

(2016) 04 JH CK 0084

In the Jharkhand High Court

Case No : Writ Petition (C) No. 563 of 2015 with W.P. (C) No. 564 of 2015 with W.P. (C) No. 566 of 2015 with W.P. (C) No. 567 of 2015.

Commissioner of Hazaribagh Nagar Parishad through the Executive Officer (in all cases) - Petitioner @HASH Rup Chand Jain

Date of Decision : 12-04-2016

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 21 Rule 101, Order 21 Rule 97, Order 21 Rule 99, Section 151, Section 47
Constitution of India, 1950 — Article 227

Citation : (2017) 1 AIRJharR 39 : (2016) 4 JCR 215

Hon'ble Judges : Aparesh Kumar Singh, J.

Bench : Single Bench

Advocate : Mr. R.S. Mazumdar, Sr. Advocate and Mr. Rohit Roy, Advocate, for the Petitioner; Mr. Ayush Aditya and Mr. Shashank Shekhar, Advocates, for the Respondent

Final Decision : Dismissed

Judgement

Mr. Aparesh Kumar Singh, J. - Heard counsel for the parties.

2. In all these writ petitions there is a common thread binding the case of the parties. The petitioner i.e. the Commissioner of Hazaribag Nagar Parishad is a objector under Order 21, Rule-97, 99 and 101 read with Section 151 of the CPC in Execution Case Nos.16/1989, 17/1989, 18/1989 and 20/1989 instituted by the respondent No. 1 decree holder in Eviction Suit Nos. 14 of 1986, 03 of 1988, 04 of 1988 and 05 of 1988. Decree and judgment dated 31st March, 1989 rendered by the court of learned Sub Judge-I, Hazaribag. Title Suit No. 52/1983 was an Inter Pleader Suit filed by the tenants i.e. other private respondents herein for a declaration as to which of the two claimants i.e. the landlords are entitled to payment of rent in respect of the suit property. Eviction Suit Nos. 01/1988, 02/1988, 03/1988, 04/1988 and 05/1988 all were preferred by the respondent landlord against their tenants in respect of the properties described in the schedule annexed to the plaint. All these suits were decided by the common judgment and decree dated 31.03.1989 and decree dated 10th April, 1989

(Annexure-4 to the writ petition No. 567/2015). The relevant documents enclosed to the instant writ petition are being referred to hereinafter also as they are common to all the writ petitions.

3. The State of Bihar was also a contesting defendant in the Inter-Pleader Suits. The learned trial court decreed the eviction suit and also held that defendant nos. 4 to 6 in the Inter-Pleader Suit have got valid cause of action to bring their respective suits and they are entitled for payment of rent in respect of respective premises. The decree in the eviction suits is now under execution. The operative part of the judgment are being reproduced hereunder :-

"52. These four issues are taken together for consideration for the sake of convenience as regards the cause of action to file T.S. 52/83 the same owes to the averments in para-20 of the plaint wherein it is stated that the cause of action for the suit arose on 7.7.1979 the date of demand by the Hazaribagh Khas Mahal, on 2.2.1983 the date of demand by the sons of late Sujan Chand Jain second set of defendants. On 23.3.83 the day of notice u/s 80 C.P.C. (page 90th begins) and the date of service thereof i.e. between 25th to 28th and on the expiry of 60 days therefrom and since then is continuing from day to day within the jurisdiction of this court. Obviously, the plaintiff of T.S. 52/83 shall be entitled to file an inter-pleader suit only when they will be put at fix after being exposed to such a situation under which they will be running risk at the cost of their interest unless seeks inter-frame of the court for issuance of direction to relieve the plaintiffs from such a state of stallmate. It has been attributed to the demand by the Hazaribagh Khas Mahal on 7.7.79 what for this demand came on surface by the side of Hazaribagh Khas Mahal and who represented the same has conspicuously been omitted to be mentioned. The omission is not accidental. It is well calculated for there has absolutely been no demand for anything including rent by any officer comprising first set of defendants. As a matter of fact T.S. 52/1983 is a laboured suit filed on manufactured cause of action with the plaintiffs thereof creating circumstances to bring first set of defendants and second set of defendants at logger head with a view to facilitating these (shop keepers) to fish in troubled water at the cost of the purchasers i.e. second set of defendants. This view of mine finds support from further discussion which will make it crystal clear that the plaintiffs of T.S. 52/83 had in fact no occasion to file this inter-pleader suit for they have had got absolutely no cause of action much less the valid cause of action amidst pointed query made by the court to Sri Krishna Kumar learned Advocate appearing for the shop keepers to display the demand notice dated 7.7.79 he could produce none nor could he indicate any documents on record presumably to be so. I would like to make it clear at this juncture that attempt was made to create confusion by inviting the attention of the court towards Ext.3A to 3G to 3/5 attributing the same to be falling in the line of the demand dated 7.7.79 but later on the facts remains that the doubt thus created must be removed and for that end I am constrained to observe that those exts. 3A to 3J appeared to have been issued in connection with an action before the Deputy Commissioner, Hazaribagh Khas Mahal section. These

