IN THE HIGH COURT OF JHARKHAND AT RANCHI
W.P.(C) No. 2628 of 2011

Rajendra Prasad Sahu @ Rajendra Prasad Shaundik
…… Petitioner

Versus

1. The State of Jharkhand
2. The Secretary, Department of Revenue & Land Reforms, Government of Jharkhand, Ranchi
3. The Deputy Commissioner, Chatra
4. The Additional Collector, Chatra
5. The Sub Divisional Officer, Chatra
6. The Land Reforms Deputy Collector, Chatra
7. The Circle Officer, Chatra …… Respondents

CORAM: HON'BLE MR. JUSTICE SANJAY KUMAR DWIVEDI

For the Petitioner : Mr. Ayush Aditya, Advocate
Mr. Akash Deep, Advocate

For the State : Mr. Manoj Kumar, G.A.-III
Mr. Rakesh Kr. Roy, A.C. to G.A.-III

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C.A.V. On:- 14/06/2024 **Pronounced on:- 27/06/2024**

This matter was assigned to this Bench and accordingly, this matter was heard.

2. Heard Mr. Ayush Aditya, learned counsel for the petitioner and Mr. Manoj Kumar, learned counsel for the State.

3. Prayer in this petition is made for declaring that the respondent authorities have got no jurisdiction or authority under the law to forcibly and illegally demolish/bulldoze the building premises of the petitioner, which were situated on the raiyati lands of the petitioner comprised within Plot No. 296 under Khata No. 36 measuring an area of 5 decimal of Mouza - Chaur, District - Chatra. Further prayer is made for order or direction holding that the demolition/bulldozing the five shops of the petitioner alongwith six shutters on 29.4.2011 without initiating any proceeding and without there being any decree or order of any court of competent jurisdiction or authority constituted under any law was wholly illegal, arbitrary, unconstitutional and

against Articles 14 and 300A of the Constitution of India. Further prayer is made for issuance of order or direction upon the respondents not to interfere with the possession of the petitioner over the said properties and to desist/refrain from acting in a manner unknown to law and lastly it has been prayed for issuance of direction upon the respondents to suitably compensate petitioner for the illegal, arbitrary and unconstitutional action of the respondents in demolishing the five shops fitted with six shutters without following the due procedure provided by law.

4. Mr. Ayush Aditya, learned counsel appearing on behalf of the petitioner submitted that by terms of registered sale deed dated 5.1.1973 the petitioner purchased 5 decimal of lands comprised within Plot No. 296 under Khata No. 36 of Village - Chaur, Thana No. 190 in the district of Chatra. He further submitted that the aforesaid lands were recorded as Gair Mazuruwa Khas in the survey record of rights. The ex-landlord in exercise of its rights granted riayati settlement in favour of one Rajendra Prasad Singh in the year 1948 and said Rajendra Prasad Singh accordingly came in possession as settlee from the ex-intermediary and paid rent to the ex-landlord and upon vesting the Jamabandi was opened in his name. He submitted that the said Rajendra Prasad Singh continued as a raiyat under the erstwhile State of Bihar on payment of rent against the grant of rent receipts. He further submitted that after purchasing 5 decimal of land as aforesaid by terms of registered sale deed dated 5.1.1973 the petitioner applied for mutation of his name and mutation was allowed in favour of the petitioner in Mutation Case No. 9/1973-74. He further submitted that the mutation order is brought on record contained in annexure-2. He drawn the attention of the court to annexure-3 which is rent receipt regularly issued in favour of the petitioner. He further

submitted without any authority or jurisdiction, suddenly the Sub Divisional Officer, Chatra, by terms of order dated 26.8.1988 cancelled the mutation in favour of the petitioner. Thereafter, the petitioner thereupon filed an appeal before the Additional Collector, Hazaribagh being Appeal No. 9/1989 and by order dated 24.10.1990 the Additional Collector, Hazaribagh allowed the appeal and set the order dated 26.8.1988 passed by the Sub Divisional Officer, Chatra contained in annexure-4 of the writ petition. He submitted that the petitioner again started paying rent against the grant of rent receipts and continued in possession and in the year 1997 made a pucca construction of five shop rooms fitted with shutters. He submitted that one shop room was fitted with two shutters. Thus the said construction were made by the petitioner on the basis of building plan sanctioned by Chatra Municipality. He drawn the attention of the Court to the sanctioned plan contained in Annexure-5. According to him the petitioner's name was also mutated in the record of Chatra Municipality and the petitioner all along paid holding tax in respect of the said building being Holding No. 441 within Ward No. 3 of Chatra Municipality. He submitted that in the year 2005 the Circle Officer, Chatra stopped issuing rent receipt, although the petitioner had gone to deposit the rent in the year 2005-06 and since the rent against the grant of rent receipts had been realised till 2004-05, the petitioner made a representation dated 7.12.2005 to the Deputy Commissioner, Chatra with copy to the Circle Officer, Chatra requesting for directing the Circle Officer, Chatra to accept rent and issue rent receipt in respect of the aforesaid properties. Thereafter, the petitioner received a notice dated 18.2.2006 from the Court of the Circle Officer, Chatra in Misc. Case No. 45/2005-06 calling upon the petitioner to appear with all documents relating to the concerned plot contained in

