

IN THE HIGH COURT OF JUDICATURE AT PATNA

Letters Patent Appeal No.179 of 2018

In

Civil Writ Jurisdiction Case No.3361 of 2014

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1. The State of Bihar through Commissioner-cum-Secretary, Department of Forest, Govt. of Bihar, Patna
 2. Chief Conservator of Forest, Bihar, Patna.
 3. The Divisional Forest Officer, Banka Division, At and PO-Banka
 4. Ranger of Forest, Katoria Range, Banka
 5. The Forest Officer, Chandan Block, At and PO-Chanda, Banka.

... .. Appellant/s

Versus

- 1.1. Sudha Devi aged about 56 years, W/o Late Bam Shanker Ray R/o Village-Gopdih, P.O. and P.S.- Chandan, District- Banka
- 1.2. Prakash Ray, aged about 37 years, S/o Late Bam Shanker Ray R/o Village-Gopdih, P.O. and P.S.- Chandan, District- Banka
- 1.3. Diwakar Ray aged about 33 years, S/o Late Bam Shanker Ray R/o Village-Gopdih, P.O. and P.S.- Chandan, District- Banka
2. Sadhu Saran ray, S/o Late Satoshi Rai Both R/o Village-Gopdih, P.O. and P.S.-Chandan, District-Banka.
3. Rajendra Rai, S/o Late Nageshwar rai.
4. Murli Rai, S/o Late Joha Rai. Both R/o Village-Gopdih, P.O. and P.S. Chandan, District-banka.

... .. Respondent/s

Appearance :

For the Appellant/s : Mr. Sarvesh Kumar Singh, AAG- 13

For the Respondent/s : Mr.Satyendra Krishna Prasad, Advocate



CORAM: HONOURABLE THE CHIEF JUSTICE
and
HONOURABLE JUSTICE SMT. ANJANA MISHRA
ORAL JUDGMENT
(Per: HONOURABLE THE CHIEF JUSTICE)

Date : 10-05-2019

Heard Shri Sarvesh Kumar Singh, learned counsel for the State of Bihar who contends that the learned Single Judge has overlooked the fact that in view of the notification dated 2nd of December, 1955 as published on 25th of January, 1956, the land which stood declared as protected forest in terms of Section 29 of the Indian Forest Act, 1927 could not be claimed by the respondent-petitioners as their private occupancy raiyati land. For this, some documents have sought to be introduced by way of a supplementary affidavit in this appeal that were not filed before the learned Single Judge along with the counter affidavit of the appellant. The supplementary affidavit dated 13th March, 2019 states that during the cadastral survey the land was indicated as forest land, and even otherwise there was nothing to indicate that when the said land came to be utilized by the Forest Department for fresh transplantation, the respondent-petitioners were ever in occupancy of the said land.

2. What we find is that the counter affidavit filed in



the writ petition states that the respondent-petitioners appear to have occupied the land with an intention to grab forest land by sowing horse gram (Kurthi) thereon which was a barren land, and upon being objected to, the respondent-petitioners have come up trying to substantiate their claim on the strength of a sale-deed of the year 1918 and on the basis of such documents which have been described in Paragraph 13 as forged and fabricated documents.

3. On the other hand, learned counsel for the respondent-petitioners submits that the respondent-petitioners had filed a true copy of the original sale-deed duly registered in 1918 indicating the acquisition of title over the land by the ancestors of the respondent-petitioners and not only this there were rent receipts in support thereof.

4. The counter affidavit describes the said rent receipts to have been issued on account of some connivance with the officials of the Revenue Department.

5. It is in this background that the learned counsel for the State contends that the respondent-petitioners could not have maintained in the writ petition without there being any ample proof relying to the title over the land and on the other hand, the notification of the year 1955 completely excluded any



right, title or interest being claimed by the respondent-petitioners.

