

(2003) 05 JH CK 0015
In the Jharkhand High Court
Case No : LPA No. 70 of 2003

Awadesh Narayan Sinha

APPELLANT

Vs

State of Jharkhand and Others

RESPONDENT

Date of Decision : 14-05-2003

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2003) 4 JCR 494

Hon'ble Judges : P.K. Balasubramanyan, C.J;R.K. Merathia, J

Bench : Division Bench

Advocate : Delip Jerath, S.N. Prasad, Manoj Tandon and A. Chand, for the Appellant; M.K. Laik, Sr. SC I., for the Respondent

Final Decision : Dismissed

Judgement

1. Heard counsel for the appellant and counsel for the State in detail.
2. The appellant approached this Court with a writ petition (WP (C) No. 6551 of 2002) claiming that he was the caretaker of the property described in the writ petition and practically seeking a declaration of title and possession over the same and complaining that the State was attempting to dispossess him from the land in that they had dug a foundation therein and that he as a caretaker, has a right to protect the possession of the land and the structures standing thereon. It was set out in the writ petition that title was obtained by virtue of an auction sale held in the year 1954 by a receiver appointed in a suit and that after a lengthy process the title and possession was obtained. It was also pleaded that a warehouse was constructed in the land. According to petitioner, the Deputy Commissioner was trying to dispossess him and to put in a construction thereon and this was liable to be prevented.
3. When the writ petition came up for admission, the learned Judge thought that the writ Court was not the proper forum to adjudicate upon the claim put forward by the appellant and the appellant had to avail himself of the alternative

remedies open to him. Even then, the learned Judge also stated that if the appellant files any application before the Deputy Commissioner, Giridih, the Deputy Commissioner will look into the matter and decide the same preferably within a month of receipt of such an application. Feeling aggrieved thereby, the writ petitioner has filed this appeal.

4. In this appeal, the contentions raised in the writ petition have again been reiterated by the appellant. On receiving notice, the respondents have filed a counter affidavit in which they have questioned the right of the appellant to file the writ petition, since according to them, even on his own showing, the appellant could not claim any title or possession over the property in question. The claim of title on the basis of a purchase from receiver was also denied. In fact, the primary title set up by the appellant was itself questioned. It was pleaded that the person, whose caretaker the petitioner claims, has no title and possession over the land. It was also pleaded that in the cadastral survey, this land was shown as Kaisher-e-Hind Land, meaning thereby that it was a Government land. In short, the right of the writ petitioner-appellant to approach this Court with the writ petition was questioned, the title set up was questioned and the possession claimed was also questioned.

5. We find that the question that has to be decided, is a question of title and possession over an item of immovable property. Normally, Such an exercise is to be undertaken by the civil Court and not by this Court in exercise of jurisdiction under Article 226 of the Constitution of India. Secondly, we find that the person, who claims to be the owner of the property, has not come forward with the writ petition or this appeal. This appeal has been filed by a person, who claims to be a caretaker of the property. We do not think that this Court can decide or adjudicate upon the question of the title and possession as involved in this proceeding in the presence of a caretaker and in the absence of the alleged owner of the property. We think that it would be imprudent to exercise the jurisdiction in a case like the present one. This disputed question has to be got adjudicated upon by the appropriate forum. The learned Single Judge has given an opportunity to the appellant to move the appropriate forum. In this situation, we are satisfied that no error has been committed by the learned Single Judge in refusing to interfere.

6. We confirm the judgment of the learned Single Judge and dismiss the appeal.