IN THE HIGH COURT OF JHARKHAND AT RANCHI
W.P.(C) No. 2763 of 2020

Afroj Ali

... … Petitioner

Versus

1. The State of Jharkhand
2. The Principal Secretary, Department of Land and Revenue, Government of Jharkhand, Ranchi
3. The Deputy Commissioner, Pakur
4. The D.C.L.R., Pakur
5. The Circle Officer, Maheshpur, District- Pakur
6. Ajit Narayan Singh
7. Archana Singh … …Respondents

CORAM: HON'BLE MR. JUSTICE RAJESH SHANKAR

For the Petitioner :- Mr. Manoj Kumar Choubey, Advocate
For the State :- Mr. Varun Prabhakar, A.C. to G.P.-III

Order No. 04 **Dated: 14.12.2020**

The present case is taken up through video conferencing.

2. At the request of the learned counsel for the petitioner, the remaining defects, as pointed out by the office, are ignored.

3. The present writ petition has been filed for quashing the order dated 20.02.2018 passed by the respondent no.4- the Land Reforms Deputy Collector, Pakur, in Revenue Miscellaneous Case No. 05/2017-18, whereby the objection of the father of the petitioner and one Archana Singh has been rejected by holding that any interference to the settlement of the land in question made in favour of Bimlendra Narayan Singh (father of the respondent no. 6) would not be in the interest of justice. Further prayer has been made for quashing the order dated 30.08.2019 passed by the Circle Officer, Maheshpur-the respondent no.5 who while agreeing with the observation made by the respondent no.4 in the order dated 20.02.2018, has dropped the proceeding of Revenue Misc. Case No. 02 of 2019-20. It has also been prayed for issuance of direction upon the respondent no. 4 to decide Review Case no. 05 of 2018 pending before him for adjudication since 2018 with further prayer for issuance of direction upon the respondent no. 3- the Deputy Commissioner, Pakur to take appropriate steps under the Jharkhand Public Land Encroachment Act, 1957 (in short "the Act, 1957") for the removal of encroachment made over the public road by the respondent no. 6.

4. The factual background of the case as stated in the writ petition is that the land appertaining to plot no. 475, Khata No. 162, Mouza-

Maheshpur, District Pakur measuring an area of area 18 katha 3 dhur (hereinafter referred as the said land) was settled in the name of Bimlendra Narayan Singh (the father of the respondent no. 6) by the ex-landlord in the year 1945. The nature of the said land as recorded in the survey khatiyan is "Rasta" and the same is being used as a path to attend rituals and ceremonies at Rani Dighi Pokhar situated at plot no.474 and Kana Dighi Pokher situated at plot no. 476 as the said land is situated in the middle of plot no. 474 and 476. In the year 2011-12, a proceeding being Miscellaneous Revenue Record Case No. 3 of 2011-12 was initiated by the Circle Officer, Maheshpur-the respondent no.5 on the application of the respondent no.6 wherein after issuance of notice, the father of the petitioner, his uncle and respondent no. 7 with other villagers representing 16 anna raiyat of Maheshpur village filed objections along with the copies of relevant revenue records. The reports were also called for from Karamchari and Circle Inspector of the concerned circle and the respondent no. 5 passed the order dated 25.06.2015 to the effect that since the land was recorded in the survey *Khatian* as "Gair Majurwa Aam" "Rasta", he was not competent to pass any order on the application of the respondent no. 6 for declaring his right, title and interest over the said land and as such the said record was referred to the respondent no. 4 for taking appropriate decision on the issue. Thereafter, the respondent no.4 re-registered the case as Revenue Misc. Case No. 05 of 2017-18 and disposed of the same vide order dated 20.02.2018 directing the respondent no. 5 not to interfere with the settlement of the said land done in favour of Bimlendra Narayan Singh with a liberty to the opposite parties to prefer appeal before the competent court of law. Aggrieved with the said order, the respondent no. 7 filed revision application before the respondent no. 3 vide Revision Misc. Record Case No. 02 of 2018 which was dismissed vide order dated 12.09.2018 at the stage of admission itself due to non-prosecution. The Uncle of the petitioner Bablu Seikh also filed review petition before the respondent no. 4 for reviewing the order dated 20.02.2018 passed by the respondent no. 4, which is still pending. The petitioner, after the death of his father, preferred an application before the respondent no. 5 regarding fresh

