

In The Court of Commissioner, Saran Division, Chapra

Misc. Revision No.358/2012

Manoj Kumar Pandey & ors.

Vrs.

State of Bihar & ors.

ORDER

28.03.2016 - The instant revision petition is directed against the impugned order passed by Collector, Gopalganj in Misc. case No. 19/2012 on 09.10.2012.

The brief facts of the case are that a Misc. case No. 19/2012 was initiated in the Court of Collector, Gopalganj pursuant to the order passed by Hon'ble High Court on 19.06.2012, while disposing CWJC No. 8405/2012, (Manoj Kumar Pandey & ors Vrs The State of Bihar). In the said writ petition the petitioners prayer was that their shops are situated in the premises of Thawe Durga Mandir in khata No.3, kheshra No. 25 and 31 in the district of Gopalganj and they used to sell worship articles like co-conut, sweets and Chunari; their shops should not be removed and the said shops be settled with them. Petitioners of the writ petition appeared before the Collector and contested their case but the learned Collector on finding that the claim made by the petitioners as baseless held that the said land has been encroached by the petitioners by raising makeshift shops and he ordered for the removal for the said structures and accordingly ordered to C.O. Thawe for taking necessary steps to keep the said land completely vacant for easy access movement of people visiting the deity. Feeling aggrieved by the said order, the petitioners have preferred a revision case before this Court vide Misc. Revision No. 358/2012. Meanwhile during pendency of this case before this Court, the petitioners again approached the Hon'ble High Court by preferring CWJC No. 6013/2013 wherein they prayed among other things, that no stay has been granted by the Div. Commissioner, in the matter as such a direction may be given to that effect. In compliance to the said order of Hon'ble High Court dt. 19.03.2013 this Court was pleased to grant stay regarding the operation of the impugned order of Collector, Gopalganj as well as C.O. Thawe and they were also informed accordingly. Thereafter, the learned counsel for the petitioners remained absent on many dates which resulted in non-disposal of the case for quite some time and when this Court realized that the petitioners are taking advantage of the stay order granted earlier by this Court, it was felt necessary that the case be finally disposed of and in the process this Court fixed 14.03.16 and granted last chance to the petitioners to plead their case. As such on 14.03.2016 the learned counsel for the petitioners as well as Govt. pleader for the Collector, Gopalganj were heard at length.

The learned senior counsel appearing on behalf of the petitioners submitted in details about the entire course of events leading to coming up of this case before this Court. He further submitted that the petitioners are shopkeepers within the premises of Thawe Devi Mandir and when they came to know that the State of Bihar going to evict them from the premises of Thawe Devi Mandir, they approached the collector of Gopalganj to make a settlement of the land in their possession bearing khata No. 3 kheshra

No. 23 area 7 decimal consisting of 18 shops. He further submitted that then the Collector directed them to deposit the amount and as per his direction the entire amount was deposited in the Thawe Block Office. He also submitted that when the petitioners failed in their attempt they filed a CWJC No. 8405/2012 before Hon'ble High Court and the said case was disposed of with a direction to the petitioners to appear before Collector alongwith receipt of depositing amount and other documents to indicate that they are holding their shops at the present place from long before but thereafter petitioners were noticed under the provision of Bihar Land Encroachment Act to remove the shops from the Govt. Land which is Gair Mazurwa Aam Land. He further submitted that although petitioners appeared before the Collector and contested their case and placed all documents, the learned Collector observed that the entire property of Thawe Devi Mandir had taken over by Bihar Religious Trust Board from 12.11.2011. The learned Counsel for the petitioners also raised a question as to whether after the vesting of Thawe Mandir property on 12.12.2011 to Bihar Religious Trust Board then whether the Collector had any jurisdiction to pass any order for the removal of encroachments and in answer to that he stated that the Collector is not competent to do so. He also submitted that under such circumstances the present Land Encroachment proceeding is without jurisdiction because the ownership of the property has been changed from the state of Bihar to the Bihar Religious Trust Board and so the present proceeding may be dropped with an observation that the entire case record be sent to the Bihar Religious Trust Board to take necessary steps in this connection.

The learned G.P. appearing on behalf of the Collector, Gopalganj, vehemently opposed the arguments forwarded by the learned senior counsel for the petitioners regarding their claim relating that the said property is vested in Bihar Religious Trust Board as such the Collector had no jurisdiction for passing any order regarding the removal of encroachment under Land Encroachment Act. He further submitted that the said khata No.3 is Gair Mazurah Malik khata and petitioners have encroached the kheshara No. 25 and 31 of the said khata and it is recorded in khatiyani that every year Ram Navmi Mela is held on that kheshra and the said kheshra are entered in sairat register whereas the kheshra No. 23 having area 7 decimal is recorded in khatiyani as Gair Mazurah Aam Devi Mandir. He further submitted that the claim of the petitioners regarding kheshra No. 25 and 31 is totally wrong as there is no shops of any petitioners is in kheshra No. 25 and the petitioner after encroaching the land of kheshra No. 31 constructed some temporary shops which is creating obstruction during the assembly of huge crowd of pilgrims and devotees during the Navratri Festival and it was for that reasons the district administrative has taken the steps for removal of encroachment in order to enable them to further beautify the surroundings of the temple. He lastly submitted that the impugned order is a legally valid order as such no interference is required.

Considering the facts and circumstances of the case, material available on records, pleadings advanced by the learned counsel for the parties and on perusal of the impugned order, it is seen that the learned Collector, Gopalganj initiated the proceeding on the direction of the Hon'ble High Court with respect to the different plots of land of khata No. 3 which is a Gair

Mauzurah Malik khata of which plot No. 25 and 31 are the surrounding plots of Thawe Durga Mandir which itself situated in plot No. 23. The contention of the petitioner counsel is that as the shops of the petitioners are situated in the said plot for over a longtime and the said plots be settled with them. Similarly on other two plots 25 and 31 several shops have been built illegally by some persons. The learned Collector on finding that the said land is sairat land, the same can not be settled with any person permanently and also on finding that the shopkeepers have illegally encroached the land causing inconvenience to the pilgrims during the peak season, he ordered for the removal of such encroachment by due process under the provisions of Bihar Public Land Encroachment Act. I do not find any apparent illegality in the said order of Collector which seems to have been passed after careful consideration of all aspects of the case in correct perspective. The learned counsel for the petitioners, on the other hand states that on the kheshra No. 23 over which the temple is located become the property of Bihar Religious Trust Board and hence the learned Collector is not competent to pass any order for removal of Encroachment. But the learned G.P. is of the view that the dispute basically relates to the adjoining plots No. 25 and 31 which are exclusively public land and so far as the claim of the petitioners that there are shops over the kheshra No. 23 is concerned the said averment is fully wrong and misleading. This clearly shows that the petitioners have raised the entire dispute by encroaching upon the public land for their ulterior motive. It is seen that the learned Collector in his detailed order dealt with the entire issue, considering all the relevant facts and documents of the case after appreciating the facts and law. As such the impugned order of Collector, Gopalganj passed in Misc. case No. 19/2012 on 09.10.2012 is upheld and accordingly, this revision application being devoid of any merit as such this Court finds no good ground to make any interference in the said order. As such the instant revision petition is dismissed accordingly for the aforementioned reasons and the stay order granted earlier by this Court also stands vacated.

Dictated and Corrected by me.

28.3.16
Commissioner,
Saran Division, Chapra

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