
(1987) 07 PAT CK 0037
In the Patna High Court
Case No : C.W.J.C. No. 696 of 1982 (R)

Amin Mahto

APPELLANT

Vs

Commissioner, South Chotanagpur Div. and Others

RESPONDENT

Date of Decision : 14-07-1987

Acts Referred:

Chotanagpur Tenancy Act, 1908 — Section 46, 71A

Citation : (1988) 36 BLJR 114

Hon'ble Judges : S.B. Sinha, J

Bench : Single Bench

Judgement

S.B. Sinha, J.—In this writ application the petitioner challenges orders dated 11-1-1980 and 8-2-1980 as contained in Annexures 4 and 5 passed by respondent No. 2 and 1 respectively whereby and whereunder the said respondents, in purported exercise of their power conferred upon them u/s 71-A of the Chhotanagpur Tenancy Act, directed that the lands in question be restored in favour of respondent Nos. 4 to 7 and further directed that the said respondents pay compensation to the petitioner which may be determined in accordance with law, in view of the fact that the petitioner was in possession of the land in question for a period of more than 30 years.

2. Mr. P. K. Prasad, learned counsel appearing for the petitioner, submitted that from the order passed by the respondent No. 3 it would appear that the application filed by the respondent Nos. 4 to 7 was rejected on the ground that the petitioner was in illegal possession.

3. However, the respondent No. 2, the appellate authority and the respondent No. 1, the revisional authority in my opinion, rightly held that the petitioner was an under Raiyat. This fact would be borne from the fact that even in the record of right it has been mentioned that the land in question which was recorded in the name of the predecessor-in-interest of the respondent Nos. 4 to 7, were in possession of the predecessor-in-interest of the petitioner on payment of annual Salami of Rs. 10. Such an arrangement must be held to be a transfer within the

meaning of the provision of Section 46 of the Chotanagpur Tenancy Act. For the purpose of construction of Section 71-A of the Chotanagpur Tenancy Act the word "transfer" must be given a wide meaning. It has been so held by a Bench decision of this court in *Bina Rani Ghosh v. Commissioner, South Chotanagpur Division* (1985) P.L.J.R. 732 : 1985 B LT 279 .

4. In view of the entry in the record of right in my opinion, there cannot be any doubt that the petitioner's predecessor-in-interest was merely an under Raiyat (Sikmidar) under the predecessor-in-interest of the respondent Nos. 4 to 7.

5. In terms of the provisions of Section 46 of the Chotanagpur Tenancy Act there cannot be any lease of an agricultural holding for a period of more than five years. Induction of an under Raiyat in an agricultural holding by a Raiyat is certainly a transfer within the meaning of Section 46 of the Chotanagpur Tenancy Act. The very fact that the petitioner has been claiming his right as Sikmidar and had been in possession of the land in that capacity for a period of more than five years it must be held that the same amounts to a transfer which evidently was in contravention of the provisions of Section 46 of the Chotanagpur Tenancy Act,

6. In this view of the matter, the impugned orders as contained in Annexures 4 and 5 cannot be set aside. The writ petition is, therefore, dismissed but without any order as to costs.