annexure-6. He submitted that the petitioner appeared with all documents including the previous orders including the order passed in Mutation Case No. 9/73-74 and the order dated 24.4.1990 passed by the Additional Collector, Chatra annexed with the petition. He further submitted that despite the same, by order dated 23.5.2006 the Circle Officer recommended for cancellation of running Jamabandi in favour of the petitioner and the records were sent to the Sub Divisional Officer, Chatra through the Land Reforms Deputy Collector, Chatra. He submitted that thereafter the petitioner was forced to move before this Court by filing writ petition being W.P.(C) No. 4426/2006 challenging the order of the Circle Officer dated 23.5.2006 recommending for cancelling of running Jamabandi of the petitioner. By way of drawing the attention to the order dated 21.11.2006 passed in W.P. (C) No. 4426 of 2006 he submitted that the writ petition was disposed of observing that since no final order has been passed, therefore, it was not desirable to interfere at this stage. He further submitted that the petitioner contested the matter before the Land Reforms Deputy Collector, Chatra in Misc Case No. 1/2007-08 which was registered on the basis of recommendation of the Circle Officer as aforesaid and the Land Reforms Deputy Collector, Chatra by detailed order 12.6.2007 set aside the order of the Circle Officer, holding that the Jamabandi of the petitioner shall continue and the aggrieved party, if any, may seek remedy before the civil court contained in Annexure-8. He submitted that in order dated 12.06.2007 passed in Misc. Case No. 1/2007-8 the entire history in respect of the lands in question was considered by the Land Reforms Deputy Collector, Chatra and it was also held that the petitioner's name had been duly mutated in Mutation Case No. 9/73-74 thereafter rent was realised for 14 years till 1988 and again in 1988 the

Circle Officer, Chatra passed order dated 26.9.1988 cancelling the Jamabandi which was set aside by the Additional Collector in Appeal No. 9/88-89 by terms of order dated 24.4.1990 and again rent was realised till 2005. However, despite the aforesaid, fresh proceeding was initiated at the instance of the Circle Officer, Chatra in 2005-06 being Misc. Case No. 45/2005-06 in which the Circle Officer again recommended for cancellation of Jamabandi. He submitted that the revenue authorities cannot cancel a running Jamabandi in favour of settlee from the ex-intermediary, particularly when the mutation was allowed in favour of the petitioner in 1973 which has continued for the last more than 30 years and in the above background he submitted that the petitioner claims title on the basis of registered sale deed dated 5.1.1973, mutation in the records of Chatra Municipality, construction on the basis of sanctioned building plan, payment of municipal taxes and at least two orders of the Additional Collector, Chatra dated 24.11.1990 and Land Reforms Deputy Collector dated 12.6.2007 contained in annexure 4 and 8 respectively in which the petitioner's raiyati right has been accepted. He submitted that on 29.4.2011 the district administration appeared with bulldozer and demolished the aforesaid shops of the petitioner which had been constructed on the raiyati lands of the petitioner. He submitted that this has happened in absence of any proceeding under law initiated against the petitioner. He further submitted that there is no order or decree of any court of competent jurisdiction or authority constituted under any law authorising the respondents to demolish/bulldoze the constructions made by the petitioner over his raiayti lands. He submitted that the petitioner was never given any notice nor any proceeding was ever initiated against the petitioner and in absence of any proceeding this has happened. He further submitted that the cost of the said

constructions was more than Rs. 5 Lakhs. The said constructions were pucca construction and were made on the basis of sanctioned building plan upon the raiyati lands of the petitioner and several orders were passed in favour of the petitioner inspite of that arbitrarily without any show cause and proceeding this has occurred. He relied in the case of ***"Masonic Lodge Vs. State of Jharkhand" 2001 1 JCR 108***. He referred to para 8 to 12 which reads as undee:-

