

Jharkhand High Court

Smt Kavita Devi Alias Kavita ... vs The State Of Jharkhand Through The ... on 27 February, 2017

IN THE HIGH COURT OF JHARKHAND AT RANCHI

W.P. (C) No. 738 of 2017

1. Smt. Kavita Devi @ Kavita Dalmia
2. Smt. Neelam Devi @ Neelam Dalmia
3. Girdhari Lal Dalmia --- ---- Petitioners

Versus

1. The State of Jharkhand through the Deputy Commissioner, Giridih
2. The Sub Divisional Officer, Giridih
3. The Anchal Adhikari, Giridih --- --- Respondents

CORAM: The Hon'ble Mr. Justice Aparesh Kumar Singh

For the Petitioners: M/s Sumeet Gadodia, Anurag Kashyap, Advocates
For the Resp - State: Mr. Atanu Banerjee, GA

02/ 27.02.2017

Heard counsel for the parties.

2. Petitioners apprehending forceful dispossession from the suit land comprising Plot No. 179 Thana No. 101 Khata No. 80 area 173 decimal situate at Mouza Lakhari P.S. Giridih (T) district Giridih, as described in the plaint at Annexure-3, instituted Title Suit No. 221/2016 before the Sub Judge-I, Giridih with a prayer for declaration of their right, title and interest over the suit land; restraint upon the Respondents from dispossessing the plaintiffs from the suit land during pendency of the suit and changing the nature and character of the suit land and injunction being made final at the time of judgment and decree; cost, if any, which they may be entitled. Though, defendants are State Officers requiring service of notice under section 80 of Code of Civil Procedure before institution of the suit, but due to urgency shown, by way of an application made under Order 39 Rule 1 and 2 of Code of Civil Procedure (Annexures-4&5), plaintiffs sought waiver of the requirement for early hearing of injunction petition itself. Learned Sub Judge-I, Giridih passed the following order on 20.12.2016,.

"Plaintiff files attendance through lawyer.

Heard Ld. Court for the plaintiff and perused the record. Both defendants are government officials. Plaintiff is directed to comply the provisions U/s 80 C.P.C.

To 30.01.2017 for taking steps on behalf of the plaintiff."

3. Being aggrieved, petitioners have approached this Court asserting that the requirement of Section 80 Rule 2 CPC has not been met by the learned Court leaving the plaintiffs remediless. The impugned order amounts to return of the plaint without any application of mind to the urgency shown. Reference is made to the case of the parties in WPC No. 1834/2016 [Sushma Rashmi & others versus The State of Jharkhand & others] wherein also, petitioners being the claimants of

same piece of land of Plot no. 179 Khata no. 80 Thana no. 101 village Lakhari district Giridih, approached this Court on the threat of removal of alleged encroachment and also partial demolition of wall of the petitioner no. 1 without any determination in terms of Section 6(2) of Bihar Public Land Encroachment Act, 1956.

4. It is submitted that this Court granted interim protection by order dated 06.04.2016 (Annexure-8) and on noticing the stand of the Respondents brought thereafter, vide order dated 03.05.2016, was pleased to find that no final determination in terms of the Act of 1956 has been done by the Respondent Circle Officer, Giridih where the instant proceedings were pending. The writ petition was disposed of in terms of judgment at Annexure-9 with an observation that the proceedings be concluded expeditiously in accordance with law and after due opportunity to the petitioners. Dependent upon the outcome of the proceedings, consequence would flow. It is submitted that the petitioners who diligently invoked the forum of competent Civil Court being threatened by the action of the Respondent authorities in similar fashion, has been left without any redress in view of approach of the Learned Court in not appreciating the matter in its correct perspective. The impugned order therefore needs to be interfered with and protection may be granted to the petitioners till the Learned Court takes decision on the petition under Order 39 Rule 1 and 2 CPC pending before it. Learned counsel for the petitioners has also relied upon the judgment rendered by the Hon'ble Supreme Court in the case of State of Kerala and others versus Sudhir Kumar Sharma and others [(2013) 10 SCC 178] in support of the submissions.

5. Learned counsel for the Respondent State submits that apparently, petitioners have not been able to show any concrete proof of threatened action, as agitated herein, only averments have been made in the writ petition. Learned counsel for the State Mr. Banerjee however, at the same time, submits that the Learned Trial Court could have considered the urgency shown by the plaintiffs in the matter in terms of the provisions of section 80(2) of Code of Civil Proceeding and only on being dissatisfied, could have returned the plaint for presentation after complying with the requirement of sub-section (1).

6. I have considered the submissions of the parties and perused the impugned order as well as materials on record. Prima facie, the order impugned shows non- application of mind. In terms of provisions of Section 80(2), it is permissible for aggrieved person to obtain an urgent or immediate relief against the Government or any public officer in respect of any act purported to be done by such public officer in his official capacity, with the leave of the Court without serving any notice, as required by sub-section (1). However, Court shall not grant relief in the suit, whether interim or otherwise, except after giving reasonable opportunity of showing cause to the Government or public officer, as the case may be, in respect of the relief prayed for. Proviso to sub rule (2) indicates that if the Court is satisfied, after hearing the parties, that no urgent or immediate relief need be granted in the suit, it shall return the plaint for presentation to it after complying with the requirement of sub-section (1).

7. The Learned Trial Court has given little attention to this requirement of law while simply directing the plaintiffs to comply with the requirement of Section 80 CPC. Plaintiffs may or may not be able to establish the need for injunction on grounds of urgency or immediate relief, but

consideration has to be shown by due application of mind to such a prayer which is conspicuously lacking in the impugned order. Such an approach of the Learned Court results not only in denial of due consideration to the bonafide litigants, but at the same time, leads unnecessary journey to the higher forum on that ground. Learned Court should have exercised due diligence in applying its mind to the attendant facts and circumstances while recording a speaking order on such a prayer. The impugned order therefore is suffering from serious errors in exercise of jurisdiction, which certainly deserves interference under Article 227 of Constitution of India as it may lead miscarriage of justice also. It is accordingly set aside. Learned Trial Court would consider the application of the petitioners as early as possible, preferably within a period of three weeks from today, after due notice and opportunity to the affected parties / defendants therein. For a period of three weeks from today, no coercive steps be taken in respect of the suit property against the plaintiffs. The period of interim protection shall however expire after three weeks. It would be open for the petitioners / plaintiffs to seek interim injunction from the Learned Trial Court, which may be considered on its own merits in accordance with law without being influenced by any observation made herein-above.

8. Writ petition is allowed in the aforesaid manner.

9. Let a copy of the order be also sent to the Director, Judicial Academy, Jharkhand, Ranchi.

(Aparesh Kumar Singh, J) Ranjeet/