documents called upon the shop keepers to appear before (page-91 begins) the Deputy Commissioner, Hazaribag with their papers relating to the suit properties wherein 29.6.83 is noted which is much subsequent to the last date of alleged cause of action i.e. on the expiry of 60 days from 25th to 28th March, 1983. It comes to be recorded as between 25th to 28th May, 1983 whereas 28.6.83 finds mentioned in all those documents. Those notices on query made by the court were found not to have been issued by the Deputy Commissioner, Hazaribag on his own accord rather those were issued when the shop keepers invoked the jurisdiction of the Deputy Commissioner after having lost before the Khas Mahal Officer in the matters of settlement of suit stalls in favour of the shop keepers.

53. Now turning to the oral evidence of the witnesses examined by the side of the plaintiff of T.S. 52/83 having bearing on this issue they have point blank declined to indicate any such paper. To be more precise P.W.10 in para 2, P.W.12 in para 7, P.W.19 in para 4, P.W.23 in para-11 of their deposition have tried to reflect the proposition that first set of defendants asked for deposit of rental of the shops and stalls with the Khas Mahal but in the cross examination several witnesses from the side of the plaintiff of T.S. 52/83 have contradicted the said contention. P.W.10 in para-17 of his cross examination has stated that till that date (21.3.83) first set of defendants have not brought any action for realisation of rent from them. P.W.11 has like wise stated in para-13 of his cross examination that no notice was issued by Khas Mahal directing them to deposit rent in the treasury or not to pay rent to second set of defendants instead to deposit rent in treasury. P.W.12 in para-15 of his cross examination has categorically stated that first set of defendants never served notice for deposits of rent with them. P.W.17 has like wise stated in para 15 of his cross examination that when ever he paid rent to D.W.9 no body else laid competing claims over the rental. P.W.19 in para 19 of his cross examination categorically stated the first set of defendants have not filed any case for realisation of rental of the shops and stalls they are occupying as tenants. P.W.20 in para-15 of his cross examination has stated that Khas Mahal people asked for rent from him but did not serve any notice upon him. He has further stated that he can not spell out the (page 92 begins) the names of the person asking for rent. P.W.28 in para-24 of his cross examination stated that between 1866 to 1979 he was served with a notice by Khas Mahal that he had been paying rent illegally as the suit property belonged to the Government but in the same stretch he has amended his statements by saying that he does not remember the date of such notices. Even if it is supposed for a while that he does not remember the date of such notice but he could have easily displayed the notice through which he was asked to pay rent to the first set of defendants. But no such document has been filed before the court to lend support to their contention. As the inter-pleader suit has been filed impleading the Government on the one hand and the purchasers on the other it cannot be prudent to imagine any demand without there being any case started by the first set of defendants. Some sort of papers must be with the Government to show that the demand notice for collection of rent was issued to

the shop keepers stealing a march over the purchasers. No such papers has been filed and the reason are obvious which may be gathered from the examination of D.W.1 a solitary witness examined by the side of first set of defendants who has categorically stated that for the first time the first set of defendant have been asserting their claim what soever through the instrumentality of instant suit (T.S.52/83) vide para 10 of his deposition. In this view of the matter I am driven to an irresistible conclusion that the plaintiffs of T.S. 52/83 have got absolutely no cause of action to bring this suit and they are not entitled to the relief as claimed in T.S. 52/83.

