
(2018) 02 JH CK 0018
In the Jharkhand High Court
Case No : 5746 of 2007

Baij Nath Munda	Vs	APPELLANT
The State of Jharkhand & Ors		RESPONDENT

Date of Decision : 07-02-2018

Acts Referred:

[Chotanagpur Tenancy Act, 1908](#), [Section 72](#)

Citation : (2018) 02 JH CK 0018

Hon'ble Judges : Anubha Rawat Choudhary

Bench : Single Bench

Advocate : Ashok Kumar Pandey, D.K. Prasad, Ajay Kumar Pathak

Final Decision : Dismissed

Judgement

1. Heard Mr. Ashok Kumar Pandey, counsel for the petitioner, Mr. D.K. Prasad, counsel assisted by Mr. Ajay Kumar Pathak counsels

appearing for the respondent nos. 5 to 8 and Mr. A.K. Thakur, J.C. to S.C.(L&C) appearing for the respondent-State.

2. This writ petition has been filed by the petitioner challenging the following orders:

a) Oder dated 23.06.2005 passed by Special Officer, Schedule Area Regulation, Khunti (respondent no. 4) in SAR case no. 60/03-

04;

b) Order dated 22.12.2006 passed by Additional Collector, Ranchi respondent no. 3 in S.A.R. Appeal No. 48R15/05-06 and the

c) Order dated 24.04.2007 passed by The Commissioner, South Chotanagpur Division, Ranchi (respondent no. 2) in S.A.R.

Revision No. 32/2007.

3. Counsel for the petitioner submits as follows:

a) The property involved in this case is a piece of land being R.S. Plot No. 86 area 2.97 acres under Khata No. 49 of Village-

Kamanta, which is recorded in survey record of right in the name of ancestor of the petitioner.

b) After the death of the ancestor of the petitioner, the rent of the property is being paid by the petitioner to the State,

c) The petitioner filed an application u/s 71(A) of the Chotanagpur Tenancy Act, 1908 against respondent nos. 5 to 8 in the court of

Special Officer, Ranchi which was registered as S.A.R. Case No. 60/03-04. Counsel for the petitioner submits that although the

application for restoration has not been annexed by the writ petitioner but the same is a part of the counter-affidavit filed by the

private respondent which is contained in Annexure-H to the counter-affidavit.

d) A report was called for from the Anchal Adhikari by the authority. On the basis of the report, the petitioner submits that it is clearly

mentioned in the report that only over 0.03 acres of land a house has been constructed and the report shows that Register-II is

running in the name of ancestors of the petitioner and he has paid rent up to 2004-05. A copy of the report of the Circle Officer is

annexed at Annexure-I, to the writ petition.

e) However, vide order dated 23.06.2005 the said application for restoration of land was rejected which is contained in Annexure-II

to the writ petition. He submits that while rejecting the application for restoration, the original court relied upon the claim of surrender

by the respondent nos. 5 to 8 by the original raiyat to the then Zamindar and subsequent settlement through sada hukumnama issued

in the year 1943. He further submits that the original court has held that the application filed by the petitioner, for restoration, is time

barred under the provisions under sections 71(A) of the Chotanagpur Tenancy Act, 1908. He submits that there is no document on

record to show date of surrender as claimed by the private respondents herein and the sada hukumnama which is on record being

unregistered document cannot be relied upon by the respondent nos. 5 to 8.

f) Against this order dated 23.06.2005, the writ petitioner filed appeal being

S.A.R. Appeal No. 48R15/05-06 before Additional

Collector who also rejected the appeal without properly appreciating the fact and law. Against this, S.A.R. Revision Case No.

32/2007 was filed by the petitioner before the Commissioner which was again rejected by the impugned order on the ground that the

application filed by the petitioner was time barred.

g) learned counsel submits that the learned courts below have not appreciated the law properly in as much as the claim of the private

respondent that they are in possession of the property by virtue of deed of surrender and subsequent Sada hukunama said to have

been issued in 1943 cannot be recognized, firstly on the ground that deed of surrender is not a part of record and secondly sada

hukumnana being an unregistered document cannot be taken into account. He has relied upon the judgment reported in (2001) 1

JLJR 102.

4. Counsel for the respondents, on the other hand, submits that there is no requirement of deed of surrender for surrender of land, as surrender

itself is an unilateral act and no document is required for that purpose as per section 72 of the Chotanagpur Tenancy Act, 1908 which empowers

the raiyat to surrender his property to the land lord and for that neither any document nor any registration is required. So far as sada hukumanama

is concerned, learned counsel for the respondents submits that the respondents had came into possession by virtue of sada hukumanama and they

are in a possession of this property and have also annexed documents to submit that their possession is undisputed. Learned counsel for the

respondents submits that the application for restoration as contained in Annexure-H to the counter-affidavit filed by the petitioner does not disclose

the date of dispossession.

