

(2011) 05 JH CK 0041

In the Jharkhand High Court

Case No : Letters Patent Appeal No. 693 of 2003

Deobrat Mishra

APPELLANT

Vs

The State of Bihar now Jharkhand and Others

RESPONDENT

Date of Decision : 13-05-2011

Acts Referred:

Citation : (2011) 05 JH CK 0041

Hon'ble Judges : Prakash Tatia, Acting C.J.; Harish Chandra Mishra, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

Prakash Tatia, J.—This letters patent appeal has been preferred by the writ Petitioner to challenge the judgment dated 12th September, 2003 passed by the learned Single Judge of this Court in C.W.J.C. No. 567 of 1994, by which the writ petition of the Petitioner has been dismissed.

2. The brief facts of the case are that according to the Petitioner his father late Prafulla Chandra Mishra got the land in question having plot Nos. 261, 262 and 263 under Khata No. 73 of village Barmasia, PS & district Giridih by raiyati settlement through a customary Hukumnama executed by Gaibi Nath Mishra, Ex-landlord on 18th Magh, 1341 Fasli, corresponding to the year 1934 A.D. The Petitioner's ancestors remained in possession since then and thereafter Petitioner came in possession of the property. The name of Prafulla Chandra Mishra was mentioned as raiyati in some of the records with respect to plot Nos. 261, 262, 263 and 264 as the Petitioner's ancestors used to pay rent to the Ex-landlord till the vesting of Zamindari/ intermediary interest under the Bihar Land Reforms Act, 1950 in the State of Bihar. The Petitioner's further contention was that the land was also mutated in the name of Prafulla Chandra Mishra in pursuance of the order dated 15th December, 1971 passed in Misc. Case No. 17/1971-72. In view of the above facts, the title of the abovementioned land vested in the Petitioner's ancestor and then the Petitioner succeeded and got the property. It is also the admitted case of the Petitioner that a Title Suit No. 6 of

1975 was filed by the Indian Medical Association, Giridih Branch which was though decreed against the Petitioner and others but in appeal, a compromise was submitted by the parties and in view of the compromise, a compromise decree was passed. The said compromise is admittedly only part of the land in question, which was given to the Indian Medical Association (to whom the land was already allotted by the State of Bihar).

3. It will be relevant to mention here that as per the facts noticed by the Additional Collector, Giridih in the order dated 12th September, 1990 in Title Suit filed by the Indian Medical Association, the Petitioner's ancestors did not choose to file the written statement and also did not file the alleged Hukumnama on the basis of which they claimed the title. It is also not made clear if the ancestors of the Petitioner were owners of the property in dispute then for what consideration the part of the land was given to the Indian Medical Association. Particularly in view of the fact, the Medical Association's claim over the land, it was only for area which was given to them in compromise then that is acceptance of State's right to give land to the Medical Association by the Petitioner.

4. The Petitioner's total case is based on the documents which have been considered by the original authority i.e. the Additional Collector, Giridih in the order dated 2nd August, 1990 in detail and it has been held that the Petitioner's ancestors had no title over the property in dispute and documents are not reliable and trustworthy. However, the District Magistrate & Collector, Giridih vide order 14th November, 1991 re-considered the several documents produced by the writ Petitioner and reached to the conclusion that Petitioner's ancestors were the owner of the property in dispute but in the revision petition, preferred by some private parties, namely, Surendra Chourasia and seven others, the Revisional authority in its detailed order considered each and every documents and the reasons given by the District Magistrate-cum-Collector with respect to the claim of the writ Petitioner through their ancestors and observed that original Hukumnama was not produced before the civil court in the Title Suit nor in the appellate court where the decree was obtained by way of compromise and gave several reasons to disbelieve the photo state copy of the Hukumnama by indicating various discrepancies which was found in the photo state copy of the Hukumnama and thereafter rejected the said Hukumnama on the ground that such documents cannot be relied upon. Not only this, the Revisional authority thereafter considered the rent receipt produced by the writ Petitioner in detail and found that those rent receipts also are of no aid to the Petitioner in proving his right over the land in dispute which could have culminate no title.

5. All these facts were considered by the learned Single Judge and thereafter the learned Single Judge held that there is no illegality in the order passed by the revisional authority and there is no reason to interfere in the finding of fact recorded concurrently by the first court and secondly by the revisional court. Because of the said observation of the learned Single Judge that a finding of fact has been recorded by the first court and revisional authority concurrently,

learned Counsel for the Appellant vehemently submitted that the learned Single Judge of this Court committed error as it proceeded under assumption that all three courts "concurrently" decided the finding of fact against the Petitioner whereas the order passed by the Additional Collector was reversed by the District Magistrate-cum-Collector and the first appellate court's finding of fact could not have been reversed by the revisional court and therefore revisional court's order should have been set aside by the learned Single Judge.

6. It appears that the revisional court was second court which recorded a finding of fact in favour of the Respondent, therefore, learned Single Judge mentioned it to be concurrent finding of fact. The Petitioner persuaded us to take a fresh look into the matter and we have again examined the factual aspect of the matter with the help of the records and reasons given by the three authorities i.e. the reason given by the Additional Collector, District Magistrate-cum-Collector and the Revisional authority.

7. On query, learned Counsel for the Appellant could not satisfy us that why the original Hukumnama was not produced before any of the courts below as well as in the writ petition. The reasons given by the learned District Magistrate-cum-Collector, in fact, ignored the reasons given by the Additional Collector, in its detailed order and, therefore, the revisional authority itself looked into the documents. The revisional authority, therefore, was justified in interfering with the findings recorded by the learned District Magistrate cum Collector because the basic fact that the Hukumnama in original was not produced and photo copy of Hukumnama contains several discrepancies. Each and every documents as well as the order passed by the concerned authority were duly considered by the revisional authority.

8. It has been submitted by the counsel for the Appellant with the help of the earlier order passed by this Court in the writ petition and in contempt petition that the Respondents developed enmity because of the steps taken by the Petitioner-Appellant before this Court and because of the initiation of the contempt proceedings, wherein they were held guilty and, therefore, all these exercises have been done and the Respondents could not have inquired into the matter, if in the settlement prior to 1964 the land was recorded in the name of the Petitioner.

The argument advanced by the learned Counsel for the Appellant apparently may be attractive but it is hollow. It may be true that on earlier occasions the officers of the State may have violated the order of this Court and may have raised the construction over the plot in dispute but the fact still remains that in a title case as back as in the year 1974 there was no plea of the Petitioner's ancestors that they were owners of the properties by virtue of the alleged Hukumnama and title vested on them and there is no explanation given by the Petitioner's ancestors or Petitioner that for what consideration they had to surrender the land to the Indian Medical Council, in compromise, to whom the land was allotted by the State Government and thereby the Petitioner's ancestors, in fact, recognized the

right of the Indian Medical Council over the part of this land also.

9. We have considered all materials available on record and we are of the opinion that in view of the facts recorded by the courts below, there is no illegality in the order impugned, dismissing the Petitioner's writ petition, upholding the revisional order.

10. There being no merit, the letters patent appeal is dismissed.