

IN THE HIGH COURT OF JHARKHAND AT RANCHI

W.P.(C) No. 314 of 2019

1. Mantu Ram Mahuri @ Mantu Mahuri, aged about 62 years, son of Late Fuddi Sah.
2. Madan Ram Mahuri @ Madan Mahuri, aged about 62 years, son of Late Tunu Sah.
3. Laxmi Devi, aged about 68 years, wife of Late Bhola Ram.
4. Narendra Kr. Singh @ Nepu Singh @ Narendra Singh, aged about 42 years, son of Late Ram Sharan Singh.
5. Chandrasheskhar Dubey, aged about 52 years, son of Late Radhey Shyam Dubey.
6. Sukdev Ram @ Sukdev Ram, aged about 56 years, son of Late Babu Lal Ram.
7. Rajesh Ram, aged about 42 years, son of Late Babu Lal Ram.
8. Udhoo Yadav, aged about 42 years, son of Late Sahdev Mahto.
All resident of Jasidh, P.O. and P.S. Jasidh, District Deoghar.

... ... **Petitioners**

Versus

1. The State of Jharkhand.
2. The Deputy Development Commissioner Cum Chief Executive Officer District Board, Deoghar, having its Office at P.O., P.S. and District Deoghar.
3. The Sub Divisional Officer, Deoghar, having its Office at P.O., P.S. and District Deoghar.
4. The Circle Officer, Deoghar, having its Office at P.O., P.S. and District Deoghar.

... ... **Respondents**

CORAM :HON'BLE MRS. JUSTICE ANUBHA RAWAT CHOUDHARY

For the Petitioner : Mr. Shresth Gautam, Advocate

Mr. Rahul Anand, Advocate

For the State : Mr. Prashant Kr. Rai, Advocate

For the Resp. No. 2 : Mr. Radha Krishan Gupta, Advocate

15/22.10.2024

1. Heard the learned counsel for the parties.
2. This writ petition has been filed for the following reliefs:-

"(a) Quashing of Notices dated 15.02.2017 (Annexure-5 Series) issued by the respondent No. 3 under the provisions of Jharkhand Public Land Encroachment Act, 1956 and all proceeding subsequent thereto initiated against the petitioners as being illegal, arbitrary and not maintainable in the view of the fact that already B.A. Case No. 13 / 2013 under the Building, Rent and Eviction Control Act has been

initiated and pending against the petitioners and other Occupants for their eviction from plot no. 88D, Jamabandi No. 62, Village Jasidih.

(b) For quashing of Notices dated 01.12.2018 in respect to the petitioner nos. 1, 3 to 8 and Notice dated 27.02.2018 with respect to petitioner no. 2 issued by the respondent no. 4 and all proceedings subsequent thereto initiated against the petitioners, whereby and where under the petitioners have been proceeded against under the provisions of Jharkhand Public Land Encroachment Act, as being illegal, arbitrary and not maintainable in the view of the fact that already B.A. Case No. 13 / 2013 under the Building, Rent and Eviction Control Act has been initiated and pending against the petitioners and other occupants for their eviction from plot no. 88 D, Jamabandi No. 62, village Jasidih before Respondent No. 3.”

- 3.** The order dated 13.02.2024 was passed by this Court which is quoted as under:-

“By filing this writ application, the petitioners have prayed to quash the notices dated 15.02.2017 (Annexure-5 series), issued by respondent no. 3 and also have prayed to quash the notice dated 01.12.2018 issued to petitioner nos. 1, 3 to 8 and notice dated 27.02.2018, issued to petitioner no. 2 by the respondents. All these notices, which are under challenge, are under the provisions of the Jharkhand Public Land Encroachment Act.

Learned counsel for the petitioners submits that in respect of the self same property in question, for which the instant notices were issued, the respondents have already filed a proceeding under the Jharkhand Building (Lease, Rent & Eviction) Control Act. As per him, when a proceeding has already been initiated under the Jharkhand Building (Lease, Rent & Eviction) Control Act, a parallel proceeding under the Public Land encroachment Act is not maintainable.

The learned counsel for the petitioners submits that the respondents have initiated an eviction suit against all the petitioners. Surprisingly, there is nothing on record to suggest that there is an eviction suit, pending against all the petitioners.

Learned counsel for the petitioners prays for some time to bring on record the details of the eviction suit, which has been filed against all the petitioners. Prayer is allowed.