54. Cause of action accruing to the plaintiff of six eviction suits is owing to default of these six eviction suits to their respective landlord comprising second act of defendant in T.S. 52/83 and plaintiffs of six eviction suits. D.W.9 in para-9 of his deposition, D.W.11 in para 7 of his deposition and D.W.12 in para 3 and 9 of his deposition have stated in substance that in spite of demand made by them from their respective (page 93 begins) tenants for payment of rental they did not favourably respond hence they filed those six suits while appreciating issue No. 8 I have already found and held the tenants in six eviction suits to be defaulter in payment of monthly rent. There is no plea of payment by the side of tenants to their respective land lords. Deposits made by them with the treasury have equally been found to be illegal and invalid as also not in-consonance with the requirements of law hence in my considered opinion the defendants No. 4 to 6 of T.S. 52/83 who are plaintiffs of six eviction suits aforesaid have got valid cause of action to bring their respective suit and they are entitled to the reliefs sought for including decree for arrears of rent Rs. 620/- in case of Eviction Suit No. 14/1986, Rs. 2340/- in case of Eviction Suit No. 1/1988, Rs. 2160/- in case of Eviction Suit No. 2/1988, Rs. 360/- in case of Eviction Suit No. 3/1988, Rs. 720/- in case of Eviction Suit No. 4/1988 and Rs. 525/- in case of Eviction suit No. 5/1988 current and future at the rate stipulated in such suit till khas possession of their respective suit premises is delivered to the plaintiffs land lord by the respective defendants tenants of aforesaid six eviction suits as also decree for eviction. In the result it is hereby ORDERED that T.S. 52/1983 be and the same is dismissed on contest with cost pro rata to the first set of defendants and second set of defendants as well. It is hereby further ORDERED that Eviction Suit No. 14/1986, 1/1988, 2/1988, 3/1988, 4/1988 and 5/1988 be and the same are decreed on contest with cost against the respective defendants. Pleadings fee and Pleadings clerk's fee at contesting scale is also hereby allowed in all the seven suits. Interest pendente lite and future on decretal amount aforesaid only (excluding the cost of the suit) @ of 5% per annum till realisation is also hereby allowed in all the six eviction suits. All the defendant tenants in six eviction suits are hereby ORDERED to vacate and deliver Khas possession of suit premises in their respective occupation to their respective plaintiff landlord of six Eviction Suits within 90 days of signing of decree else the (page 94th begins) plaintiff landlords of these six Eviction suits shall be at liberty to take Khas possession of the respective suit premises in possession of their respective tenants

(defendants) through the process of the court."

4. The tenants challenged the dismissal of inter-pleader suit in F.A. No. 283/89(R) which was dismissed on 21.11.1989 by Ranchi Bench of Patna High Court and L.P.A. No. 152/1989(R) was also dismissed on 26.3.1990.

5. State of Bihar also appealed against the judgment and decree dated 31.03.1989 passed in Title Suit No. 52 of 1983 in 1st Appeal No. 293/1989 (Annexure-H to the supplementary affidavit of respondent No. 1). The appeal preferred by the State of Bihar was dismissed by the judgment dated 20th June, 2002. Operative portion thereof at para-15 to 17 are quoted hereunder :-

"[15] In my opinion, there is no substance in the submission of the Government Pleader that the suit property was originally leased out in the year 1866 and reverted back to the State after the death of Rajeshwari Devi, as it was abandoned thereafter and the rent was also not paid. At any rate, the tenants therein cannot be said to be lessees of the State Government and as such, were not entitled to pay rent/premium directly to the State. Mutations from time to time were rightly made in the tenant's ledger maintained by the State in respect of the suit property.

