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IN THE HIGH COURT OF JHARKHAND AT RANCHI

W.P. (C) No. 726 of 2015

1. Md. Mansoor Ali, Son of Late Hamid Ali, Resident of Mohalla Bagan Para, P.O. and P.S. Pakur, District-Pakur
2. Din Bandhu Das, son of Ram Prasad Das, Resident of Village Talwa Danga, P.O. and P.S. Pakur, District-Pakur (Jharkhand)
3. Md. Abdulla Khan, son of Late Rahman Khan, resident of Mohalla Bagan Para, P.O. and P.S. Pakur, District-Pakur
4. Prakash Mandal, son of Late Bama Mandal, resident of Baganpara P.O. and P.S. Pakur, District- Pakur
5. Qurban Sekh @ Qurban Ali, Son of Rahmatulla Sekh, resident of Mohalla Bagan Para, P.O. and P.S. Pakur, District- Pakur
6. Hari Kishore Sharma, son of Rameshwar Sharma, resident of Madhya Para, P.O. and P.S. Pakur, Dist. Pakur
7. Rajendra Prasad Bhagat, Son of Late Kanhai Bhagat, resident of Anpurna Colony, Pakur, P.O. and P.S. Pakur, Dist. Pakur

... .. Petitioner

Versus

1. The State of Jharkhand through the Deputy Commissioner, Pakur
2. Sub Divisional Officer, Pakur
3. Circle Officer, Pakur, P.O. and P.S. and District- Pakur

... Respondents

With

W.P (C) No. 654 of 2015

1. Afroz Khan, Son of Basir Khan Resident of Gawalpara, P.O. and P S. Pakur, Dist. Pakur
2. Jai Narayan Bhagat, Son of Sitaram Bhagat, resident of Gurudwara Road, P.O. and P.S. Pakur, District- Pakur (Jharkhand)

... .. Petitioner

Versus

1. The State of Jharkhand through the Deputy Commissioner, Pakur, P. O. P.S. and District- Pakur
2. Sub Divisional Officer, Pakur, P.O. P.S. and District- Pakur
3. Circle Officer, Pakur, P.O. P.S. and District- Pakur

... Respondents

CORAM : HON'BLE MR. JUSTICE RAJESH SHANKAR

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For the Petitioners : Mr. Manoj Kumar No. 4 (726/15)
Mr. Rupesh Singh, Mr. Amrendra Pradhan
(In 654/ 2015)

For the Respondents : Mr. L.C.N. Sahdeo, G.P. IV(In 726/15)
Mr. Atanu Banerjee, GA. (In 654/ 15)

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9/0812.2017

Both these writ petitions have been filed for quashing the notices contained in memos dated 06.12.2014 issued to the petitioners by

the Circle Officer (respondent no. 3) whereby the petitioners have been asked to show cause as to why their constructions over the part of the land bearing Jamabandi No. 588, Dag/Plot No. 1345 having a total area of 2 Bigha 18 Katha and 2 Dhur of Mouza Pakur (hereinafter called the said land) be not demolished in the light of the inspection report submitted by the Revenue Karmchari and the In-charge Circle Inspector and also in the light of the letter no. 255/DB dated 29.05.2014 issued by the Sub-Divisional Officer (respondent no. 2). The petitioners have also prayed for quashing the notices contained in memos dated 30.01.2015 issued to them by the respondent no. 3, whereby they have been directed to remove their construction alleging that they have encroached upon the said land.

