
(2014) 10 JH CK 0030

Jharkhand High Court

Case No: Writ Petition (Civil) No. 2755 of 2013

Mahadev Sharan Singh

APPELLANT

Vs

State of Jharkhand

RESPONDENT

Date of Decision: Oct. 14, 2014

Acts Referred:

- Chotanagpur Tenancy Act, 1908 - Section 85, 85(2), 85(4), 87, 89

Citation: (2015) 1 JLR 168

Hon'ble Judges: S. Chandrashekhar, J

Bench: Single Bench

Advocate: V. Shivnath, Sr. Advocate, Advocate for the Appellant; Arvind Kumar Mehta and Bhupal Krishna Pd., J.C. to S.C. (Mines), Advocate for the Respondent

Judgement

S. Chandrashekhar, J.

Aggrieved by order dated 27.01.2011 issued by the Additional Collector, Singhbhum East and for a direction upon the respondents for accepting the rent and fixation of rent in relation to Ward No. 2 under Jugsalai Municipality, Khata No. 158, Plot No. 850, 871 and 872 total area measuring 0.06.94 hectares, the petitioner has approached this Court.

2. The writ petitioner has stated thus;

One Gauri Shankar Singh and others were in possession of the property in relation to Mouza Jugsalai Ward No. 2, Purani Basti in Khata No. 158, Plot No. 850, 871 and 872, total area measuring 0.06.94 hectares and, in the record of rights it has been recorded as "Unabad Bihar (Jharkhand) Sarkar". They were in possession of the suit land since 1947 and they have constructed house over the plot in their occupation. On 12.01.1973, final publication of the Record of Rights was made. For the purpose of payment of rent an application under Section 85(2) of the Chhotanagpur Tenancy Act, 1908 was filed and the case being Rent Fixation Case No. 08 of 2009 was registered. An enquiry was conducted in the matter and the Revenue Authorities

found the petitioner in possession of the land in question. Accordingly, the Assistant Settlement Officer, Jamshedpur fixed the rent at the rate of Rs. 10/- for 40.47 sq. ft. and cess of Rs. 171/- and a separate Jamabandi was ordered to be open for payment of rent to the State. The report was subsequently submitted to the Sub-Divisional Officer, Dhalbhum, Jamshedpur vide letter dated 03.01.2009 stating that the land comprising of Mouza Jugsalai Ward No. 2, Purani Basti in Khata No. 158, Plot No. 850, 871 and 872, total area 0.06.94 hectares is in illegal possession of the petitioner and others. Vide impugned letter dated 27.01.2011 the Additional Collector, Singhbhum East directed the Sub-Divisional Officer, Dhalbhum, Jamshedpur for cancellation of the order passed in Rent Fixation Case No. 02 of 2009-2010 and for taking necessary action in the matter. Aggrieved the petitioner has filed the present writ petition.

3. A counter-affidavit has been filed on behalf of respondent Nos. 3, 4 and 6 stating that the land in question stands in the name of the State in the Revenue Records and there is no decree or order passed by a Civil Court of competent jurisdiction declaring the right of the petitioner with respect to the land in question. The procedure adopted in Rent Fixation Case No. 2 of 2009-10 was erroneous and contrary to law and therefore, the Government is not bound by the unauthorised act of its official. The final publication of the land in question was in the year, 1973 and Section 85 of C.N.T. provides that a landlord or a tenant may apply for settlement of fare rent within three months of final publication of record of rights. The petitioner is neither landlord nor tenant rather, he is an unauthorised occupant of the Government Land. Mere illegal possession of the Government Land cannot be made basis for fixation of rent in respect of Government Land. Petitioner is not entitled for fixation of rent on the basis of illegal possession and the procedure adopted by the Assistant Settlement Officer in Rent Fixation Case was contrary to law and therefore, order dated 25.08.2009 is not binding on the Government. Section 85(4) of the C.N.T. Act provides for appeal and there is a provision for revision under Section 89 of the C.N.T. Act. The petitioner without availing the alternative remedy, has approached this Court and therefore, the writ petition is liable to be dismissed.

4. Heard the learned counsel appearing for the parties.

5. Mr. V. Shivnath, the learned Senior counsel appearing for the petitioner has submitted that admittedly, the petitioner is in possession of the suit land, though illegal however, that itself is not sufficient for annulling the order passed in Rent Fixation Case No. 02 of 2009-2010. The Chhotanagpur Tenancy Act, 1908 provides a specific procedure for challenging the order of fixation of rent. Section 87 of the Act provides that any person aggrieved by the order passed by the Revenue Officer may file a suit within three months and since, no suit has been filed against the Rent-Fixation order, the order contained in impugned letter dated 27.01.2011 is liable to be quashed. It is further submitted that in the final publication even if, the name of the petitioner was not recorded in the revenue records and thus, it is

assumed that the petitioner was in illegal possession of the suit property, it was open to the State Government to file a suit as contemplated under Section 87 of the Chhotanagpur Tenancy Act, 1908 however, without filing a suit, the rent fixation order cannot be cancelled.

6. Per contra the learned counsel appearing for the respondent Nos. 3, 4 and 6 has reiterated the stand taken in the counter-affidavit and submitted that since the proceeding in the Rent Fixation Case No. 02 of 2009-2010 was illegal and erroneous, the order passed in the said proceeding is not binding on the State Government. When a report was received, the Additional Collector vide letter dated 27.01.2011 passed direction for taking necessary action in the matter and for cancellation of order passed by the Assistant Settlement Officer, Jamshedpur. The learned counsel appearing for the respondents has relied on decision of this Court in "State of Jharkhand & Ors. Vs. Taurian Infrastructure Pvt. Ltd.", reported in 2014 (1) JBCJ 155 (HC).

7. Referring to the contention of the learned Senior counsel that the State should have filed an application under Section 87 of the Chhotanagpur Tenancy Act, 1908, I find, that is what the Deputy Commissioner has precisely directed and the direction of the Deputy Commissioner is communicated to the Sub-Divisional Officer vide letter dated 27.01.2011. The Deputy Commissioner has ordered that after taking necessary legal opinion, step should be taken for challenging the order passed by the Assistant Settlement Officer. In the present case admittedly, the petitioner is not the recorded tenant. The fixation of rent in the proceeding of the Rent Fixation Case No. 02 of 2009-2010 is the order by which the respondent-State of Jharkhand is aggrieved and when a report was received that the Assistant Settlement Officer, Jamshedpur has illegally passed the order in Rent Fixation Case No. 02 of 2009-2010, enquiry was conducted and at the instance of Deputy Commissioner, the Additional Collector, East Singhbhum, Jamshedpur has issued the impugned letter dated 27.01.2011. From the report of the Circle Officer vide Annexure-3 also it appears that the petitioner is in illegal possession of the land in question. The petitioner has claimed that he is in possession of the property in question since 1947 however, he moved for fixation of rent only in the year, 2009. Admittedly, the petitioner is not claiming any right, title or interest except the illegal possession over the suit land. In these facts, if the State has decided to take legal course for challenging order passed in the Rent Fixation Case No. 02 of 2009-2010, the petitioner cannot ask the Court to direct the State not to seek legal remedy available in law. A Right to appeal/revision/review is a statutory right which cannot be taken away by the Court.

8. In these facts, I do not find any infirmity in order dated 27.01.2011 and accordingly, this writ petition is dismissed.