

(2011) 07 JH CK 0124

Jharkhand High Court

Case No: Contempt Case (Civil) No. 349 of 2011

Shiv Mandir Naga
Baba Khatal
Sangharsh Samiti

APPELLANT

Vs

The State of
Jharkhand and Others

RESPONDENT

Date of Decision: July 26, 2011

Citation: (2011) 4 JCR 392

Hon'ble Judges: Prakash Tatia, Acting C.J.; Harish Chandra Mishra, J

Bench: Division Bench

Final Decision: Dismissed

Judgement

1. Heard learned Counsel for the parties.
2. This contempt petition has been preferred in the name of Shiv Mandir Naga Baba Khatal Sangharsh Samiti alleging the deliberate disobedience, non compliance, intentional disrespecting and violation of the order of the Patna High Court, Ranchi Bench dated 23.04.1997 passed in C.W.J.C. No. 1463 of 1996(R).
3. According to learned Counsel for the Petitioner, on 23.04.1997 in the said C.W.J.C. No. 1463 of 1996(R) order was passed by the Division Bench of the Patna High Court, Ranchi Bench and this has been disrespected and deliberately violated by taking action of removal of the residents of the area of Naga Baba Khatal. Learned Counsel for the Petitioner also invited our attention to the reply filed by the Deputy Commissioner, Ranchi to show that the land in question is private land and not the Government land and, therefore, the State authorities had no right to take action of removal of residents of the said area who were occupying the private land.
4. We have considered the submissions of the learned Counsel for the Petitioner and it may be worthwhile to refer few facts apart from the fact that the order dated 23.04.1997 was an interim order and the Petitioner did not disclose that the writ

petition being C.W.J.C. No. 1463 of 1996 (R) was finally decided. However, on demanding, learned Counsel for the Petitioner has provided us the copy of the final order passed in the said writ petition dated 29.06.2001, which also we have perused.

5. Before proceeding further, it will be worthwhile to mention here that the present contempt petition has been filed by alleged Shiv Mandir Naga Baba Khatal Sangharsh Samiti without disclosing that when this Samittee was constituted and how it was constituted and who are its members and it has been stated in the writ petition that the land in question belongs to the Lord Shiva and it is not the Government land and as per the documents produced by the Petitioner himself, there were several litigations with respect to the land in question which have been clearly mentioned in the reply filed by the Deputy Commissioner, Ranchi in the above said writ petition which includes several round of litigations of several nature, trust dispute, criminal proceedings as well as proceeding under Chhotanagpur Tenancy Act and after considering all above factual aspects, the Jharkhand High Court, where this writ petition being C.W.J.C. No. 1463 of 1996 (R) stood transferred because of creation of the State of Jharkhand, was decided by a Division Bench of this Court vide order dated 29.06.2001 and, therefore, the order dated 23.04.1997 which had its life up to the passing of the final order in the writ petition has already come to an end. Not only this, but in the order dated 23.04.1997 the Division Bench of this Court clearly observed as under:

After perusal of his statement regarding land situated at Sukla colony as well as land commonly known as "Naga Baba Khatal" (opposite Government House), we are of the view that no positive direction can be issued to the administrator for removing the Khatal from these lands until and unless the litigations, as mentioned in the said counter affidavit are finally come to an end. However, the district authorities are directed to keep a vigil of the fact that taking advantage of this order, no Khatal is being made on a purely public land. It is needless to say that if and when the authorities will come to a definite conclusion that the public land has been encroached by any Khatal owner either constructing Khatal or for any other purpose, the same shall be immediately vacated and for which no further direction from this Court would be necessary

6. It is apparent from the said direction of the Division Bench of this Court that district authorities were directed to keep a vigil of the fact that taking advantage of this order, no Khatal or encroachment is being made on a purely public land and it was also directed that if and when the authorities will come to a definite conclusion that the public land has been encroached by any Khatal owner either constructing Khatal or for any other purpose, the same shall be immediately vacated and for which no further direction from this Court would be necessary. Therefore, the Division Bench, even after taking note of all above facts directed the State to take action for the land falling in the Naga Baba Khatal area in the manner as mentioned above.

7. So far as another dispute with respect to the 32 kiosks, it was observed that "we could have directed the concerned authorities to erect those 32 kiosks on the side selected as above, but in our view, before making any specific direction, the Administrator of the Corporation, Vice Chairman of the RRDA, the Deputy Commissioner, Ranchi and Manager of the Ranchi Dairy Project, should be present in Court so that they can submit a proposal jointly for implementation of our order, which would be given on the next date". Therefore, so far as claim of any kiosk holder are concerned, that was also the subject matter in the said order and, thereafter, after taking the recourse and examining the Jharkhand Cattle Licensing Regulations, 2001, the final order was passed by the Division Bench on 29.06.2001. In the final order dated 29.06.2001, the Division Bench after examining the above Regulations of 2001, observed that some exemption may be granted to the applicants from operation of the Regulations of 2001 and they should be made available to the existing Institutions and that too in accordance with the directions contained in the order passed by the Division Bench and it was made specifically clear that all such exemptions shall be available to the existing Institutions only if they within the time limit fixed in the Advertisement to be issued by the Deputy Commissioner, Ranchi apply to him for such exemption. In other words, if such Institutions do not apply for exemption within the time limit, their "khataals" or the places by whatever other name it may be called, shall be removed. Therefore, in fact the question of the land of Naga Baba Khatal being a private land is concerned, the order which has been relied upon by the Petitioner itself clearly demonstrate that after taking note of all above litigations, the above orders were passed non recognizing the rights of the persons occupying the land of Naga Baba Khatal otherwise than in the manner as given in the order dated 29.06.2001 and it not the case of the Petitioner that its member got any licence under the Regulation of 2001 and if the intention of the interim order dated 23.04.1997 is understood then it is clear that the encroachments were directed to be removed by the Division Bench of this Court as back as in the year 1997 upon satisfaction of the authorities concerned about the encroachments. The above litigations also clearly indicate that the persons who were residing over the Naga Baba Khatal tried to continue their possession but without being any title and they failed on earlier occasion also.

8. Apart from above, it is clear from the fact sated in para 6 of the contempt petition that even according to the Petitioner, the land in question belongs to the trust. The trust has not come before this Court raising any grievance for taking action by the State authorities over the land of Naga Baba Khatal and, furthermore, the trust has not been made party in this petition and further, nothing has been placed on record on the basis of which it can be gathered that the Petitioner or its members have any contract with the said trust so as to use even the land in question.

9. In totality of the facts of the case, the contempt petition is not only misconceived but has been filed only to take advantage of the orders which in fact are against the persons occupying the land of the Naga Baba Khatal.

10. We are again reiterating specifically that the Petitioner fails to make out any case of violation of any of the directions issued by this Court. Rather, in fact has shown us that the directions were passed to the State to take action against the encroachments in the areas referred above.

11. Therefore, we are of the view that the present contempt petition is nothing but clear abuse of process of Court. Hence, this contempt petition is dismissed. However, we are not imposing any cost.