

IN THE HIGH COURT OF JHARKHAND AT RANCHI
W.P. (C) No.5943 of 2019

Rakesh Jha @ Rakesh Kumar Jha Petitioner.
-Versus-

1. State of Jharkhand
2. Deputy Commissioner, Deoghar.
3. Additional Collector, Deoghar.
4. Sri Vishal Sagar, Sub Divisional Magistrate, Deoghar.
5. Circle Officer, Deoghar.
6. Madhusudan Bapat Nayas Smriti
7. Madhusudan Mandal

..... Respondents.

CORAM : HON'BLE MR. JUSTICE RAJESH SHANKAR

For the Petitioner : Mr. Kalyan Roy, Advocate
For the State : Mr. Ashish Kr. Thakur, A.C. to A.A.G.III

Order No.04

Date: 05.04.2021

1. This case is taken up through video conferencing.
2. The present writ petition has been filed challenging the order dated 11th May, 2019 (Annexure-6 to the writ petition) passed by the Sub Divisional Magistrate, Deoghar- respondent no.4, whereby the said respondent has directed the Circle Officer, Deoghar- respondent no.5 and Officer-in-charge, Kunda Police Station to prohibit the petitioner from entering into 3000 sq. ft. of land appertaining to plot no.644, Jamabandi no.1229, Mauja Jhaunsagari without his permission till disposal of the proceeding. Further prayer has been made for issuance of direction upon the respondent no.4 to restore possession of the petitioner over the land in question from which he has been dispossessed. The petitioner has also prayed for restraining the respondents from demolishing the remaining structure over the land in question from which he was forcibly evicted on 4th November, 2018 after partially demolishing the structure erected by the petitioner over the same. The petitioner has further prayed for payment of compensation for the said illegal demolition of structure made by the respondent no.4 (wrongly written as respondent no.3) and others.
3. Mr. Kalyan Roy, learned counsel for the petitioner, submits that earlier at the instance of one Ramjay Roy and others, a proceeding under Section 145 Cr.P.C. was initiated by the Sub Divisional Magistrate, Bokaro being Cr. Misc. Case no.1089 of 2007 in which possession of the land appertaining to plot no.644, J.B. no.687, Mauja Jhaunsagari, measuring an area of 5 Kathas was declared in favour of

the petitioner's father. The said order was never challenged by the aggrieved party and the same attained finality. Subsequently, in the year 2012, one Kamdeo Jha and others started taking measurement of the land in question for the purpose of getting the said land registered, which was objected by the petitioner. The petitioner also filed an application before the Deputy Commissioner, Deoghar-respondent no.2 to not register the said land in the name of any other person. The said application was forwarded to the respondent no.4 for enquiry and to take appropriate action, which led to registration of Revenue Misc. Case no.02 of 2012-13. In the said proceeding, the respondent no.5 recommended that since Jamabandi no.687 and Jamabandi no.1229, both, were related with the same plot i.e. plot no.644, one of the Jamabandis i.e. of plot no.644 may be cancelled and the record of the case was sent to the Land Reforms Deputy Collector, Deoghar as well as the respondent no.4. On considering the record as well as the report of the respondent no.5, the respondent no.3- Additional Collector, Deoghar initiated Misc. Case no.2 of 2012-13 and a notice was also issued to the petitioner and others under Section 4(h) of the Bihar Land Reforms Act, 1950. The respondent no.3 after considering the record vide order dated 23rd April, 2015 held that it was beyond his jurisdiction to cancel Jamabandi no.687 arising out of plot no.644 and, accordingly, the said proceeding was dropped in favour of the petitioner. It was also observed inter alia by the respondent no.3 that any party being aggrieved by the said order may take recourse before the Civil Court for declaration of title over the said land. It is also submitted that after the order passed in Misc. Case no.2 of 2012-13, the Jamabandi of the said land was neither cancelled nor it was opened in favour of Kamdeo Jha, who sold the property in favour of the respondent nos.6 and 7 vide registered sale deed. However, on 1st November, 2018, the respondent no.7 filed a petition before the Officer-in-charge, Kunda Police Station, Deoghar, intimating him that he purchased a portion of the land of plot no.644 and wanted to erect boundary wall over the same. After the said intimation given to the police, the respondent nos.6 and 7 started erecting boundary wall over 3000 sq. ft. of land under plot no.644, which was owned and possessed by the petitioner. On the basis of the report submitted by the concerned Assistant Sub Inspector of Police of the said police

