

IN THE HIGH COURT OF JHARKHAND AT RANCHI
(Civil Writ Jurisdiction)
W.P. (C) No. 4933 of 2018

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Express Residency Private Limited Petitioner
Versus
The State of Jharkhand & Others Respondents

CORAM: HON'BLE MR. JUSTICE KAILASH PRASAD DEO
(Through : Video Conferencing)

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For the Petitioner : Mr. S.D. Sanjay, Sr. Advocate
Mr. Sumeet Gadodia, Advocate.
For the Respondent Nos. 1-4 & 6 : Mr. Ravi Prakash Mishra, Adv.
For the Respondent No. 5 : Mr. Anil Kumar, Advocate.
For the Respondent Nos. 7 & 8 : None.

13/10.09.2021.

When the matter is taken up, Mr. S.D. Sanjay, Senior Advocate assisted by learned counsel for the petitioner, Mr. Sumeet Gadodia started assisting this Court.

In the meantime, a Whatsapp communication sent by respondent nos. 8 & 9 namely, Sri Karma Oraon and Sri Chandradeep Kachhap along with no objection Vakalatnama of their previous Advocates, Mr. Binod Singh and Deepak Kumar Singh was produced by the Court Master.

This Court after going through the Whatsapp communication found some suspicious conduct and thus call Mr. Rajendra Krishna Chairman, Jharkhand State Bar Counsel and Mrs. Ritu Kumar, President, Advocates' Association and apprise them with such conducts.

On repeated calls, no one appears on behalf of respondent nos. 8 & 9, nor they have appeared in person.

The Whatsapp communication made by respondent nos. 8 & 9 along with no objection given by learned counsel, Mr. Binod Singh and learned counsel, Mr. Deepak Kumar Singh are kept on record at page nos. 640 to 661.

Under the aforesaid circumstances, this Court peruse the records.

From perusal of record, it appears that writ petition has been filed by the petitioner on 27.09.2018 stating therein that petitioner has

purchased 37.5 kathas of land from M/s S.K. Enterprises vide registered Sale Deed No. 18710 dated 23.12.2005 situated at Mauza-Ranchi, Thana No. 205, Khata No. 33, Plot No. 591 and started construction business.

Earlier, Plot No. 591 is said to be recorded in the R.S. Records of rights in the name of Chinigia Oraon, son of Joto Oraon. The said Chinigia Oraon, the recorded tenant by virtue of a registered Deed of Surrender bearing No. 427 dated 10.02.1939 (entered in Book no. 1, Volume no. 5 at pages 280 to 281) surrendered the aforesaid land to the landlord of the village named Baralal Kandarpnath Shahdeo and handed over the possession of the same.

The said landlord of the Village Baralal Kandarpnath Shahdeo settled the aforesaid land of Plot No. 591, Khata No. 33 with one Sk. Rojit Mian by virtue of registered Sale Deed of Settlement dated 04.08.1939 and handed him the possession of the plot no. 591. The settlement of the plot no. 591 by Sk. Rojid Mian was done by executing a registered Kabuliyat in favour of the landlord of Village Baralal Kandarpnath Shahdeo vide Kabuliyat Deed No. 2845 dated 07.08.1939 and subsequently, paid rent to the landlord and after vesting of the intermediary interest, demand in the name of Sk. Rojid Mian was opened in Register-II and paid rent to the State of Bihar.

In 1966, a portion of the land measuring 33 decimals from 1.15 acres of land of Plot No. 591, under Khata No. 33, was acquired for road widening vide L.A. Case No. 2/1966-67 and for the same, compensation was given by the State Government to the heirs of Late Sk. Rojid Mian.

