

**IN THE HIGH COURT OF JHARKHAND AT RANCHI
W.P.(C) No. 1208 of 2021**

Makhan Lal Jalan s/o Late Chhedi Lal Jalan, r/o ICR Road, Darji
Mohalla, PO, PS & District Giridih.

... **Petitioner**

-versus-

1. The State of Jharkhand.
2. The Deputy Commissioner, Giridih.
3. The Land Reforms Deputy Collector, Giridih.
4. The Deputy Collector Incharge, Giridih.
5. The Circle Officer, Giridih.

... **Respondents**

CORAM : SRI JUSTICE ANANDA SEN

For the Petitioner : Mr. Yogesh Modi, Advocate
For the Respondents : Mr. Rahul Kamlesh, AC to SC IV

ORDER

RESERVED ON 16.02.2024

PRONOUNCED ON 12.04.2024

In this writ petition, filed under Article 226 of the Constitution of India, the petitioner has prayed to quash the Memo No.891/Vidhi dated 30.11.2020 issued by the Deputy Collector Incharge, Giridih, whereby the request of the petitioner to recall the restriction imposed on the sale of land was rejected. Further, a prayer has been made to issue a mandamus commanding upon the Deputy Commissioner to recall the restrain order as contained in letter No.1632/GO dated 03.09.2016 issued by the Deputy Commissioner, Giridih.

2. Land in question situated in Village Pandeydih under Khata No.6, Police Station Giridih belonged to the ex-landlord M/s Bengal Coal Company. Vide registered Settlement Deed dated 21.02.1912, the land was settled in favour of Babu Bipin Bihari Choudhary. Plot numbers were mentioned as 381 and 382. The said Babu Bipin Bihari Choudhary sold the aforesaid land to Babu Ram Singh and one Bihari Lal Jalan vide registered sale deed dated 28.01.1935, wherein also the details of land was mentioned as Plot Nos.381 and 382 of Khata No.6, Village Pandeydih. Heirs of Babu Ram Singh sold the aforesaid land to Vijay Kumar Jalan son of Bihari Lal Jalan vide registered sale deed dated 06.05.1980. In the said sale deed also the plot numbers were mentioned as 381 and 382. Co-sharers of the property filed a partition suit being Partition Suit No.34 of 1988 in the Court of Sub Judge, Giridih in respect of the joint family property including the aforesaid property. The suit was compromised and in the said plaint and

-: 2 :-

other documents including compromise petition also, plot numbers were mentioned as 381 and 382. The petitioner, later on came to know that the actual plot numbers of the land was in fact 391, 392 and 393, but it was wrongly mentioned in all the registered sale deeds, settlement deeds and in Court documents as 381 and 382.

Petitioner, thereafter filed an application before the Anchal Adhikari (Circle Officer), Giridih along with documents, praying therein to correct the plot numbers mentioned as 381 and 382 to plot Nos.391, 392 and 393 in the revenue records. In the Revenue Records also, the plot numbers of the petitioner's land was recorded as plot Nos.381 and 382 as recorded in all the other documents. The petitioner, thereafter, filed an application before the Circle Officer, Giridih, praying therein to correct the plot numbers recorded in the Revenue Records against the name of the petitioner from 381 and 382 to plot Nos.391, 392 and 393. An enquiry was conducted and objections were called for and after hearing the parties, the Circle Officer on 08.09.2020, after rejecting the objections, allowed the application of the petitioner and corrected the plot numbers in the Revenue Records as plot Nos. 391, 392 and 393 in place of plot Nos.381 and 382. Thus, as per the Revenue Records, the plot numbers of the petitioner has been corrected.

As some land grabbers started to interfere with the land over plot Nos.391, 392 and 393 (wrongly mentioned as plot Nos.381 and 382), which, according to the petitioner belonged to him, by virtue of registered deed, he filed an application before the Deputy Commissioner, Giridih to ensure that any portion of the said plots, i.e., plot Nos.391, 392 and 393 are not allowed to be sold by any registered deed. The Deputy Commissioner, on representation of the petitioner, vide letter No.1632/GO addressed to the Sub Registrar, Giridih, instructed the latter not to register any deed in respect of the lands in Mouza Pandeydih, Thana No.43, Giridih Muffasil, Khata No.6, Plot Nos.391, 392 and 393.

