

SUPREME COURT OF INDIA

State of Jharkhand

Vs.

Surendra Kumar Srivastava

C.A.No.21 of 2019

(Ashok Bhushan and Indu Malhotra,JJ.,)

03.01.2019

JUDGMENT

Indu Malhotra,J.,

SLP(C) No.26645 of 2015

1. Leave granted.

2. The present Civil Appeals arise out of S.L.P. (C) Nos. 26645 and 24684 of 2015 which have been filed to challenge the Judgment dated May 19, 2015 passed by the Jharkhand High Court in W.P. (C) No. 2081 of 2015. The Writ Petition had been filed by Respondent Nos. 1 to 3 herein to challenge the Order dated 07.04.2015 refusing to grant Interim Relief in an Application filed under Order XXXIX Rules 1 and 2 of the CPC in Title Suit No. 45/2015, and Order dated 21.04.2015 passed by the District Court.

3. A brief factual background of this case is set out herein below:

3.1. According to the Writ Petitioners/Respondent Nos. 1 to 3 herein, their mother - late Smt. Shyal Devi had purchased about 3.61 acres of land ("suit property") from Raju Gour and Shatrughan Gour by way of two unregistered Sale Deeds dated 30.04.1958. According to Respondent Nos. 1 to 3, late Smt. Shyal Devi had raised a structure over a part of the suit property, and was cultivating the rest of it. The said land was situated adjacent to the land belonging to the Bihar State Road Transport Corporation.

3.2. In 1992, Smt. Shyal Devi filed Title Suit No. 153/1992 before the Additional Munsif, Jamshedpur alleging that the officials of the Bihar State Road Transport Corporation were disturbing her possession of the suit property since 1990. The *Additional Munsif* vide Judgment and Decree dated 18/27.02.1999 decreed the Suit in favour of the Plaintiff - late Smt. Shyal Devi, and confirmed her possession since

1958. The Bihar State Road Transport Corporation was restrained from interfering with the peaceful possession of Smt. Shyal Devi. The relevant extract of the findings of the Additional Munsif contained in the Judgment is reproduced hereinbelow:

“11. In view of the aforesaid discussion, I found that plaintiff [Smt. Shyal Devi] has proved her possession of the suit land since 1958 and as such these issues are decided in favour of the plaintiff and against the defendant.”

3.3. The Bihar State Road Transport Corporation filed Title Appeal No. 20/1999 to challenge the Judgment and Decree dated 18/27.02.1999 before the Additional District Judge, East Singhbhum, Jamshedpur. The Title Appeal No. 20/1999 was dismissed by the Additional District Judge on the ground of possession. However, the District Judge held that the Plaintiff had failed to establish her title, and it would be open for the Bihar State Road Transport Corporation to file a suit against late Smt. Shyal Devi for declaration of title over the land, and to seek her eviction.

3.4. The Bihar State Road Transport Corporation preferred Second Appeal No. 17509/2005 against the Judgment dated 29.08.2005 passed by the Additional District Judge before the Jharkhand High Court, which is currently pending adjudication.

3.5. It is relevant to mention that late Smt. Shyal Devi did not challenge the finding that she had failed to establish her title before the High Court. Hence, the finding of the Additional District Judge attained finality.

3.6. During the pendency of the Second Appeal, the Deputy Commissioner, East Singhbhum, Jamshedpur sought a No-Objection Certificate vide letter dated 13.10.2012 from the Transport Commissioner, Jharkhand for the construction of an Electricity Sub-station on the land comprised in Khata No. 24 (Plot Nos. 2650, 2652, 2656, and 2657) in Jamshedpur, recorded in the name of the Bihar State Road Transport Corporation.

The Transport Commissioner vide letter dated 04.03.2015 conveyed that it had no objection for transfer of the said land for the construction of an Electricity Sub-station thereupon.

3.7. During the pendency of proceedings before the High Court, Smt. Shyal Devi expired 24.02.2014 leaving behind three sons i.e. Respondent Nos. 1 to 3, as her legal representatives and successors.

3.8. Respondent Nos. 1 to 3 filed Title Suit No. 45/2015 before the Civil Judge (Junior Division - I), Jamshedpur seeking permanent injunction to restrain the Appellant -The General Manager, Jharkhand State Electricity Board [in S.L.P. (C) No. 24684 of 2015] from interfering with their alleged possession of the suit property, along with an Application for Temporary Injunction.

