
(2001) 02 JH CK 0064
In the Jharkhand High Court
Case No : CWJC No. 1805 of 1999 (R)

Ajay Metachem Ltd.

APPELLANT

Vs

Commissioner, Chotanagpur Division, Ranchi and Others

RESPONDENT

Date of Decision : 27-02-2001

Acts Referred:

Chotanagpur Tenancy Act, 1908 — Section 46, 47, 49, 71

Citation : (2001) 02 JH CK 0064

Hon'ble Judges : M.Y. Eqbal, J

Bench : Single Bench

Advocate : V. Shivnath, for the Appellant; S.N. Das and GP 2, for the Respondent

Final Decision : Dismissed

Judgement

M.Y. Eqbal, J.—Heard Mr. V. Shiv nath, learned counsel for the petitioner, Mr. S.N. Das and learned GP 2 for the respondents and with their consent this writ application is disposed of at the admission stage itself.

2. This writ application is directed against the order dated 18.5.1999 passed by the respondent No. 1, Commissioner, South Chotanagpur Division, Ranchi in SAR Revision No. 206/97 whereby he affirmed the order of restoration passed by the respondent No. 2, Deputy Commissioner, East Singhbhum, Jamshedpur in SAR Appeal No. 61 of 1995-96 and reversed the order dated 30.9.1998 passed by the Respondent No. 3, Land Reforms Deputy Collector, Dalbhum, Jamshedpur in R.P. Cas No. 3 of 1994-95.

3. The fact of the case lies in a narrow compass.

4. The respondent Nos. 4 to 8 being the members of scheduled tribe filed application u/s 71-A of the Chotanagpur Tenancy Act before the Land Reforms Deputy Collector, Jamshedpur (in short LRDC) for restoration of land under Khata No. 49, Plot No. 308 measuring an area of 44 decimals situated at Mouja Eardih, district Singhbhum East. The restoration application was filed on the ground, inter alia, that the land in question stood recorded in the cadestral survey

records of right in the name of their predecessor Paran Manjhi as recorded raiyat and after his death applicants remained in peaceful possession of the said land but they have been dispossessed on the basis of transfer made in violation of the provisions of Section 46 of the said Act. The writ petitioners, who are the opposite parties, appeared and filed their show cause stating-, inter alia, that the land in question was held and possessed by one Tehmina Dastur, wife of late Sohrab Dastur, who is by caste Parsi and was not a member of scheduled tribe, much before the revisional survey operation, which took place in 1964. The revisional survey records of right of 1964 was prepared in the name" of Tehmina Dastur. It is stated that the recorded raiyat namely Tehmina Dastur paid rent to the State of Bihar and in the year 1982 said Tehmina Dastur and her daughter sold the land to the petitioner by registered sale-deed dated 21.1.1982 for valuable consideration. After the aforesaid purchase the writ petitioners constructed the buildings and structures for setting up a factory by investing substantial amount. The LRDC rejected the restoration application holding that although the name of Paran Manjhi recorded in the cadestral survey records of right but in the revisional survey records of right 1964 the name of vendor was recorded and, therefore, the RS records of right will prevail. In appeal filed by the respondents, the Deputy Commissioner reversed the order passed by the LRDC and allowed restoration application holding that the land in question is a raiyati land belonging to the member of scheduled tribe and they were dispossessed in violation of the provisions of the Act. The revisional authority affirmed the order of the Deputy Commissioner and dismissed the revision application.

5. Mr. V. Shivnath, learned counsel for the petitioner, assailed the impugned order passed in revision on the following grounds :--

(1) The proceeding u/s 71-A of the said Act was not maintainable for the reason that the land in question was duly recorded in the revisional survey records of right in the name of Tehmina Dastur, which has not presumptive value u/s 83 of the Act.

(2) The proceeding u/s 71-A of the said Act was itself Barred by-limitation.

(3) The nature of land having been changed for non- agricultural purposes before the operation of Schedule Area Regulations, 1969, the provisions of CNT Act cannot be attracted.

(4) The authority while passing the impugned order has totally ignored the proviso to Section 71-A of the said Act, which provides for other remedy in the event substantial structures are found over the land in question.

6. From perusal of the impugned order, it appears that the appellate authority and the revisional authority have taken notice of the fact that the revisional survey records of right prepared in the year 1964, has been declared void vide Government of Bihar Notification No. A/L 702/57-723 (Revenue), Patna on 28.9.1967. This fact has not been denied by the petitioner. This Court also take

judicial notice of the fact that no revisional survey records of right prepared in 1964 is effective in the district of East Singhbhum, it was only in 1980 the Municipal Survey Khatiyani was prepared. The submission of Mr. Shiv-nalh that the vendor of the petitioner is the recorded raiyat in the revisional survey records of right has no leg to stand. The Commissioner has rightly held that the cadestral survey records of right was in full force till final publication of Municipal Survey Khatiyani" in the year 1980. The Commissioner has further recorded a finding that the husband of the vendor of the petitioner, namely, Sohrab Nariman Dastur purchased the land in question in 1966 without obtaining the permission of the Deputy Commissioner, which is the mandatory requirement u/s 46 of the Act. Even after the alleged purchase the nature of the raiyati land used for agricultural purposes was not changed. Admittedly the petitioner said to have purchased the land in question in 1982 from Tehmina Dastur and after purchasing the land the petitioner constructed structures and, thereafter, changed the use of the land. The Commissioner has come to a definite finding that no substantial structure was constructed before coming into force of the Schedule Area Regulation, 1969.

7. It is, therefore, clear that the land in question was an Adibasi land belonging to a raiyat, who is a member of Scheduled Tribe. The respondents-applicants for the first time dispossessed from the land in question in 1966 on the basis of transfer made in contravention of the provisions of Section 46 and Section 49 of the said Act. It is also evident that the petitioner constructed the structures after purchasing the land in 1982. The Commissioner, therefore, rightly allowed the restoration application and ordered for restoration of the land in favour of the respondents. On this fact it can be safely concluded that the proviso to Section 71-A of the said Act cannot come in rescue of the petitioner. If the transferee after taking possession of tribal land in contravention of law makes spine improvement of the land or convert the use of the land by making structures with a view of over-reach the law and taking recourse to from fraudulent method then compensation would not be payable while passing order of restoration of the land.

8. Mr. V. Shivnath, learned counsel for the petitioner, relied upon a decision of the Patna High Court in the case of Dindayal Ram v. Ramzan Mistri, AIR 1946 Pat 466. In my opinion, the ratio decided by the Patna High Court is not at all applicable in the instant case. In that case the question arose for consideration before the Court was whether the land originally acquired for cultivation but subsequently acquired for cultivation but subsequently being used for non-agricultural purposes can be sold in execution of a money decree. Their Lordship held that the protection from saleability by money decree provided by Section 47 is intended only for agricultural lands and it would be highly inequitable to extend such protection to lands which were subsequently used for other purposes.

9. Regard being had to the entire facts and circumstances of the case and the

principle of law discussed herein-above, I am of the opinion that there is no infirmity in the impugned order of restoration passed by the Commissioner, South Chotanagpur Division, Ranchi.

10. Hence, there is no merit in this writ application, which is accordingly dismissed.

11. Writ petition dismissed.