It appears that writ petition has been filed by the petitioner impleading the State of Jharkhand as *respondent no. 1*, the Principal Secretary, Department of Revenue & Land Reforms, Government of Jharkhand as *respondent no.2*, The Deputy Commissioner, Ranchi as *respondent no. 3*, The District Sub-Registrar, Ranchi as *respondent no. 4*, The Deputy Secretary, Jharkhand Vidhan Sabha, as *respondent no. 5*, The Circle Officer, Ranchi Circle as *respondent no. 6* and Sanskriti Vihar having its office at 55, Baralal Street, Upper Bazar, P.O. - Ranchi, P.S. - Kotwali, District – Ranchi through its Secretary,

Bishwanath Narsaria, son of Late Sanwormal Narsaria, resident of Randhir Prasad Street, Near Gandhi Chowk, Upper Bazar, P.O. - Ranchi, P.S. - Kotwali, District – Ranchi as *respondent no. 7*.

It appears that writ petition has been filed on 27.09.2018. It was listed before the Coordinate Bench of this Court (Rajesh Shankar, J.) on 11.10.2018, when learned State counsels appearing for the respondent nos. 1 to 4, 6 and Mr. Aditya Raman, J.C. to Mr. Jay Prakash, Sr. Advocate appearing for the respondent no. 5 have prayed for four weeks' time to seek instruction and file their respective counter affidavits.

The Coordinate Bench has granted four weeks time and also granted interim protection stating that no coercive measure shall be taken towards the land/property of the petitioner in pursuance of the letter no. 1566 dated 20th August, 2018 (Annexure-3 to the writ petition), but counter affidavits have not been filed within time.

However, two interlocutory applications vide I.A. No. 10284/2018, kept at Flag-C, has been filed on 19.11.2018 for intervention and copy has been served upon other sides and I.A. No. 10309/2018, kept on Flag-D, has been filed on 20.11.2018 for dismissal of writ petition on the ground of maintainability.

From perusal of order sheet, it appears that on 29.11.2018, on the joint prayer of the parties, the case was adjourned to be listed on 10.01.2019 extending the interim order granted on 11.10.2018.

It further appears that counter affidavits have not been filed and I.A. No. 10877/2018 has been filed on 06.12.2018 on behalf of Karma Oraon and Chandradeep Kachhap for vacating the interim order and I.A. No. 10876/2018 has been filed on 06.12.2018 on behalf of Karma Oraon and Chandradeep Kachhap for early hearing of I.A. No. 10284/2018 as well as I.A. No. 10309/2018 and for vacating the stay.

It appears from the office note that counter-affidavit on behalf of respondent no. 5 has been filed on 05.02.2019.

It appears that the matter was listed before the Coordinate Bench of this Court (Sujit Narayan Prasad, J.) on 13.03.2019, when nobody appeared to press the interlocutory applications bearing nos. I.A. Nos. 10876, 10284, 10309 and 10877 of 2018.

Office note further reveals that I.A. No. 11168/2019 has been filed on 04.12.2019 on behalf of Karma Oraon and Chandradeep Kachhap for early hearing and I.A. No. 11260/2019 has also been filed on 06.12.2019 on behalf of petitioner for early hearing.

It appears that vide order dated 28.03.2019, the Coordinate Bench of this Court (Sujit Narayan Prasad, J.) has allowed the I.A. No. 10284/2018 and directed to implead Sri Karma Oraon, son of Koka Oraon, resident of Village – Hindpiri, P.O. - Hindpiri, Tisrigali, P.S. - Hindpiri, District – Ranchi as *respondent no. 8* and Sri Chandradeep Kachhap, son of Mahadeo Kachhap, resident of Village – Purani Ranchi, P.O. - G.P.O. P.S. - Kotwali, District – Ranchi as *respondent no. 9* and dismissed the I.A. No. 10876/2018 as not pressed and further ordered that I.A. No. 10309/2018 and I.A. No. 10877/2018 shall be considered at the time of hearing of the case and on the joint prayer of the parties, the case has been fixed for 24.04.2019.

Thereafter, the matter was listed before the Coordinate Bench of this Court (Rajesh Shankar, J.) on 29.01.2020, when on the joint request of the parties, the matter was adjourned for two weeks. On 26.02.2020, the matter was again adjourned on the joint prayer of the parties to be listed on 19.03.2020.

