
(2019) 09 JH CK 0092

In the Jharkhand High Court

Case No : Writ Petition (C) No. 3324 of 2016

Manoj Kumar Singh

APPELLANT

Vs

State of Jharkhand And Ors

RESPONDENT

Date of Decision : 03-09-2019

Acts Referred:

Constitution Of India, 1950 — Article 226, 227

Citation : (2019) 09 JH CK 0092

Hon'ble Judges : Sujit Narayan Prasad, J

Bench : Single Bench

Advocate : Kundan Kr. Ambastha, Ankit Kumar

Final Decision : Dismissed

Judgement

1. This writ petition is under Article 226 of the Constitution of India whereby and whereunder order dated 05.04.2016 as contained in Memo No. 762 passed by Joint Registrar, Cooperative Societies, Jharkhand in Misc. Case No. 09 of 2015 is under challenge, by which, the order of cancellation of allotment of the land made in favour of the petitioner dated 07.07.2007 has been affirmed.

2. It is the case of the petitioner, as per the pleadings made in the writ petition, that for the land measuring an area of 4 kathas equivalent to 2880 square feet appertaining to Society Plot No. 314/49 of the Survey Plot No. 314 of khata no. 98 situated at village Hesag, P.S. Jagannathpur, district Ranchi, a deed of absolute sale has been executed on 18.03.1984 by the Society in favour of petitioner-Manoj Kumar Singh for a valuable consideration and the purchaser came in possession over the same and thereafter, the land has been surrounded by erecting boundary wall and since then the petitioner is in exclusive possession over the same being the rightful owner thereof.

3. It is further the case of the petitioner that he has made several requests before the Society to get the aforesaid absolute deed of sale registered in his favour but in spite of several requests and reminders, the land has not been

registered on the pretext that the proceeding under the Urban Land Ceiling Act, 1976 is pending, against the original land owners, in whose favour the land has been allotted, in Partition Suit No. 113 of 1947 and even after repealing of the Urban Land Ceiling Act, 1976, the petitioner has immediately approached the President/Member of the Society praying therein to get the deed of sale registered but not doing so by the Society prompted the petitioner to approach the Registrar, Cooperative Societies, Jharkhand, Ranchi by filing Misc. Case No. 09 of 2015. There, the matter was heard by the Joint Registrar, who has rejected the claim of the petitioner on the ground that the petitioner has not taken endeavor for getting the land registered in his favour fairly for a period of 23 years which is under challenge by way of filing the present writ petition.

4. Mr. Kundan Kumar Ambastha, learned counsel for the petitioner has submitted by referring to the deed of absolute sale, in particular Condition No. 6 (iii), which stipulates that the vendee shall complete the building within five years from the date of registration of this deed according to such plans and specifications as may be approved by the society and the concerned authorities competent from time to time and on default thereof shall forfeit the plot to the society and would be entitled to the payment of the consideration money only, therefore, the allotment has been cancelled even without waiting for the registry of the land which is the only ground for cancellation of allotment, as has been mentioned in the deed of sale, therefore, this condition is not applicable in the facts and circumstances of the case and as such the cancellation of allotment made by the society in favour of the petitioner cannot be said to be legally justifiable but this fact has not been considered by the Joint Registrar, Cooperative Society while passing the impugned order, as such the impugned order is not sustainable in law and fit to be set aside.

5. Mr. Ankit Kumar, A.C to learned G.P. IV has submitted that there is no illegality in the impugned order as the petitioner has failed to show any bona fide by showing any chit of paper establishing the fact that after allotment of land, by way of absolute sale, he has approached the Society for registration of the land rather no effort has been made by the petitioner for getting the land registered, which necessitated the Society for cancellation of the order of allotment made in favour of the petitioner, upon which, the Joint Registrar, Cooperative Society, Jharkhand, Ranchi after considering these facts, has declined to interfere with the order of cancellation of allotment, as such, the same may not be interfered with.

6. After hearing learned counsel for the parties and on appreciating the rival submissions, the fact which is not in dispute in this case is that the deed of absolute sale has been made in favour of the petitioner by the Janta Grih Nirman Sahyog Samiti Ltd, Hatia, Ranchi on 18.03.1984, by which the plot in question has been allotted.

The Condition No. 6 (iii) of the deed of absolute sale dated 18.03.1984, which is annexed as Annexure 1 to the writ petition, is quoted herein below:

"6(iii).the Vendee shall complete the building within Five years form the date of registration of this deed according to such plans and specifications as may be approved by the society and the concerned authorities competent from time to time and on default there of shall forfeit the plot to the society and would be entitled to the payment of the consideration money only."

It is evident from the aforesaid clause, upon which much emphasis has been laid by learned counsel representing the petitioner, that the Vendee shall complete the building within five years from the date of registration of the deed according to such plans and specifications as may be approved by the society. The said condition stipulates about the period of five yeas for completion of building that is from the date of said five years may not be counted from the date of absolute sale.