> *"8. 1 fail to understand as to under what authority of law the respondents, namely, the District Administration, forcibly put a lock in the premises and dispossessed the petitioner by opening a revenue office. The highhandedness of the respondents and misuse and abuse of power for extraneous reasons has exposed them and proved that the authorities are not following the rule of law. The Administrative action must be exercised objectively, rationally, fairly and non- arbitrarily. It should not be taken in due haste disregarding the procedures nor it should be ultra vires the powers conferred by the Statute. In this connection reference may be made to a decision of the Apex Court in the case of Bangalore Medical Trust v. B.S. Muddappa and Ors., 1991 (4) SCC 54.*
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> *9. In the case of Krishna Ram Mahale v. Shobha Venkat Rao, AIR 1989 SC 2097, the Apex Court held that it is well settled law in this country that where a person is in settled possession of property, even on the assumption that he had no right to remain on the property, he cannot be dispossessed by the owner of the property except by recourse to law.*
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> *10. In the case of Samir Sobha Sanyal v. Tracks Trade Private Ltd. and Ors., 1996 (4) S1 CC 144, the Apex Court in similar circumstance observed as under:-*
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> *"Even with regard to that we are not impressed with the same. Since the letter of the law should be strictly adhered to, we find that high-handed action taken by respondents 2 and 3 and 4 in having the appellant dispossessed without due process of law, cannot be overlooked nor condoned. The Court cannot blink at their unlawful conduct to dispossess the appellant from the demised property and would say that the status quo be maintained. If the Court gives acceptance to such high-handed action, there will be no respect for rule of law and unlawful elements would take hold of the due process of law for ransom and it would be a field day for anarchy. Due process of law would be put to ridicule in the estimate of the law abiding citizens and rule of law would remain a mortuary."*
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> *11. Having regard to the facts of the case I am fully satisfied that the action of the respondents was illegal, arbitrary and unjustified inasmuch as they have no authority under the law to forcefully dispossess the petitioner from the property in question. In such circumstance, the respondents are liable to pay compensation and damages to the petitioner for deprivation of property, loss, damages, mental pain and agony.*
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> *12. For all these reasons I allow this application by passing the followings order*
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> *(i) the respondents/District Administration immediately and forthwith within 24 hours shall unlock the premises of Masonic Lodge and hand over the possession of the same to the petitioner.*
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> *(ii) The respondents-State of Jharkhand shall pay a sum of Rs. 25,000/- (twenty five thousand) to the petitioner by way of compensation for the loss, damages and mischief committed by them with the property in question by dispossessing the petitioner from the said property.*

(iii) If the amount of compensation is not paid within two weeks from today the petitioner shall be entitled to execute this order as if it is a decree of a Court of law. Let a copy of this order be immediately communicated by fax by the Registrar of this Court to the Deputy Commissioner, Dhanbad."

5. Relying on the said judgment he submitted that in those case where illegally the house in question was demolished the High Court has directed to restore the original position and the compensation was also allowed. He further relied in the case of **" *Lata Soni Etc. Etc. Vs. Jamshedpur Notified Area Committee" 2002 3 JCR 679 (Jhr).*** He submitted that the jurisdiction of the High Court was considered under Article 226 of the Constitution of India. He referred to para 7 to 10 which are quoted hereinbelow:-

"7. The next question relates to the jurisdiction of the High Court under Article 226 of the Constitution of India to restore possession of the premises and grant of compensation.

The issue relating to grant of relief regarding restoration under a writ jurisdiction, fell for consideration before, a Bench of Patna High Court in the case of Smt. Labanya Ghosh v. State of Bihar, reported in 1983 Bihar LT (Rep) 262. The Court held that the writ petitioners having been dispossessed by an illegal and void order by an authority, in an illegal manner, the possession of the land from which they were evicted, must be restored to them. The High Courts are entitled to mould the relief to meet the peculiar and complicated requirement of this country, governed by rule of law. In the said case, the Court restored the possession of the petitioners over the land under the writ jurisdiction.

Similar issue fell for consideration before the Patna High Court in the case of Smt. Indrawati Devi v. Bulu Ghosh, reported in 1988 BBCJ (HC) 307 "equivalent to AIR 1990 (Patna) 1", wherein the Patna High Court held that the inherent power of the Court are meant to be exercised in such situations where nothing is more demoralising to a law abiding citizen than to be told by the Court that it is helpless in the matter of the affording him any protection even when his adversary has acted with impunity, contrary to all known legal procedures and that too after submitting to the Courts jurisdiction. To tolerate such an injustice would itself amount to perpetrating injustice in its most blatant form.

The Patna High Court in the case of Hindustan Petrolium Corporation v. State of Bihar, as reported in 1996 (2) Pat LJR 621 : (AIR 1996 Pat 163), granted relief of restoration of possession in a case under writ jurisdiction.

In another case of Smt. Manju Devi v. State of Bihar, reported in 1999 (2) Pat LJR 641, Bench of the Patna High Court, while discussing the power conferred under Article 226 of the Constitution of India, held that the rule of law is the very basis of the constitutional system, which cannot be sacrificed on any equitable consideration. Even for a defaulter tenant such mode cannot be allowed to evict him, defies the system of administration of justice under the laws of the land and such relief can be granted. In the said case the possession of the disputed shop was restored by the High Court in a case under Article 226 of the Constitution of India.

Similarly, in the case of Satya Narain Prasad v. State of Bihar, reported in 2000 (2) Pat LJR 36, the Patna High Court held that under Article 226 of the Constitution, although the writ Court does not interfere in a case of

dispossession of an individual, but the Writ Court may interfere where the State/authority is involved, being accused of having forcibly evicted a person by taking advantage of his position.

