

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

B.P.L.E. APPEAL No.- 44/2015-16

Appellant -

1. Tanveer alias Tannu, S/o Md. Sayed
2. Ahrar alias Munnu, S/o Late Md. Shafi

- Vrs.-

Respondent/O.P.

State of Jharkhand

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आदेश

1. यह अपील आवेदन अंचल अधिकारी का न्यायालय जमशेदपुर द्वारा B.P.L.E. केस नम्बर-03/2015-16 में दिनांक 13.08.2015 को पारित आदेश के विरुद्ध अपीलार्थी 1. Tanveer alias Tannu, S/o Md. Sayed 2. Ahrar alias Munnu, S/o Late Md. Shafi द्वारा दायर किया गया है। अपीलार्थी Tanveer alias Tannu S/o Md. Sayed 2. Ahrar alias Munnu, S/o Late Md. Shafi द्वारा अपील आवेदन में जिक्र किया गया है, कि “ (1) That the instant B.P.L.E. Appeal is directed against the Ex-parte order dated 23.07.2015 (Anx-10) passed in B.P.L.E. case No- 03/2015-16 under the seal and signature of opposite party No-1 i.e. Circle Officer, Golmuri cum Jugsalai wherein and whereby the O.P. No-1 has passed an order under Clause © Sub Section 2 of Section 5 of B.P.L.E. Act 1956 directing the appellants to remove the encroachment from plot No-195, 196, 197, 198, total area- 0.43 acres of village-Kalimati, thana No-1163, P.S.- Parsudih, District- East Singhbhum, Jamshedpur within a period of 15 days as the same is a public land.(2) That the appellants have not move before this learned court earlier or any other court/courts by filing any appeal/revision or any other case/petition for the reliefs claimed in this appeal. (3) That the case of appellants is the land in question standing on plot No- 195, 196, 197, 198 under khate No- 372 total area - 0.43 acres of village-Kalimati, thana-1163, P.S.- Parsudih, District-East Singhbhum, Jamshedpur was recorded as homestead land or Dilibari Land in the ‘Survey Khatiyan of 1964’ in the name of one Smt. Kunja Basini Biswas, wife of Late Hiralal Biswas of Makdampur, P.S.- Parsudih, Singhbhum (west), bounded and butted as follows:- North- Md. Hamid, South-Md. Kallu, East- Kachha Road, West-Nirmal Sharma (4) That Smt. Kunj Basini Biswas entered into an “Agreement for Sale” on 24.01.1978 with the Md. Syeed, Md. Safi and Md. Wali Ahmad i.e. fathers of the appellants with respect to the above lands and received a consideration amount of Rs 5,60,000/- and put them in peaceful physical possession over the same with having full right/title/interest over the same. (5) That after the agreement for sale, the recorded tenant Smt. Kunj Basini Biswas

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filed an affidavit and agreement before the Deputy Commissioner and Competent Authority, Singhbhum on 16.05.1978 stating the fact regarding transfer of above mentioned lands by her in favour of the father of the appellants. (6) That meanwhile the said recorded tenant Smt. Kunja Basini Biswas also filed a petition before the Deputy Commissioner cum Competent Authority, Singhbhum West for seeking permission to sell out her lands as mentioned above to the father of the appellants on 18.07.1978. (7) That meanwhile one Bhagwan Dayal Sharma, S/o Late Sital Sharma claimed the ownership of the property in question by stating that he had purchased the said land in the year 1962 after paying consideration amount to the recorded tenant Smt. Kunja Basini Biswas, but inspite of promise, the recorded tenant Smt. Biswas had not executed the registered sale deed, though he is in possession over the land since 1962 and in the year 1979 he had filed a T.S. No- 292/1979 in the court of Munsif, Jamshedpur and subsequently the said Title Suit was ended into compromise and recorded tenant Smt. Biswas executed a deed of release on 15.09.1979 in favour of him. (8) That the father of the appellants immediately filed a petition u/s 144 Cr. P.C. before the court of Shri P.Jha, Executive Magistrate, at Jamshedpur, which was numbered as Misc. Case No- 161 of 1982, against the recorded tenant Smt. Kunja Basini Biswas stating therein that since the date of agreement 24.01.1978, they are in peaceful physical possession over the land in question with having full right/title/interest over the same. The said case u/s 144 Cr. P.C. was converted into under section 145 Cr. P.C. and evidences were adduced before the learned Executive Magistrate on behalf of the parties and after hearing in length and perusing the entire documents/papers/evidences, the learned Executive Magistrate vide order dated 27.05.1986 pleased to pass an order declaring the possession of the land in favour of the father of the appellants. (9) That against the order dated 27.05.1986 passed by the Executive Magistrate, Jamshedpur, the 2<sup>nd</sup> party i.e. Bhagwan Dayal Sharma preferred a Criminal Revision No- 102/1986 before the court of 1<sup>st</sup> Additional Sessions Judge, Jamshedpur, who after hearing the entire case in length vide order/judgment dated 29.03.1990 was pleased to dismissed the Criminal Revision petition and confirmation the possession in favour of the appellants. (10) That being aggrieved and dissatisfied with the order/judgement dated 29.03.1990, the said Bhagwan Dayal Sharma preferred a Criminal Misc. Case No- 1242/1990(R) before the High Court of Judicature at Patna, Ranchi Bench Ranchi, which was also rejected by the Hon'ble High Court vide order dated 11.02.1993. (11) That later on the Civil dispute between heirs of Bhagwan Dayal Sharma and the appellants was ended into compromise and the possession of appellant was confirmed.