3.9. The Civil Judge (Junior Division - I) vide Order dated 07.04.2015 dismissed the Application for Temporary Injunction filed by Respondent Nos. 1 to 3. It was held that Respondent Nos. 1 to 3 failed to describe the specific area/portion of the suit property which was in their alleged possession, over which the construction of the Electricity Sub-station was being carried out by the Jharkhand State Electricity Board. The Civil Judge (Junior Division - I) concluded that Respondent Nos. 1 to 3 had failed to make out a prima facie case, and held that no irreparable loss would be caused, which could not be compensated in terms of money.

3.10. Aggrieved by the Order dated 07.04.2015, Respondent Nos. 1 to 3 filed an Appeal under Order XLIII, Rule 1(r) of the CPC before the District Judge III-cum-MACT, East Singhbhum, Jamshedpur.

The Appeal was dismissed vide Order dated 21.04.2015 whereby the District Judge affirmed the Order passed by the Civil Judge (Junior Division - I) dated 07.04.2015. It was held that Respondent Nos. 1 to 3 had failed to demarcate the suit property in the Plaint to show that the construction activity was taking place on their land. The Plaintiffs had not placed on record the old Khatian, or the new Khatian. Respondent Nos. 1 to 3 were making a claim of possession with respect to 3.61 acres of land recorded in R.S. Khatian of 1937 under Khata No. 19 (Plot Nos. 3737, 3733, 3710, 3741, 3749, 3751, 3752, 3753, 3754 and 3755), Khata No. 21 (Plot No. 3742), Khata No. 33 [Plot Nos. 3718, New Plot Nos. 2657, 2658, 2659, 2660, a portion of 2650, 2626(p), 2656(p), 2653(p), 2655(p) Thana No. 1198 and 1151]. The said land stated to be situated in Mouza Baridih and Bara, P.S. Sidhgora, District Singhbhum East, in new Khatian No. 24 in the finally published record of rights of Jamshedpur Notified Area (1995–1996). On the other hand, the Counsel for the State Electricity Board stated that 1.47 acres of land recorded as Khata No. 24 (Plot Nos. 2650, 2652, 2656 and 2657) was registered in the name of the Bihar State Road Transport Corporation, as Anabad land. The Board placed reliance on trace map, and a letter dated March 4, 2015 addressed by the Transport Commissioner, Ranchi, Jharkhand to the Deputy Commissioner, East Singhbhum, Jamshedpur making the land available for the Jharkhand State Electricity Board.

The District Court held that the Plaintiffs had produced no rent receipts, or municipal receipts to corroborate their plea of alleged possession over the disputed suit property. The District Court found that Respondent No. 3 - Narendra Kumar Srivastava had concealed a material fact that he had filed a Writ Petition before the High Court seeking an injunction from construction of a boundary wall and digging on the suit property by the Appellant - The General Manager, Jharkhand State Electricity Board [in S.L.P. (C) No. 24684 of 2015]. The Writ Petition came to be withdrawn on 24.04.2015. The suppression of a material fact warranted the drawing of an adverse inference against the Respondents. The grant of injunction being a discretionary relief, Respondent Nos. 1 to 3 were found to not be entitled to the same.

3.11. Aggrieved by the judgment of the District Judge, Respondent Nos. 1 to 3 filed W.P. (C) No. 2081 of 2015 before the Jharkhand High Court seeking a writ of certiorari to quash the Order dated 07.04.2015 passed by the Civil Judge (Junior Division - I) in Title Suit No. 45/2015, and Order dated 21.04.2015 passed by the District Court in Misc. Appeal No. 5/2015.

3.12. The Electricity Board filed a Counter Affidavit along with photographs of the construction of the Electricity Sub-station. It was submitted that almost 90% of the construction work of the Electricity Sub-station had already been completed. It was further stated that the grant of an injunction would seriously affect public interest, and the welfare scheme for providing electricity to the local populace at subsidised rates.