This case is adjourned for three weeks to be listed under the heading ‘For orders’.”

- 4.** From perusal of the aforesaid order, it is apparent that the specific grievance of the petitioner was that the proceedings under

Jharkhand Public Land Encroachment Act could not have been initiated on account of pendency of proceeding under Jharkhand Building (Lease, Rent & Eviction) Control Act and therefore there could not be parallel proceedings, one under Jharkhand Building (Lease, Rent & Eviction) Control Act and another under the Public Land Encroachment Act.

5. A supplementary affidavit has been filed by the petitioners in this case pursuant to order dated 13.02.2024 giving the details of the cases with regard to the proceeding under Jharkhand Building (Lease, Rent & Eviction) Control Act. The details as mentioned in the affidavit are as follows: -

“4. That it is stated and submitted that the Deputy Development Commissioner-cum-Chief Executive Officer, District Council, Deoghar, i.e. the Respondent No.-2 vide Letter No. 171 dated 01.04.2013 made an application before the Sub-Divisional Office, Deoghar for eviction of the occupants/petitioners from the shops situated at Plot No. 88.

5. That it is stated and submitted that on the basis of the aforesaid Letter No. 171 dated 01.04.2013, a Miscellaneous Case No. 230/2013 was registered before the Court of Sub-Divisional Office, Deoghar and notices were issued to (1) Ganesh Dubey, (2) Kartik Mali, (3) Gopal Ram Mahuri, (4) Mantu Ram Mahuri, the Petitioner No.-1 (5) Madan Ram Mahuri, the Petitioner No.-2, (6) LAXMI Devi, the Petitioner No.-3, (7) Nipu Singh, the Petitioner No.-4, (8) Radhey Shyam Dubey, the father of the Petitioner No.-5, (9) Babu Lal Ram, the father of the Petitioner Nos.- 6 & 7 and (10) Sahdev Mahto, the father of the Petitioner No.-8

6. That it is stated and submitted that later on the aforesaid Miscellaneous Case No. 230/2013 was converted in B.A. Case No. 13/2013 under the Bihar Building (Lease, Rent & Eviction) Control Act, 1982 and subsequent notice dated 28.09.2023 was issued to (1) Fanindra Nath Dubey @ Budhu Dubey, (2) Kartik Mali, (3) Gopal Ram Mahuri, (4) Mantu Ram Mahuri, the Petitioner No.-1, (5) Madan Ram Mahuri, the Petitioner No.-2, (6)

Laxmi Devi, the Petitioner No.-3, (7) Nipu Singh, the Petitioner No.-4, (8) Radhey Shyam Dubey, the father of the Petitioner No.-5, (9) Babu Lal Ram, the father of the Petitioner Nos.- 6&7 and (10) Sahdev Mahto, the father of the Petitioner No.-8”

- 6.** The petitioner has annexed notice issued by the Sub Divisional-cum-Officer Rent Control, Deoghar dated 28.09.2013 in B.A. Case No. 13 of 2013 and dated 12.12.2013 in B.A. Case No. 13 of 2013 wherein the name of the addresses of the notices are as under:-

Notices issued on 28.09.2013 in B.A. Case No. 13 of 2013	
Sl No.	Names and address
1	Fanindra Nath Dubey @ Budha Dubey, Zila Prishad Deoghar Ke Bharedar.
2	Kartik Mali, S/O Lt. Nunulal Mali, Zila Prishad Deoghar Ke Bharedar.
3	Gopal Ram Mahuri, S/O: Lt. Sivnandan Sah, Zila Prishad Deoghar Ke Bharedar.
4	Matu Ram Mahuri, S/O: Fuddi Sah, Zila Prishad Deoghar Ke Bharedar.
5	Madan Ram Mahuri, S/O: Tutu Sah, Zila Prishad Deoghar Ke Bharedar.
6	Mo. Laxmi Devya, S/O: Patal Sah, Zila Prishad Deoghar Ke Bharedar.
7	Nipu Singh, S/O: Lt. Ram Sharan Singh, Zila Prishad Deoghar Ke Bharedar.
8	Radheyshyam Dubey, S/O: Lt. Matru Dubey, Zila Prishad Deoghar Ke Bharedar.
9	Babulal Ram, S/O: Gora Ram, Zila Prishad Deoghar Ke Bharedar.
10	Sahdev Mahto, S/O: Rajkumar Mahto, Zila Prishad Deoghar Ke Bharedar.

