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Court : Patna

Decided On : Aug-01-1997

Judge : Choudhary S.N. Mishra, J.

Appeal No. : C.W.J.C. No. 1297 of 1988 (R)

Appellant : Sunith Kumar Mallik and ors.

Respondent : The State of Bihar and anr.

Judgement :

Choudhary S.N. Mishra, J.

1. In this writ application under Articles 226 and 227 of the Constitution of India, the petitioners prayed for issuance of a writ of mandamus commanding the respondents to forbear from interfering with the petitioner's occupancy rayati rights over their lands situated in Village Okni, Noora, Hazari in the district of Hazaribagh. All the petitioners are the resident of different mohalla in the town of Hazaribagh.. It is stated that in the year 1765.00, the British Government took over the Diwani of Bengal, Bihar and Orissa. The area of the Hazaribagh district was bifurcated into three estates namely Ramgarh Kendi and Kharagdiha and one Thanadari Jagir of Kunda on which no revenue was assessed. It is also alleged that in the year 1790, 465 Bighas of lands were acquired for the purpose of forming the Government Estate from the Ramgarh Estate for establishment of a cantonment. It is alleged that in the year 1842 the cantonment was abolished, but

however, restored in 1859 when the total area held by Government was 1,400 bighas and the total rental payable to the Ramgarh Estate was 1,357/-. Subsequently in the year 1865, an area of 4,462 bighas was carved out from the Ramgarh Estate as a perpetual lease on a rent of Rs. 2,600/- with an object for extending and improving the sanitary condition of the cantonment. The cantonment was again abolished in the year 1984 and all the land and the building of the Military were handed over to the Civil Department. Subsequently the Government Estate extends over a compact area of 7,270 acres in and around the town of Hazaribagh comprising of 22 villages such as Okni, Noora Hazari, Matwari Korra etc. and the then Government acquired the position of landlord and all the occupants of the lands and buildings were treated to be the tenants. The State Government later decided to take over the entire Zamindari and intermediaries in the district of Hazaribagh including all the estates and ultimately vested in the State with effect from 26th January, 1955. Subsequently the State Government has constituted a department namely Khas Mahal for the purpose of retaining and managing the Government Estate under the management of the State Government. The most of the lands comprising those villages of Hazaribagh district were recorded in the name of the raiyats who acquired occupancy right thereon. It is alleged that though the respective raiyats have acquired the occupancy right over the lands in question, yet they were compelled to execute the lease and accordingly Chapparbandi leases for the purpose of constructing the building, were executed for 30 years with an assurance that the said lease shall be renewed after 30 years. Accordingly, it is alleged that 80-90% of the residential houses in or around the Hazaribagh town are under the said leases. The said leases were executed as far back as in the year 1948 and prior to the execution of the lease, the ancestors of the lessee were in occupation of the lands. One of the such leases executed in favour of one of the petitioners, is made Annexure-1 to the writ application. In this case neither any counter affidavit has been filed on behalf of the State respondents nor the facts stated have been denied during the course of hearing of this writ application.

2. It is submitted by Mr. Sahani, learned Counsel that the petitioners inspite of having acquired occupancy right over the land, in question, they are being threatened by the respondent authority for eviction from the alleged lease lands in

question on the ground of violation of the terms and conditions of the lease. It is submitted that very execution of the lease with respect to the lands which were in occupation by the ancestors occupants of the lease made and before the execution of the alleged lease in the year 1948 is wholly illegal, arbitrary and without jurisdiction, and, as such, cannot be enforced under any provisions of law. It is stated that the lands are the raiyati lands of the ancestors of the petitioners, who have acquired raiyati interest much before the execution of the alleged lease in the year 1948 as they are in possession of the same since 1910. According to the learned Counsel, the alleged lease are in the violation of Section-79 of Chotanagpur Tenancy Act as well as Section 23 of the Contract Act. In support of this contention Mr. Sahani has relied upon a Khatian, filed alongwith the Supplementary affidavit, which goes to show that the Khatian was prepared as far back as in the year 1910, and it appears that the lands are the raiyati lands over which the residential houses are situate since 1910 i.e., prior to the execution of the alleged lease deeds. It further appears that some of these lands are Belagan and some of the lands are with rent, a copy of said record of rights in annexed as Annexure-2 series to this writ application.

3. In this case, no counter affidavit has been filed as stated above. Accordingly this writ application is being disposed of on the basis of the averments made therein. From the materials on record, it appears that the ancestors of the petitioners are coming in possession over the lands since 1910 after constructing the residential houses thereon, which is apparent from the Khatian prepared in 1910 itself, even then the respondents relying upon the terms and conditions mentioned in the alleged lease are taking recourse to disturb the possession of the petitioner in purported exercise of power under Khas Mahal Act. Even assuming for a moment that the lease has been legally executed and the terms and conditions thereof have been violated by the lessee, even then the respondents authorities cannot take the law in their own lands and evict the lessee forcibly without taking recourse to the provisions of law. If the respondent authorities are allowed to assume possession of the lands and buildings in question, at this belated stage, this will cause not only irreparable injuries and damages to the respective reiyats, who are residing after constructing the houses since 1990 but will also create law and order problem. Assuming for the moment that the State being the lessor with respect to

the lands, in question, has a right to resume the possession of the lands covered under the lease, cannot be allowed to act arbitrarily and thereby disturbed the peaceful possession of the respective occupants, who have acquired the occupancy right over the lands, in question. I am supported by a decision of the Supreme Court in the case of State of U.P. v. Dharmender Prasad Singh, reported in : [1989]1SCR176 wherein the Apex Court in a similar situation has held as follows:

A lessor, with the best of title, has no right to resume possession extra-judicially by use of force, from a lessee, even after the expiry of earlier termination of the lease by forfeiture or otherwise. The use of the expression 're-entry' in the lease deed does not authorise extra-judicial methods to resume possession. Under law, the possession of a lessee, even after the expiry of its earlier termination is juridical possession and forcible dispossession is prohibited, a lessee cannot be dispossessed otherwise than in due course of law. In the present case, the fact that the lessor is the State does not place it in any higher or better position. On the contrary, it is under an additional inhibition stemming from the requirement that all actions of Government and Governmental authorities should have a 'legal Pedegr'. In Bishandas v. State of Punjab : [1962]2SCR69 , this Court said (at pp. 1574 and 1575 of AIR. We must, therefore, repel the argument based on the contention that the petitioners were trespassers and could be removed by an executive order. The argument is not only specious but highly dangerous by reason of its implications and impact on law and order.

4. After having heard the learned Counsel for the petitioners and the respondent State and going through the materials on record, particularly relying upon the aforesaid decision of the Apex Court, let a writ of mandamus be issued restraining the State respondents from, in any way, interfering with the peaceful possession of the petitioner, over the lands in question. This disposes of this writ application, but without cost.