

IN THE HIGH COURT OF JHARKHAND AT RANCHI

W.P(T) No. 5015 of 2012

With

W.P(T) NO.5016 of 2012

With

W.P(T) NO.5017 of 2012

With

W.P(T) NO.5018 of 2012

Alstom T&D India Ltd.

....

....

Petitioner(In all the cases).

--Versus ---

State of Jharkhand & Ors.

..... Respondents

**CORAM : HON'BLE THE CHIEF JUSTICE
HON'BLE MRS. JUSTICE JAYA ROY**

For the Petitioner : Mr.Indrajit Sinha, Advocate.

For the Respondents : Mr. Rajiv Ranjan, Addl. Advocate General.

Order No. 02

Dated :28th August, 2012

Learned counsel for the writ petitioner submitted that when these writ petitions were filed the appellate authority was not there and the appeals were filed well in time but interim order could not be obtained. Taking this situation, the assessing officer issued garnishing order to the clients of the writ petitioner demanding the amount of the writ petitioner lying with them. However, now the appellate authority has joined and the petitioner has moved an application for appropriate orders on its application for interim relief but that has not yet been decided.

In view of the above , learned counsel for the petitioner prays that the appellate authority may be directed to hear the appeals preferred by the petitioner and if he can not hear the appeals and cannot decide the appeals then he may be directed to decide the application for interim relief.

It is submitted that till then the petitioner's client to whom the garnishing orders have been issued may not be compelled to pay the amount to the respondent-department.

Learned Addl. Advocate General appearing on behalf of the State submitted that the appellate authority since has joined therefore, the petitioner can seek relief from the appellate authority.

To avoid any controversy, whether the appellate authority is hearing any appeal or passing the interim order or not it would be appropriate that we may fix a date of appearance of the writ petitioner before the appellate authority and the appellate authority may on that fixed date, may hear the appeals itself or may decide the prayer for interim relief. Therefore, these writ petitions are disposed of with direction to the writ petitioner to appear before the appellate authority on 31.08.2012 itself. On that date, the appellate authority may hear the appeals finally and if not possible, may hear the application for interim relief and may pass appropriate order.

Till that date, the assessing officer shall not insist for payment of the amount for which garnishing order has been issued to the clients of the writ petitioner and at the same time, the petitioner shall not receive the amount from the said clients for which garnishing order has been issued.

(Prakash Tatia, C.J.)

(Jaya Roy, J.)

IN THE HIGH COURT OF JHARKHAND AT RANCHI

L.P.A. No. 310 of 2012

Hemant I. Thakkar @ Hemant I. Thaker Appellant.

--Versus ---
State of Jharkhand & Ors. Respondents

**CORAM : HON'BLE THE CHIEF JUSTICE
HON'BLE MRS. JUSTICE JAYA ROY**

For the Appellant : M/s.Indrajit Sinha & A.K.Sah, Advocates.
For the Respondents : Mr.Rajesh Kumar, Advocate.

Order No. 03

Dated :28th August, 2012

I.A.NO.2349/2012

Heard learned counsel for the parties.

The application is allowed and the delay in filing the L.P.A is condoned.

I.A.NO.2417/2012

There are few mistakes in the L.P.A. which are not relevant in view of our order. Therefore, the amendment petition has become infructuous.

L.P.A.NO.310/2012

Heard learned counsel for the parties.

The appellant's Writ Petition being W.P(C) NO.1354 of 2012 was dismissed vide order dated 15.06.2012 on the ground that the Circle Officer has directed the parties to go to the Civil court and in a manner, the disputed question of possession is involved, therefore, the writ jurisdiction cannot be invoked.

Learned counsel for the appellant submitted that the land in question was the subject matter in the civil suit and ultimately, the decree passed by the first appellate court was affirmed by the second appellate court i.e. the High Court. In view of the above, there is no question of fact and the Circle Officer has observed contrary to the findings recorded in the decree passed by the Civil Court and that too which has been upheld by the High Court.

