

Prem Das Banerjee Vs. State of Jharkhand and Ors

Prem Das Banerjee Vs. State of Jharkhand and Ors

SooperKanoon Citation : sooperkanoon.com/110548

Court : Jharkhand

Decided On : Jul-20-2017

Appellant : Prem Das Banerjee

Respondent : State of Jharkhand and Ors

Judgement :

1 IN THE HIGH COURT OF JHARKHAND AT RANCHI W.P. (C) No. 2438 of 2006 with W.P. (C) No. 2439 of 2006 with W.P. (C) No. 2443 of 2006 with W.P. (C) No. 2447 of 2006 Ujjal Kanti Banerjee, son of Late Prem Das Banerjee, resident of Namkum Bazar, P.O. & P.S.Namkum, Town & District Ranchi ... Petitioner [W.P. (C) No. 2438/2006] Ramavtar Sahu, son of Late Doman Sahu, resident of Namkum Bazar, P.O. & P.S.Namkum, Town & District Ranchi ... Petitioner [W.P. (C) No. 2439/2006] Mahanand Jha, son of Late Gangadhar Jha, resident of Namkum Bazar, P.O. & P.S.Namkum, Town & District Ranchi ... Petitioner [W.P. (C) No. 2443/2006] Bhola Prasad, son of Bindeshwar Prasad, resident of Namkum Bazar, P.O. & P.S.Namkum, Town & District Ranchi ... Petitioner [W.P. (C) No. 2447/2006] Versus 1. State of Jharkhand 2. Deputy Commissioner, Ranchi 3. Circle Officer, Namkum Circle, Ranchi 4. Collector, Ranchi ... Respondents [in all cases] CORAM: HON'BLE MR. JUSTICE RAJESH SHANKAR For the Petitioners : Mr. Rohitashya Roy, Advocate Mr. Tarun Kumar Mahto, Advocate For the State : Mr. V.K. Prasad, SC (L & C) Mr. Ashish Kr Thakur, JC to SC(L&C) 05/20.07.2017 The present writ petitions have been filed for quashing the notices dated 04.01.2006 issued under the seal and signature of the respondent no. 4 purported

to be the notices under Section 3 of the Jharkhand Public Land Encroachment Act, 2000 (in short to be referred as the Act) by reasons of which the petitioners were asked to appear and showcause as to why the alleged encroachment over the plots in question should not be removed. The petitioners have also prayed for quashing of the orders dated 18.03.2006 passed under Section 5(i)(c) of the Act by reasons of which the respondent no. 3 has held that the plots in question 2 belong to the Government and the petitioners have encroached the said plots and has further proceeded in terms with Section 6(2) of the Act. It has also been prayed inter alia for quashing the notices under Section 6(2) of the Act issued under the seal and signature of the respondent no. 4 dated 18.03.2006 by reasons of which the respondent no. 4 has directed the petitioners to remove the encroachment over the plots in question and has further held that in case of disobedience, the petitioners shall be prosecuted under Section 188 of the Indian Penal Code.

2. The factual background of the case as transpires from these writ petitions are that the lands situated under R.S. Khata No. 87, Khewat No. 2, Village Bargawan, P.S. Namkum (previously Ranchi) was a gairmazurwa malik khata of landlord Janki Prasad Sahu and Hari Charan Sahu, both sons of late Ram Lal Sahu. The plot nos. 4, 5 and 6 under Khata No. 87 comprised of 5.63 acres, 41 acres and 2.03 acres respectively, thus, the total area under the aforesaid three plots was 48.66 acres. Said Hari Charan Sahu and Janki Prasad Sahu were in joint possession over the aforesaid lands. However, Hari Charan Sahu filed a partition suit being Partition Suit No. 34 of 1939 against Janki Prasad Sahu, wherein he claimed decree of partition for various properties including the plot nos. 4, 5 and 6 of Khata No. 87 of village Bargawan. A compromise decree was passed, in terms of which plot nos. 4, 5 and 6 were exclusively allotted to Hari Charan Sahu, who came in peaceful possession over the said plots of land. While being in exclusive possession over the plot nos. 4, 5 and 6 of Khata No. 87, Hari Charan Sahu settled different portions of these lands to different individuals.

3. The learned counsel for the petitioners submits that in so far as W.P.(C) No. 2438 of 2006 is concerned, Hari Charan Sahu settled various land under Plot No. 5 in favour of one Sarju Prasad by a registered deed of settlement dated 26.11.1953. Name of Sarju Prasad was entered in KForm while the Zamindar submitted 3 his return under the Bihar Land Reforms Act, 1950. Sarju Prasad, thereafter,

transferred 4 kathas of land to Ram Swaroop Sharma by a registered deed on 30.11.1965. Ram Swaroop Sharma transferred the said land to the father of the petitioner vide registered deed of sale dated 05.01.1972. The father of the petitioner got his name mutated in the revenue records vide Mutation Case No. 7 R 27 of 198485 by order dated 11.06.1984 and, thereafter, paid rent to the State Government against which rent receipts have been issued. The petitioner has been in continuous and uninterrupted possession through his predecessor intitle.

