

(2012) 09 JH CK 0112

Jharkhand High Court

Case No: Writ Petition (C) No. 5034 of 2006

Bhola Choudhary

APPELLANT

Vs

The State of Jharkhand and
Others

RESPONDENT

Date of Decision: Sept. 12, 2012

Acts Referred:

- Bihar Public Land Encroachment Act, 1956 - Section 6(1)(c), 6(2)

Citation: (2012) 4 JCR 693

Hon'ble Judges: Aparesh Kumar Singh, J

Bench: Single Bench

Advocate: Rohit Roy, for the Appellant; V.K. Prasad, SC (L and C) for the State, for the Respondent

Judgement

Aparesh Kumar Singh

1. The petitioner was aggrieved by the notice dated 7th of August 2006 issued by the Collector, Dhanbad under the provisions of section 6(2) of the Bihar Public Land Encroachment Act, 1956. The writ petition was preferred alleging that the impugned action has been taken without taking into account the objection filed by the petitioner and no final order was served upon the petitioner under the relevant provisions of section 6(1)(c) of the Act of 1956 for removal of the alleged encroachment. Respondent had appeared earlier and filed a counter affidavit stating that a proceeding under the Bihar Public Land Encroachment Act, 1956 was initiated for removal of encroachment and after giving opportunity of hearing, measurement was made and it was found that the petitioner had encroached 532 sq.ft of the public land, whereafter the impugned notice was issued for removal of the alleged encroachment. The stand of the petitioner that a notice under the Bihar Building (Lease, Rent and Eviction) Control Act, was issued, was strongly contested stating clearly that a proceeding vide B.P.L.E. Case No. 03 of 2004-05 was initiated in

the court of Circle Officer, Dhanbad whereafter, the petitioner was found to have encroached over the public land and action contemplated under the Act was taken for removal of the said encroachment, against which the petitioner straightaway moved this court without exhausting alternative remedy available to him.

2. On the strong contest of the petitioner, respondents were directed to produce the relevant records showing whether proceedings were initiated under the B.P.L.E. Act and notices were issued upon the petitioner or not? Today, counsel for the respondent State has produced the records containing the notices issued upon the various persons and showing service of notice upon the petitioner Bhola Choudhary, Son of Sri Tuleshwar Choudhary, which indicates that after affording opportunity to the petitioner and others, order dated 12th July 2006 was passed in respect of number of persons including this petitioner.

3. Having gone through the order dated 12th July 2006, it appears that the impugned notices were issued pursuant to the order passed under the relevant provisions of B.P.L.E. Act. However, Learned counsel for the petitioner submits that the copy of the said order was never served upon him and respondent State may be directed to serve a copy of the said order upon him so as to enable him to prefer an appeal against the order in question before an appropriate forum. It appears that after initiating proceeding under the provisions of B.P.L.E. Act, orders were passed leading to issuance of impugned notices, which has been challenged by the petitioner in the present case without pursuing the alternative remedy. In the circumstances, respondent State is directed to serve a copy of the order upon the counsel for the petitioner within two days. Thereafter, it would be open to the petitioner to avail of the alternative remedy before the appellate forum under the Act of 1956. However, it is submitted by the counsel for the petitioner that the appeal may be barred by limitation and he would prefer appeal within a period of four weeks from the date of service of copy of the order upon him. In the circumstances, it is observed that the appellate authority may consider the question of delay sympathetically in view of the pendency of this writ application. It is expected that the respondent would not take any coercive steps for the period of four weeks by which time petitioner undertakes to prefer his appeal against the order dated 12.07.2006.

With the aforesaid observations and directions, this writ petition is disposed of.