

Dharma Devi and ors. Vs. State of Bihar (Now Jharkhand) and ors.

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Court : Jharkhand

Decided On : Mar-11-2005

Reported in : [2005(2)JCR350(Jhr)]

Judge : S.J. Mukhopadhaya, J.

Appeal No. : C.W.J.C. No. 11715 of 1992(P)

Appellant : Dharma Devi and ors.

Respondent : State of Bihar (Now Jharkhand) and ors.

Advocate for Def. : V. Shivnath, Sr. Adv.,; Birendra Kumar and; Sweety Topno

Advocate for Pet/Ap. : P.K. Sinha, Sr. Adv. and; Arbind Kumar Choudhary, Adv.

Disposition : Petition allowed

Judgement :

S.J. Mukhopadhaya, J.

1. This application has been preferred by the petitioners against the orders contained in Memo No. 7312, dated 30th October, 1992 (Annexure-4) and the Memo No. 7399, dated 2nd November, 1992 (Annexure-7), both issued by the Deputy Commissioner, Deoghar. By the first order, the Deputy Commissioner, Deoghar directed the Circle Officer, Deoghar to comply with the order by 31st

October, 1992 regarding eviction of the petitioners and for that, if necessary, the Superintendent of Police, Deoghar, will be deploying a police officer along with police force. Similar order has also been passed vide the subsequent order contained in Memo No. 7399, dated 2nd November, 1992, whereby it was also ordered to depute an Execution Magistrate, Deoghar for eviction of the petitioners from the land in question.

2. For determination of the issue, it is not necessary to discuss all the facts, except the relevant one.

The dispute relates to a land measuring 1,43 acres of Mouza Todra Dih No. 401, Touzi No. 1/27, Khata (Jamabandi) No. 15/10, Dag No. 202 in the district of Deoghar. It appears that in pursuance of a Mutation case being Mutation Case No. 367/1985-86, the land was mutated in favour of the petitioners, Kallashpati Devi and other by order dated 17th March, 1986. The 5th respondent, Anita Ghosh and one Anubha Ghosh challenged the same in Mutation Case No. 401 of 1992, on the ground that the order of Jamabandi has been made in favour of the petitioners without notice to them. After hearing the 5th respondent and other, the Jamabandi earlier created in favour of the petitioners was cancelled on 23.9.1992 (Annexure-3) accepting the claim of the 5th respondent and others. It further appears that the 5th respondent thereafter moved before the Deputy Commissioner, Deoghar for eviction of the petitioners. The Deputy Commissioner, Deoghar, in his turn, vide Memo No. 7202/Confidential, dated 27th October, 1992 directed the Circle Officer, Deoghar to take steps to evict petitioners and to give possession in favour of the 5th respondent and others, the Jamabandi in favour of petitioners having been cancelled. In this connection, the impugned orders were issued and circulated vide Memo No. 7312, dated 30th October, 1992 followed by order passed by the Deputy Commissioner, Deoghar, contained in Memo No. 7399, dated 2nd November, 1992.

3. The only plea taken by the petitioners is that the Deputy Commissioner, Deoghar has no jurisdiction to evict the petitioners.

4. It appears that the petitioners have already moved before a civil Court of competent jurisdiction in Title Suit No. 94 of 1992 for declaration of right and title in

respect of the land in question. The said suit is pending for final hearing. Now, it is a settled law that on creation of Jamabandi, no right and title is created in favour of one or other, nor cancellation of Jamabandi extinguishes the right and titled of the actual owner, rather it only enables the person to pay rent by entering his name in Register-II. In this regard, one may refer to a Division Bench decision in the case of Sitaram Choubey and Ors. v. The State of Bihar and Ors., reported in 1993(2) PLJR, 255. In the circumstances, as the creation of Jamabandi does not create any right and title in favour of the petitioners, nor cancellation of the Jamabandi will create any right in favour of the 5th respondents, this Court is not inclined to give any finding on the merit of those orders. Sofar as the eviction is concerned, it is a settled law that only a Court of competent jurisdiction can pass such order. Neither any person can be evicted on the basis of an order of cancellation of Jamabandi, nor possession can be given in favour of any person on the basis of creation of Jamabandi.

5. For the reasons aforesaid, I hold both the orders contained in Memo No. 7312, dated 30th October, 1992 (Annexure-4) and Memo No. 7399, dated 2nd November, 1992 (Annexure-7), both issued by the Deputy Commissioner, Deoghar, illegal and thereby set aside both of them. However, this order will not stand in the way of the parties to have appropriate declaration/restoration of possession from an appropriate Court of law.

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