(12) That it is humbly stated and submitted that since 24.01.1978, the appellants are in peaceful physical possession over the land in question with having full right/title/interest over the same, but all on a sudden after lapse of more than 37 years in the year 2015, received a notice being case No- 03/2015-16 under the seal and signature of Circle Officer, Golmuri cum Jugsalai, Jamshedpur for removal of encroachment form plot No. 195, 196, 197, 198 area-0.43 acres of village-Kalimati, thana No- 1163, P.S.- Parsudih, District - Singhbhum West and the appellants subsequently appeared before the learned court of Circle Officer., Golmuri cum Jugsalai, Jamshedpur and took time for filling reply of the same. (13) That it is humbly stated and submitted that after taking the time, the appellants could not file detailed reply due to illness of their old mother and as such Ex-parte order was passed by the learned Circle Officer on 23.07.2015 without hearing the appellants under Sub Section 5 of Section 2 of the B.P.L.E. Act 1956 directing him to remove the encroachment from land in question within a period of 15 days from the order, otherwise the appellant will be liable for penalty as per section 188 of I.P.C. (14) That it is humbly stated and submitted that the Ex-parte order dated 23.07.2015 passed in case No- 03/2015-16 by the learned Circle Officer, Golmuri cum Jugsalai, Jamshedpur is liable to be set-aside on the following Grounds- (A) For that Ex-parte order dated 23.07.2015 is against the settled principles of law and weight of evidence on record and as such is liable to be set-aside?" (B) For that the learned Circle Officer has not considered the point that the land in question is not a public land, rather in the survey khatiyani of 1964 it has been recorded in the name of one Smt. Kunja Basini Biswas, W/o Late Hiralal Biswas as homestead land or Dihibari land. (C) For that the learned Circle Officer has not considered the point vide order dated 27.05.1986 passed in Misc. Case No. 161/1982 by Shri P. Jha, Executive Magistrate, Jamshedpur, the nature of the land was shown as hoestead land and the possession over the land in question has been confirmed in favour of the fathers of the appellants. (D) For that the learned Circle Officer, Jamshedpur has not considered the point that the 1<sup>st</sup> Appellants District & Sessions Judge, Jamshedpur vide order dated 23.09.1990 passed in Criminal Revision Case No. 102/1986 has rejected the case of the 2<sup>nd</sup> party and has confirmed the possession of the appellant over the land in question and rejected the case of the Bhagwan Dayal Sharma. (E) For that the learned Circle Officer has not considered the point that the Hon'ble Patna High Court, Ranchi Bench Ranchi vide order dated 11.02.1993 passed in Criminal Misc. Case No. 1242/1990(R) has rejected the case of the Bhagwan Dayal Sharma. (F) For that the learned Circle Officer has not considered the agreement for sale dated 24.01.1978 i.e. of 37 years long back executed by the



recorded tenant Smt. Kunja Basini Biswas in favour of the appellants? (G) For that the learned Circle Officer has not considered the point that the recorded tenant Smt. Kunja Basini Biswas has made a statement on oath before Deputy Commissioner cum Competent Authority that she has transferred her land in favour of the appellant? (H) For that the learned Circle Officer, Jamshedpur has not considered the point that the recorded tenant Smt. Kunja Basini Biswas has made an application on 18.07.1978 before the Deputy Commissioner cum Competent Authority seeking permission to sale-out the land in question to the appellants? (I) For that the learned Circle Officer, Jamshedpur has not considered the point that due to illness of their old mother the appellants could not appear before this learned court and as such Ex-parte order dated 23.07.2015 has been passed against them? (J) For that the Ex-parte order dated 23.07.2015 passed by the learned Circle Officer, Jamshedpur is in violation of principle of natural justice and as such liable to be set-aside at once? (K) For that the learned Circle Officer, Jamshedpur before passing Ex-parte order, should consider the difficulty of the appellants sympathetically and at least some chance must be given to the appellants to place their entire case or not? (L) For that the learned Circle Officer, Jamshedpur has not considered the point that the Civil dispute between the appellant and one Bhagwan Dayan Sharma ended into an compromise by the Civil Court and the possession over the land was declared in favour of the appellants. (15) That it is humbly stated and submitted that the appellants are highly educated and renowned persons of the locality some of them are practicing Doctors and if their structures are demolished/removed, their prestiges in the society and locality will be lower down, which cannot be compensated in terms of money. (16) That it is humbly stated and submitted that if the Ex-parte order dated 23.07.2015 is not set-aside, the appellants will suffer irreparable loss and injury and that cannot be compensated in terms of money. (17) That it is humbly stated and submitted that there are good grounds in the instant appeal and there is every chance of success in the appeal. (18) That the instant appeal is bonafide and in the interest of justice.”