Once the plot numbers in the Revenue Records was corrected, the petitioner approached the Deputy Commissioner, Giridih, praying therein to recall the restraint order, which was rejected by the impugned order on the ground that the Government Pleader had opined that the petitioner should first get the registered deed corrected by invoking Section 26 of the Specific Reliefs Act. This impugned order in Memo No.891 dated 30.11.2020 is under challenge in this writ petition.

-: 3 :-

3. Learned counsel for the petitioner submits that, when the Revenue Records have already been corrected and in new Revenue Records, the plot Nos.391, 392 and 393 has been reflected to be the plot of the petitioner, then respondents should have withdrawn the restraint order. As per him, the Deputy Commissioner did not apply his mind rather solely based his decision on the opinion of the Government Pleader, which should not have been done. The Circle Officer, after detailed enquiry, when had accepted the mistake and had corrected the Revenue Records by entering plot Nos.391, 392 and 393 in place of plot Nos.381 and 382, the Deputy Commissioner should have accepted the aforesaid correction made and should have recalled the restraint order. He also submits that in a civil suit, where one Shyam Sundar Manmohan claimed raiyati right over the aforesaid land in question being plot Nos.391, 392 and 393, Khata No.6, in the said suit being Title Suit No.29 of 2006, the Civil Judge, Senior Division Giridih vide his judgment held that plot Nos.391, 392 and 393 and part of plot No.394 does not belong to Shyam Sundar Manmohan. Thus, in view of the aforesaid findings, respondents should not have rejected the claim of the petitioner and directed them to get the deed corrected in terms of Specific Reliefs Act. Learned counsel for the petitioner lastly submits that in terms of Section 3 of the Bihar Tenant's Holding (Maintenance of Records) Act, 1973, the Circle Officer has got power to make correction of any wrong entries.

4. Learned counsel for the State-respondents submits that in the Revenue Record, the entries of plot numbers with corresponding details are based on the khatian. If the land is purchased by the subsequent purchasers, on basis of the sale deeds, transfer deeds or any other registered deeds, the details of the land mentioned in the registered instruments is the basis of the entry made in the Revenue Records. In this case, admittedly, in the registered settlement deeds and thereafter all the sale deeds and thereafter in the suit of partition also plot numbers was mentioned as plot No.381 and 382. Unless the said error is corrected, strictly as per law, the petitioner cannot get the relief, which he is claiming. So far as the order passed by the Circle Officer is concerned, he submits that the order of the Circle Officer, in fact, has indirectly amended and corrected registered documents, which is impermissible and illegal as the Circle Officer has got no power to do so. Until and unless the deed is corrected by competent authority, the Circle

Officer does not derive any power under the Bihar Tenant's Holding (Maintenance of Records) Act, 1973 to change the same. It is only the Civil Court of competent jurisdiction under Section 26 of the Specific Reliefs Act, who can correct a registered document. Until and unless a registered instrument is corrected, the Circle Officer does not have any power, even after making an enquiry, to make any correction in the records of rights. He submits that the petitioner should have firstly got all the deeds corrected by way of a declaration from a competent Court and thereafter only the Circle Officer gets the jurisdiction to make necessary correction in the record of rights. He argues that the petitioner has put the cart before the horse, which is impermissible.

5. After hearing the parties, I find that the dispute lies in a very narrow compass. The petitioner's ancestor had purchased the land vide registered document. In the document the plot numbers were mentioned as 381 and 382. In the Partition Suit 34 of 1988, the plot numbers were also mentioned as 381 and 382. In the compromise degree also the plot number was mentioned as 381 and 382. It was detected by the petitioner that the actual plot number is 391, 392 and 393. It is the case of the petitioner that there is wrong recording of the plot number in the registered settlement deed, registered sale deed, degree in the suit and also in the compromise petition. It is admitted by the petitioner that in the revenue records against the holding of the petitioner, the plot numbers were mentioned as 381 and 382. Be it noted that in the revenue records, the plot numbers in relation to the holding of a person is recorded as per the registered settlement deed or registered sale deed or in terms of the recording made in any judgment and decree. In this case also the revenue records were drawn up in terms of the registered sale deed.

6. As per the petitioner, in the registered sale deed, settlement deed, and in the compromise decree, wrong plot numbers are mentioned. The original document is the settlement deed. As the plot numbers in the said settlement deed was wrongly recorded, all the subsequent documents which were prepared later also bears the plot numbers which, according to the petitioner, is wrong.