The report of the Circle Officer as contained in Annexure-1 to the writ petition clearly indicates that the petitioner has been dispossessed from the

property for more than 55 years.

Counsel further submits that this fact is recorded by the Circle Officer in his report as contained in Annexure-1 which is undisputed fact and has not

been controverted by the writ petitioner even in writ petition or at any stage of the proceedings.

Accordingly, the claim of surrender and the sada hukumanama even if not taken into account, then also, the report of Circle Officer is sufficient to

show that the petitioner was dispossessed from the property for more than last 55 years and the application, filed by the petitioner, for restoration

of land was time time barred.

5. Considering the facts of this case, I see no reason to interfere with the impugned orders. Accordingly the writ petition is hereby dismissed on

account of following facts and reasons :-

a) The writ petitioner herein had filed his application for restoration of the property involved in this case on 17.10.2003 which has

been numbered as S.A.R. Case No. 60/2003-04. The authority called for a report from the Anchal Adhikari, Khunti and the report

of the Anchal Adhikari Khunti is contained in Annexure-1 to the writ petition. In paragraph no. 2 of the report of the Anchal

Adhikari, Khunti it has been clearly mentioned that the property in question is in possession of the private respondents for a period of

about 55 years. Although, the rent receipt has been issued in favour of the original raiyats who were ancestors of the petitioner till the

year 2004-05, the finding in the report of the Circle Officer that the private respondents are in possession of the property for about

55 years has not been disputed by the writ petitioner at any stage.

b) Although the writ petitioner has not annexed a copy of the original application for restoration which was numbered as S.A.R. Case

No. 60/2003-04, but the same is available in the record of the case which is part of counter-affidavit filed by the private respondents

as contained in Annexure-H to the counter-affidavit. From perusal of Annexure-H to the counter-affidavit it is apparent that the

petitioner in his original application has not mentioned the date of dispossession and the column regarding date of dispossession in the

said application is unfilled. Accordingly, the petitioner neither disclosed the date of dispossession in his original application nor

disputed the finding recorded by the Circle Officer in his inspection report as contained in Annexure-1 to the writ petition that the

private parties herein were in possession of the property since last 55 years.

c) From the entire records and the submission advanced on behalf of the

petitioner, I find no explanation offered by the writ petitioner

as to why no steps were taken for restoration of the property for long 55 years. The S.A.R. Case No. 60/2003-04 was dismissed by

the Authority vide impugned order dated 23.06.2005 on the ground that the application itself is time barred.

d) Against the order dated 23.06.2005, the petitioner filed appeal being S.A.R. Appeal No. 48R-15/05-06 which was dismissed

vide order dated 22.12.2006 by the Additional Collector, Ranchi by holding inter-alia that the application for restoration filed by the

writ petitioner was barred by limitation.

e) Against this order, the writ petitioner filed S.A.R. Revision No. 32/2007 which was also dismissed by Commissioner, South

Chhotanagpur, Division, Ranchi vide order dated 24.04.2007 by holding that the application for restoration was time barred as it was

filed after 55 years.

f) There is consistent finding of fact by all the three authorities i.e. order passed in S.A.R. Case No. 60/2003-04, order passed in

S.A.R. Appeal No. 48R-15/05-06 and order passed in S.A.R. Revision No. 32/2007 that the petition for restoration filed by the

writ petitioner under Section 71A of the Chotanagpur Tenancy Act, 1908 is time barred. The reliance of the petitioner on the

judgment reported in 2000(1) J.C.R. 156 (Haroon Oraon vs. State of Bihar) to emphasize the point that the transfer of land on the

basis of claim of surrender of land and Sada Hukumnama is not admissible on account of being un-registered document, does not

help the petitioner in any manner whatsoever particularly in view of the fact that the Circle Officer had clearly mentioned in his report

that the respondent are in possession of the property for about 55 years dehors the disputed sada hukumnama and deed of

surrender.

g) The authorities below have consistently held that the application for restoration filed by the writ petitioner was time barred.

Moreover, from, the entire records of the case I do not find any explanation furnished on behalf of the petitioner for not having filed

the application for restoration for long 55 years.

6. Accordingly, this Court is not inclined to interfere with the impugned orders. There being no perversity in the impugned orders and the petitioner

having lost before all the three authorities, this Court is not inclined to give any relief to the writ petitioner.

7. On account of the aforesaid facts and circumstances, the writ petition is hereby dismissed.