
(2024) 12 JH CK 0028
Jharkhand High Court
Case No: C.M.P. No. 75 Of 2023

Sushari Mahtain @ Susari

APPELLANT

Vs

State Of Jharkhand

RESPONDENT

Date of Decision: Dec. 11, 2024

Acts Referred:

- Code of Civil Procedure, 1908 - Order 9 Rule 4

Hon'ble Judges: Subhash Chand, J

Bench: Single Bench

Advocate: Atanu Banerjee, Suman Kumar Ghosh, Ankit Kumar, Arbind Kumar

Final Decision: Allowed

Judgement

Subhash Chand, J

1. Learned counsel for both parties are present.

2. By way of this C.M.P., order dated 07.11.2022 passed by the learned Civil Judge, Senior Division-II-cum- L.A. Judge, Bokaro in Civil

Miscellaneous Petition No.5 of 2022 (arising out of Land Acquisition Reference Case No.231 of 1981) has been assailed.

3. Learned counsel for the petitioner has submitted that before the District Land Acquisition Officer, Dhanbad, Land Acquisition Reference No.231 of

1981 was decided and the appeal against the same was also preferred and the same was allowed and the matter was remanded by the Appellate

Court to the concerned L.A. Judge, where the land acquisition case was pending. In that case, the proceeding of the same was dismissed on this

ground that no steps were taken for service of notice to opposite party Fulmani Mehatain.

4. Thereafter, the application under Order IX Rule 4 of C.P.C. was filed on behalf of the petitioner, the applicant in land acquisition reference case,

for restoration of the same, which was rejected by the learned Court below vide order dated 07.11.2022. It has been submitted that the learned Court

below has shown no reason while dismissing the application of the applicant-petitioner.

5. Per contra, learned counsel for the opposite parties opposed the contentions made by the learned counsel for the petitioner and contended that the

applicant-petitioner had laches in taking the steps for service of notice to private opposite parties, as such, the impugned order passed by the learned

Court below needs no interference.

6. I have heard the learned counsel for the parties and perused the materials on record.

7. Admittedly, Land Acquisition Reference No.231 of 1981 was decided on 23.12.1989 and against the same, First Appeal No.27 of 1991 (R) was

preferred. This First Appeal was decided vide order dated 13.03.2019 remanding the land acquisition reference case to decide the same afresh in

view of the direction passed by the appellate Court.

8. From the very perusal of Annexure-1, it is found that vide order dated 14.12.2021, the learned Land Acquisition Judge, Bokaro had dismissed the

Land Acquisition Reference Case No.221 of 1981 of 232 of 1981. All were dismissed in default. The copy of the same is at page No.26 of this

C.M.P.

8.1 The application was moved on behalf of the applicant under Order IX Rule 4 of C.P.C. to restore the same. The copy of same is Annexure-2 of

this C.M.P. In this C.M.P., in which, the petitioner had taken plea that on 13.07.2019, 28.08.2019, 24.09.2019 and 19.11.2019, the applicant gave

vakalatnama and the record was proceeded for further proceeding and with the onset of COVID lockdown, the record was posted for further

hearing on 26.03.2021 and on the second phase of lockdown on 29.04.2021, 19.06.2021 and 10.08.2021 no proceeding were pursued and ultimately the

case was dismissed on 15.12.2021. This application is also supported with the affidavit.

8.2 This very application was rejected by the learned Land Acquisition Reference Court vide order dated 07.11.2022, which is the impugned order in this C.M.P. From the very perusal of the same, it is found that on the date fixed, no one was present on behalf of private opposite party and this very restoration application was dismissed by the learned Land Acquisition Reference Court showing that the order dated 28.09.2022 was not complied with for taking steps for service of notice to private opposite party.

8.3. It is pertinent to mention herein that in appeal, the Land Acquisition Case was remanded and all the parties were present before the appellate Court, as such, both the parties were aware in regard to remanding the Land Acquisition Reference Case and there was no requirement to issue the fresh notice. Even if the fresh notice was required for private opposite party taking for proper steps on the same, the ground is narrated in the restoration application itself.

8.4. Herein it would be pertinent to mention that from the very perusal of order dated 28.09.2022, the steps were taken on behalf of the applicant, service report of the same came back and in view of the service report, it was reported that the address of the private opposite party was not correct and the fresh steps for the same could not be taken. The learned Land Acquisition Reference Court has not taken into consideration the ground the detailed reasons which has been shown by the petitioner not taking the proper steps for service of notice to the private opposite party. In order to substantiate the justice and to decide the dispute between the parties on merit there is sufficient ground to allow the restoration application. As such, the impugned order passed by the learned Court below on 07.11.2022 based on perverse finding needs interference.

9. Accordingly, this C.M.P. is hereby allowed and the impugned order dated 07.11.2022 passed by the learned Civil Judge, Senior Division-II-cum-L.A. Judge, Bokaro in Civil Miscellaneous Case No.5 of 2022 (arising out of Land Acquisition Reference Case No.231 of 1981) is set aside. The application filed by the petitioner for restoration of Land Acquisition Reference Case No.231 of 1981 is restored on its number.