4. The learned counsel for the petitioners submits that in so far as W.P.(C) No. 2439 of 2006 is concerned, the landlord Hari Charan Sahu settled different portions of land under Plot No. 4 in favour of Sarju Prasad vide registered deed of settlement dated 26.11.1953. Sarju Prasad's name was entered in KForm while the landlord submitted its return under the Bihar Land Reforms Act, 1950. Sarju Prasad transferred 10 kathas and 13 chattaks of land of Plot No. 4 to one Mukesh Talwar who transferred the same to one Nandlal Prasad vide registered deed of sale dated 29.09.1980. Nandlal Prasad in his turn sold the said land to the petitioner vide registered sale deed dated 04.06.1984. The petitioner got his name mutated in the revenue record vide Mutation Case No. 12 R 27 of 198788 vide order dated 27.04.1987 and paid rent to the State Government against which rent receipts have been issued.

5. In so far as W.P.(C) No. 2443 of 2006 is concerned, Zamindar Hari Charan Sahu had settled different portions of land under Plot No. 5 in favour of Sarju Prasad vide registered deed of settlement dated 26.11.1953. The name of Sarju Prasad was mentioned in the KForm while the landlord had submitted his return under the Bihar Land Reforms Act, 1950. Sarju Prasad sold and transferred 07 kathas of land under Plot No. 5 to Ram Swaroop Sharma vide registered sale deed dated 30.11.1965. 4 Ram Swaroop Sharma, thereafter, transferred the said land to the petitioner vide registered sale deed dated 12.08.1976. The petitioner got his name mutated in the revenue records vide Mutation Case No. 80 R 27 of 198384 and has paid rent to the State Government against which rent receipts have been issued.

6. In so far as W.P.(C) No. 2447 of 2006 is concerned, the Zamindar Hari Charan Sahu settled different portions of land of Plot No. 4 to Anant Kumar Ghosh @ Anant Gope vide registered deed of settlement dated 08.02.1950. The name of Anant Kumar Ghosh was mentioned in KForm while the landlord had submitted return under the Bihar Land Reforms Act,

1950. Anant Kumar Ghosh, thereafter, transferred 06 decimals of land to the petitioner vide registered sale deed dated 15.01.1958. The petitioner, thereafter, got his names mutated in the revenue records and has been paying rent to the State Government against which rent receipts have been issued. Draft record of rights in respect of the said land has also been prepared in the name of the petitioner. 7. The State Government initiated proceeding under Section 4(h) of the Bihar Land Reforms Act, 1950 seeking to annul the settlements made by Zamindar Hari Charan Sahu in favour of different individuals on the basis of the report of the Circle Officer, Namkum. The Deputy Collector Land Reforms, Sadar by an order dated 27.12.1990 held that Section 4(h) proceeding was not maintainable and the same was accepted by the Additional Collector. The proceedings were, thereafter, dropped. The State Government did not prefer any appeal against the same. Subsequently, the Deputy Commissioner, Ranchi started another proceeding under Section 4(h) against different individuals who are the transferees of the settlees of the Zamindar Hari Charan Sahu. An order for annulment of the settlement was passed by the Deputy Commissioner, Ranchi in respect of 41 acres of land under Plot Nos. 4, 5 and 6 in Case No. 26 R 28 of 5 199394. He further held vide order dated 17.11.1993 that since the settlement is annulled, therefore, all the subsequent transfers stood annulled. Appeals against the said orders being Revenue Appeal Nos. 451 of 1993 and 452 of 1993 were dismissed by the Commissioner, South Chhotanagpur vide order dated 16.03.1994. The Revenue Department, thereafter, passed orders for annulment of various settlements. Being aggrieved by the orders of the State Government, the transferees whose transfers were also annulled, preferred C.W.J.C. No. 3007 of 1997(R). This Court, vide judgment dated 20.02.2003 in the case of Smt. Lakshmi Devi & Ors. Vs. The State of Bihar & Ors. reported in 2003 (2) JLJR 159 allowed the writ petition and quashed the orders passed by the Deputy Commissioner and subsequent appellate order by the Commissioner and confirmation by the State Government. The said judgment of the Hon'ble Single Judge was challenged by the respondent State Government in L.P.A. No. 64 of 2010 which was dismissed and thereafter the Special Leave Petition preferred by the State being S.L.P. No. 12518 of 2012 was also dismissed. 8. The learned counsel for the petitioners vehemently submits that ignoring the judgment passed by the Hon'ble Single

