

Baldev Singh Vs. The State of Jharkhand and Ors

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Court : Jharkhand

Decided On : Jun-14-2016

Appellant : Baldev Singh

Respondent : The State of Jharkhand and Ors

Judgement :

1 IN THE HIGH COURT OF JHARKHAND AT RANCHI L.P.A No. 248 of 2016 With I.A Nos. 3360, 3359 & 3416/2016 With L.P.A No. 249 of 2016 With I.A Nos. 3361, 3362 & 3417/2016 With L.P.A No. 250 of 2016 I.A Nos. 3363, 3364 & 3418/2016 1.Birendra Kumar Jaiswal, son of late Jagjivan Lal Jaiswal 2.Uttam Kumar Jaiswal, son of late Jagjivan Lal Jaiswal, both residents of Flat No.3A/B, 3rd Floor, Loknath Complex, Aditya Apartment, PO & PS Jugsalai, Town Jamshedpur, District East Singhbhum Appellants in LPA No.248/2016 Baldev Singh son of late Gurucharan Singh resident of Jugsalai Station Road Near Goal Chakkar, PO & PS Jugsalai, Town Jamshedpur, District East Singhbhum Appellant in LPA No.249/2016 Md. Shakil son of late Md.Ismail, resident of Jugsalai, Near Jugsalai Goal Chakkar, PO & PS Jugsalai, Town Jamshedpur, District East Singhbhum Appellant in LPA No.250/2016 Versus 1.State of Jharkhand 2.The Deputy Commissioner, East Singhbhum PO & PS Jamshedpur, Town Jamshedpur, District East Singhbhum 3.The SubDivisional Officer, Dhalbhum PO & PS Dhalbhum, Town Jamshedpur, District East Singhbhum 4.The Circle Officer, Jugsalai, Town Jamshedpur, District East Singhbhum 5.The Divisional Railway Manager, South Eastern Railway, Chakradharpur, PO & PS

Chakradharpur, District West Singhbhum 6. The Senior Section Engineer, South Eastern Railway, Tatanagar, PO & PS Tatanagar, Town Jamshedpur, District East Singhbhum Respondents in All the Cases Coram: Honble Mr. Justice Virender Singh, Chief Justice Hon'ble Mr. Justice Shree Chandrashekhar For the Petitioners/Appellant : Mr. Rahul Gupta, Advocate (In L.P.A Nos. 248 & 250/16) Mr. Indrajit Sinha. Advocate (In L.P.A Nos. 249/16) For the Respondent Rlys. : Mr. Mahesh Tiwary, Advocate 2th Dated : 14 June, 2016 Per Virender Singh, C.J. : All these Letters Patent Appeals arising out of three writ petitions being W.P (C) Nos. 1515, 1516 & 1527 of 2016 were taken up by the Writ Court together as the issue involved in the writ petitions relates to eviction of the appellant writ petitioners (hereinafter called as writ petitioners) from the land falling within Plot No. 183 under Khata No. 3, Mouza Jugsalai as recorded in the Revisional Survey Records of Rights published in the year 1965. 2. Admittedly, writ petitioners are not claiming title/rightful ownership over the disputed land and the stand taken by them, as one finds from the pleadings is that they being in possession over the disputed property since long, some of them also erected houses or other structures including shops etc. cannot be evicted by a mere notice. South Eastern Railways, Tatanagar, claiming itself to be the owner of the said property when issued notices on 10th/11th March, 2016 to the writ petitioners for vacating the land giving them a week's time, the writ petitioners moved the Writ Court by filing the aforesaid three writ petitions, which came up before the Writ Court initially on 19th March, 2016, on which date the following order was passed; Learned counsel for the petitioners submits that in each of the individual writ petitions, petitioners have been served with a notice dated 10.03.2016 and 11.03.2016 issued by the Senior Section Engineer, Land, South East Railway, Tatanagar to vacate the Railway land alleged to be occupied unauthorizedly by 17.03.2016. 2. Notice is completely vague and does not contain any description of any plot, area, etc, therefore, it suffers from vagueness. Individual petitioners have made their assertion in the respective writ petitions about continuance over pieces of land since long. It is submitted that in any case, no proper proceeding has been initiated, if at all the allegation is of unauthorized occupation of the Railway land. Therefore, petitioners have approached this Court. 3. Learned counsel for the respondent Railways seeks short time to obtain instructions in the matters. 4. Accordingly, list the cases on

