

IN THE HIGH COURT OF JHARKHAND AT RANCHI

**L.P.A. No. 413 of 2024**

Ganesh Burman @ Ganesh Poddar, aged about 57 years, son of Sri Mahadev Poddar, resident of Village- Choukunda, P.O.- TK Gram, P.S.- Fatehpur, District- Jamtara. ... .. Appellant

Versus

1. The State of Jharkhand
2. The Circle Officer, Fatehpur, P.O. & P.S.- Fatehpur, Distt.- Fatehpur
3. The Deputy Commissioner, Jamtara, P.O. & P.S.- Jamtara, District- Jamtara
4. The Secretary of Building Construction Department, Government of Jharkhand, Project Bhawan, Dhurwa, P.O. & P.S.- Dhurwa, District- Ranchi ... .. Respondents

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**CORAM: HON'BLE THE CHIEF JUSTICE  
HON'BLE MR. JUSTICE DEEPAK ROSHAN**

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For the Appellant : Mr. Shresth Gautam , Advocate  
Mr. Rahul Anand, Advocate  
Mr. Yogendra Yadav, Advocate  
Mr. Himanshu Harsh, Advocate  
For the Respondents: Mr. Aditya Kumar, A.C. to Sr. S.C.-I  
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**05/Dated: 28.01.2025**

**M.S. Ramachandra Rao, C.J.**(Oral)

- 1) This Letters Patent Appeal is preferred against the judgment dt. 13.2.2024 of the learned Single Judge dismissing the appellant's writ petition.
- 2) In the writ petition, the appellant had challenged the memo no. 880 dt. 24.12.2019, memo no. 34 dt. 17.1.2020 and memo no. 412 dt. 9.7.2020 whereby the respondents had asked the appellant to vacate property bearing Khata No. 65, Plot No. 208 of Mauza Choukunda, P.O.- TK Gram, P.S.- Fatehpur, District- Jamtara.
- 3) It was the contention of the appellant in the writ petition that the said land was granted to his grandfather, namely, Jagdish Prasad Sah under the Bhoodan Yagna Scheme by the Bihar Bhoodan Yagna Committee and to that effect a donation certificate bearing certificate No. 101831 dt. 28.8.1957 was issued in the name of his grandfather. Copy of the same was filed as Annexure-1 in the writ petition.

- 4) It was further contended by the appellant that after the land was donated, his grandfather applied for mutation which was registered as Mutation Case No. 21/1962-63 and the mutation was allowed by the Court of the Circle Officer, Kundahit and necessary entries were made in Register-II and a rent of Rs.0.59 Paise was also fixed towards the said land. The said mutation order was filed as Annexure- 2 to the writ petition.
- 5) It was contended that thereafter the grandfather of the appellant built a kacha house on the land and started living there and cultivating the land. Appellant has also filed rent receipts issued as Annexure-3 as evidence of his possession of the land and cultivation of the same which had been issued by the Bhoodan Yagna Board.
- 6) On 24.12.2019 the Circle Officer, Fatehpur issued Annexure-4, eviction notice to the appellant asking him to vacate the land within 15 days.
- 7) Thereafter the appellant made a detailed representation before the said Officer explaining that his ancestor was the lawful owner of the land and that it was granted in 1957 under the Bihar Bhoodan Yagna Act, 1954 and later mutation was also done and rent was also fixed and was being paid. Annexure-5 is the said representation.
- 8) Thereafter on 17.1.2020, an eviction notice was issued by the Circle Officer, Fatehpur (which was filed as Annexure-6) asking appellant to vacate the land.
- 9) In March 2020, according to the appellant, the respondents started construction work over the land, but due to pandemic situation and lock-down the construction was got stopped.

10) On 30.6.2020 appellant made a representation to the Deputy Commissioner, Jamtara reiterating that he is the lawful owner of the land and stating the circumstances under which he inherited the land from his grandfather who had been donated the said land by the Bhoodan Yagna Board and also complaining that the respondents were forcibly carrying out constructions over the land and asked him to stop the said work.

11) Thereafter, it appears that the construction work again commenced on 2.7.2020.

12) In the meantime on 9.7.2020 the Circle Officer, Fatehpur issued a 3<sup>rd</sup> eviction notice directing the appellant to again vacate the land within ten days.

13) These eviction notices were impugned in the writ petition and it was specifically contended that these notices had no backing of law and the Circle Officer had no jurisdiction to evict the appellant.

14) The appellant then filed writ petition being W.P. (C) No. 1979 of 2020 before this Court and complained about the inaction of the respondents to his representation.

15) This Court on 29.7.2020 directed the respondents to pass a reasoned and speaking order after giving him an opportunity. The writ petition was kept pending. Thereafter the present impugned order dated 6.8.2020 was passed.

