

उपायुक्त – सह – जिला दण्डाधिकारी का न्यायालय,
पूर्वी सिंहभूम, जमशेदपुर।

B.P.L.E. APPEAL No.- 44/2012-13

Appellant - Bikash Mukherjee & Others
- Vrs.-

Respondent/O.P. Tata Steel Ltd (Tisco Ltd)

आदेश	
1.	<p>यह अपील आवेदन अंचल अधिकारी का न्यायालय जमशेदपुर द्वारा B.P.L.E. केस नम्बर-1045/2012-13 में दिनांक 29.05.2012 को पारित आदेश के विरुद्ध अपीलार्थी Bikash Mukherjee & Others द्वारा दायर किया गया है। अपीलार्थी Bikash Mukherjee & Others द्वारा अपील आवेदन में जिक्र किया गया है, कि “ (1) That on an application of the respondent in the court of the C.O. at Jamshedpur, a B.P.L.E. Case No. 1045/1991 was instituted against S.C. Chakravarty, under section 3 of the Bihar Public Land Encroachment Act, with respect to encroachment of 10 ft x 60 ft of land within R.S. Plot No. 401, Khata No. 77, Mouza Sonari, Jamshedpur. (2) That the notice was sent by the court of the C.O. at Jamshedpur to S.C. Chakravarty on 05.05.2011 informing him to appear before the court on 26.05.2011. (3) That on 26.05.2011 the appellant appeared before the court of the C.O. with a petition praying to make him a necessary party in the said case as the holding in question was purchased by him by means of registered sale deed no. 3461 dated 04.05.1991 from S.C. Chakravarty and put the appellants in possession thereof. (4) That no copy of the plaint was supplied nor the appellants were made necessary parties in the said BPLE case nor any order in the petition on the appellant requesting him to implead a party as o.p. This case though several dates were passed, no order was passed on the petition dated 26.05.2011. (5) That it is to be noted that after the said purchase of the holding the appellants applied for mutation in the office of Tata Steel Ltd. (6) That Tata Steel Ltd having been satisfied with the facts, by their letter no. LME/TAL/GD/33 dated 15.03.2007 mutated the holding in the name of the appellants. (7) That the learned Court below passed its order on 23.02.2012 in B.P.L.E. Case No. 1045/1991, u/s 6(2) of the BPLE Act directing S.C. Chakravarty to remove the encroachment within a period of 15 days from the date of order.”</p> <p>अपील आवेदन के Ground के कंडिका “(b), (c), (d), (e), (f), (g) एवं (h) में जिक्र किया गया है कि “(b) For that the appellant had purchased the H.No. 457, Sonari, P.O. & P.S. Sonari, Jamshedpur, District East Singhbhum, Jharkhand in his name, in the name of his</p>

wife Smt Shyamli Mukherjee, son Bipla Mukherjee and daughter Moumita Mukherjee from Sudhir Chandra Chakraborty by registered deed of sale bearing no. 3461 dated 04.05.1991. (c) For that the appellant had applied to the respondent i.e. Tata Steel regularization of transfer and mutation of the said holding in his name along with his other purchasers. (d) For that the respondent, only after, being fully satisfied with the documents and seeing that there is no encroachment of their land by the applicant, transfers and mutates the holding in favour of the applicant. (e) For that the learned court below did not consider the fact that after being fully satisfied the sub-lease of the H.No. 457, Sonari, P.O. & P.S. Sonari, Jamshedpur, District East Singhbhum, Jharkhand was mutated in the joint names of the appellant and his family members, vide respondent's letter no. LME/TAL/GD/33 dated 15.03.2007 and the appellant has been paying rent to the respondent regularly. (f) For that court below failed to implead the appellant a party although the appellant had filed a petition on 26.05.2011 praying to make him a necessary party in the BPLE Case no. 1045/1991 but the court below over looked the said petition and without hearing the appellant nor giving him any chance to file the show cause, passed the impugned order dated 23.02.2012. (g) For that the land alleged to have been encroached by the appellant if any land is found to be encroached, the appellants are ready to vacate the said alleged encroachment. (h) For that non consideration of the petition dated 26.05.2011 and not making the appellant necessary party in the case has rendered the impugned order completely illegal and consequently the order of removing the alleged encroachment within 15 days from 23.12.2012 passed by the court is liable to be set aside."