Judge of this Court in C.W.J.C. No. 3007 of 1997(R), the respondent initiated proceedings under the Jharkhand Public Land Encroachment Act against the petitioners on the basis of the orders passed by the Deputy Commissioner annulling the settlements made by the Zamindar and subsequent transfers made in relation to Khata No. 87, Plot Nos. 4, 5 and 6. Thus, the impugned orders passed by the respondents being in the teeth of the judgment rendered by the Hon'ble Single Judge which has been confirmed by the Division Bench of this Court as well as by the Supreme Court, the same is liable to be set aside. 9. The learned counsel for the respondents, mainly relying upon the counteraffidavit filed on behalf of the respondent nos. 1 to 4 in W.P.(C) No. 2439 of 2006 submits that a 6 portion of the land in question was settled by the exlandlord, Hari Charan Sahu in favour of Sarju Prasad after 01.01.1946 in the year 1953 by Hukumnama and at that time the exlandlord had no power to settle the land. Pursuant to the direction of the State Government and in the light of the instructions of the Additional Collector, Ranchi as well as the Land Reforms Deputy Collector, Ranchi, a proceeding under Jharkhand Public Land Encroachment Act, 2000 was initiated in the Court of Circle Officer, Namkum and the encroachers were heard and finally, it was held that the land in question is gairmazurwa malik land which is a public land. The land encroachment proceedings initiated by the respondents against the petitioners were justified in view of the fact that the copy of the judgment passed by this Court in C.W.J.C. No. 3007 of 1997(R) was never brought to the knowledge of the respondents. 10. Having heard the learned counsel for the parties and on going through the relevant documents placed on record, it appears that the order passed by the Deputy Commissioner, Ranchi in a proceeding under Section 4(h) of the Bihar Land Reforms Act, 1950 as well as the order passed in appeal by the Commissioner, South Chhotanagpur and confirmation by the State Government were put to challenge by one Smt. Laxmi Devi and others (transferees of the settlees) in C.W.J.C. No. 3007 of 1997(R). This Court vide judgment dated 20.02.2003 allowed the said writ petition and quashed the orders passed by the Deputy Commissioner, Ranchi, the Commissioner, South Chhotanagpur and the confirmation made by the State Government. The said judgment dated 20.02.2003 was challenged by the State Government in L.P.A. No. 64 of 2010 which was also dismissed vide order dated 25.01.2011.

Subsequently, the State of Jharkhand filed special leave petition being S.L.P.(C) No. 12518 of 2012 challenging the orders passed in C.W.J.C. No. 3007 of 1997(R) and L.P.A. No. 64 of 2010. However, the said SLP was also dismissed by the Hon'ble Supreme Court vide order dated 21.10.2016. 11. It is apparent from the aforesaid facts that the respondent nos. 3 and 4 initiated the proceeding under Jharkhand Public Land Encroachment Act, 2000 being completely ignorant about the fact that this Court had already quashed the orders passed by the Deputy Commissioner, Ranchi under Section 4(h) of the Bihar Land Reforms Act, 1950 as well as the order passed by the Commissioner, South Chhotanagpur and the order of confirmation passed by the State Government. Thus, the land encroachment proceedings were completely in contravention with the judgment passed by this Court in C.W.J.C. No. 3007 of 1997(R). The impugned notices dated 04.01.2006, orders dated 18.03.2006 passed under Section 5(i)(c) and notices under Section 6(2) of the Jharkhand Public Land Encroachment Act, 2000 respectively cannot be sustained in law. Otherwise also, it is well settled that intricate question of right, title, interest and possession cannot be adjudicated in a summary proceeding. The proceeding under Jharkhand Public Land Encroachment Act, 2000 being a summary proceeding cannot be resorted to by the authorities when the occupants of the land have been in open and continuous possession for several years through their predecessor in title. The Hon'ble Supreme Court in the Case of Govt. of A.P. Vs. Thummala Krishna Rao & Ors. reported in (1982) 2 SCC 134 has held thus, 9. The view of the Division Bench that the summary remedy provided for by Section 6 cannot be resorted to unless the alleged encroachment is of a very recent origin, cannot be stretched too far. That was also the view taken by the learned single Judge himself in another case which is reported in Mehrunnissa Begum Vs. State of A.P., (1970) 1 Andh L T 88 which was affirmed by a Division Bench (1977) 1 Andh L T 292. It is not the duration, short or long, of encroachment that is conclusive of the question whether the summary remedy prescribed by the Act can be put into operation for evicting a person. What is relevant for the decision of that question is more the nature of the property on which the encroachment is alleged to have been committed and the consideration whether the claim of the occupant is bona fide. Facts which raise a bona fide dispute of title between the Government and the occupant must be adjudicated upon by the

ordinary courts of law. The Government cannot decide such questions unilaterally in its own favour and evict any person summarily on the basis of such decision. But duration of occupation is relevant in the sense that a person who is in occupation of a property openly for an appreciable length of time can be taken, prima facie, to have a bona fide claim to the property requiring an impartial adjudication according to the established procedure of law. 12. Considering the facts of the case and the judicial pronouncements discussed hereinabove, the impugned notices dated 04.01.2006, orders dated 18.03.2006 passed under Section 5(i)(c) of the Act and the notices dated 18.03.2006 under Section 6(2) of the Jharkhand Public Land Encroachment Act, 2000 are hereby quashed and set aside. 13. The present writ petitions are accordingly allowed and disposed of in terms of the aforesaid observations. (Rajesh Shankar, J.) Manish/A.F.R.

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com