The order dt.6.8.2020 reads as under:

“अभिलेख उपस्थापित।

06-08-20

वादी उपस्थिति। वादी द्वारा माननीय उच्च न्यायालय, झारखण्ड राँची के समक्ष दायर वाद सं०- WP(C) No. 1979/2020 पर दिनांक 29.07.2020 पर पारित आदेश की प्रति संलग्न करते हुए निर्माण कार्य रोकने हेतु आवेदन समर्पित किया। साथ ही वादी को सुना। पूर्व दाखिल कागजात के अतिरिक्त अन्य साक्ष्य प्रस्तुत नहीं किया। वाद से संबंधित विषय पर चर्चा के उपरांत निम्न आदेश पारित किया जाता है:

यह वाद अतिक्रमण से संबंधित मामला है। मौजा चौकुन्दा के अनावादी खाता सं०-65, दाग सं०-208, कुल रकवा-28.00 एकड़, किस्म - पुरातन पतित भूमि के अंश रकवा-2.00 भूखंड पर श्री

गणेश पोद्दार व वर्मन, ग्राम-चौकुण्डा द्वारा चाहरदिवारी निर्माण किये जाने पर संबंधित राजस्व उपनिरीक्षक द्वारा आवेदन समर्पित करते हुए अतिक्रमण करने की सूचना उपलब्ध कराया गया। उक्त भूमि का पूर्व से किसी भी प्रकार का भौतिक परिवर्तन नहीं किया गया है, अर्थात् भूखण्ड वर्तमान में भी प्राकृतिक स्वरूप में ही विद्यमान है।

प्राप्त सूचना के आधार पर श्री गणेश ओद्दार व बर्मन, पिता-स्व० जगदीश प्रसाद साव को नोटिस किया गया। वादी श्री बर्मन द्वारा डाक के माध्यम से उक्त भूखण्ड पर अपने दादा स्व० जगदीश प्रसाद साव को बिहार भूदान यज्ञ समिति द्वारा प्रदत्त पट्टा एवं लगान रसीद की छायाप्रति साक्ष्य स्वरूप समर्पित करते हुए उक्त भूखण्ड पर दावा प्रस्तुत किया गया। जबकि वर्तमान में भी वर्णित स्थल प्राकृतिक स्वरूप में है।

श्री बर्मन द्वारा प्रस्तुत कागजातों का कार्यालय में उपलब्ध दस्तावेज से मिलान करने पर मेल नहीं होता है। आचार्य विनोभा भावे/ बिहार भूदान यज्ञ समिति को बिहार भूदान यज्ञ अधिनियम, 1954 के नियम-3 के अनुसार भू-स्वामियों से प्राप्त दानस्वरूप भूमि पर भूमिहीन को पट्टा निर्गत किया जाता है एवं तदनुसार दाखिल-खारिज की कार्रवाई पूर्ण करते हुए लगान निर्धारित किया जाता है। राजस्व उप निरीक्षक के जाँच प्रतिवेदन के अनुसार उक्त भूखंड, मौजा-चौकुन्दा के किसी भी रैयत के Inherit भूमि नहीं है। श्री बर्मन व वंशज मौजा-चौकुन्दा के मूल रैयत नहीं हैं। साथ ही अधिनियम के धारा-19 के अनुसार कार्रवाई सुनिश्चित कर वांछित सूचनाएँ, जो अंचल कार्यालय, फतेहपुर में संधारित संबंधित पंजी-॥ में अंकित रहना चाहिए, जो अंकित नहीं है।

साथ ही श्री बर्मन द्वारा प्रस्तुत 2015 में निर्गत लगान रसीद का क्रमांक सं० अंचल कार्यालय, फतेहपुर में संधारित लगान रसीद निर्गत पंजी के क्रमांक से मेल नहीं खाता। अर्थात् नियमित रूप से लगान देने की बात मिथ्या है। वादी द्वारा फर्जी कागजात समर्पित किया है। इस प्रकार श्री बर्मन व उनके पूर्वज को बिहार भू-दान समिति द्वारा प्रदत्त पट्टा की प्राप्ति की पूर्ष्टि नहीं होती है।

अतएव उपर्युक्त तथ्यों के आधार पर वादी श्री वर्मन व पौद्दार का उक्त भूखण्ड पर दावा खरिज किया जाता है। अर्थात् श्री बर्मन व पौद्दार द्वारा उक्त भूखण्ड पर अतिक्रमण किया गया है, जिसे तत्काल प्रभाव से उच्छेद किया जाता है।

लेखापित  
अंचल अधिकारी फतेहपुर  
अंचल

अंचल अधिकारी  
फतेहपुर  
06.08.2020”.

**16)** The impugned order passed by the Circle Officer, Fatehpur clearly indicates that the appellant was in possession of the subject land and had even constructed a boundary wall therein but it is contended that the same is an ‘encroachment’.

**17)** Art. 300 A of the Constitution of India states that no person shall be deprived of his property save by authority of law.

**18)** However no provision of law is quoted in the order dt.6.8.2020 which empowers the Circle Officer, Fatehpur to determine the title to the land in the occupation of the appellant or to evict the appellant. the doctrine of separation of powers, precludes the Circle officer, who is a

member of the Executive branch of the Government from exercising judicial powers.

