
(2003) 08 JH CK 0043
In the Jharkhand High Court
Case No : CWJC No. 2199 of 1995 (R)

Balram Hazam and Others

APPELLANT

Vs

State of Bihar and Others

RESPONDENT

Date of Decision : 11-08-2003

Acts Referred:

Chotanagpur Tenancy Act, 1908 — Section 71A
Constitution of India, 1950 — Article 226

Citation : (2003) 4 JCR 179

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

Bench : Single Bench

Advocate : D.K. Sinha, for the Appellant; SC-I, for the Respondent

Final Decision : Allowed

Judgement

M.Y. Eqbal, J.—Heard the parties.

2. This writ application has been filed by the petitioner for quashing the order dated 3.7.1995 passed by the Circle Officer, Sonahatu directing restoration of land in favour of respondent No. 3.

3. The petitioner's case is that the land of Khata No. 37 plot No. 100 area 0.77 decimals of village Jamudag, P.S. Sonabhatu, District. Ranchi was recorded in the name of Jhasu Munda who had surrendered the said plot to the Ex-landlord Thakur Pitambar Singh in 1942. The Ex-landlord after resuming the land settled, it with the father of the petitioner Balram Hazam by Soda Hukumnama dated 13.4.1944 and 5.1.1945 followed by grant of rent receipts. The petitioner's father came in possession of the said land and paid rent to the Ex-landlord and after vesting of Zamindari to the State of Bihar. The respondent No. 3 who was recorded raiyat filed an application for restoration of land u/s 71-A of CNT Act which was registered as SAR 1 of 1994-95 before the Scheduled Area Officer, Khunti. The said restoration application was finally dismissed by order dated 22.8.1974 holding that no case of restoration was made out by respondent No.

3. The respondent No. 3 thereafter filed a case before the Circle Officer, Sonahatu" under Bihar Money Lenders Act for restoration of land and the Circle Officer, Sonahatu allowed the said application by the imputed order dated 3.7.1995.

4. Annexure 1 series are the copies of Hukumnama and the copy of the rent receipts showing settlement of land payment of rent to the Ex-landlord. The petitioner also filed rent receipts granted by the State of Bihar after vesting of the Zamindari upto date i.e., 1994. , From perusal of the restoration order passed by the Scheduled Area Regulation Officer in case No. 96/74-75, it appears that the Regulation Officer after considering the Hukumnama coupled with series of rent receipts came to the conclusion that the land was settled by the Ex- landlord in favour of the father of the petitioner in the year 1944 and 1945 and all the rent receipts granted by the State of Bihar are genuine documents. The Regulation Officer further held that it is not a case of fraudulent transfer of the land belonging to the member of scheduled tribe or illegal dispossession of the member of scheduled tribe. Consequently the restoration application was rejected. It is worth to be noted here that against the said order the respondent No. 3 did not file any appeal or revision challenging the said Order. On the contrary after about 20 years in the year 1994 the same respondent No. 3 filed an application under Bihar Money Lenders Act 1974 for delivery of possession of the land on the ground of illegal possession of the petitioner on the basis of mortgage as a Bhugud Bandhak Mortgage. The Circle Officer ignoring the order passed under the provisions of Section 71-A of the CNT Act illegally recorded a finding that the settlement was not valid and therefore, it shall be deemed that possession of the petitioner was on the basis of Bhugud Bandhak Mortgage. Prima facie the finding recorded by the Circle Officer is illegal and wholly without jurisdiction. The Circle Officer failed to consider that the application under the Bihar Money Lenders Act itself was not at all maintainable and entertainable. The Circle Officer has no jurisdiction to reconsider the matter again when the order passed in restoration proceeding attained its finality. The impugned Order, therefore, cannot be sustained in law.

5. For the aforesaid reason this writ application is allowed and the impugned Order passed by the Circle Officer, Sonahatu in case No. 1 of 1994-95 is quashed.