
(1997) 08 PAT CK 0066

Patna High Court

Case No: Civil Revision No. 85 of 1987 (R)

Mahendra Prasad
Barnwal and Another

APPELLANT

Vs

Assistant Engineer,
National Highway and
Others

RESPONDENT

Date of Decision: Aug. 9, 1997

Acts Referred:

- Civil Procedure Code, 1908 (CPC) - Order 39 Rule 2

Hon'ble Judges: P.K. Deb, J

Bench: Single Bench

Final Decision: Allowed

Judgement

@JUDGMENTTAG-ORDER

P.K. Deb, J.

This revision petition has been preferred against the order dated 22.2.97 passed by the Ist Additional Judge, Giridih, dismissing the Misc. Appeal No. 5 of 1997 preferred by the petitioners affirming the order dated 28.1.97 passed by the Munsif Incharge, Giridih, in Title suit No. 1 of 1997 whereby the prayer for injunction of the petitioners has been rejected.

2. There is chequered history of the case. The dispute is in respect of two plots of land which the Govt. demands to be the Govt. land while the petitioners contend the same to be in their continuous possession for last sixty five years being contiguous to their raiyati land. On previous occasion also for taking possession over the suit land, the Govt. filed a suit against the predecessor of the plaintiff-petitioners but the suit was dismissed and appeal was preferred but the same was also dismissed. After that, the State- authorities wanted to proceed under the Land Encroachment Proceeding and B.P.L.E. case was also registered. Objections were raised from the

side of the petitioners but those objections were not being entertained and then being much enthusiastic with the order passed by this Court in C.W.J.C. N 2290 of 1990 whereby the District Magistrates and also the authorities concerned were asked to remove all kinds of encroachment. The Opposite Parties made attempts to dispossess the petitioners and as such being apprehensive of dispossession forcefully, the petitioners have filed the above mentioned suit before the Court of Munsif, Giridih and also filed a petition under Order XXXIX, Rule 11 and 2 of the C.P.C. for injunction against the defendant- opposite parties to restrain them in taking forceful possession of the land in question. The learned Munsif rejected the prayer mainly on two grounds, namely (i) that the petitioners could not prove by producing documents regarding their title over the suit land and (ii) that when there was order from the High Court asking the District Magistrates to clear all encroachment without delay then the plaintiffs have got no case either prima facie or for irreparable loss the balance of convenience. The same view was expressed by the appellate court on being appeal preferred by the petitioners before the District Judge as mentioned above.

3. In a similar situation, on Bhuneshwar Sao case up before this Court in CWJC No. 392 of 1997 (R) and it was directed by this Court that when the Civil Court has taken the cognizance of the matter then till the disposal of the suit, the State-authorities have no jurisdiction to proceed with the land Encroachment proceeding.

4. From the report of the Anchaladhikari, it could be found that the petitioners at least have got possession for last 65 years and that is there in the Govt. record itself and without going through B.P.L.E. case there can not be any taking of forceful possession. It appears that on previous occasion also, the Govt. felt that the land is Govt. land and, as such, suit was filed for evicting the plaintiffs from the suit land but the same failed and in appeal, no relief could be obtained by the Opposite parties. Failing in the civil court, the Opposite parties tried to take forceful possession on the basis of the blanket direction given by this Court under the writ jurisdiction regarding removal of encroachment. Such sort of blanket order should not be taken use of by the authorities in all cases. The order can be implemented lawfully and through proper procedure. In the present case, even if the petitioners could not show any corporeal right prima facie but when they have got their possession for last 65 years as per the Govt. records itself then without adjudicating whether any right has been accrued by such a long period to the petitioners or not, the State-authorities should not be allowed to dispossess the petitioners/plaintiffs from the enjoyment of possession for such a long period when the authorities failed in their attempt on previous occasion also even through civil suit.

5. Mr. R.K. Marathia, appearing for and on behalf of the petitioners in support of his contention has referred to a judgment of the Apex Court in the case of 1996 I AD 1002 (SC) . In that case, there was a prayer for declaration of title simpliciter and a prayer for injunction. It was held by the Supreme Court that if admittedly possession

remained with the plaintiff then without going for deciding corporeal or incorporeal right of the plaintiff over the suit property the suit should not be thrown out rather injunction must be granted in favour of the plaintiff under Order XXXIX, Rule 1 and 2 of the C.P.C. till the disposal of the suit.

6. Mr. P.D. Agarwal, appearing for and on behalf of the State submitted that the present case the petitioners could not show any right over the suit land except their long possession and in that case they are not entitled for any injunction and in support of his contention, he has also referred to a judgment of the Supreme Court as reported in [Faridabad Complex Administration Vs. Yadu etc.](#). In that case, Section 208 of the Haryana Municipalities Act regarding limitation about the demolition of illegal construction was in question. The suit was filed and the suit was decreed in favour of the tax payers on the ground that notice u/s 208 under the Haryana Municipalities Act was served beyond the period of limitation, That decree of restraint was set aside by the Supreme Court holding that when the tax payers could not show any right over the construction having been constructed in accordance with the Municipal Rules then the question of limitation does not arise. The present suit is on different context. Here once the suit was filed for taking possession over the suit land from the plaintiffs by the defendants and that suit failed up to the appellate court and then encroachment cases were filed but those have not been finalised and then the matter came up before the Civil Court and on the basis of a blanket order passed under the writ jurisdiction asking the District Magistrates of Bihar to clear off encroachment, defence can not take advantage of it for getting or giving go by to the previous history of the suit lands and their own deeds. Thus, I find in the present case that at least the petitioners could be able to make out a good case for injunction against the defendants. Without taking the recourse of the law, which had once being failed, the defendants are trying to take forceful possession being armed with a blanket order passed under the writ jurisdiction of this Court.

7. Another point has been raised by Mr. P.D. Agarwal for and on behalf of the State that it has been held again and again by the Apex Court that when in the matters of injunction, two courts have given concurrent finding then under the revisional jurisdiction this Court should not interfere with it unless there is any apparent error on the face of it. It is true that the revisional courts are slow in interfering when there are concurrent findings by two courts in respect of injunction, but in the present case, it appears that both the courts below had not at all considered the history behind the case. When the defendants failed in their attempt to take possession over the suit land in the civil suit then they made an attempt to take possession by initiating B.P.L.E. proceeding and during the pendency of those B.P.L.E. proceedings, on the basis of a blanket order being passed by this Court under the writ jurisdiction the defendants became enthusiastic to take forceful possession from the plaintiffs. Under such circumstances, this Court should not sit tight over the matter only because two lower courts have given concurrent finding.

These findings are based mainly on the direction being given by this Court under the writ jurisdiction as mentioned above wherein the present plaintiffs were never party and it was in the form of a P.I.L.

8. Hence, after the considering the facts and circumstances of the case and the legal position as discussed above, I am constrained to interfere in the matter and more so when this Court under the same writ jurisdiction in similar circumstances had interfered and direction was given that the State- authorities should not take law into their own hands when the matter is already in the seisin of the civil court.

9. This revision petition is, thus, allowed and the orders of the Court below are hereby set aside and the defendants-opposite parties are hereby restrained to take possession over the suit land during the pendency of the suit. But the original court is hereby asked to take all efforts so that, the suit may be disposed of as expeditiously as possible preferably within a year next without giving any scope of unnecessary adjournment to either of the parties.

10. No order as to costs.