19) Thus his order is without jurisdiction.

20) We are also of the opinion that the Circle Officer cannot unilaterally determine the title of the government to the subject land and only the civil court can do.

21) In **Government of Andhra Pradesh Vs. Thummala Krishna Rao and Anr.**<sup>1</sup>, the Supreme Court has held that if there is a bonafide dispute regarding title of the government to any property, government cannot take a unilateral decision in its own favour that the property belongs to it, and on the basis of such a decision, summarily evict somebody who is in possession of the property.

22) This was reiterated in **Kaikhosrou (Chick) Kavasji Framji v. Union of India**<sup>2</sup>, in the following terms:

*“The question involved in **Express Newspapers case**<sup>3</sup> in relation to remedy of the State qua person in possession of the land was again considered by a Bench consisting of three Judges in **State of Rajasthan v. Padmavati Devi**<sup>4</sup>. In that case also, the question arose as to whether the State Government can take recourse to a summary remedy of eviction of a person under the State Revenue laws from the land when such person raises a bona fide dispute about his right to remain in occupation over such land. Their Lordship held that in such a situation, the summary remedy to evict such person under the Act could not be resorted to.*

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<sup>1</sup> (1982) 2 SCC 134

<sup>2</sup> (2019) 20 SCC 705, at page 720

<sup>3</sup> (1986) 1 SCC 133

<sup>4</sup> (1995) Supp 2 SCC 290

48. S.C. Agrawal, J. speaking for the Bench held in para 6 in the following words: (**Padmavati Devi case**, SCC pp. 292-93)

“6. As noticed earlier Section 91 of the Act prescribes a summary procedure for eviction of a person who is found to be in unauthorised occupation of government land. The said provisions cannot be invoked in a case where the person in occupation raises bona fide dispute about his right to remain in occupation over the land. Dealing with similar provisions contained in Section 6 of the Andhra Pradesh Land Encroachment Act, 1945, this Court in **State of A.P. v. Thummala Krishna Rao** has laid down that the summary remedy for eviction provided by Section 6 of the said Act could be resorted to by the Government only against persons who are in unauthorised occupation of any land which is the property of the Government and if the person in occupation has a bona fide claim to litigate he could not be ejected save by the due process of law and that the summary remedy prescribed by Section 6 was not the kind of legal process which is suited to an adjudication of complicated questions of title. For the same reasons, it can be said that summary remedy available under Section 91 of the Act is not the legal process which is suited for adjudication of complicated questions of title where the person sought to be evicted as an unauthorised occupant makes a bona fide claim regarding his right to be in possession. In such a case the proper course is to have the matter adjudicated by the ordinary courts of law.”

This view was reiterated in **State of U.P. v. Zia Khan**<sup>5</sup>.”

**23)** Admittedly, the possession of the appellant is long standing as evidenced by the mutation order given by the revenue authorities in his grandfather’s favour in 1962-63. So there is a Bonafide dispute of title. Therefore summary eviction of appellant could not have been done without following due process of law.

**24)** The State should file a Civil Suit for declaration of title and recovery of possession and then only evict the appellant. The learned Single Judge clearly erred in asking appellant to go the Civil Court and get back possession.

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<sup>5</sup> (1998) 8 SCC 483

**25)** The Circle Officer then referred to certain documents which he claims to be in his possession, in his office. He also relied on an investigation report of a Revenue Sub Inspector and opined that the subject land is not inherited land of any raiyats. This finding cannot be sustained since there was a mutation order in favour of the appellant's grandfather issued by the revenue officials in 1963. It is also not the Circle Officer's case that the Revenue Sub Inspector had given any notice to appellant before making his investigation. Material collected behind appellant's back cannot be used to his prejudice.

**26)** The Circle officer also held in the impugned order that the appellant and his descendants were not the original raiyats of the land. On what basis he came to this conclusion is not stated there.

**27)** He also opined that certain rent receipts produced by the appellant did not match the number of rent receipt register maintained in the Zonal office, Fatehpur and that the appellant had submitted fake documents.

**28)** We fail to understand how the Circle Officer could determine whether a document is fake or not as he is not conferred the power of the civil court to decide the genuineness of document or whether it is a forgery.

**29)** For all the aforesaid reasons, the appeal is allowed with cost of Rs. 1,00,000/- (Rs. One Lakh only) to be paid by the 1<sup>st</sup> respondent to the appellant; the impugned proceedings dt. 24.12.2019, 17.1.2020, 9.7.2020 and 6.8.2020 are all set-aside and declared to be proceedings issued without jurisdiction and null and void; the respondents are directed to put back the appellant in possession of the property, if he has been dispossessed, within one week from today. Disciplinary action be

initiated against the 2<sup>nd</sup> respondent by the 1<sup>st</sup> respondent for acting highhandedly without any jurisdiction for evicting the appellant.

**30)** Pending Interlocutory Application, if any, stand disposed of.

**(M.S. Ramachandra Rao, C.J.)**

**(Deepak Roshan, J.)**

Sharda/MM