3.13. The learned Single Judge of the High Court vide the impugned Judgment dated 19.05.2015 allowed W.P. (C) No. 2081 of 2015 filed by Respondent Nos. 1 to 3, and directed the parties to maintain status quo with respect to the suit property. It was clarified, that the Appellant - The General Manager, Jharkhand State Electricity Board [in S.L.P. (C) No. 24684 of 2015] was, however, at liberty to raise construction on any other land, except the disputed suit property.

The learned Single Judge held that the findings of the courts below with respect to there being no prima facie case in favour of Respondents No. 1 to 3 was erroneous in view of the judicial findings in their favour in the previous round of litigation in Title Suit No. 153/1992, and Title Appeal No. 20/1999. The Single Judge held that the courts below dismissed the Application for Temporary Injunction filed by Respondent Nos 1 to 3 on the ground that Respondent Nos. 1 to 3 (Plaintiffs) had failed to specifically describe the disputed suit property, even though the description of the disputed suit property was not objected by the Jharkhand State Electricity Board. On balance of convenience, the Single Judge held that in case the Appellant - The General Manager, Jharkhand State Electricity Board [in S.L.P. (C) No. 24684 of 2015] completes the construction of the Electricity Sub-station, Respondent Nos. 1 to 3 would be under a compulsion to accept compensation, even if the Title Suit No. 45/2015 was decreed in their favour. The Single Judge held that the photographs produced by the Appellant Electricity Board only indicated the raising of electricity poles, and no other construction had been raised on the disputed Suit Land.

4. Aggrieved by the impugned Judgment dated 19.05.2015 passed by the learned Single Judge of the High Court, the State of Jharkhand filed the present S.L.P. (C) No. 26645 of 2015, and the General Manager, Jharkhand State Electricity Board filed S.L.P. (C) No. 24684 of 2015.

4.1. This Court vide Interim Order dated 14.12.2015, granted liberty to the Appellant - The General Manager, Jharkhand State Electricity Board [in S.L.P. (C) No. 24684 of 2015] to draw the supply lines.

4.2. The Appellant - The General Manager, Jharkhand State Electricity Board [in S.L.P. (C) No. 24684 of 2015] in I.A. Nos. 91857 & 91859/2018, sought permission to energise the

Electricity Sub-station, after depositing the costs of the suit property as assessed by the Circle Officer, Jamshedpur before the Deputy Commissioner, Jamshedpur.

4.3. During the pendency of the proceedings, the Electricity Sub-station has been fully constructed having a capacity of 33/11 K.V. As per the Executive Engineer, Electricity Supply Division, Jamshedpur approximately 1 lakh people residing in the nearby areas would be benefitted by the supply of electricity, and it would result in reduction of loss of load on other Electricity Sub-stations situated in the vicinity.

5. The Appellants and Respondent No. 4 in both the Special Leave Petitions were represented by Mr. Ajit Kumar Sinha, Senior Advocate, while Respondent Nos. 1 to 3 were represented by Mr. Satpal Singh, Advocate.

5.1. The learned Senior Counsel appearing for the Appellants, inter alia submitted that Writ Petition No. 2081 of 2015, seeking a writ of certiorari, was not maintainable, as it was filed to challenge judicial orders passed by civil courts. Learned Counsel placed reliance on the decision of a three-judge bench in *Radhey Shyam v. Chhabi Nath & Ors*².

5.2. On merits, it was submitted that Respondent Nos. 1 to 3 did not have title to the disputed suit property. The Counsel relied on the findings in the Judgment dated 29.09.2005 passed in Title Appeal No. 20/1999 wherein the Additional District Judge had clearly held that the mother of Respondent Nos. 1 to 3 had failed to prove her title with respect to the disputed suit property. The said finding attained finality, since late Smt. Shyal Devi, or her legal heirs and successors i.e. Respondent Nos. 1 to 3 had not challenged the finding any further.

5.3. It was further submitted that the State of Jharkhand was the owner of the suit property, which was evidenced from the revenue records of the suit property recorded in the name of the Bihar State Road Transport Corporation. The learned Senior Counsel submitted that TISCO Ltd. had transferred 16.529 acres of land to the Bihar State Road Transport Corporation. The suit property was recorded in the name of the Bihar State Road Transport Corporation in the recent survey (khatiyal). The Electricity Sub-station has been constructed on 1.47 acres of land registered as Khata No. 24 (Plot Nos. 2650, 2652, 2656 and 2657) made available to the Jharkhand State Electricity Board by the Transport Department, Ranchi, Jharkhand vide letter dated 04.03.2015.