encroachment/construction being carried out by the respondent no. 6 whereupon a notice was issued to the respondent no.6 mentioning inter alia that the said land is recorded as *Gair Majarua Aam* i.e. the government land. The respondent no.6 filed a writ petition being W.P.(C) No. 2732 of 2019 before this Court challenging the impugned notice issued vide memo no.985 dated 26.09.2018 by the respondent no. 5 wherein he was restrained from making any construction upon the said land. The said writ petition was finally disposed of by a Co-ordinate Bench of this court vide order dated 01.07.2019 directing the respondent no.5 to take final decision in the matter after considering the reply of the respondent no. 6. The respondent no. 5 in compliance of the aforesaid order registered Revenue Misc. Case No. 02 of 2019-20 and after hearing the parties, passed the order dated 30.08.2019 and closed the proceeding of the case agreeing with the decision of the respondent no.4 for not interfering with the possession of Bimlendra Narayan Singh. Hence, the present writ petition.

5. Learned counsel for the petitioner submits that the respondent no. 4 while passing the impugned order dated 20.02.2018 has not decided the legal issue raised with regard to his jurisdiction and competence. If the issue of jurisdiction is raised by a party, an administrative authority while passing the order is required to decide the jurisdiction issue first and thereafter to go into the issue of facts as the competence of the authority is foremost and important legal question and the said issue has far reaching effect and implication in future. The respondent no. 4 had no legislative competence conferred by any law applicable in the matter of *Jamabandi* to decide the reference by assuming the power vested with the respondent no. 3, rather he should have further referred the matter to the superior authority competent under the law to decide such reference made by the respondent no. 5. However, the said legal issue has not been properly appreciated by the respondent no. 4 in its order dated 20.02.2018 passed in Revenue Miscellaneous Record No. 05 of 2017-18. It is further submitted that the respondent no. 5 while passing the impugned order dated 30.08.2019 in Revenue Misc. Case No. 02 of 2019-20 has though observed that the land in question is recorded as

"Rasta" as per last survey records of *Khatiyan* which is situated in the middle of plot no. 474 and 476, yet has allowed the application of the respondent no. 6 merely for the reason that the respondent no.4 had passed order 20.02.2018 and thus the said authority has not properly appreciated the plea of the petitioner. It is also submitted that it is the statutory duty of the respondent no. 3 or other authorities to save public land from being encroached, however they have completely failed in discharging their statutory duty in terms with the provisions of the Act, 1957. The respondent no.7 subsequently in connivance with the respondent no.6, did not take any interest on her revision application pending before the respondent no.3 as major part of the land has been sold by her during the said period and, therefore, she lost her interest in using the road to go to her land crossing Plot No.475, which has now been blocked by the respondent no.6 in the garb of the order of the respondent no.4.

6. The learned counsel appearing on behalf of the State respondents submits that there are concurrent finding of facts by both the respondent nos. 4 and 5 which are not required to be interfered by this Court under its extraordinary writ jurisdiction. If the petitioner feels aggrieved, he may approach a competent court of civil jurisdiction seeking determination of his claim.

7. Heard learned counsel for the parties and perused the materials available on record. The main contention of the learned counsel for the petitioner is that the said land is recorded in the Khatian as "Rasta" and the said fact has also come in the impugned order dated 20.02.2018 passed by the respondent no. 4, however merely on the basis of the fact that the said land was settled by the ex-landlord in favour of the father of the respondent no. 6, the objection raised by the petitioner with regard to the right of the respondent no.6 to have possession over the said land, has been turned down.

