

(2008) 03 JH CK 0003
In the Jharkhand High Court

Shio Nath Singh	Vs	APPELLANT
Bharat Coking Coal Ltd.		RESPONDENT

Date of Decision : 10-03-2008

Acts Referred:

Constitution of India, 1950 — Article 226, 227

Citation : (2008) 2 JCR 481

Hon'ble Judges : M. Karpaga Vinayagam, C.J;Dabbiru Ganeshrao Patnaik, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

M. Karpaga Vinayagam, C.J.—The delay in filing this appeal is condoned. IA. No. 2512/07 is disposed of.

2. This Letters Patent Appeal is directed against the order passed by the learned single Judge on 15.6.2007 in W.P. (S) No. 1432 of 2003, dismissing the writ petition.

3. The appellant filed the said writ petition before the learned single Judge for issuance of a writ in the nature of mandamus commanding upon the respondents to pay compensation and provide employment to his dependents in pursuance of the Land Losers" Scheme against the acquisition of his land measuring 7.43 acres. The same was dismissed by the learned single Judge in the light of the facts disputed by the respondents. Hence, this LPA.

4. According to the petitioner-appellant, he, a cultivator, owned and possessed the land measuring 13.5 acres in the village Solunga, which he acquired through registered sale deed from one S.P. Agrawala on 26.10.1995. For extension of South Tisra Open Cast Project, a proposal for acquisition of 87 acres of land in Mouza Solunga was submitted by the respondents to the District Land Acquisition Officer, Dhanbad, in the year 1992. Due to abnormal delay in land acquisition proceeding, the respondent BCCL felt it imperative to acquire the land belonging to various owners including the petitioner-appellant, resorting to direct

negotiation with the owners. Accordingly BCCL took the delivery of possession of the land of the petitioner in the year 1995. After acquisition of the said land, the petitioner-appellant was asked to submit some documents for processing the payment of compensation and also for offering employment. The petitioner-appellant furnished the relevant documents. But the respondents have refused to give the compensation amount as well as to offer employment to his dependents on the ground of non-production of mutation order, upto date rent receipts and recent survey khatian in his name.

5. The case of the respondent-BCCL is as follows:

The sale-deed alleged to have been executed by Sheo Prakash Agrawala as per his Attorney Holder in favour of the petitioner is only sham and a paper transaction. The land in question had already been vested with BCCL with effect from 1.5.1972 after enactment of the Coking Coal Mines Nationalization Act, 1972. Since there is a claim by the petitioner-appellant, in order to verify his right, title, ownership and possession of the land in question, he was asked to establish the same through relevant documents. Several opportunities had been given to him. Even then, he was not able to produce the relevant documents and evidence as required by BCCL, except the sale deed. Even though there is Land Losers" Scheme for rehabilitation of the displaced persons, the claim of the petitioner-appellant for payment of compensation and for providing employment cannot be considered unless and until the petitioner-appellant satisfies and establishes his right, title, ownership and possession of his property. Therefore, the respondents rejected his claim, disputed his title and possession of the land in question.

6. In the light of the disputed facts relating to the question of ownership and possession, the learned single Judge dismissed the writ petition. However, liberty was given to the petitioner-appellant to agitate his grievance before the appropriate forum by letting evidence to establish his claim.

7. While assailing the order of the learned single Judge, the learned Counsel appearing for the petitioner-appellant would refer to various documents in order to show that the stand taken by the respondents in the counter-affidavit filed by them in the writ petition is contrary to the stand taken by them earlier in some of the documents, which were sent by the respondents to the petitioner-appellant and as such, it cannot be stated that it is a disputed claim.

8. We have heard the learned Counsel for the respondents on this aspect and have given our anxious consideration to their respective submissions.

9. Admittedly the petitioner-appellant had chosen to produce only the sale deed, in spite of the fact that the respondents asked him for production of other relevant documents, such as rental receipts and mutation orders. The petitioner merely stated that he has applied for mutation, but no steps have been taken by him to produce the same.

10. On the other hand, it is specifically averred by the respondent-BCCL that the sale deed is only sham and a paper transaction and it is not a genuine document. In that fact situation, the appellant was bound to produce the other documents, which he had not produced. So under those circumstances, the respondents were not able to hold that the petitioner-appellant had established his right, title, ownership and possession of the land in question.

11. In the aforesaid circumstances, the learned single Judge has dealt with this aspect in detail and held that the disputed question of fact cannot be gone into in a writ petition under Article 226 and 227 of the Constitution of India.

12. As pointed out by the learned single Judge, even according to the petitioner-appellant, the land in question, which belongs to him, has been acquired by the respondent-BCCL for its mining purpose, whereas, according to the respondents, the petitioner is not the real owner, as he has not been able to establish his right, title, ownership and possession of the land in question.

13. Therefore, the disputed question of fact and disputed question of claim over the right, title and interest over the property in question can be decided only when evidence is led in by the parties before the appropriate forum. Hence, we do not find any merit in this appeal. As correctly observed by the learned single Judge, the petitioner-appellant is at a liberty to agitate his grievance before the civil Court or the appropriate forum, where he could establish his right, title, possession and ownership of the land in question.

The appeal is, thus, dismissed. However, there is no order as to costs.

D.G.R. Patnaik, J.

14. I agree.