5.4. Pursuant to the interim Order dated 14.12.2015, the Electricity Sub-station had been completely constructed, and would provide electricity to over 1 lakh people residing in the vicinity.

5.5. It was further submitted that the learned Single Judge erred in allowing W.P. (C) No. 2081 of 2015 since Respondent Nos. 1 to 3 had failed to make out a prima facie

case in their favour. They had also failed to demarcate the area in their alleged possession, in the Plaint, on which the electricity Sub-station was being constructed. The balance of convenience was in favour of the Appellant-Electricity Board, in view of the overriding public interest in providing electricity to over 1 lakh people. Further, no irreparable loss or injury would be caused to Respondent Nos. 1 to 3 as they could always be adequately compensated under Section 67 of the Electricity Act, 2003, if found entitled.

5.6. On the other hand, Advocate Mr. Satpal Singh supported the findings of the learned Single Judge of the High Court. It was submitted that the title to the disputed suit property vested in Respondent Nos. 1 to 3 since the issue pertaining to title was decided by the Additional Munsif in favour of the mother of Respondent Nos. 1 to 3, vide Judgment dated 18.02.1999. Title Appeal No. 20/1999 filed by the Bihar State Road Transport Corporation against the Judgment of the Additional Munsif was dismissed by the Additional District Judge, vide Judgment dated 29.08.2005. Although, Second Appeal No. 17509/2005 had been filed by the Bihar State Transport Corporation against the Judgment dated 29.08.2005 passed by the Additional District Judge, it was pending final determination before the High Court. The learned Advocate contended that the mere pendency of the Second Appeal No. 17059/2005 would not entitle the Bihar State Road Transport Corporation to transfer the disputed suit property to the Appellant - General Manager, Jharkhand State Electricity Board [in SLP (Civil) No. 24684 of 2015]. The Appellant-State Electricity Board failed to establish its title or possession over the disputed Suit property, since it had not produced any material except the letter of the Transport Commissioner dated 04.03.2015 and a map. The learned Counsel relied on the decisions of this Court in *Meghmala & Ors. v. G. Narasimha Reddy & Ors*³. and *Rame Gowda (dead) by LRs v. M. Varadappa Naidu (dead) by LRs & Anr*⁴. to submit that a person who is in settled possession, even in case he is a trespasser, has the right to be protected against forcible eviction, and can be evicted only after following the procedure prescribed by law.

6. The limited issue which arises for consideration in the present Civil Appeals is whether the learned Single Judge of the High Court was justified in directing the parties to maintain status quo during the pendency of the Title Suit No. 45/2015 before the Court of Civil Judge (Junior Division - I), Jamshedpur.

7. Discussion and Analysis We have heard the Counsel for both parties at length, perused the pleadings, and the written submissions filed in the present Civil Appeals.

7.1. With respect to the first submission of the learned counsel for the Appellants that the Writ Petition filed by Respondent Nos. 1 to 3/Plaintiffs for a writ of certiorari to quash the Order dated 07.04.2015 passed by the Civil Judge (Junior Division) and the Order dated 21.04.2015 passed by the District Judge was not maintainable in view of the judgment of the three-judge bench in *Radhey Shyam v. Chhabi Nath & Ors.*, there cannot be any dispute to the law laid down by this Court in *Radhey Shyamv.*

Chhabi Nath & Ors. (supra), but in the facts of the present case, we do not propose to unsettle the judgment of the High Court on the above ground due to two reasons, firstly, in the High Court, the Appellants, who were Respondents in the Writ Petition, did not challenge the maintainability of the Writ Petition under Article 226 of the Constitution of India, and secondly, had the Appellants raised the above objection regarding maintainability of the Writ Petition, the course open for Plaintiffs/Respondent Nos. 1 to 3 was to amend the cause title of the writ petition under Article 227 of the Constitution, and such a Writ Petition under Article 227 would have been clearly maintainable.

7.2. The Writ Petition under Article 227 challenging the orders passed by Civil Courts refusing to grant interim injunction under Order XXXIX, Rules 1 and 2 of the CPC could very well be maintainable, and the opportunity to amend the cause title by Respondent Nos. 1 to 3 by raising any objection to that effect having been denied to them, we, instead of setting aside the judgment of the High Court on the above ground, proceed to examine the contentions on merits.

