

Sl.267
13.06.2025
Court No.6
BP

C.O. 756 of 2025

Bharat Sanchar Nigam Ltd.
-versus-
Susen Kumar Podder & Ors.

Mr. Sanajit Kumar Ghosh
Mr. S. Gupta
... for the petitioner

Mr. Avinaba Patra
Mr. Dipayan Kundu
..for the opposite party no. 1

This application under Article 227 of the Constitution of India is at the instance of BSNL and is directed against an order being no. 98 dated 27th January, 2025 passed by the learned Civil Judge (Junior Division), 1st Court, Ranaghat, Nadia in Misc. Case No. 38 of 2016 arising out of Title Execution Case No. 17 of 1995.

By the order impugned the application under Section 47 of the Code of Civil Procedure filed by the petitioner herein stood rejected.

The opposite party no.1 filed a suit for declaration of title of "A" schedule property, a decree of khas possession of "B" schedule property by demolition of the unauthorised boundary wall of the defendants standing on the suit land and for perpetual injunction.

The said suit was decreed ex parte on September 27, 1993 thereby declaring the title of the plaintiff to the "A" schedule property of the plaint with a further decree of khas possession of "B" schedule land by demolition of the

unauthorised boundary wall of the defendants standing thereon. The said decree was put into execution giving rise to Title Execution Case No. 17 of 1995. The petitioner filed the application under Section 47 of the Code of Civil Procedure praying for dismissal of the title execution case.

The learned advocate appearing for the petitioner submits that the suit property was acquired by the L.A. Collector during the period 1962-63 and 1967-68 and the compensation was duly paid to the land owners. He further submits that the property was acquired for the Department of Telecommunication, Government of India for the construction of Telephone Exchange of the suit property. He, therefore, submits that the execution case should not be allowed to proceed with any further as BSNL has right, title, interest and possession in respect of the suit property.

The learned advocate appearing for the petitioner places reliance upon the decisions of the Hon'ble Supreme Court in the case of Delhi Administration Vs. Gurdip Singh Uban and others reported at (1999) 7 SCC 44 in support of his contention that upon issuance of the notification under Section 6 of the Act the property vested to the State. Meera Sahni Vs. Lt. Governor of Delhi & Ors. reported at 2008 9 SCC 177.

Heard the learned advocate for the opposite parties on such submission.

The opposite parties obtained a decree in Title Suit No. 175 of 1992 and the petitioner herein filed a miscellaneous case under Order 9 Rule 13 of the Code of Civil Procedure for setting aside the ex parte decree. The said miscellaneous case was dismissed on 21st June, 2003 and the said order attained finality and the petitioner did not carry the matter forward. Thereafter the petitioner has filed this application under Section 47 of the Code of Civil Procedure.

It is well settled that if the decree neither suffers from jurisdiction error nor invalidity nor there is any objection as to the executability of the decree, an application under Section 47 of the Code of Civil Procedure is not maintainable.

From the schedule of the plaint annexed to this civil revisional application this Court finds that plot no. 2216, Khatian Nos. 3817 and 3816 of mouza Ranaghat has been described as Schedule 'A'. The encroached portion has been described in Schedule B which forms part of Schedule 'A'.

The contention of the petitioner is that the suit property was acquired and, the property stood vested and the opposite party cannot claim any right, title, interest and possession in respect of the suit property.

It is not the case of the petitioner that the entire plot no. 2216 was acquired. It appears from the documents annexed to this application that only a portion of the plot

no. 2216 has been acquired. No material has been produced before this Court in support of the contention that the decreetal property was acquired.

It is well settled that the executing court cannot go behind the decree unless it was shown that it was passed by a court having inherent lack of jurisdiction which would make the decree a nullity.

The learned advocate appearing for the petitioner could not demonstrate that the decree suffers from any jurisdictional error or the decree is a nullity in the eye of law.

The learned trial judge assigned cogent reasons for rejecting the said application.

The decisions in the case of Delhi Administration (supra) and Meera Sahni (supra) cannot come to the aid of the petitioner as the issue in the case on hand is whether the decree can be impeached by filing an application under Section 47 of the Code of Civil Procedure.

For such reason, this Court is not inclined to interfere with the order impugned.

Accordingly, C.O. 756 of 2025 stands dismissed.

No order as to costs.

Urgent certified photocopy of this order, if applied for, be supplied to the parties expeditiously on compliance of usual legal formalities.

(Hiranmay Bhattacharyya, J.)