It appears from the order-sheet placed on record which starts from the order-sheet dated 20th December, 2011 and final order dated 15.02.2012 that there may be a boundary dispute between the parties. The Circle Officer at the most has jurisdiction to demarcate the boundary according to the materials available with him. Admittedly, in this proceeding, no order of possession/ dispossession can be passed. Virtually this demarcation is done in the administrative side but in a quasi judicial form, after giving opportunity to the parties but the effect of the order passed in such proceedings remains to be having limited effect as no actual relief is granted by the Circle Officer and at the cost of the repetition, it may be observed that it is only a demarcation which can be made by the Circle Officer and even if the Circle Officer finds that one party is in possession of the excess land even then he cannot do anything in a private dispute between the two rival claimants. For actual relief the parties are required to obtain order and the decree from the court of competent jurisdiction. If the petitioner already has decree of declaration of title then, in that situation, on the basis of the title which may have perfected or may have been established by the binding decree between the parties then the petitioner can certainly place on record all material facts before the Civil court for obtaining the injunction even without seeking declaration as suit for mere injunction in such circumstance of said threat of dispossession etc. is independently maintainable as has been provided under the provision of Specific Relief Act.

Therefore, whenever such orders are passed by the Circle Officer with respect to the mere demarcation of the land then in that situation the parties should go to the Civil court straightway in case of any grievance or apprehension of dispossession or threat to their possession instead of approaching the Court under Articles 226/227 of the Constitution of India merely to challenge that the order by which only a demarcation issue has been decided by the Circle Officer.

So the apprehension of the appellant-petitioner that the appellant will have to establish the title which has already

been established in the earlier round of litigation and the decree has been upheld by the High Court, yet he will have to establish his title, is not well founded and the petitioner can seek the relief of mere injunction from the Civil court and if he makes out a case for grant of injunction, the Civil court can grant injunction and other appropriate relief in a properly instituted suit.

Therefore, in that view of the matter, we do not find any illegality in the impugned order.

The L.P.A. is dismissed with the above observations.

(Prakash Tatia, C.J.)

(Jaya Roy, J.)

IN THE HIGH COURT OF JHARKHAND AT RANCHI

W.P(PIL) No. 4406 of 2012

Court on its own Motion Petitioner.

--Versus ---
Union of India & Ors. Respondents

**CORAM : HON'BLE THE CHIEF JUSTICE
HON'BLE MRS. JUSTICE JAYA ROY**

For the Petitioner : Mr.Anil Kumar Sinha, Advocate.
For the Respondents : Md. Mokhtar Khan, ASGI.

Order No. 03

Dated :28th August, 2012

Learned counsel for the State sought two weeks time so that he may place on record the steps taken by the Government as well as office of the Advocate General in the matter of timely filing of the replies in the matters pending in the High Court.

Time is granted. However, we direct the State Government as well as all officers-in-charge who are handling the cases pending in the High Court who, without loss of time, will examine all the cases pending in the High Court to find out that in how many cases replies have not been filed. This exercise must be completed within a period of two months. The total compilation from each officer-in-charge be collected by the department concerned and officer-in-chargewise chart may be prepared so as to find out which officer-in-charge has not filed replies or has not filed replies in time. The complete set along with complete chart be provided to the office of the Advocate General. The State with proper guidance from the office of the Advocate General may workout that what type of register they may maintain so as to find out the periodical progress in filing of the replies and the Advocate General office need not to seek the details from the department or from the officer-in-charge whenever information is sought by the Court, meaning thereby, office of the Advocate General itself may immediately on the basis of the register maintained in his office may inform the

Court about the number of cases in which replies have not been filed or in the cases wherein replies have been filed after more than one month from the date of receipt of the copy of the petition filed by the Officer-in-charge. Meanwhile, the filing of the replies may be expedited as henceforth there will be no leniency in the cases where replies are not found filed in the matters.

In view of the above, put up this case on 01.11.2012.

Copy of this order be given to the learned Amicus Curiae.

(Prakash Tatia, C.J.)

(Jaya Roy, J.)

Biswas/SI