8. In the case of Priya Brata Maity v. State of West Bengal, reported in AIR 2000 Cal 32, the Court took into account certain actions taken by the Municipal authorities under the Municipal Act, in spite of injunction order passed by the learned Civil Court, and against the provisions of law. The Court held that action to be illegal and held that the statutory authority must exercise its jurisdiction within four corners of the State. In a case where an order has been passed in violation of the order of injunction, the High Court can bring the parties to the same position in exercise of its inherent jurisdiction as if the order of injunction had not been violated. The Court can lake notice of the subsequent events and mould reliefs with a view to shorter litigation.

The Court further held that the right to a shutter being protected under Article 21 of the Constitution of India, a person illegally deprived of therefrom is entitled to be compensated in view of the doctrine of "Constitutional tort. In the said case, the action on the part of the Municipal authorities was held to have suffered from the views of both malice of fact and malice of law."

9. Somewhat similar case fell for consideration before the Supreme Court in the case of Samir Sobhan Sanyal v. Tracks Trade Private Limited, reported in (1996) 4 SCC 144 : (AIR 1996 SC 2102). That was a case where the appellant was evicted without any decree or order of eviction, unlawfully and without any due process of law. The Apex Court held that since the letter of the law should strictly be adhered to high handed action of the party in having the appellant of the said case dispossessed without due process of law, cannot be overlooked nor condoned. The Court cannot blink at their unlawful conduct to dispossess the person from the demised property and would say that the status quo be maintained. If the Court gives acceptance to such high handed action, there will be no respect for rule of law and unlawful elements would be taken hold of the due process of law for ransom and it would be a field day for anarchy. Due process of law would be put to ridicule in the estimate of the law-abiding citizens and rule of law would remain a mortuary. In the said case, the respondents were directed to put the appellant in possession within 24 hours.

In the case of S.R. Ejaz v. T.N. Handloom Weavers Cooperative Society Ltd., reported in (2002) 3 SCC 137 : (AIR 2002 SC 1152), the Supreme Court taking into consideration the plaintiff appellants possession and subsequent forcible dispossession, with the help of workers and local police, without any order of competent Court, having been established, imposed cost of Rs. 50,000/- on the respondents of the said case.

10. From the referred above, it is evident that in a case where an order has been passed in violation of order of any Court or action on the part of the statutory authorities suffers from the views of malice of fact or malice of law the High Court can grant relief of restoration of possession and/or compensation/cost in appropriate cases under Article 226 of the Constitution of India. The second question is accordingly, answered in affirmative and against the appellants.

6. Relying on the above judgment he submitted that the shop of the petitioner was forcibly bulldozed by the district administration without following the procedure of law and in view of that the High Court is having power under Article 226 of the Constitution of India to pass appropriate order.

7. On these grounds, he submitted that the petitioner is still in possession and in view of that the petitioner may be suitably compensated.

8. Mr. Manoj Kumar, learned G.A-III appearing on behalf of the respondent-State resisted the said argument of the learned counsel for the petitioner on the ground that the respondents acted for removing encroachment made by the petitioner on the government land and in view of that this is not arbitrary. He submitted that five acres of land has already been acquired by the Government of Bihar now Jharkhand by land acquired under Declaration No. 03/380 F.R. dated 11.12.1914. He submitted that it is false submission that the land in question has been settled by the Ex-landlord in favour of one Rajendra Prasad Singh in the year, 1948.. He further submitted that the petitioner has no right to purchase the government acquired land. According to him the construction made by the petitioner is bad in view of that this has happened. He submitted that in the counter affidavit dated 21.12.2011 it is disclosed that show cause was issued and the petitioner replied to that. He submitted that L.R.D.C. without considering the facts has allowed the petition in favour of the petitioner which is not desirable in the eye of law. He submitted that disputed question of facts are involved in view of that this Court may not interfere under Article 226 of the Constitution of India.

9. He further submitted that supplementary counter affidavit has been filed on 16.03.2023 wherein it is stated that the said has occurred pursuant to order passed by the High Court in PIL following the order passed by the Hon'ble Supreme Court. It is further disclosed that the matter in question was about 12 years old regarding the official procedure for removal of encroachment adapter or not there is no any document available in the office at present. He further submitted that further supplementary counter affidavit dated 24.01.2024 has been filed pursuant to order passed by this

Court. He submitted that in the said supplementary counter-affidavit it is disclosed that on the recommendation of the Anchal Adhikari regarding cancellation of the Jamabandi illegally running in the name of the petitioner, the hearing was started before the L.R.D.C. in Misc Case No. 1/07-08 and after hearing the L.R.D.C. passed order on 13.06.2007 which is annexure-8. He further submitted that the Additional Collector had no jurisdiction to pass any order in respect of mutation proceeding for opening of demand or cancellation of the same. On these grounds he submitted that the writ petition may kindly be dismissed. He further submitted that there is disputed question of fact and this Court has no jurisdiction to pass any order and that can be only subject matter of the suit. He relied upon the judgement in the case of **" *Sujata Patra Vs. The Vice Chancellor, Utkal University and Others" 2018 SCC Online Ori 418.*** He referred to para 15 and 16 which is quoted hereinbelow:-