Thereafter, on 22.02.2021, the Coordinate Bench of this Court (Rajesh Shankar, J.) has considered I.A. No. 11168/2019 filed on behalf of Karma Oraon and Chandradeep Kachhap and I.A. No. 11260/2019 filed on behalf of petitioner and the same have been disposed of as the writ petition has already been taken up on Board.

So far, I.A. No. 10309/2018, which has been filed by respondent nos. 8 & 9, raising preliminary objection with regard to the maintainability of the present writ application in view of Article 212 of the Constitution of India is concerned, learned counsel for the petitioner prayed for time and was allowed three week's time to file response to the present interlocutory application. The writ petition was fixed for 07.04.2021 and till that date, State has not filed any counter affidavit in compliance of order dated 11.10.2018.

Subsequently, when the matter was again taken up by the Coordinate Bench of this Court (Rajesh Shankar, J.) on 07.04.2021, I.A. No. 10309/2018 preferred on behalf of respondent nos. 8 & 9 raising preliminary objection with regard to the maintainability of the writ petition has been disposed of considering that issue shall be considered at the time of hearing of the writ petition itself. The writ petition has been fixed for 09.06.2021 and respondent nos. 8 & 9 were permitted to file counter-affidavits by 06.05.2021, subject to the payment of cost of Rs. 1,000/- in favour of Advocates' Association Welfare and Development Fund, Jharkhand High Court, Ranchi.

The matter was listed before the Coordinate Bench of this Court (Rajesh Shankar, J.) on 15.07.2021 and an adjournment slip was filed on behalf of learned counsel for the respondent nos. 8 & 9 on the ground of his personal work and considering the same, the matter was directed to be listed on 12.08.2021.

When the matter was again listed on 12.08.2021 before the Coordinate Bench of this Court (Rajesh Shankar, J.) has recused from hearing the writ petition and thus, the matter was referred before the Hon'ble Chief Justice for assigning the matter to any other Bench.

It appears that on 13.08.2021, necessary correction has been made in order dated 12.08.2021, as the name of learned counsel for the respondent no. 5 has inadvertently been typed as "Mr. Deepak Kumar Singh" in place of "Mr. Anil Kumar".

Hon'ble the Chief Justice has assigned this matter to this Court on 25.08.2021.

It appears that a mention slip was filed by the learned counsel for the petitioner, Mr. Sumeet Gadodia on 01.09.2021, which was allowed by this Court for listing the matter on 06.09.2021, but at that time it was not within the knowledge of the Court that this matter was assigned by Hon'ble the Chief Justice to this Court. The writ petition was not listed on 06.09.2021 as being a assigned matter, office has listed the case on Friday i.e. 10.09.2021 as normally tied up and assigned matters, as per roaster, are listed on Friday.

It appears from the record that counter-affidavit on behalf of respondent no. 5 has been filed on 05.02.2019 by Gurucharan Sinku,

Deputy Secretary, Jharkhand Vidhan Sabha, Ranchi is on record, who has admitted at para-4 of the counter-affidavit that the proceeding undertaken by the Scheduled Caste, Scheduled Tribe and Backward Classes Welfare Samiti of Jharkhand Vidhan Sabha. It has been stated that under Article 208 of the Constitution of India, the business of Vidhan Sabha Rule can be framed which is known as Rules for Procedure of Jharkhand Vidhan Sabha and its Conduct of Work, 2015, and the same is effective from 01.09.2001.

Rule 197 to 208 of the Rule 2015, talks and mentions about different Committee of the Vidhan Sabha.

Rule 212 of Rule, 2015 provides that all the proceeding and the reports of the Committee shall be confidential and no persons shall disclose / publish it unless the same is not placed before the House or not published under Rule 217 by the order of the Speaker of Vidhan Sabha.