2. The factual background of the case as stated in the writ petitions is that the said land is recorded in the revisional survey record of right in the name of Shesh Nath Pandey and after his death, the same devolved in Kanti Pandey being his heir/legal representative. In the year 1972, some portions of the said land were given to the petitioners' ancestors on monthly tenancy to carry out business for their livelihood. Since the date of tenancy, the petitioners are in possession of their respective shares and are paying rent to the concerned landlord/agents. After the death of Kanti Pandey, a dispute arose among his heirs/legal representatives which resulted in filing of Title (Partition) Suit No. 23 of 2010 by one Smt. Sunetra Tewari. All of a sudden, the petitioners have been issued show cause notices dated 06.12.2014 for removal of their construction alleging that they have encroached upon the said land. Thereafter, the petitioners filed their respective reply stating that they are in continuous possession of the said land by virtue of tenancy which is a private property of one Shesh Nath Pandey. However, the respondent no. 3 vide impugned notices contained in memos dated 30.01.2015 has directed the petitioners to remove the construction on or before 20.02.2015 failing which the construction would be demolished at the cost of the petitioners. Thereafter, the petitioners alongwith others filed objection before the respondent no. 3 on 09.02.2015, however without any positive consequence. Hence, the present writ petition.

3. The learned counsel appearing on behalf of the petitioners submit that the said land is recorded in the name of Shesh Nath Pandey

in the Survey Settlement held in the year 1928 and 1932 and the inter se dispute among the legal descendants of the recorded tenant is pending in the court of Sub Judge, Pakur in Title Suit (Partition) No. 23 of 2010. It is further submitted that no encroachment proceeding can be initiated upon a private land. The said land has been settled to the petitioners by Kanti Pandey on monthly tenancy basis and the rent receipts have been issued to them by Kanti Pandey and subsequently after his death, by his son Kalyan Prasad Pandey. It is further submitted that the petitioners have constructed small shops upon the said land as per their respective shares since the date of settlement. Till date, neither the inspection report of the Revenue Karmchari/ the In-charge Circle Inspector, nor the copy of letter no. 255/DB dated 29.05.2014 has been served upon the petitioners to ascertain about the nature of the proceeding and as such they have been denied adequate opportunity to defend their cases.

4. Per contra, the learned counsel appearing on behalf of the respondents submits that the said land stands recorded in the last survey and settlement Khatian as "Tank" and the raiyat of the said land is Dharmendar Singh. The Sub-Divisional Officer, Pakur vide memo no. 255 DB dated 29.05.2014 directed the Circle Officer to make an inquiry and take necessary action with regard to conversion of tanks, ponds and water reservoirs etc. and accordingly the Revenue Karamchari and the Circle Inspector I/c made inquiry and submitted report(s) stating that Plot No. 1345 is recorded as "Tank" and by filling up the same, some persons have raised structures thereon and carrying out various commercial activities. Thereafter, the respondent no. 2 vide letter no. 285/Rev. dated 17.06.2014 directed the respondent no. 3 to take necessary action for restoring said tank to its original status keeping in view the provisions of Section 35 of the Santhal Parganas Tenancy(Supplementary Provisions) Act, 1949 (hereinafter referred as the Act 1949) and also in view of the order passed by this Court in W.P. PIL No. 1325 of 2011. It is further submitted that the raiyat of the said land has also stated in writing that he too is keenly intending to restore the said tank to its original status as and when the occupants including the petitioners vacate the same. Moreover, in the said partition suit also, no party raised any objection with respect to the restoration of the tank to its original

status. It is also submitted that the petitioners are claiming the said land on the ground that it is the only source of their livelihood, but on that ground alone, the petitioners may not be allowed to fill up the tank by destroying the natural water resource held by a raiyat. It is further submitted that as per section 35 of the Act, 1949, tanks and other reservoirs can not be used for any other purposes.

5. Heard the learned counsel for the parties and perused the materials available on record. The land in question is a raiyati land upon which the petitioners have claimed their possession stating that in the year 1972, Kanti Pandey had transferred the said land to them on monthly tenancy basis and thereafter they constructed their shops and are running their business to earn livelihood. On the other hand, the respondents have contended that the nature of the land is 'Tank' and the petitioners have filled it up by putting soil and constructed shops upon it which is in violation of the provision of section 35 of the Act, 1949. The respondents have also stated that the present raiyat of the said land has written letter that if the encroachers are removed, the tank will be restored to its original status. The learned counsel for the petitioners have assiduously argued that the land is a raiyati land and as such the government cannot initiate any proceeding for eviction of the petitioners from the same. The Patna High Court (during the period of unified Bihar) in the case of Ansal Ali and others Vs. The State of Bihar and others reported in 1996 (2) PLJR 656 in para 18 held as under:-

