
(2007) 09 JH CK 0067
In the Jharkhand High Court

Bishwanath Singh

APPELLANT

Vs

State of Jharkhand and Others

RESPONDENT

Date of Decision : 24-09-2007

Acts Referred:

Citation : (2008) 1 JCR 396

Hon'ble Judges : M. Karpaga Vinayagam, C.J;Amareshwar Sahay, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

1. This letters patent appeal is directed against the order of the learned Single Judge dismissing the writ petition, filed by the appellant herein.
2. The facts, in short, leading to the present appeal are that the petitioner had filed W.P.C. No. 5520/2003 for quashing of Annexure-9 to the present appeal, i.e., the order dated 20th February, 2003, passed in Mutation Appeal No. 39/2000-01, whereby the appeal preferred by the writ petitioner against the order dated 23.8.1996 passed by the Circle Officer, Jugalalai, Jamshedpur, in Mutation Case No. 298/1994-95 rejecting his prayer for mutation, was dismissed by the Appellate Authority.
3. According to the writ petitioner, on 19.2.1998 he purchased plot Nos. 4861, 4862, 4823, 3032, 3027 and 2382 corresponding to new plot Nos. 2577 (P), 2578, 2580 and 2581 measuring 4.81 acres standing on R.S. Khata No. 71, Khewat No. 1 situated in Mauza Kalimati within Sidhgora Police Station, Jamshedpur and was coming peaceful possession of the same.
4. He filed a Title Suit No. 107/1988 against Swarn Singh and others for declaration of right, title and interest over the aforesaid plot of lands and also for restraining the defendants from interfering with his possession. The said Suit was decreed ex-parte on 29.7.1989 from the Court of Additional Munsif. Thereafter, an execution case was filed by him for execution of the ex-parte decree in which the objection was filed by the TISCO but the said objection was rejected by the

executing Court on 14.2.1990 against which the TISCO filed Civil Revision No. 62/1990, which was also dismissed on 9.4.1990. The petitioner thereafter, filed an application before the Circle Officer, Jugalalai for mutation of his name, which was registered as Mutation Case No. 298/1994-95. The Circle Officer, by order dated 23.8.1996 rejected the prayer of the writ petitioner for mutation. The said order of the Circle Officer was challenged by the petitioner in appeal in Mutation Appeal No. 39/2000-01 before the Deputy Commissioner, who vide his order dated 20th February, 2003, contained in Annexure-9 to the present appeal, dismissed the appeal and then the petitioner filed the writ application before this Court challenging the said order passed by the Circle Officer as well as the Appellate Authority.

5. TISCO, the respondent No. 4 in the writ petition, as well as the State seriously contested the claim of the writ petitioner and disputed that the petitioner was not in possession of the lands in question,

6. In course of hearing the learned Single Judge by dated 23.3.2007 directed the Deputy Commissioner, East Singhbhum, Jamshedpur, to conduct an enquiry and submit report as to who was in possession of the lands in question. Pursuant to the said order the enquiry report was submitted before the writ Court, which has been annexed as Annexure-12 to the present appeal.

7. The learned Single Judge after hearing the parties and after perusing the enquiry report, submitted by the Deputy Commissioner, and after noticing the fact that the lands in question was recorded in survey as "Un-Aabad Malik" held that since there was serious dispute with regard to the possession of the petitioner and found that the petitioner was not in possession of the lands in question and, therefore, refused to give any relief to the petitioner and consequently, dismissed the writ petition.

8. Mrs. Ritu Kumar, learned Counsel appearing for the appellant vehemently argued that in the enquiry report (Annexure-12) nowhere it is mentioned that the present appellant is not in possession over the lands in question and, therefore, the finding of the learned Single Judge that the lands claimed by the petitioner were not in his possession, is not based on record. It was further argued that when the appellant was having the decree of a competent Civil Court and when the objection of the TISCO was rejected in the execution proceeding then there was no reason not to allow the prayer of the petitioner for mutation of his name.

9. Mr. Mishra, learned Counsel appearing for the TISCO on the other hand, submitted that in the old survey, the lands in question was recorded in the record of rights as "Un-Aabad Malik" and in the last survey the name of TISCO is entered in the record of rights as the Lessee. Nowhere the name of the petitioner stands in the record of rights and the title suit filed by him was collusive one in which neither the State of Bihar nor the TISCO was made party and, therefore, on the basis of the said collusive ex-parte decree of the Civil

Court, no order for mutation could have been allowed and, therefore, the authority concerned has rightly rejected the prayer for mutation of the petitioner.

10. From the impugned appellate order of the Deputy Commissioner (Annexure-9 herein) it appears that he considered the entire matter in detail and after considering the material available on the records held that after perusing the entire records, written argument as well as the enquiry report that the land in question is the lease hold area of TISCO and, therefore, the Circle Officer has rightly rejected the prayer for mutation of the petitioner.

11. From the impugned order of the learned Single Judge it also appears that in course of hearing he ordered for a spot enquiry by the Deputy Commissioner and after submission of the enquiry report when it was found that the petitioner was not in possession of the land, he dismissed the writ petition.

12. So far as the grievance of the petitioner regarding the fact that in the enquiry report no where it is mentioned that the petitioner is not in a possession, it is relevant to note that in the enquiry report (Annexure-12) it is mentioned that the enquiry team made enquiry on the spot and from the survey records it appeared that in the survey of 1934-37 the lands in question was recorded as "Un-Aabad Malik". It is specifically mentioned in the enquiry report that over the plot Nos. 2578 and 2580, small kacha houses are standing and in the record of rights against the plot No. 2578 it is recorded as an illegal possession of Banarsi Singh since 1980 and against plot No. 2580 it is recorded as an illegal possession of Donto Kaur wife of Hazra Singh. The enquiry report disclosed that presently both the above-mentioned persons are an illegal possession of the lands in question.

13. When there is specifically mentioned in the enquiry report that plot Nos. 2578 and 2580 are presently being illegally occupied by the aforesaid two persons and, therefore, it cannot be said that the appellant is in possession of the same. So far as plot Nos. 2577 and 2581 is concerned it is mentioned that the same are barren lands over which shrubs and trees are situated and these plots have been recorded in the name of TISCO as Lessee.

14. It is well settled that the order of mutation has to be passed on the basis of the possession only. Whereas on enquiry possession of the petitioner was not found by the Deputy Commissioner. However, though the petitioner disputed the said finding regarding possession but the facts remains that there is serious dispute not only with regard to the possession of the petitioner but with regard to his title also. It is also well settled principle of law that in a proceeding for mutation disputed or complicated question of title cannot be gone into. The ex-parte decree obtained by the petitioner against his own vendors is also of no help to the petitioner because the same is not binding upon State or TISCO since they were not party in the Suit, filed by the petitioner.

15. In view of the fact, above facts as well as the facts that there is concurrent finding of facts by the Circle Officer, by the Deputy Commissioner as well as by the learned Single Judge on the basis of the enquiry report and, therefore, those

finding of facts arrived at on the basis of the relevant facts cannot be disturbed or interfered with in a letters patent appeal. Reference in this regard may be made to the case of "Depta Tewari and Ors. v. State of Bihar and Ors. reported in 1987 PLJR 1037."

16. view of the discussions and findings above, we are not inclined to interfere with the impugned order. Accordingly, having found no merit, this letters patent appeal is dismissed.