutiny of the evidence and decide the nature and character of the land. Once the finding of fact was recorded by the revenue Courts that the land in question is a raiya land, obviously the encroachment case could not have been instituted.

5. However, if the petitioner-appellant still insists that the land in question is not a raiya land and that it is a public land, it obviously will have to avail the alternative remedy including the filing of a civil suit for adjudication of the question regarding the nature and the character of the disputed land.

6. In so far as the impugned order passed by the learned Single Judge is concerned the same requires no interference for the reasons assigned hereinabove.

7. The appeal, under the circumstance, is dismissed at the admission stage itself.