

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

SPECIAL LEAVE PETITION(C) NO. 2457-2458 OF 2009

JOYDEEP BHATTACHARJEE

.....PETITIONER

Versus

BHUPENDRA KUMAR MAZUMDAR & ORS.

.....RESPONDENTS

O R D E R

There is a dispute in regard to certain property in Tinsukia, between the petitioner and respondents 13 and 14 on the one hand and respondents 1 to 3 on the other. Respondents 1 to 3 filed W.P.(C) No.2407 of 1999 alleging that the petitioner with the help of others forcibly demolished the boundary fence and tried to interfere with their possession and seeking a direction to respondents not to indulge in the illegal activity of evicting them from their own patta land in the name of demarcation of boundary and to remove the pillars put up in their land on 15.5.1999 and other consequential reliefs. The said writ petition filed by respondents 1 to 3 was dismissed by a learned single Judge by order dated 20.5.1999 on the ground that the reliefs sought related to disputed questions relating to title and possession. The learned single Judge relegated respondents 1 to 3 to the remedy of a civil suit.

2. Feeling aggrieved, respondents 1 to 3 filed a writ

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appeal. The said writ appeal was allowed by a division bench of the Gauhati High Court in part by order dated 23.12.2005. The said order noted that respondents 10 to 12 in the writ appeal (petitioner and respondents 13, 14 herein) had entered appearance through their counsel but the said counsel had withdrawn their appearance and thereafter though notices were served on them, they did not arrange for fresh representation in the appeal. The division bench also noted that petitioner and respondents 13 and 14 had filed a suit for declaration of title in regard to the property in question but had subsequently withdrawn the same. It directed the authorities (respondents 4 to 7, 9 and 10) to restore the possession of the land in dispute (measuring less than 2 kathas) to respondents 1 to 3 and directed petitioner and respondents 13 and 14 to remove the structures and tube well. It directed that any measurement or demarcation should be undertaken only pursuant to order passed by a legally recognised forum in a proceedings participated by both parties. It directed the parties to approach the Civil Court or appropriate forum for deciding their dispute. It made it clear that it was not expressing any opinion on the merits.

3. The petitioner filed a review petition which was dismissed on 30.9.2008. Feeling aggrieved, the petitioner has filed these petitions seeking special leave to file appeals challenging the order dated 23.12.2005 and the review order dated 30.9.2008. Though there is a delay of 1023 days with reference to the order dated 23.12.2005, as the review petition was dismissed only on 30.9.2008 and the SLPs are in time with reference to the dated of the review order, we are of the view that the delay should be condoned. Accordingly, we condone the delay.

4. The High Court directed restoration as writ petitioners were dispossessed during the pendency of the writ appeal, and such dispossession was by exceeding the ambit of the order dated 2.9.2003 in W.P.(C) No.6991/2003 filed by the petitioner without disclosing the pendency of the writ appeal (WA No.167/1999). We find that the division bench of the High Court has not decided or expressed any opinion in regard to merits, but has merely relegated the parties to approach the Civil Court in accordance with law, subject to restoration. There is, therefore, no need to interfere with the said order except to provide the

following safeguards:-

- (a) Respondents 1 to 3 herein, to whom possession has
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been restored on 25.1.2006 in pursuance of order dated 23.12.2005 of the High court, shall not put up any structure nor alienate the same for a period of six months from today. Either party may approach the Civil Court or other appropriate forum in accordance with law within the said period and seek appropriate interim relief;

(b) If and when either party approaches the Civil Court or other alternative forum, such Court or forum shall decide the subject matter of such suit or proceedings on the basis of the pleadings before it and the evidence let in and will not be influenced by any observations that might have been made by either the learned single Judge or the Division Bench in their orders dated 20.5.1999 and 23.12.2005.

(c) Having regard to the nature of disputes and the allegation of forcibly dispossession etc., the Civil Court/appropriate forum shall endeavour to dispose of the suit or proceedings expeditiously preferably within one year.

.....J.
(R.V.

RAVEENDRAN)

New Delhi;
October 25, 2010.

.....J.
(A.K. PATNAIK)

