

IN THE HIGH COURT OF JHARKHAND AT RANCHI
W.P. (C) No. 1811 of 2023

Mrs. Arati Gupta & Ors. ... Petitioners
Versus
The State of Jharkhand & Ors. ... Respondents

CORAM: Sri Ananda Sen, J.

For the Petitioners : M/s. Debolina Sen
and Kashyapi, Advocates.
For the State : Mr. Sanjay Kumar Tiwari, S.C.-I
For Proforma Respondent: Mr. Saurabh Swarup, Advocate.
For the Resp. Nos. 10-11: Mr. Ranjit Kumar, Advocate.

Oral Order

06/Dated: 22.02.2024

Heard the learned counsel for the parties.

2. The grievance of the petitioner is that portion of the area, which the petitioner was occupying and was bounded by boundary walls and some shops, have been demolished by the State respondents.

3. It is the case of the petitioners that they are in occupation over the area in question since 1895.

4. Learned counsel for the State disputed the title of these petitioners.

5. As a result of the said dispute, a proceeding under the provisions of the Land Encroachment Act was initiated, which ultimately culminated in filing of a writ petition being C.W.J.C. No.3741 of 1993 (R). In the aforesaid writ application vide order dated 21st of July, 2003, the learned coordinate Bench of this Court has held that there is a dispute in respect of right, title and possession in relation to the property and the same cannot be decided in a summary proceeding. The parties were allowed to move before the civil court of competent jurisdiction. It has also been held, in the aforesaid order, that even in respect to a government lands, if a person is in possession for a long period, instead of summary proceeding, one should take recourse of a civil court of competent jurisdiction.

6. The Court also took note of the fact that the registered deed, which the petitioner has brought, is of 19th July, 1895 and there are decisions of the Court in Title Suit No.14 of 1955, wherein, the predecessor in interest of the deceased-petitioner of the aforesaid writ application, Subroto Kumar Gupta was a party. The learned Single Judge also held that considering all these facts, the Land Reforms

Deputy Collector could not have taken an action for evicting the petitioner in a summary proceeding. The entire order of eviction was set aside by the learned Single Judge and liberty was given to the aggrieved party to move before a court of competent jurisdiction for appropriate relief.

7. Admittedly, the State is the aggrieved party as the petitioner is in occupation of the land in question since 1895. Admittedly, the State has not approached the civil court. The municipal holding receipts are being issued in favour of the petitioner.

8. It is the grievance of the petitioner that now the respondents have demolished the shops and the walls which they have constructed.

9. The State submits that they have not demolished the shops rather, it is the shop owners, who have removed their shops and now placed 8 Kiosks i.e. '*gumti*'.

10. It is also not understood as to why a person will remove a permanently constructed shop and will replace it by a Kiosk/'*gumti*'.

Mr. Ranjit Kumar, learned counsel assisting this Court on behalf of Respondent nos. 10 and 11, stated that the respondents themselves are demolishing the under construction shop rooms.

11. Thus, I find that there is a contradictory stand taken by the respondents-Municipal Corporation.

12. Thus, to clarify the issue, I appoint Mr. Prashant Pallav and Mrs. Bandana Kumari Sinha, learned Advocates of this Court, as Advocates Commissioners, who will inspect the premises in question and will submit a report along with photographs on the following points:-

(1) Whether the shops and the boundary wall which has been demolished was permanently constructed.

(2) Who are/were the persons occupying the shops. If they are the tenant then to whom they are paying rent.

(3) Whether the demolition has taken place in very recent past i.e. within a month or two.

(4) Which authority or person was instrumental in demolishing the shops and the boundary wall.

(5) The demolished area was in whose occupation.

(6) What is the present physical status of the property.

13. The cost of their travelling will be borne by the State and the fees of both the counsels will be Rs.15,000/- (Rupees Fifteen thousand) each will also be borne by the State.

14. In the meantime, the possession of the petitioner over the entire land in question will not be disturbed by anyone.

15. The Deputy Commissioner, Hazaribagh and the Senior Superintendent of Police, Hazaribagh will be personally responsible to give all assistance and security to the lawyers, who have been appointed by this Court.

16. The Advocate Commissioner will inform the authorities and the Municipal Commissioner, Hazaribagh about the date when they intend to inspect at least 24 hours in advance.

17. List this case on 02.04.2024.

(Ananda Sen, J.)