

**Sheokali Devi and ors. Vs. State of Bihar and ors.**

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**Court :** Patna

**Decided On :** Mar-19-1998

**Judge :** S.J. Mukhopadhaya, J.

**Appeal No. :** C.W.J.C. No. 3698 of 1985

**Appellant :** Sheokali Devi and ors.

**Respondent :** State of Bihar and ors.

**Disposition :** Petition Allowed

**Judgement :**

**S.J. Mukhopadhaya, J.**

1. The writ petition was originally preferred by one Mangal Sah against the order dated 6th April. 1983, passed in Land Encroachment Case No. 2/82-83 and the appellate order dated 17/31st July, 1983, passed in Case No. 39 of 1983.

During the pendency of the writ petition, the petitioner died and his heirs Sheokali Devi and others were substituted in his place.

2. In this case, the dispute relates to 3 Kathas of land out of plot No. 2000, Khata No. 170 situated in village Dharamparta.

3. The case of the petitioners is that the total plot, in question belonged to Hathwa Raj, who settled the land, in dispute in favour of the original-petitioner, over which the original petitioner constructed a Pucca house and they are residing with the family. After vesting of Zamindari with the State of Bihar, the original petitioner applied for creation of Jamabandi in the year 1967 and taking into consideration the possession, receipts including Receipt No. 2516 dated 17th August, 1945, as well as the fact that the land, in question was in a corner of Plot No. 2000 and was not going to disturb the Bazar, jamabandi was created.

Subsequently, when the petitioners were peacefully living in the house, at the instance of some inimical persons one Encroachment Case No. 3/64-65 was initiated against the original petitioner. In the said case, after local enquiry, the Circle Officer recommended to drop the proceeding vide his report dated 12th September, 1968, there being no encroachment and the possession of land being based on settlement made by Hathwa Raj. Subsequently, the successor Circle Officer also submitted similar report on local inspection on 27th January, 1969. Thereafter, the L.R.D.C. vide his order dated 21st November, 1970, taking into consideration the merit, long possession of petitioners since 1945, other evidence and report of Circle Officer, held that the encroachment case was not maintainable against the original petitioner as lands were settled in his favour and the case was dropped.

4. The grievance of the petitioners is that after about 12-13 years, a land encroachment proceeding being Case No. 2/82-83 was initiated against 18 persons, including deceased petitioner Mangal Sah, who had house over the Plot No. 2000. After hearing the parties, by cryptic order dated 6th April. 1983, all the them, including deceased petitioner Mangal Sah were declared encroachers. Thereafter when the original petitioner preferred Appeal No. 39/83 against the same, the said appeal was rejected by impugned order dated 17th/31st July, - 1983.

5. According to the Counsel for the petitioners, the land encroachment proceeding once initiated and then dropped after hearing the parties on merit, second proceeding under the same provision with respect to same very land against same

person, was not maintainable being barred by the principle of res judicata. Reliance was placed on a decision of this court in the case of Kali Kant Prasad Seal v. State of Bihar and Ors. reported in 1969 PLJR 23.

6. It was submitted that the petitioners being in possession over the land in dispute for more than 40 years, acquired right and interest by adverse possession, even if the land is a public land and in such case, land encroachment proceeding was not maintainable. He referred Special Bench decision of this court in the case of Bri) Bhukhan Kalwar and Ors. v. S.D.O., Siwan and Ors. : AIR1955 Pat1 .

7. No counter-affidavit has been filed on behalf of the respondents. The averments made in the writ-petition stand not controverted. However, the Counsel for the Respondents-State tried to make a distinction by placing the fact, as mentioned in the impugned order dated 6th April, 1983 that the present proceeding may be with respect to some other land.

8. To ascertain the fact whether the earlier proceeding initiated against the deceased petitioner-Mangal Sah was with respect to same very land or not, I have gone through both the orders dated 21st November, 1970 (Annexure-3) and the impugned order dated 6th April, 1983 (Annexure-4). From the orders aforesaid, I find that the land in dispute is the same, i.e. plot No. 2000 of village Dharamparta, P.S. Gopalganj, which was the subject matter of the earlier Land Encroachment Case No. 3/64-65.

9. The case of Kali Kant Prasad Seal (supra), as cited by the Counsel for the petitioners was almost similar to the present one. In the said case, the proceeding under Section 3 of Bihar Public Land Encroachment Act, 1956, was initiated and then dropped against the said petitioner and then another fresh proceeding regarding the same allegation was initiated. This Court in the said case held that once alleged encroachment proceeding is dropped, the same matter cannot be reopened over and again.

10. So far as the claim of the petitioners that they are in possession over the land, in the question, since 1945 is concerned, the same is supported from the report submitted in December, 1967 letter of General Manager, Hathwa Raj bearing No.

1205, dated 20th October, 1967 and the order dated 21st November, 1970, passed in Land encroachment Case No. 3/64-65. The aforesaid statement also stands not controverted by the Respondents.

11. This Court in the case of Brij Bhukhan Kalwar (supra), held that if a person has on account of efflux of time acquired title by adverse possession to a property, which was at one time a public property, that property cannot be taken by the State without payment of compensation. Title by adverse possession can also be acquired even on so-called public lands, like Gairmazrua Aam etc.

12. In the present case, as the earlier land encroachment proceeding was dropped and there is a valid dispute of title, according to me, the subsequent land encroachment proceeding was not maintainable against the deceased petitioner-Mangal Sah and his heirs.

13. For the reasons stated above, I set aside the impugned order dated 6th April, 1983, passed in Land Encroachment Case No. 2/82- 83 and the appellate order dated 17th/31st July, 1983, passed in Case No. 39 of 1983, as contained in Annexures-4 and 5.

14. The writ petition is allowed. However, on the facts and circumstances of the case, there shall be no order, as to costs.

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