> *"**15.** In Raj Kumar Soni v. State of U.P., (2007) 10 SCC 635 the apex Court, following Gadde Venkateswara Rao v. Govt. of A.P., AIR 1966 SC 828 and M.C. Mehta v. U.O.I.,, (1999) 6 SCC 237 : AIR 1999 SC 2583, held that it is not always necessary for the Court to strike down an order merely because the order has been passed in breach of the principles of natural justice. The Court can refuse to exercise its discretion if striking down such an order will result in restoration of another order passed in violation of the principles of natural justice or otherwise not in accordance with law.*
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> ***16.** Keeping in view the law laid down by the apex Court, as discussed above, if a mistake was committed by the authority and on its detection the same was rectified by revision of the result, this Court is of the considered view that no illegality or irregularity has been committed by the authority so as to exercise the extraordinary jurisdiction of the Court by invoking Article 226 of the Constitution of India."*

10. Relying on the above judgment he submitted that if the mistake is rectified no order can be passed by this Court under Article 226 of the Constitution of India. He further relied in the case of **" *Sharda Devi Vs. State of Bihar and Another"(2003) 3 SCC 128***. He referred to para 32 of

the judgment which is quoted hereinbelow:-

> *"**32.** In Collector of Bombay v. Nusserwanji Rattanji Mistri [AIR 1955 SC 298] the decisions in Esufali Salebhai case [ILR (1910) 34 Bom 618 : 12 Bom LR 34] and Aiyavu Pillay case [9 IC 341 : (1911) 2 MWN 367 : 9 MLT 272] were cited with approval. Expressing its entire agreement with the said views, the Court held that when the Government possesses an interest in land which is the subject of acquisition under the Act, that interest is itself outside such acquisition because there can be no question of the Government acquiring what is its own. An investigation into the nature and value of that interest is necessary for determining the compensation payable for the interest outstanding in the claimants but that would not make it the subject of acquisition. In the land acquisition proceedings there is no value of the right of the Government to levy assessment on the lands and there is no award of compensation therefor. It was, therefore, held by a Division Bench of Judicial Commissioners in Mohd. Wajeeh Mirza v. Secy. of State for India in Council [AIR 1921 Oudh 31 : 24 Oudh Cas 197] that the question of title arising between the Government and another claimant cannot be settled by the Judge in a reference under Section 18 of the Act. When the Government itself claims to be the owner of the land, there can be no question of its acquisition and the provisions of the Land Acquisition Act cannot be applicable. In our opinion the statement of law so made by the learned Judicial Commissioners is correct."*

11. Relying on the above judgment he submitted that when the Government possesses an interest in land and the said interest is not outsided for acquisition of land, in view of that writ petition may be dismissed. He further relied upon the judgment in the case of ***"Bhimandas Ambwani Vs. Delhi Power Company Limited"(2013) 14 SCC 195***. He referred to para 13 and 14 which is quoted hereinbelow:-

> ***13.** This Court dealt with a similar case in Tukaram Kana Joshi v. Maharashtra Industrial Development Corpn. [(2013) 1 SCC 353 : (2013) 1 SCC (Civ) 491] and held : (SCC pp. 359 & 361, paras 11 & 17-18)*
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> *"11. … There is a distinction, a true and concrete distinction, between the principle of 'eminent domain' and 'police power' of the State. Under certain circumstances, the police power of the State may be used temporarily, to take possession of property but the present case clearly shows that neither of the said powers have been exercised. A question then arises with respect to the authority or power under which the State entered upon the land. It is evident that the act of the State amounts to encroachment, in exercise of 'absolute power' which in common parlance is also called abuse of power or use of muscle power. To further clarify this position, it must be noted that the authorities have treated the landowner as a 'subject' of medieval India, but not as a 'citizen' under our Constitution.*
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> *17. Depriving the appellants of their immovable properties was a clear violation of Article 21 of the Constitution. In a welfare State, statutory authorities are bound, not only to pay adequate compensation, but there is also a legal obligation upon them to rehabilitate such persons. The non-fulfilment of their obligations would tantamount to forcing the said uprooted persons to become vagabonds or to indulge in anti-national activities as such*

sentiments would be born in them on account of such ill-treatment. Therefore, it is not permissible for any welfare State to uproot a person and deprive him of his fundamental/constitutional/human rights, under the garb of industrial development.

18. The appellants have been deprived of their legitimate dues for about half a century. In such a fact situation, we fail to understand for which class of citizens the Constitution provides guarantees and rights in this regard and what is the exact percentage of the citizens of this country, to whom constitutional/statutory benefits are accorded, in accordance with the law.