7. Now, the question is what is the correct plot number and the procedure to get the wrong recording corrected.

8. Section 26 of the specific relief act, 1963 reads as follows

26. When instrument may be rectified. — (1)When, through fraud or a mutual mistake of the parties, a contract or other instrument in writing not being the articles of association of a company to which the Companies Act, 1956 (1 of 1956) applies does not express their real intention, then—

(a)either party or his representative in interest may institute a suit to have the instrument rectified; or

(b)the plaintiff may, in any suit in which any right arising under the instrument is in issue, claim in his pleading that the instrument be rectified; or

(c)a defendant in any such suit as is referred to in clause (b), may, in addition to any other defence open to him, ask for rectification of the instrument.

(2)If, in any suit in which a contract or other instrument is sought to be rectified under sub-section (1), the court finds that the instrument, through fraud or mistake, does not express the real intention of the parties, the court may, in its discretion, direct rectification of the instrument so as to express that intention, so far as this can be done without prejudice to rights acquired by third persons in good faith and for value.

(3)A contract in writing may first be rectified, and then if the party claiming rectification has so prayed in his pleading and the court thinks fit, may be specifically enforced.

(4)No relief for the rectification of an instrument shall be granted to any party under this section unless it has been specifically claimed:

Provided that where a party has not claimed any such relief in his pleading, the court shall, at any stage of the proceeding, allow him to amend the pleading on such terms as may be just for including such claim.

9. As per the provision in this Section, if due to mutual mistake of the parties, in any instrument, their real intention is not expressed, a suit may be instituted to have the instrument rectified. In this case, as per the petitioner, a mistake has cropped up in the registered instruments, in relation to the plot numbers, was due to mutual mistakes. Until and unless the said instrument is rectified and the plot numbers in the deeds and in the instruments are corrected, the petitioner will not be benefited. There has to be a declaration to the effect that the recording of plot numbers in all the documents / instruments is wrong and the same needs to be corrected. Further, there has to be another declaration to the effect that what is the correct plot numbers. These declarations can be made only after proper evidence is led, since these issues are factual. These declarations can only be given by a Civil Court of competent jurisdiction and none else.

10. As per the petitioner, the revenue records have already been corrected by the revenue officers. The said correction, as per me, could not have been carried out without the mother document being corrected. Without getting the settlement deed, sale deed, being corrected, the Revenue

Authorities do not derive any power to correct the revenue records. It is true that the Revenue Authorities undertook an enquiry and found that there is error in the recording but that finding does not confer jurisdiction upon the Revenue Authorities to correct their records. Since their records were based on the registered sale deed and the settlement deed, those instrument first needs to be corrected, then only the revenue records could have been corrected. To get these instruments rectified, the petitioner had to approach a Civil Court of competent jurisdiction in terms of Section 26 of the Specific Relief Act, 1963. In this case without getting an appropriate relief in terms of Section 26 of the Specific Relief Act, the petitioner got the revenue records corrected. This was not the correct procedure. So far as the enquiry report is concerned, the same can be a piece of evidence in favour of the petitioner in the suit filed under Section 26 of the Specific Relief Act. It is only consequent upon a decree in terms of Section 26, the plot numbers, in the instrument, can be corrected/rectified. Further, in this case a Compromise Decree also needs to be corrected. Without any rectification in the instruments, the revenue records cannot be corrected, as has been done in this case. The anomaly will remain, as the instrument will show a particular plot number, whereas the revenue records corresponding to such instrument will reflect another plot number. This is mere one reason the instrument needs to be corrected before making any correction in the revenue record.

11. Thus, I hold that the petitioner should approach an appropriate Civil Court of Competent Jurisdiction in terms of Section 26 of the Specific Relief Act and get the instruments rectified. Once the petitioner gets a decree in terms of Section 26 of the Specific Relief Act, it will be open to the petitioner to approach the Deputy Commissioner or the Registering Authority and bring to the notice of the authorities about the correction made in the parent instrument by which the petitioner is claiming title over the property in question. It will be open to the authorities to allow the petitioner to deal with the land title of which he is claiming through the settlement deeds, sale deeds and the decree.

12. With the aforesaid observations and directions, this writ petition stands disposed of. Pending interlocutory application, if any, stand disposed of.

(Ananda Sen, J.)