29.03.2016. 3 5. Till then, no coercive steps be taken pursuant to the impugned notices against individual petitioners, if not already taken. 3. The matter was taken up on 12th April, 2016, when the pleadings by both the sides were complete. What appears from the records is that on the proposal of both the sides, a Pleader Commissioner (Advocate of this Court) was appointed to carry out the inspection of the premises in question. A detailed order was passed in this regard by learned Writ Court. We feel it apt to reproduce the same. It reads thus; In these individual matters, counter affidavit have already been filed by the respondent Railways taking a plea that petitioners are illegally and unauthorizedly occupying the Railway land which is coming in the way of construction of Rail Overbridge at Jugsalai at Tatanagar. 2. Petitioner in WPC No. 1515/2016 claims to be holding a plot of land over plot no. 177/232 under Khata No. 2 Ward No. 5 having an area of 0.512 decimal of Notified Area Committee, Jamshedpur. He has constructed a shop and house and is doing business from the said premises. 3. Petitioners in WPC No. 1516/2016 claim to be in possession over plot no. 114 under Khata no. 3, Thana No. 1161 having an area of 12 Katta since 1982 and doing business of scrap materials in the name of M/s King Metals. 4. Petitioner in WPC No. 1527/2016 claims to be in possession of an area of 30'x60' under Khata No. 2 Khesra No. 170 Ward No. 5 in Jamshedpur Notified Area Committee and running motor garage since 1980. 5. Learned counsel for the respondent Railways categorically submits by relying upon Railways Map of the area that the petitioners are encroaching within the demarcated area falling within the boundary wall of Railways property near LIC gate. It is submitted that the Road Overbridge (ROB) is part of modernization development programme of Railways at Tatanagar and its adjoining area which needs removal of encroachment from the Railways land. It is submitted that 77 out of 80 such encroachments have already been removed except three petitioners who have raised an objection by approaching this Court. 6. Learned counsel for the respondent Railways and petitioners both make a proposal that the area in question clearly defined with all necessary description be inspected by the Court appointed Pleader Commissioner through Survey knowing Amin in the presence of both the parties to find out, whether there is an encroachment over Railways land. Parties would abide by the decision of the Court on the basis of the Pleader Commissioner's report and if it is found that

there is any encroachment over the Railways land, the same would be removed without any delay by the individual petitioners. 7. Having regard to the submissions made and exigency shown by the Railways in the matter of construction of Road Overbridge which would benefit a large number of people, this Court is inclined to accede to the proposal of the parties. Accordingly, Mr. Rohit Roy, learned counsel practicing in this Court, is appointed as Pleader Commissioner to carry out inspection of the area in question in the presence of both the parties with the help of Survey knowing Amin. Respondent 4 Railway Authorities would provide the entire description of the land said to be under encroachment by the petitioners, to the Pleader Commissioner within one week through the learned counsel for the Railways Mr. Mahesh Tiwari. Thereafter, Circle Officer of the concerned Jugsalai Block / competent authority having revenue jurisdiction over the area, would provide services of Survey knowing Amin to the learned Pleader Commissioner for carrying out inspection on the date and time fixed by the learned Pleader Commissioner after necessary description of the land is provided by Railways within a period of one week, as aforesaid. Learned Pleader Commissioner would inform the learned counsel for both the parties to ensure presence of the parties on the date so fixed for carrying out such inspection. Fee of the learned Pleader Commissioner would be Rs. 20,000/- to be equally borne by Railways and the petitioners. Each of three petitioners would share the 50% of the amount of fee equally amongst themselves. Pleader Commissioner's fee will be deposited on the next date fixed before this Court. Let such a report be submitted by the learned Pleader Commissioner on the next date i.e. 03.05.2016. The Railway authorities would coordinate with the Circle Officer of the Revenue area / competent authority for providing the service of Survey knowing Amin for inspection and measurement of the area by the Pleader Commissioner. 8. Let a copy of the order be handed over to the learned Pleader Commissioner Mr. Rohit Roy and learned counsel for both the petitioners and Railways by tomorrow. All the authority concerned and the petitioners would cooperate with the Pleader Commissioner in carrying out the inspection. 9. Interim order dated 19.03.2016 shall continue till the next date. 4. It is thereafter an inspection was carried out by the Pleader Commissioner who, in his report dated 3rd May, 2016, stated that the disputed land, which is in possession of the writ petitioners belongs to the South Eastern Railways. The