It has further been stated that the system of this Committee is particularly useful in dealing with matters, on account of the special law technical nature and better considered details of small number members, rather than by the House itself. Apart from the supervision, the Committee also make recommendation and issue direction. Direction and recommendation are to be implemented by different Government department and action taken report are submitted before Vidhan Sabha. Rule 32 says that the matter which are under consideration before the Committee, by suggestion, representation and application are to be addressed to the Secretary of the Vidhan Sabha.

Rule 217 of Rule, 2015 provides that when the Vidhan Sabha is not in Session, the Speaker is the authority to order for the publication of the report of the Committee. Article 194 of the Constitution of India deals with “powers, privileges and immunities of State Legislature and other Members”.

The right to know about the reports only arises when they have been published for use of public in general.

It has categorically been stated at para-17 of the counter-affidavit that the Committee namely, Scheduled Caste, Scheduled

Tribe and Backward Class Welfare Committee has not submitted its report to the Speaker nor this report has been published under the authority of the Speaker.

Under the aforesaid circumstances, this Court directs the office to implead the Secretary, Jharkhand Vidhan Sabha as *respondent no. 10*.

The Secretary, Jharkhand Vidhan Sabha is directed to file an affidavit in person before this Court that :-

(i) Under what capacity such letter has been issued by the Deputy Secretary, Sri Gurucharan Sinku, son of Late Rasika Sinku addressed to Principal Secretary, Revenue and Land Reforms Department, Government of Jharkhand, Ranchi, Deputy Commissioner, Ranchi, District Sub-Registrar, Ranchi and Circle Officer, Town Circle, Ranchi as contained in Letter No. 1566/Vidhan Sabha dated 20.08.2018.

(ii) Whether the Deputy Secretary are officers under Vidhan Sabha, empowered to communicate letter without order of Hon'ble the Speaker or it is his personal letter issued without direction of Hon'ble the Speaker or Chairman of the Committee.

The Secretary, Jharkhand Vidhan Sabha is also directed to swear affidavit with regard to competency of such officers like Deputy Secretary in communicating with other offices by issuing such letters and whether they are authorized by Hon'ble Speaker on behalf of Vidhan Sabha or not?

The affidavit must be filed by the learned Secretary, Jharkhand Vidhan Sabha, within a period of four weeks.

It appears that petitioner has filed rejoinder to the counter affidavit filed by respondent no. 5 on 15.02.2021 and reply to I.A. No. 10309/2018 on 10.03.2021

From perusal of record, it appears that counter-affidavit has been filed by Circle Officer (Town), Ranchi on behalf of respondent nos. 2 to 4 & 6 on 09.04.2021 in compliance of order passed by the Coordinate Bench of this Court (Rajesh Kumar, J.) on 11.10.2018. From perusal of counter-affidavit, it appears from para-2 that he has been duly authorized to swear affidavit on behalf of the respondents,

but without disclosing which of the respondent authorities authorized him to file the counter affidavit on behalf of them.

This Court fails to understand that whether this counter-affidavit is to be considered to be counter-affidavit of the respondent no. 1, State of Jharkhand or respondent no. 2 the Principal Secretary, Department of Revenue & Land Reforms, Government of Jharkhand, or respondent no.3, The Deputy Commissioner, Ranchi or the respondent no. 4, The District Sub-Registrar, Ranchi or it is considered to be the counter affidavit of respondent no. 6 Circle Officer, Ranchi Circle without having approval from the higher authorities.

Under the aforesaid circumstances, the learned State Counsel is directed to produce the original file from Circle Officer, Ranchi regarding authorization.

From perusal of the counter-affidavit, it appears that the Circle Officer has inquired the matter by the concerned Revenue Karamchari as well as the Circle Inspector (Town Anchal), Ranchi and after examining the revenue records, it has been found that the land of Mouza-Ranchi, Thana No. 205, Khata No. 33, Plot No. 591, Area- 1.13 acres stands recorded in the name of Chingia Oraon, son of Joto Oraon in the revisional survey of rights. The Jamabandi of the land of Mouza-Ranchi, Thana No. 205, Khata No. 33, Plot No. 591, Area – 34 Kathas stands running in the name of Ajay Maroo, son of Late Sita Ram Maroo and Rakesh Doshi, son of Navin Chandra Doshi, in the Register-II, Volume-4 at page no. 175.