[16] I, therefore, hold that by virtue of Dwami-Patta of the year 1866, an absolute raiyati interest over the suit property was created in Raj Gopal Roy and the defendants 4 to 6, being the transferees of the said raiyati interest, are raiyats of the State Government and are liable to pay rent.

[17] I, therefore, find no reason to interfere with the impugned judgment and decree. There is no merit in the appeal. It is dismissed, but without costs."

6. Letters Patent Appeal No. 508 of 2004 preferred by the State of Bihar (now Jharkhand) and Others against the said judgment was held as not maintainable vide order dated 8th September, 2005 in view of the Full Bench decision in the case of Satya Narayan Agiwal and another v. State Bank of India reported in 2005(3) JCR (Jhr) (FB), Annexure-I to the same affidavit.

7. State of Jharkhand preferred Special Leave to Appeal being C.C. No. 6838/2006 against the said judgment which was dismissed by judgment dated 11th September, 2006 by the Hon'ble Supreme Court (Annexure-J). The tenants aggrieved by the eviction decree passed in the eviction suit challenged it in the appellate court of First Additional District Judge, Hazaribag being Eviction Title Appeals No. 04/1989, 05/1989, 06/1989, 07/1989 and 08/1989 all of which were dismissed by the judgment dated 11th January, 2005 (Annexure-M to the same affidavit). The second appeal preferred therefrom by the aggrieved tenants was also dismissed by learned Single Judge of this Court vide judgment dated 25th July, 2008 (Annexure-N) in Second Appeal No. 89/2005, 140/2005, 144/2005, 145/2005 and 149/2005. The tenants also approached the Apex Court in Special Leave to Appeal (Civil) No.26651 of 2008 which was dismissed. The petitioners therein i.e. tenants were granted six months" time to vacate the premises in

question subject to filing of usual undertaking in the Hon"ble Apex Court within four weeks. Judgment dated 19.12.2008, quoted hereunder :-

"SLP(C) No. 26651/2008

The Special Leave Petition is dismissed.

However, the petitioner is granted six months" time to vacate the premises in question subject to filing of usual undertaking in this Court without four weeks from this date.

S.L.P.(C) ?./2008 (CC No. 16871)

Delay condoned.

Learned counsel appearing on behalf of the petitioner submits, on instruction, that he has advised the petitioner to approach the High Court for review of its order as some points have not been decided by the High Court. In view of this, he seeks permission to withdraw this petition. Permission is granted. The Special Leave Petition is accordingly dismissed as withdrawn."

8. The Deputy Commissioner, Hazaribag filed an objection in the execution proceedings which is at page 342 of the same supplementary affidavit under Order-XXI, Rule 97 of CPC read with Sections 47 and 151 thereof. One such petition is at Annexure-Q of the same affidavit in Execution Case No. 17 of 1989. While asserting that the State of Bihar was a defendant in Title Suit No. 52 of 1983 tried analogously with Eviction Suits No. 2, 3, 4 and 5 of 1988 and 14 of 1986, it claimed title, interest with the legal possession over the land of Khata No. 124, Plot No. 101, 102, 103, 104, 105 and 106 area 0.96 acre under survey village Hazari, P.S. No. 141 in Hazaribag Town. It alleged that the premises involved in the present execution is a portion of aforesaid 0.96 acres of land. It also stated that the State of Jharkhand has filed T.S. No. 169/2006 with respect to lands of Khata No. 124, Plot No. 101, 102, 103, 104, 105 and 106 measuring total area 0.96 acre and sought relief for declaration of title, interest with legal possession over the suit land and further declaration that sale deeds No. 6644, 6645, 6720, 6832, 6863 and 6864 of the year 1979 are void ab-initio, collusive and illegal and as such the plaintiff State of Jharkhand is not bound by the sale deeds. It also prayed for declaration that the judgment passed in Title Suit No. 52/1983 decided analogously with eviction suits by the learned Sub-Judge-I is illegal, void ab-initio and without jurisdiction and should be set aside as it was obtained fraudulently. It alleged that the decree in question did not bind the State and that Rajeshwari Devi died issue-less in or about 1923 and the entire leased property diverted/vested to the State. The State has become absolute proprietor with respect to aforesaid entire 0.96 acres of land. Other pleas were also raised therein. This petition was heard in the execution case and rejected vide order dated 9th July, 2007 (part of Annexure-Q at page-363 of the same affidavit).