Notices issued on 12.12.2013 in B.A. Case No. 13 of 2013	
Sl No.	Names and address
1	Sri Binay Kumar Dubey, S/O: Lt. Ganesh Dubey, Zila Prishad Deoghar Ke Bharedar.
2	Sri Rohit Kumar Dubey, S/O: Lt. Ganesh Dubey, Zila Prishad Deoghar Ke Bharedar.
3	Sri Ujjawal Kumar Dubey, S/O: Lt. Ganesh Dubey, Zila Prishad Deoghar Ke Bharedar.
4	Sri Rajesh Dubey, S/O: Lt. Ganesh Dubey, Zila Prishad Deoghar Ke Bharedar.
5	Sri Sukdev Ram, S/O: Lt. Babulal Ram, Zila Prishad Deoghar Ke Bharedar.
6	Sri Rajesh Ram, S/O: Lt. Babulal Ram, Zila Prishad Deoghar Ke Bharedar.
7	Sri Jay Shankar Yadav, S/O: Lt. Sahdev Mahto, Zila Prishad Deoghar Ke Bharedar.

8	Sri Udhoo Yadav, S/O: Lt. Sahdev Mahto, Zila Prishad Deoghar Ke Bharedar.
9	Sri Santosh Yadav, S/O: Lt. Sahdev Mahto, Zila Prishad Deoghar Ke Bharedar.

7. The learned counsel for the petitioner submits that a few of the petitioners involved in the present case are son of the persons to whom the notice was issued in B.A. No. 13 of 2013 and upon their death, they have filed the writ petition. He has submitted that the said proceedings are still pending.

8. The learned counsel appearing on behalf of the respondent No. 2 has submitted that in W.P.(C) No. 5313 of 2004 dated 26.10.2016 a number of notices were challenged bearing Memo No. 67, 68, 70, 72 and 74 all dated 24th June, 2004 wherein the petitioners were asked to vacate the premises within the period of three days and shops were to be constructed. He submits that this Court did not interfere with the notices and also recorded a submission that the respondent board had submitted that step for eviction of the petitioner would obviously be taken in accordance with law.

9. The learned counsel submits that the proceedings which have been initiated by virtue of B.A. Case No. 13 of 2013 has not proceeded in view of non-co-operation by the petitioners. However, no such affidavit has been placed on record. The fact remains that as per the affidavit dated 27.02.2024, the proceedings are pending.

10. Considering the facts and circumstances of this case, this Court finds that the petitioner has brought on record the proceeding which have been initiated against the petitioners or their predecessor in interest by virtue of B.A. No. 13 of 2013 under the provisions of Jharkhand Building (Lease, Rent & Eviction) Control Act but the same is still pending. Apparently, more than 10 years have been elapsed.

11. This Court is of the view that the respondents cannot initiate both the proceeding with respect to the same premises, one for removal of encroachment under Jharkhand Public Land Encroachment

Act 1956 and also for eviction of the premises under the provisions of Jharkhand Building (Lease Rent and Eviction) Control Act by treating the petitioners as tenant.

12. In such circumstances, the impugned notices which have been issued by the respondent No. 3 dated 15.02.2017 as contained in annexure 5 series under the provisions of Jharkhand Public Land Encroachment Act 1956 cannot be sustained in the eyes of law. Accordingly, the same are set aside.

13. However, at the same time the proceeding initiated under Jharkhand Building (Lease Rent and Eviction) Control Act cannot remain pending for an indefinite period of time and no reason has been mentioned in the supplementary affidavit with regard to such pendency.

14. Consequently, the petitioners and the respondent No. 2 or his authorized representative are directed to appear before the Sub Divisional Officer cum Rent Controller, Deoghar on 26th November, 2024 at 11: 00 AM.

15. Upon their appearance, the aforesaid authority shall ensure expeditious disposal of the pending proceedings and the final order be passed as expeditiously as possible but not later than three months from 26th November, 2024. Parties to cooperate.

16. In case there is any difficulty in complying with this order in letter and spirit, it will be open to seek extension of time before this court.

17. This writ petition is disposed of with the aforesaid observations and directions.

(Anubha Rawat Choudhary, J.)

Rakesh/-