2. निम्न अदालत अभिलेख बी0पी0एल0ई0 वाद संख्या-1045/2012-13 में दिनांक 29.05.2012 को पारित प्रश्नगत आदेश में उल्लेखित है, कि "वादग्रस्त भूमि टिस्को जमींदारी उन्मूलन के पूर्व टिस्को (भूतपूर्व जमींदारी) की खास भूमि थी, जो अन्य भूमि सहित सरकार में निहित होने के उपरांत टिस्को को सरकार द्वारा समझौता के पश्चात दिनांक 01.08.1985 को सम्पन्न लीज डीड के तहत लीज पर दी गई है। पुनः लीज का नवीकरण दिनांक 20.08.2005 के सम्पन्न एकरारनामा में हुआ जिसमें उक्त भूमि लीज पर टिस्को को दिया गया है एवं हाल सर्वे खतियान के अनुसार अनाबाद बिहार सरकार (वर्तमान झारखण्ड सरकार) की भूमि है। उपरोक्त तथ्यों से स्पष्ट है कि विपक्षी ने लोक भूमि पर अतिक्रमण कर रखा है विपक्षी को अतिक्रमित भूमि पर बने रहने का कोई औचित्य नहीं है। इस पर बिहार सरकार लोक भूमि अतिक्रमण अधिनियम के अंतर्गत कार्रवाई आवश्यक है। अतः अधिनियम की धारा-6 के अधीन आदेश दिया जाता है कि प्रतिवादी वाद अधीन भूमि पर निर्मित सभी गैर-कानूनी संरचनाओं को आदेश प्राप्ति के पंद्रह(15) दिनों के अन्दर हटा लें। यदि विपक्षी पंद्रह(15) दिनों के अंदर अवैध संरचनाओं को स्वयं

नहीं हटा लेते हैं तो उसे बलपूर्वक हटा दिया जायेगा। साथ ही साथ संरचना हटाने का मूल्य भी वसूला जायेगा।”

3. अपीलार्थी द्वारा प्रश्नगत भूमि पर अपने दावे के समर्थन में निम्नांकित कागजातों की छायाप्रति समर्पित किया गया है :-

- (i) अभीलार्थी द्वारा प्रश्नगत भूमि का Sale Deed की छायाप्रति,
- (ii) अभीलार्थी द्वारा प्रश्नगत भूमि का Tata Steel Letter No. LE/LME/932 dt. 15.03.2007 की छायाप्रति,
- (iii) अभीलार्थी द्वारा प्रश्नगत भूमि का 'Tata Steel' Letter No. LE/LME/933 dt. 15.03.2007 की छायाप्रति,

4. अपीलार्थी के विद्वान अधिवक्ता को सुना। अपील आवेदन, निम्न न्यायालय द्वारा पारित प्रश्नगत आदेश, निम्न अदालत अभिलेख में हल्का कर्मचारी एवं अंचल निरीक्षक का जाँच प्रतिवेदन, सम्पूर्ण अभिलेख एवं उपलब्ध कागजातों का अवलोकन किया। छोटानगपुर काश्तकारी अधिनियम की धारा-84(1), (2) एवं (3) में प्रावधानित है, कि (1) In any suit or other proceedings in which a record-of-rights prepared and published under this Chapter or a duly certified copy thereof or extract therefrom is produced, such record-of-rights shall be presumed to have been finally published unless such publication is expressly denied and a certificate, signed by the Revenue-officer, or by the Deputy Commissioner of any district in which its local area, estate or tenure or part thereof to which the record-of-rights relates is wholly or partly situate, stating that the record-of-rights has been finally published, under this chapter shall be conclusive evidence of such publication. (2) The (State) Government may, by notification, declare with regard to any specified area, that a record-of-rights has been finally published for every village included in that area; and such notification shall be conclusive evidence of such publication. (3) Every entry in a record-of-rights so published shall be evidence of the matter referred to in such entry and shall be presumed to be correct until it is proved, by evidence, to be correct. इन प्रावधानों के अनुसार record-of-rights का निर्धारण हाल सर्वे खतियान के आधार पर की जानी है। हाल सर्वे खतियान में प्रश्नगत भूमि अनाबाद बिहार सरकार के नाम से दर्ज है। इससे स्पष्ट है, कि निम्न न्यायालय का आदेश उचित एवं न्यायसंगत है इसे यथावत रखते हुए अपील आवेदन खारिज किया जाता है।

विधि-व्यवस्था एवं अन्य आवश्यक कार्यों में व्यस्तता के कारण आदेश आज दिनांक 07.06.2016 को पारित किया जा रहा है।

लेखापित एवं संशोधित



उपायुक्त

पूर्वी सिंहभूम, जमशेदपुर।



उपायुक्त

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