9. The background history of litigation including the appeals filed by the State of

Bihar (now Jharkhand) against the decree passed in the Inter-Pleader Suit No. 52/1983 have also been referred to in the said order.

10. After considerable discussion over the rival pleas of the parties, learned executing court vide order dated 9th July, 2007 rejected the petition filed under Order-XXI, Rule 97 CPC by the Deputy Commissioner, Hazaribag. The operative portion of the order is quoted herein :-

"So far Order 21, Rule 97 is concerned, it says "Where the holder of a decree for the possession of immovable property or the purchaser of any such property sold in execution of a decree is raised or obstructed by any person in obtaining possession of the property, he may make an application to the court complaining of such resistance or obstruction." From plain reading of the said provision it becomes crystal clear that the State is neither the decree holder nor he is the purchaser of the said property sold in execution of a decree. So, his impugned petition also does not come under the purview of Order 21, Rule 97 .

In view of the above facts and circumstances and after discussions, I come to the conclusion that the impugned petition filed by the State does not fall under the four corners of Section 47, 151 read with Order 21, Rule 97 of the C.P.C. I have also gone through the entire decisions relied by the State but those decisions are not applicable at all in the instant case. Thus, I find that the impugned petition of the State does not come under the purview of said provision. So, there is no need to register the same under the head of Miscellaneous case for hearing. Accordingly, the impugned petition dated 2.6.2007 stands rejected."

11. The writ petition under Article 227 of the Constitution of India preferred by the State of Jharkhand being W.P.(C) No. 5615/2007 was also dismissed by the order dated 28th November, 2007 (Annexure-R to the same supplementary affidavit). There are no further challenge by the Deputy Commissioner, Hazaribag or by the State of Jharkhand on that issue.

12. In the background of the aforesaid chequered history of the instant litigation, the petitioner herein also preferred applications being Misc. Case No. 52, 53 and 55/2012. One of the Misc. Petitions in Execution Case No. 17/1989 is at page 143 of the instant writ petition. Same grounds have been taken in other Misc. cases also making an objection before the learned executing court inter-alia stating that the property involved includes portion of plot No. 462, village Hazaribag, Thana No. 140 measuring 5 Katha 2 Dhurs within present Ward No. 6 of Hazaribag Nagar Parshad. Boundary of the area is indicated at para-3 as follows :-

East : Road (Lepo Road/Main Road)

West : Govt. Land

North : Plot No. 463 Brahmo Samaj

South : Road (Malviya Marg).

