

Dibesh Kumar Sarkar Vs. Railways

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Court : Jharkhand

Decided On : Mar-06-2013

Appellant : Dibesh Kumar Sarkar

Respondent : Railways

Judgement :

IN THE HIGH COURT OF JHARKHAND AT RANCHI W.P. (C) No. 1268 of 2013 with W.P. (C) No. 1271 of 2013 with W.P. (C) No. 796 of 2013 --- Ram Chandra Ram (WPC 1268/13) Biswanath Saw @ Bisnath Sah (WPC 1271/13) Dibas Kumar Sarkar @ Dibesh Kr. Sarkar (WPC 796/13) --- --- --- Petitioners Versus The Union of India through Ministry of Railways, New Delhi & others (all cases) --- --- Respondents --- CORAM: The Honble Mr. Justice Aparesh Kumar Singh For the Petitioners: Mr. Raja Ravi Shekhar, Advocate For the State: JC to GP-III --- 04/06.03.2013 In these writ petitions, petitioners are aggrieved by the notice and order dated 07th December 2012 and 22nd January 2013 passed by the Estate Officer, Eastern Railway, Malda (Respondent no. 3), by which petitioners have been asked to vacate the lands in question.

2. According to the petitioners, the land in question have been purchased by them under registered sale deed from the vendors in whose favour the same were settled earlier by the State authorities. In WPC 796/13, petitioner is said to have purchased the property from one Ajit Kumar Samanto on 11th March 1976. Counsel for the petitioners submits that khatiyani slip in respect of the settlement made in favour of the vendors by the State authorities in the first two writ petitions

is annexed as annexure-4. It is further submitted that sale deeds have been annexed to the supplementary affidavit in all these writ petitions on the basis of which petitioners claim right, title and ownership of the lands in question.

3. The ground for challenging the impugned notice as well as order passed by the Estate Officer in the purported exercise of power under the Public Premises (Eviction of Unauthorized Occupants) Act, 1971, is that the notice issued is completely vague without any description of land by which they have been summarily asked to remove their habitat.

4. However, no counter affidavit has been filed on behalf of the respondent Railways till date.

5. From perusal of the notice and the order annexed to the writ petitions, it appears that the same lack any proper description of land which is said to be encroached by these petitioners. In the absence of proper description of the land, they have been prevented from furnishing reply in their defence. It is the requirement of the Act of 1971 that if any notice is issued to the person to vacate the public land alleged to have been encroached, it should contain necessary details in order to give proper opportunity to the aggrieved parties to defend themselves before any adverse order is passed against the same. This is one of the facets of the principles of natural justice, since otherwise, it becomes an empty formality.

5. In these circumstances, upon hearing the parties and after going through the impugned notice and order contained in the instant writ petition, I am of the view that the principles of natural justice was not followed while issuing the impugned notice followed by passing of the impugned order. Accordingly, the impugned notice and order contained at annexures-1 & 2 respectively, are quashed.

6. However, it will be open to the respondents to issue proper notice containing description of the land which is said to be encroached by the petitioners and after due and proper opportunity by following the procedure prescribed under the Act of 1971, respondents may proceed to pass order in accordance with law. It is made clear that any observation made herein, shall not be treated as comments on the

merits of the case as this court has not gone into the merits of the dispute. Writ petitions stand disposed of in the aforesaid terms. (Aparesh Kumar Singh, J) Ranjeet/

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