***14** The instant case is squarely covered by the aforesaid judgment in Tukaram case [(2013) 1 SCC 353 : (2013) 1 SCC (Civ) 491] and thus, entitled for restoration of possession of the land in dispute. However, considering the fact that the possession of the land was taken over about half a century ago and stood completely developed as Ms Ahlawat, learned counsel has submitted that a full-fledged residential colony of the employees of DESU has been constructed thereon, therefore, it would be difficult for Respondent 1 to restore the possession. In such a fact situation, the only option left out to the respondents is to make the award treating Section 4 notification as, on this date i.e. 12-2-2013 and we direct the Land Acquisition Collector to make the award after hearing the parties within a period of four months from today. For that purpose, the parties are directed to appear before the Land Acquisition Collector c/o the Deputy Commissioner, South M.B. Road, Saket, New Delhi on 26-2-2013. The appellants is at liberty to file a reference under Section 18 of the Act and to pursue the remedies available to him under the Act. Needless to say that the appellants shall be entitled to all statutory benefits."*

12. Relying on the above judgment he submitted that the writ petition may be dismissed. With regard to possession of property he further relied upon the judgment in the case "***Banda Development Authority, Banda Vs. Motilal Agarwal and others"(2011) 5 SCC 394***. He referred to para 37 of the said judgment which is quoted hereinbelow:-

"***37.** The principles which can be culled out from the abovenoted judgments are:*

(i) No hard-and-fast rule can be laid down as to what act would constitute taking of possession of the acquired land.

(ii) If the acquired land is vacant, the act of the State authority concerned to go to the spot and prepare a panchnama will ordinarily be treated as sufficient to constitute taking of possession.

(iii) If crop is standing on the acquired land or building/structure exists, mere going on the spot by the authority concerned will, by itself, be not sufficient for taking possession. Ordinarily, in such cases, the authority concerned will have to give notice to the occupier of the building/structure or the person who has cultivated the land and take possession in the presence of independent witnesses and get their signatures on the panchnama. Of course, refusal of the owner of the land or building/structure may not lead to an inference that the possession of the acquired land has not been taken.

(iv) If the acquisition is of a large tract of land, it may not be possible for the acquiring/designated authority to take physical possession of each and every parcel of the land and it will be sufficient that symbolic possession is taken by preparing appropriate document in the presence of independent witnesses and getting their signatures on such document.

(v) If beneficiary of the acquisition is an agency/instrumentality of the State and 80% of the total compensation is deposited in terms of Section 17(3-A) and substantial portion of the acquired land has been utilised in furtherance of the particular public purpose, then the court may reasonably presume that possession of the acquired land has been taken."

13. Relying on the above judgment he submitted that in the light of that judgment the facts of the present case is covered in view of that this writ petition is fit to be dismissed.

14. On these grounds he submitted that the writ petition may kindly be dismissed.

15. In view of above submissions of the learned counsel for the parties the Court has gone through he materials on record and finds that Annexure-1 is a document dated 5.1.1973 which is registered sale deed in favour of the petitioner with regard to purchase of 5 decimal of lands situated within Plot No. 296 under Khata No. 36 of Village - Chaur, Thana No. 190 in the district of Chatra. Annexure-2 is the document which suggests that the said land was mutated in favour of the petitioner in Mutation Case No. 9/1973-74 and the rent receipt is contained in Annexure-3. The cancellation order of mutation dated 26.8.1988 was challenged by the petitioner before the Additional Collector, Hazaribagh in Appeal No. 9/1989 and the Additional Collector, Hazaribagh has set the order dated 26.8.1988 passed by the Sub Divisional Officer, Chatra and the petitioner was again started paying the rent thereafter. The name of the petitioner was recorded in Chatra Municipality being Holding No. 441 within Ward No. 3. When the authority stopped issuing the rent receipt petitioner made a representation dated 7.12.2005 to the Deputy Commissioner, Chatra thereafter, the petitioner

received a notice dated 18.2.2006 from the Court of the Circle Officer, Chatra in Misc. Case No. 45/2005-06 calling upon the petitioner to appear with all documents relating to the concerned plot and inspite of that by order dated 23.5.2006 the Circle Officer recommended for cancellation of running Jamabandi in favour of the petitioner thereafter the petitioner moved before this Court by filing writ petition being W.P.(C) No. 4426/2006 which was disposed of by order dated 21.11.2006 considering that since no final order has been passed, therefore, it was not desirable to interfere at this stage. The petitioner contested the matter before the Land Reforms Deputy Collector, Chatra in Misc Case No. 1/2007-08 which was registered on the basis of recommendation of the Circle Officer. The Land Reforms Deputy Collector, Chatra by order 12.6.2007 set aside the order of the Circle Officer, holding that the Jamabandi of the petitioner shall continue and the aggrieved party, if any, may seek remedy before the civil court contained in Annexure-8. In the aforesaid order the Land Reforms Deputy Collector has discussed the entire facts which has been noted above in the argument of the learned counsel for the petitioner and learned counsel for the respondent State. Thus, it is crystal clear that how the land in question has come in the possession of the petitioner. Not even a single chit of paper was filed by the State in the counter affidavit as well as supplementary counter affidavit filed on the direction of this Court later on to the effect that the said land was acquired by the government or it was in the possession of the Government.