The averment has been made at para-5 of the counter-affidavit regarding filing of an application under Section 71(A) of the CNT Act, 1908 before the Special Officer, Scheduled Area Regulation, Ranchi in the year 1983 seeking 49 ½ decimals of land in Plot no. 591, Khata No. 33 on the ground that the land in favour of Sk. Rajid Mian was done in contravention of CNT Act, 1908. SAR Case No. 83/1983-84 was preferred before the learned Special Officer, Scheduled Area Regulation, Ranchi, whereby the petition has been rejected vide order dated 18.01.1984.

Thereafter, Koka Oraon and Mangra Oraon filed a writ petition before the Hon'ble Patna High Court, Ranchi Bench as C.W.J.C. No. 1735/2000 (R), which was allowed in terms of order dated 21.12.2001 by Coordinate Bench of this Court (M.Y. Eqbal, J.) and remanded the case to the court of Additional Collector, Ranchi and disposed of the appeal on merits.

Subsequently, Koka Oraon and Mangra Oraon filed an appeal before the Additional Collector, Ranchi vide S.A.R. Case No. 06R15 of 1984-85 against the order dated 18.01.1984, which was too dismissed on 01.04.2002. Further, Koka Oraon and Mangra Oraon filed a revision petition before the Commissioner, South Chotanagpur Division, Ranchi vide Ranchi S.A.R. Revision No. 42 of 2002, which was rejected by the Commissioner in terms of order dated 21.12.2004. It has further been stated that after death of Sk. Rajid Mian, his legal heirs namely, M. Ansari along with nine others sold 49 ½ kathas of land in R.S. Plot No. 591A and 591B to M/s S.K. Enterprises vide Registered Sale Deed No. 2585 dated 04.03.1985 and handed over the possession of the same. M/s S.K. Enterprises got the name mutated in the revenue records vide Mutation Case No. 172R27 of 1985-86 and paid rent to the State of Bihar, now State of Jharkhand. Subsequently, in the said Plot No. 591 for the 37 ½ kathas land, a registered agreement on sale dated 10.11.2005 was executed between (i) Haji Muslim Ansari (ii) Abdul Mannan and (iii) Md. Nizam Tangla and Express Residency. It has been further stated that a registered Deed of Sale No. 13710 dated 23.12.2003 for Plot No. 591 and Sub-Plot No. 591A and 591B of 37 ½ Kathas was executed between M/s S.K. Enterprises acting through its partner (i) Shree Raj Kishore Prasad (ii) Shyam Kishore and (iii) Sanchita Devi and (i) Ajay Maroo and (ii) Rakesh Doshi, both Directors of Express Residency Limited. Further a registered deed of sale no. 19562 dated 29.11.2008 for Sub-Plot No. 591A-1 within Khata No. 33 of 3 kathas 8 chhatak (within plot no. 591) was executed between M/s S.K. Enterprises acting through its partner (i) Shree Raj Kishore Prasad (ii) Shyam Kishore and (iii) Sanchita Devi and Rahul Maroo, Director of Express Residency.

The Circle Officer has categorically stated at para-5 in page no.

12 of the counter-affidavit that **it could not be ascertained whether the said documents are genuine or not** ? However, it has been stated that no action for cancellation of the Jamabandi of the land of Mouza-Ranchi, Khata No. 33, Plot No. 591, Area-34 kathas, standing in the name of Ajay Maroo, son of Sita Ram Maroo and Rakesh Doshi, son of Navin Chandra Doshi has been taken.