relevant extract of the report of the Pleader Commissioner reads thus; In presence of all the aforementioned persons, I commenced physical inspection of the site. Firstly, Anchal Amin identified the disputed land with Plot & Khata Nos. The structures of the petitioners was found to be comprised within Khat No. 3, Plot No. 183 of Mouza Jugsalai as per the Revisional Survey Record of Rights corresponding to New Plot No. 232/177 of Khata No. 2 of the Municipal Survey Record of Rights. Thereafter I inspected the respective structures of the petitioners. Petitioner namely, Baldev Singh is said to be the owner of several small structures about 1012 in numbers comprised within the aforesaid plot. The same are being used for running shops. The photographs of the structures of the petitioners namely Baldev Singh are enclosed with this report and identified as AnnexureA Petitioners namely Birendra Kumar Jaiswal and Uttam Kumar Jaiswal are in possession of a big concrete structure 5 situated on the aforesaid from which they are operating their business. The said structure has also a big vacant area on the rear side where some commercial activities are carried out by the said petitioners, though there are no concrete structures. The photographs of the structures of the petitioner namely Birendra Kumar Jaiswal and Uttam Kumar Jaiswal are enclosed with this report and identified as AnnexureB Petitioner namely Md. Sakil is in possession of three shop rooms comprised within the aforesaid plot, from which he is running his business. The photographs of the structures of the petitioner namely Md. Sakil are enclosed with this report and identified as AnnexureC All the aforesaid structures are situated just beside the road which leads to Tatanagar Railway Station. Behind these structures there is a old dilapidated wall said to have been constructed by the railways in order to prevent humans and animals from straying into railway tracks. The photographs of the dilapidated boundary wall situated behind the structures of the petitioners are enclosed with this report and identified as AnnexureD The officers of the S.E.R who were present during the inspection claimed that S.E.R has acquired the land on which the structures of the petitioners are situated. They referred to the Revisional Survey Recored of Rights and the Survey Settlement map in support of their claim. It transpires from the Revisional Survey Record of Rights that the disputed plot i.e. R.S Plot no. 183 has been recorded in the name of South Eastern Railway. It was further claimed that the acquired land extends beyond the

land in occupation of the petitioners i.e. till the road leading to railway station. The Anchal Amin measured the land true to scale by referring to the Settlement Map in presence of all the parties. It was found that the land acquired by S.E.R is between 145' to 275' from the railway track if measured from the Level Crossing Gate (wrongly referred as LIC Gate on behalf of Railway) to the disputed site. Distance between the Railway track and the dilapidated boundary wall was measured between 75' to 80' by Anchal Amin. I further found that save and except the dilapidated boundary wall behind the structures of the petitioners, there is no other physical demarcation that the land belongs to the railways. There is only one pillar at some distance from the structure of the petitioners which has been marked with the word S.E.R.. Save and except the said pillar, no other physical demarcation that the land has been acquired by S.E.R. was found. Photographs of the disputed site taken from across the road are enclosed with this report and identified as Annexure E. The learned counsel for the petitioners produced some maps and Municipal Survey record of rights to justify his clients claim over the disputed land asserting that the disputed land is recorded as Anabad Bihar Sarkar & possession of his client is entered. From the order dated 12.4.2016, I find that I have been asked to carry out physical inspection of the disputed land on basis of the documents produced by the respondents with the assistance of Anchal Amin. Hence, I am not referring to the documents produced by the counsel for the petitioners. On physical inspection of the disputed site/land conducted by me with the assistance of Anchal Amin in presence of all the concerned parties, I could ascertain as under: a. The structures of the petitioners are comprised within revisional survey plot no. 183 of khata no. 3, mouza Jugsalai. b. Railway acquired the disputed land and an entry in favour of South Eastern Railway has been recorded w.r.t. R.S. Plot No. 183 in the Revisional Survey Record of Rights published in the year 1965 as provided to me on behalf of the Railways. c. The extent of land acquired by the railway is between 145' to 275' from the railway track starting from Level Cross Gate to disputed site as measured by the Anchal Amin true to scale with reference to the Settlement Map produced on behalf of the Railways. d. The structures of the petitioners fall within the land recorded in favour of South Eastern Railway in the Revisional Survey Record of Rights published in the year 1965. e. There is one old dilapidated boundary wall running across the