station, a proceeding under Section 144 Cr.P.C. being Cr. Misc. Case no.792 of 2018 was initiated by the respondent no.4 and vide order dated 3rd January, 2019, the parties were restrained from entering the disputed land till disposal of the proceeding.

4. Learned counsel for the petitioner also submits that during pendency of Cri. Misc. Case no.792 of 2018, the respondent no.7 in connivance with the respondent no.4 taking help of musclemen entered the premises in question on 4th November, 2018 and demolished the garage situated over the same and the petitioner was ousted from the said part (3000 sq. ft. of land) of plot no.644. The petitioner also filed Complaint Case no.1298 of 2018 against the respondent nos.4, 6 and 7, which is presently pending. It is further submitted that said Cri. Misc. Case no.792 of 2018 was finally disposed of vide order dated 3rd January, 2019 by the respondent no.4 with an observation that since the dispute related to title and possession over the land in question, the same was beyond the jurisdiction of the said authority. The aggrieved party was, however, given liberty to take recourse before the competent court of law. Under the aforesaid background, learned counsel for the petitioner submits that passing of the impugned order dated 11th May, 2019 by the respondent no.4 is illegal and wholly without jurisdiction. It is also submitted that since the petitioner has illegally been dispossessed from the part of plot no.644, an appropriate order may be passed by this Court for his restoration over the same.
5. Mr. Ashish Kumar Thakur, learned A.C. to A.A.G.III, submits that the proceeding under Section 4(h) of the Bihar Land Reforms Act, 1950 was dropped by the respondent no.3 vide order dated 23rd April, 2015 on the ground of jurisdiction and hence the submission of the learned counsel for the petitioner that the same was dropped in favour of the petitioner is completely wrong. It is further submitted that the then Sub Divisional Magistrate, Deoghar, while passing the order dated 3rd January, 2019 in Misc. Case no.792 of 2018, clearly observed that the dispute with respect to the land in question appeared to be of title and possession and hence, the proceeding under Section 144 Cr.P.C. was dropped with liberty to the parties to take recourse before the competent court of law. Moreover, the impugned order dated 11th may, 2019 has lost its statutory force under Section 144(4) Cr.P.C.

6. Heard learned counsel for the parties and perused the contents of the writ petition. Several proceedings were initiated by the administrative authorities including the Sub Divisional Magistrate, Deoghar for the dispute between the petitioner and the respondent nos.6 and 7. However, while dropping the proceeding of Cri. Misc. Case no.792 of 2018 vide order dated 3rd January, 2019, the respondent no.4 clearly observed that the nature of dispute between the parties appeared to be of title and possession and, accordingly, they were given liberty to take recourse before the competent court of law.
7. In the aforesaid context, the prayer made by the petitioner that possession of the land in question may be restored in his favour cannot be entertained by this Court. As per the observation made by the respondent no.4 while passing the order dated 3rd January, 2019 in Cri. Misc. Case no.792 of 2018, the petitioner was at liberty to take appropriate recourse before the competent court of law for appropriate relief. This Court under Article 226 of the Constitution of India does not intend to go into the disputed question of title and possession over the land in question between the petitioner and the respondent nos.6 and 7. Thus the petitioner's prayer for his restoration of possession over the land in question cannot be entertained.
8. So far as the impugned order dated 11th May, 2019 passed by the respondent no.4 is concerned, the same has lost its statutory force in view of Section 144(4) Cr.P.C.
9. Under the aforesaid facts and circumstances of the case, no relief can be granted to the petitioner under the writ jurisdiction of this Court.
10. The writ petition is, accordingly, dismissed.

Sanjay/

(Rajesh Shankar, J.)