13. The petitioner took the plea that plot No. 462 had been leased out to Rajeshwari Devi widow of Late Raj Gopal Roy by a registered Patta No. 1408 dated 23.6.1917 by the Hazaribag Nagar Parshad and in return Rajeshwari Devi also executed the registered Kabuliyat being No. 1409 on the same day in favour of Chairman, Municipality, Hazaribag. The said Raj Gopal Roy, husband of Rajeshwari Devi had pre-deceased Rajeshwari Devi and had died issueless long before the grant of Patta to Rajeshwari Devi and thus Raj Gopal Roy had never any right, title and interest over any part of the property and he could not have in any manner created any dispossession of the property which is the genesis of claim of the decree holder. It also alleged that objectors were never made party in the suit i.e. 52/1983 decided analogously with the eviction suit by the judgment and decree dated 31.03.1989. It claimed that the suit property belongs to the objector situate at village Boddomgunj although the same situates at Hazaribag. The property actually relates to Municipal Plot No. 462. This application was rejoined by the decree holder landlord. The learned Executing Court rejected this petition vide order dated 28th July, 2012, Annexure-8 of the writ petition (impugned herein). By the same common order Misc. cases in other Execution cases preferred by the objector/petitioner herein were also rejected and have been impugned in the respective writ petition. After considering in detail the plea of the rival parties and the undertaking given by the tenant before the Apex Court as also the fact that earlier an objection under the same provisions by the Deputy Commissioner, Hazaribag had also been rejected by a detailed order dated 9.6.2007. Learned Executing Court did not find any good ground to allow the objection petition to be registered as a Misc. case to be decided in a nature of regular suit. The petitioner preferred an appeal being Misc. Civil Appeal No. 21/2012 and other analogous appeals No. 22/2012, 23/2012, 24/2012 before the court of District Judge-II, Hazaribag being aggrieved against the said rejection. The matter was brought to this Court in W.P. (C) No. 2462/2013 by the decree holder landlord being aggrieved by the admission of the Misc. Appeal. Learned Single Judge of this Court vide order dated 11.8.2014 (Annexure-12 page-189 of the writ petition) disposed of the matter without interfering therewith with liberty to the petitioners to raise the issue relating to the maintainability of the Misc. Appeals before the learned District Judge to be decided within a stipulated period of three months. The learned District Judge-II, Hazaribag vide order dated 22nd December, 2014 (Annexure-15 to the instant writ petition) upheld the order of the learned executing court refusing to register the objection petitions as misc. petitions.

14. As has been narrated herein above, the two orders - one being the rejection of the objection petition of the petitioner by the learned Executing Court and the order passed in Misc. Appeal by the Court of learned District Judge-II, Hazaribag refusing to interfere in the said order, both are under challenge in the present matter preferred under Article 227 of the Constitution of India.

15. Learned senior counsel for the petitioner has laboured to bring home the point that the petitioner herein has a sustainable ground for apprehending

dispossession over plot No. 462 owned by it during course of execution of the judgment and decree dated 31.3.1989 pursued by respondent No. 1 - landlord decree holder. Learned senior counsel for the petitioner has also tried to emphasise that the plaintiff in the eviction suit i.e. landlord has very cleverly avoided reference to any description of the suit land and only indicated the holding numbers. The holdings of the petitioners are situated over plot No. 105 and plot No. 462 is adjacent thereto where-after there is a public road which the respondent decree holder has avoided to disclose in the schedule of the plaint which has become part of the decree. If the execution is carried out as per the schedule of the suit property on plot No. 462, belonging to the petitioner would also be taken in possession while carrying out eviction of the tenants - judgment debtors. Therefore, there is a valid ground to object which objection should have been considered by the learned Executing Court by registering it as Misc. case and deciding it in the nature of suit after framing of issues. There is serious error of jurisdiction in the orders of learned courts below in refusing to entertain the objection petition of the petitioner in terms of provisions of Order-XXI, Rule 97 of CPC read with Sections 47 and 151 thereof.

16. Learned counsel for the respondent landlord has serious objection to the plea raised by the petitioner. The entire history of the litigation as referred to in the foregoing paragraphs, have been reiterated by the learned counsel for the respondents decree holder in order to emphasise that there are no sustainable grounds and justifiable apprehension on the part of the objector/petitioner herein to oppose execution of the decree of eviction upheld up to the Apex Court. The tenants are under an undertaking given in the year 2008 before the Apex Court to vacate the premises within six months which is being violated on the pretext of this unsubstantiated objection raised firstly by the Deputy Commissioner, Hazaribag and after five years by the Commissioner, Hazaribag Nagar Parishad. It is contended that these frivolous objections are being made perhaps at the behest of the losing tenants. Learned executing court is bound by the decree which has become final and should be left to execute it in its letter and spirit in accordance with the provisions of law and the Civil Procedure Code. There is no error of jurisdiction on the part of the executing court or the learned appellate court in refusing to register petitioner's objection as a misc. case for deciding it as a regular suit.

