
(2019) 04 JH CK 0011

In the Jharkhand High Court

Case No : Writ Petition (C) No. 4027 Of 2017

Dinesh Kumar Das

APPELLANT

Vs

State Of Jharkhand And Ors

RESPONDENT

Date of Decision : 02-04-2019

Acts Referred:

Constitution Of India, 1950 — Article 226

Citation : (2019) 04 JH CK 0011

Hon'ble Judges : Sujit Narayan Prasad, J

Bench : Single Bench

Advocate : N. S. Mukherjee, A. Ansari, Gautam Kumar, S.C (Mines), Suraj Kumar

Final Decision : Dismissed

Judgement

This writ petition is under Article 226 of the Constitution of India, wherein the order dated 15.04.2017 passed by the Deputy Commissioner, Hazaribagh in terms of the order passed by this Court dated 28.06.2016 in W.P.(C) No.3050 of 2014, whereby and whereunder the claim of the petitioner for settlement of the land in question has been denied.

According to the case of the petitioner he is in possession of the land since the year 1984, has constructed a Kachcha house and running Photo Studio and earning livelihood from there.

He has made series of representation for settlement of the said land in his favour and upon such representation the revenue employees have conducted enquiry and made recommendation for settlement of land by forwarding it before the Deputy Commissioner, Hazaribagh and even then when no decision has been taken by the Deputy Commissioner, Hazaribagh he came before this Court by invoking Article 226 of the Constitution of India by filing a writ petition being W.P. (C) No.3050 of 2014 which was disposed of vide order dated 28.06.2016 whereby and whereunder this Court without entering into the merit of the claim of the petitioner has thought it proper to refer the matter before the competent

authority, Deputy Commissioner, Hazaribagh for its consideration. The case of the petitioner in the light of the relevant material which is brought in the aforesaid writ petition, in pursuance to the said decision a reasoned order has been passed on 15.04.2017 (impugned), whereby and whereunder by making reference of the decision of Revenue and Land Reforms Department of its letter no.307 dated 23.06.2004 which prohibits settlement of Khas Mahal and Government Land in the town area in favour of particular person and the private institution.

The claim of the petitioner is that since the area of the land is very meagre and as such appropriate order may be passed on humanitarian ground taking into consideration that the said land is the only source of livelihood of the petitioner.

Mr. Gautam Kumar, learned S.C (Mines) by taking aid of the stand taken by the State respondent in the counter affidavit has submitted that there is no infirmity in the impugned decision and settlement cannot be demanded by way of a right and it can be settled if permitted under the law but as revealed in the decision vide letter no.307 dated 23.06.2004 there is completely barred on settlement of the land of the town area if the nature of it is Khas Mahal and the Government land, therefore, no interference is required in this case.

Having heard learned counsel for the parties and upon appreciation of the rival submissions, it is evident on the material available on record that the petitioner is seeking right of settlement of land on the basis of recommendation made by the revenue authority which according to the petitioner is prior to issuance of letter no.307 dated 23.06.2004.

The question here would be whether the recommendation can be said to be decision if the answer will be affirmative then the petitioner will have a case, in case of negativity the petitioner will have no case.

Admittedly the recommendation is not binding upon the authority who is to take decision rather it depends upon the authority to accept the recommendation or refuse it.

The recommendation made by the revenue authority, has not been accepted by the competent authority and during the relevant time the State Government has come out vide letter no.307 dated 23.06.2004 by which a complete embargo has been put on Khas Mahal Government Land in favour of any particular person and private institution.

It is not in dispute that settlement cannot be obtained by way of legal vested right rather it is discretion of the State to provide it in favour of a particular person or institution for a particular purpose.

The Government has taken decision on 23.06.2004 although prior to the date of recommendation made by the revenue authority/employees but merely on recommendation no vested right will be said to be created in favour of the petitioner since the legal vested right will be said to be accrued in favour of the party, if any final decision in terms of the provision of law will be taken, it is not

the case of the petitioner that any final decision has been taken with respect to settlement of the land rather the specific case is that there was only recommendation and as has been stated hereinabove, the recommendation cannot be said to be final decision, therefore the petitioner is having no legal right over the land in question.

The Deputy Commissioner, Hazaribagh by taking into consideration the decision of the State Government through its Revenue and Land Reforms Department as contained in letter no.307 dated 23.06.2004 has put embargo in settlement of the land which is in the nature of Khas Mahal and Government land of the town area, has denied the claim of the petitioner, therefore this Court in exercise of power conferred under Article 226 of the Constitution of India for issuing writ of certiorari is not inclined to exercise the aforesaid power since there is no error apparent on the face of record or the said order does not suffer from any jurisdictional error rather it has been passed as per the law.

Accordingly, the writ petition stands dismissed.