2. निम्न अदालत अभिलेख बी०पी०एल०ई० वाद संख्या-03/2015-16 में दिनांक 23.07.2015 को पारित प्रश्नगत आदेश में उल्लेखित है, कि “अतिक्रमणकारी द्वारा कोई ऐसा सबूत या कागजात पेश नहीं किया गया है जिसके आधार पर प्रमाणित हो कि मौजा-कालीमाटी, थाना नं०-1163, खाता नं०-372, प्लॉट नं०-195, 196, 197, 198 रकवा क्रमशः 0.08, 0.09, 0.16 एवं 0.10 ए० कुल रकवा 0.43 ए० भूमि पर विपक्षी का स्वामित्व बनता है। अतिक्रमणकारी के द्वारा अवैध रूप से अनाबाद बिहार सरकार (झारखण्ड सरकार) के भूमि पर समतलीकरण कर अतिक्रमण कर लिया गया है। यह भूमि अनाबाद बिहार सरकार (झारखण्ड सरकार) की भूमि है तथा बिहार लोक भूमि अतिक्रमण अधिनियम के अन्तर्गत बी०पी०एल०ई० एक्ट की धारा-2 में परिभाषित लोक भूमि के अन्तर्गत है।

अतः सरकारी भूमि के रक्षार्थ वर्णित भूमि से अतिक्रमण हटाने हेतु बिहार लोक भूमि अतिक्रमण अधिनियम 1956 की धारा-6(2) के अन्तर्गत अतिक्रमणकारी श्री तनवीर उर्फ तन्नु, एहरार उर्फ मुन्नु एवं शकील, पिता-अज्ञात, सा0-मकदमपुर, जमशेदपुर उच्छेदन आदेश देता हूँ। अतिक्रमणकारी को नोटिस करें कि उक्त वर्णित भूमि पर से अतिक्रमण दिनांक 05.08.2015 तक हटा लें अन्यथा बलपूर्वक अतिक्रमण हटाया जाएगा एवं उस पर की गई खर्च अतिक्रमणकारी से वसूली जाएगी।”

3. निम्न न्यायालय के अभिलेख में उपलब्ध जाँच प्रतिवेदन में प्रतिवेदित है, कि “प्रश्नगत भूमि मौजा-कालीमाटी, थाना नं0 1163, थाना-घाटशिला, खाता नं0 -372, खेसरा नं0 195 (तालाब), रकवा- 0.08 एकड़, खेसरा नं0 196(तालाब), रकवा- 0.09, खेसरा नं0 197(गोड़ा), रकवा- 0.16 एवं खेसरा नं0 198 (मकान सहन), रकवा- 0.10 10 एकड़ हाल सर्वे खतियान में अनाबाद बिहार सरकार के खाते में इन्द्राज है, जो लोक भूमि है, जिसपर पूर्व में कार्य थाना के सहयोग से रोक दिया गया था, परन्तु पुनः अतिक्रमण करने का प्रयास किया जा रहा है। अतः अतिक्रमण दायर कर अतिक्रमण हटाने की कृपा की जाय।”


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


- (i) Photo copy of the survey khatiyani of 1964
- (ii) Photo copy of the 'Agreement for Sale' dated 24.01.1978
- (iii) Photo copy of the Affidavit and Agreement dated 16.05.1978
- (iv) Photo copy of order sheet dated 18.07.1978 passed by Deputy Commissioner, Singhbhum in u/c 135/1978-79.
- (v) Photo copy of the deed for release dated 15.09.1979
- (vi) Photo copy of the order dated 27.05.1986
- (vii) Photo copy of the order/judgment dated 29.03.1990
- (viii) Photo copy of order dated 11.02.1993
- (ix) Photo copy of compromise petition
- (x) Original copy of notice dated 23.07.2015

5. 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  
पूर्वी सिंहभूम, जमशेदपुर।

Case no. 1168(B)/L  
to dt. 01/07/16  
with LCR-also  
BPLF. Case no. 03/2015-11

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25/8/16.