16. The supplementary affidavit dated 10.09.2012 has been filed by the petitioner wherein it is disclosed in para 5 that the petitioner applied under the Right to Information Act, 2005 in respect of the land alleged to be acquired under Declaration No. 03/380 F.R. dated 11.12.1914. The Public

Information Officer replied vide Information No. 257/L.A. dated 24.08.2012 from which it was informed that there are no details available on record for which the information was sought. That document was brought on record by way of the said supplementary affidavit. This document itself strengthens the case of the petitioner that there is no record before the Government to prove that the said land was acquired by the Government

17. On 06.10.2023 while hearing this writ petition following order has been passed:-

> *A supplementary counter affidavit has been filed pursuant to the last order by the respondents-State stating that the order of the Circle Officer dated 26.09.1988 has been set aside by the Additional Collector by order dated 24.04.1990.*
> *2. It appears from Annexure-7 of the writ petition that the writ petition, being W.P.(C) No. 4426 if 2006 was dismissed on 21.11.2006 with the observation that the petitioner may seek any other appropriate remedy available to him under the law. Pursuant to that Annexure-8 has been passed by the Land Reforms Deputy Collector, Chatra on 13.06.2009 holding the jamabandi in favour of the petitioner and pursuant to that the rent receipt has also been issued in favour of the petitioner, as contained in Annexure-9 and these documents have not been denied, which is subsequent to the order dated 26.09.1988 and 24.04.1990, as disclosed in the supplementary counter affidavit.*
> *3. In view of the above, the respondents-State shall file further supplementary counter affidavit explaining Annexures-8 and 9 of the writ petition within two weeks.*
> *4. Let this matter appear on 10.11.2023.*

18. Thereafter the matter was adjourned twice and pursuant to that supplementary counter affidavit has been filed by the respondent-State. In supplementary counter-affidavit filed on 24.01.2024 in para 8 and 9 it has been disclosed as under:-

> *"8. That, it is humbly stated and submitted that from the perusal of Annexure-7 it is evident that the Circle Officer had recommended for cancellation of the Jamabandi to the superior authority on which no final order regarding cancellatiion of demand could be passed by superior authority that is why the Hon'ble Court did not find proper to interfere with the matter in writ jurisdiction and accordingly dismissed the same on 21-12-2006 providing opportunity to the petitioner to seek any other appropriate remedy available to him under law.*
> *9. That, it humbly stated and submitted that on the recommendation of the Anchal Adhikari regarding cancellation of the Jamabandi illegally running in the name of petitioner, the hearing was started before the L.R.D.C. in Misc case No 1/07-08 and after hearing the L.R.D.C. passed order on 13-06-2007 which is annexure '8' before the Hon'ble Court."*

19. In view of above two paragraphs of the supplementary counter affidavit filed on 24.01.2024, it is crystal clear that the Government is having no record and it was asserted that the order passed by the Land Reforms Deputy Collector in Misc Case No.01/2007-08 is said to have no jurisdiction. On query by this Court as to whether that order was challenged by the State or it was rectified or not the answer was made by the learned counsel for the State that the order was not challenged and no further action has been taken in view of that statement. It is crystal clear that there is no document and the mutation order was attained finality by the respondent-State. The registered deed was also not challenged by any of the party as well as State. In the order dated 12.06.2007 the Land Reforms Deputy Collector clearly held that jamabandi of the petitioner still continued and the aggrieved party if any, has remedy for the Civil Court, inspite of that the State has not taken any action and filed any suit about the claim of the state as asserted in the argument as well as the counter affidavit. Thus, this is an admitted position that land in question was in possession and in favour of the petitioner. The documents on record clearly suggest that five shops were constructed after obtaining sanction from the Chatra Municipality.

20. It is well known that no construction is being allowed in absence of any valid right, title and interest which further strengthens the case of the petitioner. It is further an admitted position that there is no show cause notice or even a proceeding was initiated against the petitioner with regard to said dispute. No document has been brought on record by way of counter affidavit as well as supplementary counter affidavit by the State about the said possession and this fact clearly established that in absence of any proceeding the said order was passed. With regard to maintainability of the

writ petition under Article 226 of the Constitution of India if any valid right of a person without following the due process of law is jeopardized the writ court cannot be a spectator and this aspect of the matter was considered in the case of ***Lata Soni (supra)*** on which reliance was placed by the learned counsel for the petitioner.

21. Since the aforesaid fact the accusation of land and demolition of shops belonging to the petitioner without adhering to established procedure as laid down in other laws, the petitioner is entitled to have remedy under Article 300A of the Constitution of India.

22. Apparently, from the facts as discussed hereinabove this Court is unable to perceive any disputed questions of fact in this particular case.

23. In view of above document is in favour of the petitioner. There is no dispute that the petitioner is in possession of the land which was not challenged in view of that the petitioner is having remedy under Article 300A of the Constitution of India.

24. The right to property is no longer a fundamental right, but it is still a constitutional right and a human right, and no person shall be deprived of his property save in accordance with law. Even though the right to property is no longer a fundamental right and was never a natural right, it has to be accepted that without the right to property, other rights become illusory. The protection of Article 300A of the Constitution of India is available to any person including a legal or juristic person and is not confined only to a citizen. Reference may be made to the case of ***"Dharam Dutt Vs. Union of India reported in (2004) 1 SCC 712***.