7.3. The Learned Single Judge granted an order of status quo with respect to the construction of the Electricity Sub-station even though the Plaintiffs/Respondent Nos. 1 to 3 herein had failed to produce any documentary evidence whatsoever to establish their title to the suit property. The Additional District Judge in the earlier round of litigation, in Title Appeal No. 20/1999 vide Judgment dated 29.08.2005 had categorically held that late Smt. Shyal Devi, the mother of Respondents No. 1 to 3 and the predecessor in title, had failed to establish her title to the suit property. The said finding has admittedly not been challenged by Respondent Nos. 1 to 3. The said finding has attained finality. In this view of the matter, the Respondents failed to make out a prima facie case, which would have justified the grant of an interim injunction.

7.4. Furthermore, the Plaintiffs/Respondent Nos. 1 to 3 also failed to establish that the Electricity Sub-station was being constructed on their land. The Respondents No. 1 to 3 failed to describe the specific area which was in their alleged possession over which the Electricity Sub-station was being constructed.

7.5. The balance of convenience lies entirely in favour of the Appellant - The General Manager, Jharkhand State Electricity Board [in S.L.P. (C) No. 24684 of 2015] since the entire Electricity Sub-station has been fully constructed, and is now at the stage of being energised for supply of electricity inter alia to four feeders viz. Bhuiyadih (BHU), Baridih (BRD), Vidyapatnagar (VPN). It is estimated to provide electricity to approximately 1 lakh people. The Board is statutorily empowered under Section 67 of the Electricity Act, 2003 to undertake all actions necessary for transmission or supply of electricity, subject to the procedure under the Electricity Act, 2003.

7.6. Respondent Nos. 1 to 3 have failed to produce any evidence of their possession over the vacant land, no undue hardship or prejudice would be caused to them, in the event the Appellant - The General Manager, Jharkhand State Electricity Board [in S.L.P. (C) No. 24684 of 2015] is permitted to proceed with the energisation of the Electricity sub-station.

7.7. In the event that Respondents No. 1 to 3 are able to establish their title and possession to any part of the property utilised for the Electricity Sub-station, they would be entitled to compensation for any damage, detriment or inconvenience caused, in accordance with S. 67(3) of the Electricity Act, 2003, and/or any other law for the time being in force.

7.8. The Electricity Sub-station is complete in all respects and ready to be energised, as per the documentary evidence placed before the Court. The overriding public interest of providing electricity to the local populace would far outweigh the alleged interest of Respondent Nos.1 to 3.

In view of the aforesaid facts and circumstances, the decision of the Civil Judge (Junior Division - I) and the District Judge in refusing to grant a Temporary Injunction in Title Suit No. 45/2015, was justified, and is restored.

8. In view of the aforesaid reasons, the Civil Appeals are allowed, and the impugned Judgment dated May 19, 2005 passed by the Learned Single Judge of the Jharkhand High Court in Writ Petition No. 2081 of 2015 is hereby set aside. The impugned Judgment ordering the maintenance of status quo with respect to the Suit property till the final disposal of the Title Suit No. 45/2015 stands vacated. The findings given in this judgment are prima facie in nature given at the interim stage, and will not influence the trial of the case.

9. The pending applications be disposed of accordingly.

10. Ordered accordingly.

Judgment Referred.

¹Recorded in R.S. Khatian of 1937 under Khata No. 19 (Plot Nos. 3737, 3733, 3710, 3741, 3749, 3751, 3752, 3753, 3754 and 3755), Khata No. 21 (Plot No. 3742), Khata No. 33 [Plot Nos. 3718, New Plot Nos. 2657, 2658, 2659, 2660, a portion of 2650, 2626(p), 2656(p), 2653(p), 2655(p) Thana No. 1198 and 1151]. The above-described land was stated to be situated in mouza agricultural and bara, P.S. Sidhgora, District Singhbhum East, and was incorporated in new Khatian No. 24 in the finally published record of rights of Jamshedpur Notified Area (1995-1996).

²(2015) 5 SCC 0423

³(2010) 8 SCC 0383

⁴(2004) 1 SCC 0769