7. It is evident from the material available on record, more particularly the impugned order that the petitioner has not taken any initiative for registration of land in question, however, due to pendency of the land ceiling proceeding, which according to the petitioner was one of the grounds for not getting the land registered, but the question herein and based upon which the impugned decision has been taken by affirming the cancellation of the plot in favour of the petitioner, is that the land although has been allotted way back in the year 1984 but no effort has been taken by the petitioner for getting the said land registered.

The said finding has been arrived at since no chit of paper has been annexed by the petitioner by showing any infirmity in the impugned order wherein the main consideration for challenging the cancellation order of allotment is that the petitioner has failed to take any bona fide steps by approaching the authority of the society for registration of the land. Moreover, as would be evident from the impugned order, is that, it is the society which has taken all efforts for getting the initiative for registration of the plot in question by way of several steps taken by communicating it to the petitioner i.e. on 31.03.2006, 21.08.2006, 20.12.2006, 28.08.2006 and 05.06.2007 and thereafter on local address on 12.08.2007 and even thereafter the efforts have been made to serve the notice upon the address which has been furnished in the legal notice and furthermore communication has been tried to be made through the registered post, as enclosed in the reply submitted by the Society before the Joint Registrar, as would appear from the impugned order but the registered letter has returned back thereafter the society by coming to the conclusion that the petitioner has got no interest in getting the land registered in his favour, has cancelled the allotment of plot.

9. The petitioner has challenged the aforesaid order of cancellation, purely on the ground that there is no laches on the part of the petitioner and there is also no clause for termination of allotment, save and except, condition no. 6 (iii).

The petitioner's contention that such five years period is to be counted from the date of registration of the deed and as such there was no occasion for

cancellation of allotment but this argument is not acceptable for the reason that the petitioner has not taken any efforts for getting the land registered as required under Condition No. 6(iii) and it is only after registry of the deed petitioner can be said to be absolute owner of the plot. Since the petitioner has shown no interest in getting the said deed registered, as per the condition no. 6(iii), which occasioned the society to issue notice to him for cancellation of the allotment but the petitioner has failed to respond, for which, the registered notice apart from other modes have also been sent on the present and permanent address as also on the address mentioned in the legal notice, but the petitioner did not turn up for getting the land registered. Furthermore the reliance placed by the petitioner on condition no. 6(iii) is not applicable as the occasion for the same has not come, since the condition stipulates the condition after registration but here the cancellation of allotment is the question and the stage of pre Registration.

10. The Joint Registrar, after taking into consideration the fact that the petitioner has shown no bona fide interest in getting the deed of absolute sale in his favour for 23 years, has declined to interfere with the order of cancellation, which has been impugned in this writ petition.

11. This writ petition has been filed for quashing of the said decision dated 05.04.2016 by way of filing writ of certiorari. It is settled position of law so far as power under Article 226 of the Constitution of India in issuing writ of certiorari is concerned that the same can be issued if there is perversity of finding or the decision so taken is contrary to the statutory provision or there is any infringement of fundamental right and save and except these grounds the writ Court sitting under Article 226 of the Constitution of India, is not supposed to interfere with the fact finding based upon the factual aspect place before it otherwise the writ Court sitting under Article 226 of the Constitution of India will be an appellate Court.

12. It needs to refer herein that the scope of interference of the High Court to issue writ of certiorari sitting under Article 226 of the Constitution of India is very limited, as has been discussed by Hon'ble Supreme Court in the case of Syed Yakoob Vrs. Radhakrishnan reported in A.I.R. 1964 477 Supreme Court wherein at paragraph no.7 their Lordships have held as follows:-

"The question about the limits of the jurisdiction of High Courts in issuing a writ of certiorari under Art. 226 has been frequently considered by this Court and the true legal position in that behalf is no longer in doubt. A writ of certiorari can be issued for correcting errors of jurisdiction committed by inferior courts or tribunals : these are cases where orders are passed by inferior courts or tribunals without jurisdiction, or is in excess of it, or as a result of failure to exercise jurisdiction. A writ can similarly be issued where in exercise of jurisdiction conferred on it, the Court or Tribunal Acts illegally or improperly, as for instance, it decides a question without giving an opportunity to be heard to the party affected by the order, or where the procedure adopted in dealing with