Accordingly, this Court is of the opinion that the counter-affidavit filed by the Circle Officer, Town Circle, Ranchi is an evasive reply, not based on authenticated documents, seems to be more protective in nature for himself, than to assist this Court by filing proper counter-affidavit, as such, this Court rejects the counter-affidavit filed by the Circle Officer, Town Circle, Ranchi.

The Chief Secretary, Government of Jharkhand is directed to issue necessary guidelines to all the Circle Officers in the State of Jharkhand, that they should give correct counter-affidavit on behalf of the State after having duly approved by the competent authority and designation of the competent authority must be mentioned in the counter-affidavit.

Under the aforesaid circumstances, this Court directs the learned Additional Chief Secretary, Government of Jharkhand, being the Principal Secretary, Revenue and Land Reforms Department, Government of Jharkhand to file detail counter affidavit, in person, within a period of four weeks, regarding validity and authenticity of the claim of the petitioner and about the averments made in the writ petition as well as the documents annexed and referred in the writ petition and regarding power of the Sub-Registrar to mention Letter No. 1566 dated 20.08.2018 issued by the Deputy Secretary, Jharkhand Vidhan Sabha (Page No. 46 of the writ petition), after duly approved by the learned Chief Secretary, Government of Jharkhand, Ranchi.

The Deputy Commissioner, Ranchi is further directed to file counter affidavit after detail inquiry about all the documents referred in the aforesaid writ petition from the concerned Department regarding surrender made by the Surrender made by Chinigia Oraon vide Registered Deed of Surrender bearing No. 427 dated 10.02.1939 (entered in Book No. 1, Volume No. 5, at Pages 280 to 281) and

further settlement made by landlord of Village Baralal Kandarpnath Shahdeo vide Registered Deed of Settlement dated 04.08.1939 in favour of Sk. Rojid Mian and also about Kabuliyat Deed No. 2845 dated 07.08.1939 executed by Sk. Rojid Mian and also about Land Acquisition Case No. 02/1966-67, whereby the Government has acquired 33 decimals of land out of 1.15 acres of land in Plot No. 591 under Khata No. 33 after paying compensation to the heirs of Late Sk. Rojid Mian.

The Deputy Commissioner, Ranchi shall also explain that how District Sub-Registrar, Ranchi has made entry in the sale deed of the petitioner, which has been marked as Annexure-1 regarding the letter issued by Jharkhand Vidhan Sabha Secretariat contained in Letter No. 1566 dated 20.08.2018 Kandika-04, whether such things are legal and justified.

The Deputy Commissioner, Ranchi shall also bring on record in his counter-affidavit about the details of total area of land of Mouza-Ranchi, Thana No. 205, Khata No. 33, Plot No. 591, District – Ranchi together with name, possession and nature of the land and also that how much land exists as on today.

The Additional Chief Secretary, Government of Jharkhand, Ranchi and Deputy Commissioner, Ranchi are directed to file affidavit in person within a period of four weeks from today with an explanation of the District Sub Registrar, Ranchi that whether mention of aforesaid letter in the sale deed is in accordance with law and if not, the detail inquiry and verification be made by the concerned authorities in accordance with law.

If the affidavits are not filed within prescribed time, the affidavits thereafter shall be taken on record after payment of cost of Rs. 25,000/- each by the concerned respondents as earlier Coordinate Bench of this Court has directed the respondent State to file counter affidavit on 11.10.2018 and since the matter is pending because of the State.

Office is directed to inform respondent nos. 8 & 9 of this case, as today nobody appears on behalf of respondent nos. 8 & 9 on repeated calls.

Put up this case after four weeks.

In the meantime, parties are directed to verify the pagination.

Let a copy of this order be communicated to the learned Chief Secretary, Government of Jharkhand, Ranchi, the Additional Chief Secretary, Revenue and Land Reforms Department, Government of Jharkhand, Ranchi, the Secretary, Jharkhand Vidhan Sabha, Ranchi, the Deputy Commissioner, Ranchi, the District Sub-Registrar, Ranchi through FAX by tomorrow.

(Kailash Prasad Deo, J.)

Sunil/-