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(2003) 1 JCR 396

Jharkhand High Court

Case No: C.W.J.C. No. 2997 of 1993 (R)

Gobardhan Ram	APPELLANT
Vs	
Deputy Commissioner and Others	RESPONDENT

Date of Decision: Oct. 9, 2002

Acts Referred:

- Constitution of India, 1950 - Article 226

Citation: (2003) 1 JCR 396

Hon'ble Judges: Tapen Sen, J

Bench: Single Bench

Advocate: Amreshwar Sahay, A.S. Dayal and Amar Kr. Sinha, for the Appellant; R.S. Mazumdar, G.A., for the Respondent

Judgement

Tapen Sen, J.
Heard, Mr. Amreshwar Sahay, learned counsel for the petitioner and Mr. R.S. Mazumdar, learned Government Advocate for the State-respondents i.e. respondent Nos. 1 to 4.

2. Nobody appears on behalf of. the respondent Nos. 5 to 8 although as would be apparent from the office note dated 21.1.1997 that respondent No. 5 had been served with notice and similarly, it would appear that by order dated 12.9.1997, respondent Nos. 6 to 8 had also been served with notice.

3. However, in view of the nature of the order that is being passed in this case, it is not necessary to hear the respondents at this stage.

4. From the perusal of the writ petition it appears that the petitioner had to rush to this Court challenging the order dated 13.9.1992 passed by the Circle Officer and also the order dated 30.8.1993 passed by the Land Reforms Deputy Collector, Garhwa whereby and whereunder he allowed the application for restoration filed by Babulal Korwa (respondent No. 5) and directed delivery of possession to be given to him in respect of

Plot No. 488, Khata No. 8 comprising an area 2.43 acres. According to the learned counsel for the petitioner while passing the impugned order the Land Reforms Deputy Collector did not consider the points of law canvassed to the effect that the place where the land was situated i.e. Ranka, the provisions of Chhotanagpur Tenancy Act did not apply inasmuch as it was not included as a Scheduled Area and in support of the aforesaid contention the learned counsel for the petitioner has drawn the attention of this Court to Annexure 2. Learned counsel for the petitioner has further stated that he also raised the point of the bar of Limitation but that was also not considered by the Land Reforms Deputy Collector. Being aggrieved, the petitioner filed an appeal before the Additional Collector, Garhwa being an Appeal No. 196/93-94. From a perusal of the order-sheet of the Appellate Authority as contained at Annexure 5, it is apparent that the matter was directed to be placed before the Deputy Commissioner by order dated 21.9.1993. According to the petitioner, the Deputy Commissioner was not holding Court and therefore the appeal could not be heard and in the meantime, the petitioner apprehended that the orders of the Circle Officer in relation to delivery of possession would be effected and he would be dispossessed from the property. Acting upon such apprehension, the petitioner rushed to this Court and filed the present writ petition.

5. Thus from what has been stated above, it appears that the appeal is still pending and as has been stated, the petitioner has not yet been dispossessed on account of the interim protection granted by this Court on 27.9.1993 as also 12.10.1993 and 5.11.1993.

6. Since this Court had protected the petitioner and had admitted this writ application, it is expedient in the interests of justice that the petitioner be given liberty to pursue his remedy before the Appellate Authority before whom the appeal was filed and is still pending. In that view of the matter, this case is remanded to the respondent No. 1 i.e. Deputy Commissioner, Garhwa to hear and dispose off the appeal from the stage it was left i.e. 21.9.1993. It goes without saying that the petitioner shall take all steps for adequate communication of this order before the Deputy Commissioner, Garhwa who shall act in accordance with law thereafter he shall give notice to all the parties and shall hear and determine the case of the parties strictly in accordance with law. Since this matter is pending in this Court since 1993 and the Appeal had also been filed in the year 1993, the Deputy Commissioner, Garhwa is directed to conclude the matter within one year from the date of receipt Of this order.

7. In the interests of justice and since this Court had already stayed the delivery of possession, and since none of the respondents are before us, it would be in the fitness of things to direct that the Deputy Commissioner shall also consider the question of adequately protecting the petitioner by interim order during the pendency of the appeal. Such an order shall be passed by the Deputy Commissioner upon hearing the parties and till such order is passed, the order of stay granted by this Court shall continue.

8. With the aforementioned observations/directions with writ petition stand disposed off, however, there shall be no order as to costs.