the dispute is opposed to principles of natural justice. There is, however, no doubt that the jurisdiction to issue a writ of certiorari is a supervisory jurisdiction and the Court exercising it is not entitled to act as an appellate Court. This limitation necessarily means that findings of fact reached by the inferior Court or Tribunal as result of the appreciation of evidence cannot be reopened or questioned in writ proceedings. An error of law which is apparent on the face of the record can be corrected by a writ, but not an error of fact, however grave it may appear to be. In regard to a finding of fact recorded by the Tribunal, a writ of certiorari can be issued if it is shown that in recording the said finding, the tribunal had erroneously refused to admit admissible and material evidence, or had erroneously admitted inadmissible evidence which has influenced the impugned finding. Similarly, if a finding of fact is based on no evidence, that would be regarded as an error of law which can be corrected by a writ of certiorari. In dealing with this category of cases, however, we must always bear in mind that a finding of fact recorded by the Tribunal cannot be challenged in proceedings for a writ of certiorari on the ground that the relevant and material evidence adduced before the Tribunal was insufficient or inadequate to sustain the impugned finding. The adequacy or sufficiency of evidence led on a point and the inference of fact to be drawn from the said finding are within the exclusive jurisdiction of the Tribunal, and the said points cannot be agitated before a writ Court. It is within these limits that the jurisdiction conferred on the High Courts under Art. 226 to issue a writ of certiorari can be legitimately exercised (vide *Hari Vishnu Kamath v. Ahmad Ishaque*, 1955-1 SCR 1104 : ((S) AIR 1955 SC 233); *Nagendra Nath v. Commr. Of Hills Division*, 1958 SCR 1240 : (AIR 1958 SC 398) and *Kaushalya Devi v. Bachittar Singh*, AIR 1960 SC 1168).

13. In another judgment of Hon'ble Apex Court in the case of *Sawarn Singh Vrs. State of Punjab* reported in (1976) 2 SCC 868 their Lordships while discussing the power of writ under Article 226 for issuance of writ of certiorari has been please to hold at paragraph nos.12 and 13 as under:

"12. Before dealing with the contentions canvassed, it will be useful to notice the general principles indicating the limits of the jurisdiction of the certiorari jurisdiction can be exercised only for correcting errors of jurisdiction committed by inferior courts or tribunals. A writ of certiorari can be issued only in the exercise of supervisory jurisdiction which is different from appellate jurisdiction. The Court exercising special jurisdiction under Article 226 is not entitled to act as an appellate Court. As was pointed out by this Court in *Syed Yakoob's case* (supra).

13. In regard to a finding of fact recorded by an inferior tribunal, a writ of certiorari can be issued only if in recording such a finding, the tribunal has acted on evidence which is legally inadmissible, or has refused to admit admissible evidence, or if the finding is not supported by any evidence at all, because in such cases the error amounts to an error of law. The writ jurisdiction extends only to cases where orders are passed by inferior courts or tribunals in excess of

their jurisdiction or as a result of their refusal to exercise jurisdiction vested in them or they act illegally or improperly in the exercise of their jurisdiction causing grave miscarriage of justice."

14. In another judgment rendered by Hon'ble Apex Court in the case of Pepsico India Holding (P) Ltd. Vrs. Krishna Kant Pandey reported in (2015) 4 SCC 270 their Lordships while discussing the scope of Article 226 and 227 of the Constitution of India in the matter of interference with the finding of the tribunal has been please to hold by placing reliance upon the judgment rendered in the case of Chandavarkar Sita Ratna Rao Vrs. Ashalata S. Guram reported in (1986) 4 SCC 447 at para 17 has held as under:-

"17. In case of finding of facts, the court should not interfere in exercise of its jurisdiction under Article 227 of the Constitution. Reference may be made to the observations of this Court in Bathutmal Raichand Oswal V. Laxmibai R. Tarta where this Court observed that the High Court could not in the guise of exercising its jurisdiction under Article 227 convert itself into a court of appeal when the legislature has not conferred a right of appeal. The High Court was not competent to correct errors of facts by examining the evidence and reappreciating. Speaking for the Court, Bhagwati, J, as the learned Chief Justice then was, observed at page 1301 of the report as follows:

"..... power of superintendence conferred by Article 227 is, as pointed out by Harries, C.J., in Dalmia Jain Airways v. Sukumar Mukherjee to be exercised most sparingly and only in appropriate cases in order to keep the subordinate courts within the bounds of their authority and not for correcting mere errors.

This statement of law was quoted with approval in the subsequent decision of this Court in Nagendra Nath Bose V. Commr. Of Hills Division and it was pointed out by Sinha, J., as he then was, speaking on behalf of the court in that case:

It is thus, clear that the powers of judicial interference under Article 227 of the Constitution with orders of judicial or quasi-judicial nature, are not greater than the power under Article 226 of the Constitution. Under Article 226 the power of interference may extent to quashing an impugned order on the ground of mistake apparent on the face of the record. But under Article 227 of the Constitution, the power of interference is limited to seeking that the tribunal functions within the limits of its authority."

15. This Court after considering the ratio laid down by the Hon'ble Apex Court, as referred herein above and after going through the factual aspects is of the view by taking decision of affirmation of cancellation of order of allotment on the basis of the fact that for last twenty three years the petitioner has not turned up for registration.

Further the society has taken bona fide decision with respect to other allottees will have approached before the society, therefore, this Court is of the view that the decision taken by the authority is not in such a nature warranting

interference by this Court for issuing writ of certiorari by showing any interference in the impugned decision.

16. For the reasons aforesaid, the writ petition stands dismissed.