18. "Before parting with this case, I must observe that if the tank is converted for the use of any other purpose or brought under cultivation, it would be open to the affected raiyats or the state to initiate an appropriate legal action against the petitioners. It is further made clear that the disputed question of title of the petitioners in respect of the aforementioned tank may be decided in an appropriate proceeding".

In the aforesaid judgment, it has been held that if any tank is converted for any other purpose, the State Government is empowered to take appropriate legal action. The stand of respondents is that since the land in question was being used in contravention of section 35 of the Act, 1949, the petitioners were noticed for eviction from the same.

For better appreciation of the case, Section 35 of the Act, 1947

is quoted as under:-

"35. Water reservoirs and channels for irrigation, etc. not to be cultivated or converted to other purposes:-

(1) Bandhs, aharas, tanks and other water reservoirs or channels, which are used either for the purposes of protection from flood or for irrigation, bathing, washing or drinking, shall not be settled for or converted to any other purpose without the consent of the raiyats and the village headman or mulraiyat, or the landlord in khas village, and the approval of the Deputy Commissioner. No one shall bring under cultivation any such water reservoir or channel.

(2) No proprietor or landlord shall be entitled to levy any charge for the use of water reservoirs and channels mentioned in sub-section (1) for irrigation, bathing, washing or drinking purposes. "

6. On a plain reading of the aforementioned provision, it would be evident that no settlement of bandhs, aharas, tanks and other water reservoirs or channel can be made or converted for any other purposes without the consent of the raiyats and the village headman or mulraiyat of the landlord in khas village and without approval of the Deputy Commissioner. Thus, for converting any tank for any other use, the approval of the Deputy Commissioner is a mandatory requirement. The Act, 1949 came into force on 01.04.1949 and admittedly the petitioners came in possession of their respective shares of plot in the year 1972, however the petitioners have not brought on record any document to suggest that any prior approval of the Deputy Commissioner was taken before using it for commercial purpose. The petitioners are not claiming any title upon the said land rather they are claiming long possession upon their respective shares over the land. I do not find any merit in the claim of the petitioners, as they are using the land in contravention of the provision of section 35 of the Act, 1949. Further, the pendency of a Title (Partition) Suit relating to the said land also does not help the case of the petitioners. Though the said land is raiyati, it does not entitle, even to the raiyats, to change the nature of the land without following procedure prescribed under section 35 of the Act, 1949. Irrespective of the outcome of the Title (Partition) Suit, no person is permitted to change the nature of the land. In the present case, the respondent no. 3 issued impugned

show cause notices contained in memos dated 06.12.14 to the petitioners and after considering their reply, the impugned notices contained in memos dated 30.01.2015 directing the petitioners to remove the encroachment upon the said land have been issued and thus there appears to be no illegality is found in the order of the respondent no. 3. The learned counsel for the petitioners have urged that they have not been served inspection report of the Revenue Karmchari and the In-charge Circle Inspector and the copy of letter no. 255/ DB dated 29.05.2014 and as such they have been denied adequate opportunity to defend their cases, however they have failed to show any prejudice caused to them due to non-service of the above report/ letter. Moreover, on perusal of the impugned notices, it appears that the allegation(s) have specifically mentioned therein, thus the said argument of the learned counsel for the petitioners cannot be accepted.

7. In view of the discussions made above, the writ petitions being devoid of merit are accordingly dismissed.

8. The authorities are directed to ensure that henceforth, the land in question must be restored as pond/ tank and no person should use it for any other purpose without following the due procedure prescribed under Section 35 of the Act 1949.

(Rajesh Shankar, J.)

Binit/ A.F.R.