
(2012) 07 JH CK 0164

In the Jharkhand High Court

Case No : Writ Petition (C) No. 5199 of 2005

Manoj Kumar Sahu

APPELLANT

Vs

State of Jharkhand and Others

RESPONDENT

Date of Decision : 03-07-2012

Acts Referred:

Citation : (2012) 4 JCR 564

Hon'ble Judges : Aparesh Kumar Singh, J

Bench : Single Bench

Advocate : Ritu Kumar and Samavesh Bhanj Deo, for the Appellant; Srijit Choudhary, GA, for the Respondent

Final Decision : Dismissed

Judgement

Aparesh Kumar Singh, J.—Heard the parties. The Instant writ petition was preferred for quashing the no objection certificate contained in memo No. 159 dated 9.4.2005(Annexure-2) issued under the signature of the Deputy Commissioner, Saraikella Kharsawan in favour of the respondent No. 6 for running a petrol pump at mauza Saraikella, Ward No. 2, khata No. 90, plot No. 07 having an area of 51.1 acre on the ground that the petitioner being co-sharer, no objection certificate should not have been granted in favour-of respondent No. 6 without hearing the petitioner and also that petitioner was in cultivating possession over the said land.

2. The respondent-State as well as respondent No. 6 have appeared and filed their counter-affidavits. It has been categorically stated in the counter-affidavit filed by the respondent-State at paras 12, 13 and other paragraphs that the property for which the no objection has been granted by the Deputy Commissioner, Simdega is not an ancestral joint property. Moreover, the said no objection certificate has been granted in favour of respondent No. 6, as municipal records of rights reveals that the land has been recorded in the name of respondent No. 6 on the basis of the sale-deed by which the said property was conveyed in favour of the respondent No. 6 It is further submitted that it was not

acquired In the name of Mahesh Prasad Sahu and as such the aforesaid facts being established that the land in question has been purchased in the name of respondent No. 6 and accordingly, no objection certificate was granted in the year 2005 vide memo No. 159 dated 9.4.2005 for running the petrol pump over the land in question. Further, from the statement made in para 32 of the writ application and-the subsequent answer of the respondent-State in para 33 of the counter-affidavit, it appears that for the same cause of action petitioner has filed Miscellaneous Appeal No. 6 of 2005-06 before the Divisional Commissioner, Singhbhum (Kolhan Division) Chaibasa, which was pending adjudication and petitioner rushed to this Court without awaiting the outcome of the said Miscellaneous Appeal.

3. Respondent No. 6 has also filed its counter-affidavit, wherein it has been stated in different paragraphs including paras 11 and 12 that the land in question was purchased by the respondent No. 6 from his own income and it is self acquired property of respondent No. 6 and, therefore, no question of right, title. Interest and possession of any other persons arises over the portion of the self acquired property of respondent No. 6 He has further substantiated that the Deputy Commissioner, Simdega, being competent authority granted the no objection certificate after observation of due inquiry and procedures as contained under the Petroleum Act and the rules framed thereunder.

4. Petitioner has also filed rejoinder to, the said counter-affidavit filed by the respondent No. 6 and reiterated his contention that the property in question is the subject-matter of Title (Partition) Suit No. 12 of 2005 pending in the Court of Sub Judge-1, Saraikella for which respondent No. 6 has been issued notices. It is also stated on behalf of the petitioner that title of the land being subjudice, the grant of no objection certificate by the Deputy Commissioner was not proper. Moreover, there has been violation of the Petroleum Rules. 2002 by the respondents.

5. After hearing the parties and going through the records including the impugned order it is apparent that the land in question was conveyed in favour of the respondent No. 6 by title deed, whereupon the relevant entries in municipal records has been made and after due inquiry the Deputy Commissioner proceeded to issue no objection certificate for running petrol pump over the land in question. No objection certificate was issued in the year 2005 and by now the petrol pump must be running and there is no interim order obtained in favour of the petitioner for restraining the respondent No. 6 from running the retail outlet petrol pump. It also appears that the petitioner has rushed to this Court without awaiting the outcome of the Miscellaneous Appeal filed by him over the same subject matter as also the result of the Title (partition) suit instituted by him in respect to the said property and other properties in question against the private respondents. However, it is submitted by learned counsel for the petitioner that the said Miscellaneous Appeal has been dismissed during the pendency of the writ petition.

6. Therefore, from the aforesaid facts and circumstances, it appears that the act of the respondent-Deputy Commissioner in issuing no objection certificate, while being prima facie satisfied about the title of the respondent No. 6 over the land in question is fully justified. If, however, the petitioner is able to establish the right, title and ownership over the said plot in question, he may have remedy available under law subject to the outcome of the Title (partition) Suit. At the moment this Court does not find any substance to interfere with the no objection certificate. In that view of the matter, this writ petition is dismissed.