

IN THE HIGH COURT OF JHARKHAND AT RANCHI

W.P. (C) No. 6686 of 2016

Bishundeo Prasad @ Bishundeo Sahu, son of Late Nathuni
Sahu, resident of village, P.O. and P.S.- Ghaghra, Dist.-
Gumla Petitioner

Versus

1. The State of Jharkhand
2. The Deputy Commissioner, Gumla, P.O. & P.S. and Dist.-
Gumla
3. The Additional Collector, Gumla, P.O. & P.S. and Dist.-
Gumla
4. The Sub-Divisional Magistrate, Gumla, P.O. & P.S. and
Dist.- Gumla, Jharkhand
5. The Circle Officer, Ghaghra, P.O. & P.S. - Ghaghra, Dist.-
Gumla
6. Ramchandra Prasad, son of not known to the petitioner,
Deputy Post Master, Sub Post Office- Ghaghra, P.O. & P.S.-
Ghaghra and Dist.- Gumla

..... Respondents

For the Petitioner : Ms. Chandana Kumari, Adv.

For the Respondent State : Mr. Rahul Saboo , GP II.

For the Respondent no. 6 : Mr. Ravi Prakash , Adv.

P R E S E N T

HON'BLE MR. JUSTICE ANIL KUMAR CHOUDHARY

By the Court:- Heard the parties.

2. This writ petition has been filed invoking the jurisdiction of this Court under Article 226 of the Constitution of India for quashing the order dated 20.06.2016 issued by the Circle Officer, Ghaghra (respondent no. 5), whereby and where under, the respondent no. 5 directed the petitioner to remove the structure standing over plot no. 886, khata no. 6, total area- 0.18 Acres and Plot no. 886/1665, Khata no. 6, total area 0.05 Acres as also the order dated 26.08.2016 passed by respondent no. 4 whereby and where under, though the respondent no. 4 has observed that initiation of

encroachment case, when the Zamabandi, is existing in the name of writ petitioner, the same is an act, which has been done without following the due process of law but instead of expressly, setting it aside, has directed that the steps be taken for cancellation of the Zamabandi of the petitioner.

3. Learned counsel for the petitioner submits that for the self-same land, earlier encroachment case no. 10/1992-93, was initiated against the petitioner in which eviction order was passed. The writ petitioner filed Encroachment Appeal No. 32 of 1992 in the court of Additional Collector, Gumla and Additional Collector, Gumla, allowed the appeal and set aside the order passed by the Circle Officer, Ghaghra and same has reached finality.
4. Relying upon the judgment of the Hon'ble Supreme Court of India in the case of **Samir Kumar Majumder vs. The Union of India** reported in **AIR 2023 SC 4698, para 35** of which reads as under :

"35. The doctrine itself is based on public policy flowing from the age-old legal maxim interest reipublicae ut sit finis litium which means that in the interest of the State there should be an end to litigation and no party ought to be vexed twice in a litigation for one and the same cause (See M. Nagabhushana vs. State of Karnataka and Others, (2011) 3 SCC 408." (Emphasis supplied)

it is submitted by learned counsel for the petitioner that the Hon'ble Supreme Court of India, therein, reiterated, the doctrine that party ought to be vexed twice in a litigation for one and same cause.

5. Relying upon the judgment of the Hon'ble Supreme Court of India in the case of **Government of Andhra Pradesh vs. Thummala Krishna Rao & Anr.** reported in **(1982) 2 SCC 134**, it is submitted by the learned counsel for the writ petitioner that the State cannot evict a person in long possession of land by resorting to a summary proceeding in an encroachment case. Hence, it is submitted that said impugned order passed by the respondent no. 4 be

modified by setting aside the eviction order passed by the respondent no. 5.

6. Learned counsel for the State fairly submits that since the respondent no. 4, has in no uncertain manner, mentioned that the process of initiating the encroachment case, against the petitioner, by the respondent no. 5 was not in accordance with law, as undisputedly, the name of the writ petitioner, stands in the 'Record of Rights', in respect of the plot in question, inadvertently, the respondent no. 4 has missed out, passing an express order that the order passed by the respondent no. 5 is set aside but it be deemed that the same has been set aside. It is lastly submitted that therefore, there is no justifiable reason for the petitioner to file this writ petition, challenging the said order.
7. Learned counsel for the respondent no. 6 also adopts the submission of learned counsel for the respondent - State.
8. Having heard the submissions made at the bar and after going through the materials in the record, the undisputed facts remains that the respondent no. 4 has in no uncertain manner has held that the respondent no. 5 has committed illegality by initiating the encroachment proceeding against the petitioner when his name stands recorded in the 'Record of Rights', hence, as has rightly been submitted by learned counsel for the State, the respondent no. 4, inadvertently, missed out by passing an express order that the eviction order passed by the respondent no. 5 being the order dated 20.06.2016 is set aside.
9. In view of this undisputed fact, that the order dated 20.06.2016 passed by the respondent no. 5 is not sustainable in law, as the encroachment case ought not have been initiated when the name of the writ petitioner stands recorded in the 'Record of Rights', this court is of the considered view that this is a fit case where the order dated 20.06.2016 passed by the respondent no. 5, directing the

writ petitioner to remove structures over the land concerned, be set aside and the order dated 26.08.2016 passed by the respondent no. 4 is modified by adding in the said order that the order passed by the respondent no. 5 is set aside.

10. In view of the discussions made above, the order dated 20.06.2016 passed by the respondent no. 5 is quashed and set aside and the order dated 26.08.2016 passed by respondent no. 4 is modified to the aforesaid extent only.
11. This writ petition is disposed of accordingly.

(Anil Kumar Choudhary, J.)

High Court of Jharkhand, Ranchi
Dated, the 2nd May, 2024
Smita / AFR