
(2010) 08 JH CK 0039

In the Jharkhand High Court

Case No : Writ Petition (C) . No. 161 of 2008

Sunil Kumar Sah alias Sunil Kumar

APPELLANT

Vs

The State of Jharkhand, The Deputy Commissioner and
Deoghar Municipality

RESPONDENT

Date of Decision : 12-08-2010

Acts Referred:

Bihar and Orissa Municipal Act, 1922 — Section 188
Constitution of India, 1950 — Article 226

Citation : (2010) 08 JH CK 0039

Hon'ble Judges : Narendra Nath Tiwari, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Narendra Nath Tiwari, J.—The Petitioner has prayed for quashing the order dated 19.12.22007 passed in Misc. Appeal No. 1 of 2007 by the appellate committee of Deoghar Municipality.

2. The Petitioner's claim is that he owns a vacant land and has got right title over the same. He intended to build a commercial cum residential building over this land. For that purpose, a Building Plan was submitted by the Petitioner before the Deoghar Municipality. The Municipality was informed that a Title Suit in respect of the said land was pending before the Subordinate Judge, Deoghar being Title Suit No. 116 of 2002. By order dated 12.5.2003, the Deoghar Municipality passed the order for keeping the application pending for sanction of Building Plan till disposal of the Title Suit. Against the said order, the Petitioner had preferred a Writ Application being W.P. (C) No. 3114 of 2004. But the said writ application was disposed of by order dated 19.5.2006 observing that since it is a disputed question of title in respect of the property in question, this Court under Article 226 of the Constitution of India cannot decide the legality and validity of the order of refusal passed by the Special Officer. It was also noticed that there was alternative remedy for filing the appeal against the order passed

u/s 188 of the Bihar and Orissa Municipal Act. This Court, thus, did not interfere with the impugned order. The Petitioner then preferred appeal before the Appeal Committee of the Deoghar Municipality. But the Appeal Committee dismissed the appeal observing that it is not desirable to sanction building plan during the pendency of Title Suit No. 116 of 2002 which is in respect of the land in question.

3. Learned Counsel for the Petitioner submitted that the impugned order is illegal and without jurisdiction as it has decided the question of title. The appellate order is vitiated also because one of the members of the Appellate committee was the Special Officer who had refused to sanction the plan during pendency of the title suit.

4. Learned Counsel appearing on behalf of Respondent-Deoghar Municipality submitted that the Petitioner had sought for sanction of plan in respect of land which is the subject matter of the pending suit in Civil Court, Deoghar. Since there is dispute of title between the parties and the suit is pending for adjudication before the Court, the application has been kept in abeyance awaiting decision of the Civil Court. Neither the Municipality nor the Appellate Committee has gone into the title of the parties as alleged by the Petitioner. So far his as his objection against Appellate Committee is concerned, it had three members and one of them was Special Officer. The decision has been taken by the Appeal Committee and not by the Special Officer and there is no illegality in the said decision. Moreover, the municipality has not passed any order on merit and has kept the same pending awaiting decision of the Title Suit. There is no infirmity or illegality in the impugned order.

5. I have heard learned Counsel for the parties and perused the facts and materials on record. From the first order, it appears that the Petitioners Building Plan has been kept in abeyance in view of the pendency of the Title Suit before the Civil Court. The Petitioner has claimed his right, title and asserted that he is entitled to construct a building and that the municipality has wrongly refused to sanction the plan. The same stand was taken before this Court in W.P.C. No. 3114 of 2004 and after hearing the parties and considering the facts of the case, this Court, inter alia, held that since it is disputed question of title in respect of the property in question, this Court under Article 226 of the Constitution of India cannot decide the same. The proper remedy available to the Petitioner is, therefore, to move the appellate authority as provided under the Bihar and Orissa Municipal Act.

6. The Petitioner has made the same claim in this writ petition over again. There is no fresh ground for taking contrary view in this petition. Further this Court does not find any infirmity or illegality in the impugned order as the same has been passed in view of the pendency of the Title Suit before the Civil Court in respect of the land in question. The appellate committee has rightly held that it would not be proper to sanction the Building plan before decision of the said Title Suit.

7. I find no illegality or arbitrariness in the impugned order. There is no merit in this petition and the same is accordingly dismissed.