25. The protection of Article 300-A is available to any person, including a legal or juristic person and is not confined only to a citizen. Prior to

the insertion of Article 300A, it was held that though Article 31 is not confined to citizens where his contention is that the law by which he has been deprived of his property is invalid owing to a contravention of Article 19, which is confined to citizens.

26. Where the building/shop standing on the land such land cannot be acquired and compensation is required to paid for the building/shop. Admittedly, no document has been brought on record by the respondent-State and even the Declaration No. 03/380 F.R. dated 11.12.1914 in view of the information provided by the Public Information Officer was not proved.

27. In view of above, it is crystal clear that it is not in dispute that the property in question was in possession of the petitioner on a valid purchase which was mutated and the shop was constructed on a sanctioned map and the action of the respondent-State is arbitrary and the shop in question was demolished without following the due process of law without any proceeding was well as providing hearing opportunity which is violation of principle of natural justice.

28. In the case of ***Ram Nath Arora Vs. State of Bihar (1997) 0 BBCJ 734*** in para 13 the Hon'ble Supreme Court has held as under

> "*13.In case the Authority has reasons to believe that the existing building does not fully conform with the sanctioned plan, it may give notice to the petitioner asking him to produce the sanctioned plan and to verify by having the measurements of the existing building taken in presence of the petitioner or his representative to find out whether it is in accordance with the sanctioned plan or not. In case it is found that the building is in accordance with the sanctioned plan, the. Authority must leave the petitioner in peace. In case, however, it is found that there are deviations from the sanctioned plan, it will be open to the Authority to initiate proceedings in accordance with the provisions of the Act and the Rules and the bye-laws framed thereunder after giving due notice to the petitioner. With the aforesaid observations and directions, this application stands disposed. Order Accordingly.*

29. The judgement relied by the learned counsel for the respondent in the case of ***Sujata Patra (supra)*** the Orissa High Court has not provided relief as in that case the authority has rectified the decision and in view of

that relief was not granted . No rectification is there in the present case and in that view of the matter this judgment is not helping the respondent-State.

30. The judgment relied by the learned counsel for the respondent-State in the case of ***Sharda Devi (supra)*** was arising out of Land Acquisition Act wherein it has been held that when the Government possesses an interest in land which is the subject of acquisition under the Act, that interest is itself outsided such acquisition because there can be no question of the Government acquiring what is its own. The fact of the present case is otherwise. The government has not been able to show how the land is in possession of the Government and no suit was filed and in view of that the present case is on other facts and judgment is not helping the respondent-State.

31. The judgment relied by the learned counsel for the respondent-State in the case of ***"Bhimandas Ambwani (supra)***, the possession of the land was already taken over and the claim was made after half a century thereafter and that case was arising out of Land Acquisition Act in view of that the judgment passed in that case is not in favour of the respondent-State.

32. The judgment relied by the learned counsel for the respondent-State in the case of ***Banda Development Authority (supra)*** was also on the differing footing. In that case the dispute was with regard to property and suit was also and on the said background that order was filed and in view of that the said judgment is not helping the petitioner.

33. In view of the above now it is established that in such a circumstance the action of the authority in demolishing the shops is nothing but totally illegal, arbitrary and whimsical. It is well settled that the State or its

authorities are subject to "etat de droit", i.e. the State is submitted to the law which implies that all actions of the State or its authority and officials must be carried out subject to the constitution and within the limits set by the law. In other words the State is to obey the law. It is equally well settled that executive or administrative order which involves civil consequences must be made in conformity with the rule of natural justice, which at least requires notice and opportunity of hearing to the person affected thereby.

34. This Court is having it opinion, therefore, the action of the authority was illegal and violative of all principles of rule of law which has certainly caused mental pain and injury to the petitioner besides material damages to his property. Such action of the authority must be deprecated. As such this Court comes to the conclusion that it is a fit case where an appropriate writ should be issued directing the respondent authority to pay a sum of Rs. 5,000,00/- being the cost of construction at that point of time. However, if the direction is issued to reconstruct the said demolition the cost will be much higher.

35. The respondent authority is further directed to pay a sum of Rs. 25,000/- by way of compensation for the mental pain and agony suffered to the petitioner on account of illegal act and high-handedness of the respondent authority.

36. It is made clear that aforesaid direction of cost of construction and compensation for mental pain shall be complied by the State through the respondent nos. 2 and 3 within six weeks from the date of receipt/production of a copy of this order.

37. It is open to the respondent state to fix the liability on the erring officials and recover the same from the said officer however, this will

be done by the respondent-State after complying the aforesaid directions.

38. This writ petition is allowed and disposed of in terms of aforesaid direction. Pending I.A, if any, stands disposed of.

(Sanjay Kumar Dwivedi, J.)

Jharkhand High Court, Ranchi
Dated 27/ 06/2024
Satyarthi/-.A.F.R