6. We find that another decision in C.W.J.C. No. 3509 of 2017 by the same learned Single Judge has held that even assuming for the sake of arguments that a notification had been published under Section 29, unless possession is established, mere publication of the notification could not take away the rights of those who were in occupancy of such land at the time of notification and their occupancy has to be determined in accordance with law and they cannot be evicted forcibly.

7. In the instant case, while entertaining the appeal on behalf of the State of Bihar, we had also taken notice of the contentions raised in our order dated 6th of December, 2018 which is extracted hereinunder:-

“I.A. No.971 of 2018

Having heard Sri Sarvesh Kumar Singh, learned counsel for the State of Bihar, we are satisfied that the cause shown is sufficient. The delay is condoned and application is allowed. The appeal shall be treated within time.

L.P.A. No.179 of 2018

The contention raised is that in spite of the fact that the respondent- petitioners had been unable to establish their right, title and interest over



the land, the learned Single Judge has issued a mandamus restraining the appellants from taking any action against the respondent- petitioners treating the land to be possessed by them under a valid title.

According to the learned counsel for the appellants, the land is within the protected forest area as duly notified on 2nd of December, 1955. Copy of the notification is Annexure-A to the counter affidavit in the writ petition. Prima facie, from a bare perusal of the said notification, it is evident that the declaration of the area as 'protected forest' is subject to all existing rights of individuals or communities.

There does not appear from the record as to whether any enquiry had been conducted by the appellants under the provisions of the Indian Forest Act for either settlement or adjudication of any such claim of the occupants and, therefore, the question as to whether the respondent- petitioners had any existing individual or community rights as per Section 29 of the Indian Forest Act, 1927 was not gone into.

Learned counsel submits that such enquiry has to be conducted to identify such lands as pointed out by the Apex Court in the order dated 12th of December, 1996, passed in the case of T.N. Godavarman Thirumulkpad vs. Union of India and others. It is urged that the respondent- petitioners, as a matter of fact, have no right, title and interest



and, therefore, the mandamus could not have been issued.

The matter requires scrutiny. Accordingly, issue notice to all the four respondents by both modes, i.e. under registered cover with A/D and by ordinary process on steps being taken within two weeks, returnable at an early date.

The matter shall be listed after service on the said respondents in the 2nd week of January, 2019.”

8. We had also made an inquiry as to whether the appellants had conducted any proceedings after putting the respondent-petitioners to notice so as to verify the correctness or otherwise of their statement and their claim over the land, but we find that no such procedure appears to have been adopted. The contention of the learned counsel is that once the land was notified then it is for the respondent-petitioner to have sought to raise any objections which they have not done and consequently they cannot be permitted to raise any claim of title or possession after more than half a century of the notification issued in the year 1955. It is correct that if any proceedings had been undertaken and the land came to be notified as forest land then the respondent-petitioners cannot claim any better title than what they had, but the provisions of Section 29 and the



notification of 1955 as relied on itself provides for the protection of any such rights of the inhabitants and occupants of such land which does require an inquiry to be made in the event any resistance is put forth by any such occupant. In the instant case, the respondent-petitioners have shown a *prima facie* claim with regard to the land on the basis of a sale-deed, which is more than a century old, and have also come up with a case that they have deposited rent. Whether this was done with the connivance of the Revenue Authorities or whether it is a genuine transaction has to be adjudicated and the presumption of forgery or manipulation cannot be assumed on a mere assertion in the counter affidavit of the State. It is by now well settled that a person cannot be evicted from any such claim of property rights except otherwise than in accordance with law.

9. We find that the learned Single Judge following the said principles has disposed of the writ petition and we, therefore, find no reason to interfere with the same without prejudice to the rights of the appellant-State or the Forest Department to take such appropriate steps that may be available to them in accordance with law for contesting the possession of the respondent-petitioners in accordance with law.

10. The appeal stands consigned to records with the



said observations.

(Amreshwar Pratap Sahi, CJ)

(Anjana Mishra, J)

P.K.P./-

AFR/NAFR	
CAV DATE	
Uploading Date	13.05.2019
Transmission Date	