17. Learned counsel for the respondent also submits that it is well within the jurisdiction of the executing court to satisfy itself in the matter of execution of the decree in question after verification of the respective holdings from the relevant original records and also to see that there is no transgression beyond what the decree spells out.

18. I have considered the submissions of the parties at some length and have gone through the relevant materials on record.

19. In the background of the chequered history of the litigation referred to herein above and on perusal of the objection petition by the petitioner herein in the

individual execution case, it appears that the learned courts below have found no sustainable ground for entertaining the objection petition as a misc. case to be decided as a regular suit at the behest of the petitioner. The apprehension of the petitioner that the plot No. 462 would also be delivered in execution while executing the judgment and decree in the eviction suit is also without any basis. Objection taken by the petitioner in respect of the claim of the devolution of title to Rajeshwari Devi is also categorically answered by the findings of the learned 1st appellate court in 1st Appeal No. 293/1989 decided on 20th June, 2002 vide Annexure-H of the supplementary affidavit, the operative portion of which has also been quoted in the foregoing paragraphs.

20. State of Bihar (now Jharkhand) lost its challenge to the composite judgment and decree passed in Title Suit No. 52 of 1983 i.e. Inter-Pleader Suit after serious contest up to the Apex Court. Question of title raised by the Deputy Commissioner, Hazaribag while making a fresh objection petition in the year 2007 was also negatived by the order passed by the learned executing court in the said execution case vide order dated 9th July, 2007 itself. The executing court is under bounden obligation to execute the decree in letter and spirit which has attained finality up to the Apex Court and also as per the undertaking given by the judgment debtor/tenants to vacate the same within six months thereof. Five years after rejection of the objection petition made by the Deputy Commissioner, Hazaribag, this objection petition has been made by the Commissioner, Hazaribag Nagar Parishad inter-alia raising the same ground of lack of title of Rajeshwari Devi and also alleging that execution of the decree would entail encroachment on plot No. 462 owned by the objector/petitioner. The entire ground of objection of the petitioner has been discussed by the learned executing court and appellate court and have been found to be without substance and does not merit to be decided in the nature of regular suit. The order does not appear to suffer from error of jurisdiction or failure to exercise its jurisdiction.

21. The petitioner has filed the supplementary affidavit on 8th April, 2016 now trying to rely upon a map prepared on 20th March, 2016 through a licenced Amin to buttress its contention that plot No. 462 lies in between the plot No. 105 and the public road on the map which is likely to be encroached during the course of execution of decree. Learned counsel for the respondent landlord has made serious objection to that. It is contended that if at all the executing court has to satisfy itself about existence of survey plot over which the holdings are situated, it can only be verified from the original survey map of the village. It is submitted that the survey map of village prepared long back in the year 1911 of village Hazari, Thana Hazaribag, District Hazaribag would completely oust the claim of the petitioner about existence of the said plot No. 462. The said map is said to be part of Exbt. No. 9 in the learned trial court in the eviction suits.

22. Relying upon all the aforesaid contentions it has been again emphasised on the part of the learned counsel for the decree holder that while there is no error

of jurisdiction in the impugned orders passed by learned executing court and the appellate court, the executing court is well within its power to execute the decree in its form and substance after its satisfaction about the identity of holding numbers described therein through the original records and if necessary from the survey map. This Court should therefore refuse to interfere in the writ petitions.

23. Having given considerable thought to the entire gamut of facts, legal provisions and the submissions made, this Court is of the considered opinion that the learned executing court is well within its power and jurisdiction to execute the decree in question to its satisfaction and in that exercise it is always open to the learned executing court to verify the identity of the holding numbers from all such original records relating to it and from the long standing survey map of the village in question. This Court, therefore, does not find any reason to interfere in the instant matter in exercise of its supervisory jurisdiction under Article 227 of the Constitution of India. All these writ petitions are accordingly dismissed.

24. Needless to say that the learned executing court would proceed with the execution of the decree expeditiously.