

IN THE HIGH COURT OF JHARKHAND AT RANCHI

W.P. (C) No. 2254 of 2016

Satish Kumar Choursia, S/o Sri Sheo Pujan Chourasia, R/o Mohalla Shivapahar, Dumka Town, P.O. & P.S. – Dumka, Subdivision and District – Dumka. Petitioner

Versus

1. State of Jharkhand
2. Deputy Commissioner, Dumka, P.O. & P.S. Dumka, district- Dumka.
3. Subdivisional Officer, Dumka, P.O. & P.S. Dumka, District - Dumka
4. Smt. Mantu Rani Devi, W/o Late Ramdas Sah
5. Anand Keshari, S/o Lare Chotan Keshari
Both Resident of Mohalla Shivpahar, Dumka Town, P.O. & P.S. Dumka, Subdivision & District – Dumka.

... ... Respondents

CORAM: HON'BLE MRS. JUSTICE ANUBHA RAWAT CHOUDHARY

For the Petitioner : Mr. Rahul Gupta, Advocate
: Mr. Avish Anand, Advocate

For the Respondent : Mr. Rahul Kamlesh, Advocate

No. 1 to 3

For the Respondent : Mr. D. C. Mishra, Advocate

No. 4 and 5

08/28.02.2019

1. Heard Mr. Rahul Gupta, counsel appearing on behalf of the petitioner assisted by Mr. Avish Anand, Advocate
2. Heard Mr. Rahul Kamlesh, counsel appearing on behalf of respondent nos. 1 to 3.
3. Heard Mr. D. C. Mishra, counsel appearing on behalf of respondent nos. 4 and 5.
4. This writ petition has been filed for the following reliefs-

*"That by the instant writ application the Petitioners
prays for an appropriate writ/order/direction for
quashing of the order dated 15.12.2015 passed by the
learned Deputy Commissioner (i.e Respondent No. 2
herein), Dumka in R.M.A. No. 04/2014-15 whereby and
whereunder the learned Deputy Commissioner, Dumka
has been to allow the Appeal preferred by the*

Respondents against the order dated 25.01.2014 passed by the Court of Sub-Divisional Officer, Dumka AND/OR Pass such order/orders as this Hon'ble Court may deem fit and proper for doing substantial justice to the Petitioner."

5. Counsel for the petitioner submits that a proceeding for removal of encroachment was initiated in connection with Plot Nos. 300 and 405 and an order was passed for removal of encroachment against the private respondent herein vide order dated 25.06.2014 by the Sub-Divisional Officer, Dumka in E. E. Case No. 25/2013-14. He further submits that against the order, the private respondent filed an appeal which has been disposed of by the impugned order dated 15.12.2015 passed in R.M.A. Case No.04 of 2014-15. By referring to the impugned order, he submits that a specific statement was made by the appellant/private respondent herein that the house of the private respondent is situated in Plot No. 402 and on the basis of this oral statement the appeal was allowed.
6. Counsel for the petitioner further submits that as the private respondent had encroached over the Plot No. 300 and Plot No. 405, an order of eviction of the private respondent from these two plots ought to have been sustained by the appellate authority.
7. Counsel appearing on behalf of private respondents submits that the house of the private respondents is located only in Plot No. 402 and he has got no concern with Plot No. 300 and Plot No. 405 and he shall have no grievance, if any of the parties proceed in connection with Plot No. 300 and Plot No. 405. He submits that even the ancestors of the private respondent had not encroached Plot No. 300 and 405.
8. Counsel appearing on behalf of the respondent state submits that they have filed a counter affidavit indicating that the house of the private respondents is on Plot No. 402.

9. After hearing the counsel for the parties and after considering the materials on record, this Court finds that the specific case of the private respondents is that the house of the private respondents is situated on Plot No. 402 and that they have not encroached Plot No. 300 and Plot No. 405. Admittedly, the impugned proceedings were in connection with Plot No. 300 and Plot No. 405. In such circumstances, if it is found that Plot No. 300 and Plot No. 405 is encroached by the private respondents, it will be open to the authorities of the respondent-State to take steps in accordance with law.

10. From the impugned order, this Court finds that the specific case of the private respondents was that their house is situated on Plot No. 402 has been accepted by the learned appellate authority. In view of the specific stand which has been taken by the private respondents, the impugned order does not call for any interference.

11. However, there is no impediment for the Respondent State to proceed in connection with Plot No. 300 and Plot No. 405, in view of the aforesaid specific stand which has been taken by the private respondents herein that they have no concern with Plot No. 300 and Plot No. 405 and if required help of amin may also be taken for exact identification of Plot No. 300 and Plot No. 405.

12. Accordingly, this writ petition is disposed of.

(Anubha Rawat Choudhary, J.)

Mukul