

(2020) 01 JH CK 0206

Jharkhand High Court

Case No: Writ Petition (C) No. 1005 Of 2011

Jai Prakash Sahu @ Jai Prakash
Sao

APPELLANT

Vs

State Of Jharkhand And Ors

RESPONDENT

Date of Decision: Jan. 16, 2020

Acts Referred:

- Constitution Of India, 1950 - Article 226

Hon'ble Judges: B.B. Mangalmurti, J

Bench: Single Bench

Advocate: S.K. Murty, P.K. Mukhopadhyay, Prabhash Kumar

Final Decision: Dismissed

Judgement

1. Heard learned counsel for the petitioner and learned counsel for the respondent no.5. No one appears on behalf of the respondent nos.1-4.

2. Instant writ application has been filed against the order dated 24th September, 2009 passed in Mutation Revision Case No.18/2009-10, 1/2008-09

arising out of Mutation Appeal No.43/2006-07 and Mutation Case No.19/2004-05 by which the application filed by the petitioner for mutation has been

rejected on the ground that delivery of possession has not been executed in Title Appeal No.10 of 1960. Further prayer was to direct the authorities to

mutate the land i.e., Plot Nos.2376, 2377 and 2705 under Khata No.123, Mauza Jamtara in favour of the petitioner in place of his forefather.

3. Learned counsel for the petitioner submitted that forefather of the petitioner and other had filed Title Suit No.67 of 1955 which was dismissed on

30th November, 1959 and thereafter predecessors of petitioner and others preferred an appeal being Title Appeal No.10 of 1960 which was partly

allowed and Plot Nos.2376, 2377 and 2705 under Khata No.123 measuring an area of 1.25 acres were found in favour of the appellant as the contest

defendant did not claim any interest in those plots. It is further submitted that petitioner filed an application for mutation pertaining to these plots before

the Circle Officer, Dumri, Giridih which was registered as Mutation Case No.1077 of 2003-04 but the same was dismissed on 26th May, 2004 holding

that there had been a partition amongst heirs and successors and possession of land in question is disputed. Against the dismissal of mutation case

petitioner preferred an appeal before Land Reforms Deputy Collector, Giridih being Case No.05 of 2004-05 which also affirmed the order of the

mutation case and thereby dismissed the appeal holding that possession of respondent no.5 Punit Sao was found over Plot Nos.2376, 2377 and 2705.

Aggrieved by the said order of Land Reforms Deputy Collector, Giridih he approached the Court of Deputy Commissioner, Giridih being Revision

Case No.18 of 2009-10 / 01 of 2008-09 but the same was also dismissed. Learned counsel for the petitioner also submitted that all the three courts

have erred in holding that possession was not taken after the judgment of title appeal as no execution case was filed. It is further submitted that this

petitioner was all along in possession of those three plots and Plot No.2705 is still vacant, as has been held by the Court of Land Reforms Deputy

Collector, Giridih in Case No.05 of 2004-05. Learned counsel for the petitioner also submitted that when the court of Sub-Ordinate Judge, Hazaribag

in Title Appeal No.10 of 1960 / 16 of 1960 passed judgment on 23rd March, 1961 and has held that the defendant did not claim any interest in these

three plots and appeal succeeded in part, then the office of Circle Officer could not pass order contrary to the findings held in title appeal regarding the

ownership and possession of these three plots to this petitioner.

4. Learned counsel appearing on behalf of the respondent no.5 submitted that the petitioners or their predecessors were never in possession of all

these three plots being Plot Nos.2376, 2377 and 2705 because the copy of judgment which has been attached as Annexure-4 to the supplementary

affidavit by the petitioner would show that it was filed for declaration as well as recovery of exclusive possession over schedule lands. Learned

counsel further submitted that although the judgment in title appeal was passed in the year 1961 but no execution case was filed and possession of lands were never taken by this petitioner. He also submitted that now as per the order of Deputy Collector Land Reforms, it would appear that Plot Nos.2376, 2377 have been acquired for the construction of National Highway whereas Plot No.2705 is still vacant land. In this circumstance when the possession in execution was not taken over by the petitioner, the order passed by the statutory authority is in no way could be held bad in the eye of law. He also placed reliance upon a case of State of Uttar Pradesh versus Lakshmi Sugar and Oil Mills Limited and Others reported in (2013) 10 SCC 509 where the Honâ€™ble Apex Court has held that a High Court cannot exercise power under Article 226 of the Constitution of India and cannot sit in appeal over the findings by reversing concurrent findings of fact of the authorities. Here in this case three courts have found that the petitioner was never in possession of the said plots and, therefore, has rightly passed the order.

5. Considering the above submissions of the parties and on perusal of the papers attached with the application as well as the judgment of Honâ€™ble

Apex Court over which reliance has been placed, it appears that the court of Circle Officer and the court of Land Reforms Deputy Collector sitting in

appeal as well as the revisional authority being Collector-cum-Deputy Commissioner, Giridih have found that possession is not in favour of the

petitioner and rejected the prayer for mutation. In these circumstances when the concurrent findings of the three courts is not in favour of the

petitioner and there is no paper that execution was done within the stipulated period by the petitioner., therefore, no interference is required in the matter.

6. Resultantly, instant writ application is dismissed.