8. To appreciate the contentions of the parties, I have perused the available record. It appears that the respondent no. 4 while passing the impugned order dated 20.02.2018 has elaborately dealt with the contentions of the parties and has also gone through the reports submitted by the Revenue Karamchari and Circle Inspector, Circle

Office, Maheshpur. It has been observed by the respondent no. 4 that the said land was settled in favour of the father of the respondent no. 6 in the year 1945 for giving way to Rani Dighi Pokhar situated at plot no.474 and the respondent no. 6 is in possession of the same without any hindrance from any person and due to non-availability of the *Zamindari* return, the authenticity of the settlement cannot be judged. It has further been observed that presently the said land is not being used by the public as "road". It has also been observed that jamabandi of the said land was opened in the name of father of the respondent no. 6 who paid rent to the ex-landlord till vesting and thereafter to the Government from the year 1967-68 till 2011-2012. The respondent no. 4 has found that the land is recorded as *Puratan Patit* which was validly settled by the ex-landlord and the Sub-Divisional Officer has been settling such types of land. The proceeding initiated in Sub-Divisional Office under Section 4(h) of the Bihar Land Reforms Act, 1950 (in short, "the Act, 1950") in R.E.R Case No.99 of 1953-54 in relation to acquisition of Rani Dighi Pokhar situated at plot no.474 was cancelled by the Sub-Divisional Officer, Pakur and the settlement made in favour of the father of the respondent no.6 was kept in existing position.

9. On perusal of the order dated 30.08.2019 passed by the respondent no. 5, pursuant to the direction of this Court in W.P.C no. 2732 of 2019, it appears that the said respondent also got the land inspected by the Revenue Deputy Inspector, Maheshpur and Circle Inspector, Maheshpur who found that the land was recorded as "Rasta" in the *Khatiyan* and the *jamabandi* of the said land was opened in the name of the father of the respondent no. 6. The rent has been paid till 2019 and the said land is not the connecting road of any Mouza. Presently, small bushes have come up over the said land. He further found that an appropriate proceeding under Section 4(h) of the Act, 1950 was never initiated for the said land. The respondent no. 5 also perused the order dated 20.02.2018 passed by the respondent no. 4 and agreed with the observation made by him. Finally, the respondent no. 5 dropped the proceeding granting liberty to the opposite parties to prefer appeal.

10. In view of the observations made by the respondent authorities, it appears that the said land was recorded as "Rasta" in the *Khatiyan* which was settled by the ex-landlord in the name of the father of the respondent no. 6 to give way to plot no. 474 which was also settled to him. The father of the respondent no. 6 paid rent to the ex-landlord till vesting of the *Zamindari* and thereafter *jamabandi* of the said land was opened in his name in Register-II. He paid rent to the State government and remained in possession of the same and after his death, the respondent no.6 is in the possession. All these facts have not been disputed by the petitioner, however he has claimed the said land as public road. Both the respondent nos. 4 and 5 after getting the land inspected by the Revenue Karamchari and Circle Inspector, have given concurrent finding of facts that the said land is not being used as public road.

11. I am of the view that settlement of the said land, which has not been cancelled by initiating any proceeding under Section 4(h) of the Act, 1950 coupled with opening of *jamabandi* and payment of rent to the government as also long possession over the same, has rightly not been interfered with by the respondent nos. 4 and 5. Moreover, though the nature of the land has been shown as 'Rasta' in the Khatiyan, the same by itself does not entitle the petitioner to get any relief from this Court under writ jurisdiction since he has failed to show any cogent evidence that the said "road" is a public road, rather the impugned orders clearly reveal that the same was the land which was settled in favour of the father of the respondent no.6 as an approach road to reach plot no. 474 which was also settled in his favour.

12. In view of the aforesaid facts, I do not find any reason to interfere with the order dated 20.02.2018 passed by the respondent no. 4 and order dated 30.08.2019 passed by the respondent no. 5 under extraordinary writ jurisdiction. The writ petition is accordingly dismissed. The petitioner is however at liberty to approach the competent court of civil jurisdiction seeking adjudication of his claim over the said land.

(Rajesh Shankar, J.)

Ritesh/A.F.R.