disputed land which is said to have been constructed by the Railways. It is situated behind the structures of the petitioners. The structures of the petitioners do not extend beyond this boundary wall towards the railway track. f. Save and except the said dilapidated boundary wall, there is no other physical demarcation of the land identifying it to be the land of the Railways. With the aforesaid findings, I submit this report to the Hon'ble Court along with the photographs mentioned above, taken in course of physical inspection, as well as Field Book and documents submitted by both the parties. 5. On the basis of the Pleader Commissioner's report, the learned Writ Court found the writ petitioners encroachers over the land claimed by South Eastern Railways and held that as per the undertakings given by them, they are bound to vacate the land in question. Learned Writ Court, thus, directed the writ petitioners to vacate the land within one week from the date of the impugned judgment, i.e 17th May, 2016, failing which respondent Railways was granted liberty to take steps for removal of unauthorized encroachment. Being aggrieved of the said order, the writ petitioners are before us through the medium of the present three appeals on hand, which were taken up by the Vacation Bench (S.B) on 25 th May, 2016 during Summer Vacation in terms of Rule 22 of the High Court of Jharkhand Rules, 2001 and after hearing both the sides, parties were ordered to maintain status quo till date. 6. Heard Mr.Rahul Gupta appearing for the appellants in L.P.A 7 No.248 & 250/2016 and Mr.Indrajit Sinha in L.P.A No.249/2016 and Mr.Mahesh Tiwary for the South Eastern Railways. 7. After going through the records of the case especially the report of the Pleader Commissioner, which is based on the spot inspection carried out along with the Officers of South Eastern Railways and the State authorities, we are of the view that no interference is required in the matter. The land meant for construction of Railway OverBridge at JugsalaiTatanagar, Jamshedpur, which is said to be in possession of the writ petitioners, is not the property of the writ petitioners. The learned Writ Court has also noticed that none of the writ petitioners has been able to show any piece of document to disclose his claim for ownership and title over the piece of land in question. Even otherwise, the case set up by the writ petitioners is not with regard to the ownership or title over the property and they are only claiming possession since long. The plea taken by them is that, in fact, the property in dispute does not belong to South Eastern

Railways and it is the property of the State of Bihar and thus, for vacating the same the respondent Railways has no jurisdiction to issue notice to the writ petitioners. Mr. Indrajit Sinha submitted that it is a vague notice without any authority of law and if at all, writ petitioners were to be evicted, they can be evicted by resorting to the procedures established by law. 8. We do not find substance in the pleas taken by the writ petitioners. The writ petitioners had raised a dispute of title of the respondent Railways over the disputed property, countering which Revisional Survey Records of Rights was produced by the Railways. The other plea taken by the writ petitioners that the disputed property is the Tata leased property could not have been decided in absence of the alleged 8 lessor being made a party. Moreover, the dispute raised by the writ petitioners, in essence, is a dispute of ownership of the property over which they are not laying any claim. May be, with regard to a part of the disputed land, some order was passed in a proceeding under section 145 Cr.P.C, when a dispute cropped up between the alleged lessor and the writ petitioner in W.P(C) No.1515/2016 however, in the said proceeding, the respondent Railways was not a party. The order passed in the said proceeding, in fact, dislodges the claim raised on behalf of the writ petitioners that the disputed property is the Tata leased property. The said order, thus, would not put the writ petitioners in any advantageous position. The plea of adverse possession raised by the writ petitioners is misconceived. While dealing with the unauthorized occupation of public land, the Hon'ble Supreme Court in the case of Mandal Revenue Officer Vs. Goundla Venkaiah & Ano. [(2010) 2 SCC 461] in para 47 has observed thus; In this context, it is necessary to remember that it is well nigh impossible for the State and its instrumentalities including the local authorities to keep everyday vigilance/watch over vast tracts of open land owned by them or of which they are the public trustees. No amount of vigil can stop encroachments and unauthorised occupation of public land by unscrupulous elements, who act like vultures to grab such land, raise illegal constructions and, at times, succeeded in manipulating the State apparatus for getting their occupation/possession and construction regularised. It is our considered view that where an encroacher, illegal occupant or land grabber of public property raises a plea that he has perfected title by adverse possession, the court is dutybound to act with greater seriousness, care and circumspection. Any laxity in this regard

may result in destruction of right/title of the State to immovable property and give an upper hand to the encroachers, unauthorised occupants or land grabbers. 9. Admittedly, when the matter was taken up by the learned Writ Court on 12th April, 2016, an undertaking was given by the writ petitioners and once the property in dispute has been prima facie held to be the property of the South Eastern Railways, the writ petitioners, in our considered view, have no escape except abiding the undertaking given by them before the Writ Court. It is on the basis of their undertaking and after determination of the factual aspects, a direction has been given to them to vacate the said land. 10. Considering the aforesaid aspects in entirety, we are of the view that the impugned order of learned Single Judge does not suffer from any legal infirmity and hence, we decline to interfere with the same. The net result is that these appeals deserve to be dismissed. Ordered accordingly. 11. As learned Writ Court, while dismissing the writ petitions, had granted one week's time to the writ petitioners to vacate the land in question and the writ petitioners thereafter, obtained the order of status quo, coupled with the fact that they are in possession over the land in dispute for reasonably good period, we, in the interest of justice, grant them two week's time, effective from today to vacate the land in question failing which the authority concerned shall be at liberty to take necessary steps. 12. All the connected Interlocutory Applications also stand disposed of, accordingly. However, no order as to costs. (Virender Singh, C.J.) (Shree Chandrashekhar, J.) dey