
(2008) 12 JH CK 0088
In the Jharkhand High Court

Bhuwang Oraon and Bablu Oraon

APPELLANT

Vs

State of Jharkhand and Others

RESPONDENT

Date of Decision : 19-12-2008

Acts Referred:

Constitution of India, 1950 — Article 244

Citation : (2009) 1 JCR 299 : (1997) 4 RCR(Civil) 645

Hon'ble Judges : M.Y. Eqbal, J;Jaya Roy, J

Bench : Division Bench

Final Decision : Allowed

Judgement

M.Y. Eqbal, J.—In this appeal, a very interesting question, which needs consideration by this Court, is as to whether the Deputy Commissioner or any of the officer exercising power conferred by Section 71-A of the Chota Nagpur Tenancy Act, 1908 can issue interim order of injunction.

2. The facts of the instant case lie in a narrow compass: The appellants, who are members of Scheduled Tribes, filed an application u/s 71-A of the C.N.T. Act (in short 'the Act') for restoration of land on the allegation that they were fraudulently dispossessed by the private respondents. The said application was registered as S.L.R. Case No. 120/06-07. The Special Officer, Scheduled Area Regulation, issued show cause notices to the private respondents. In the meantime, the Special Officer directed the respondents to stop construction work on the land in question. The respondents challenged the said order by filing a writ petition being W.P. (C) No. 5434 of 2007, whereby the respondents were directed to stop construction over the land in question. The respondents took the stand that similar applications were filed by the appellants earlier on the same ground and those restoration applications were dismissed and, therefore, fresh restoration proceeding is barred by res judicata. It was further contended by the respondents that the Scheduled Area Regulation Officer has no jurisdiction or power to issue orders of injunction or to direct the Officer Incharge to restrain the respondents from making construction.

3. The learned Single Judge, after hearing the parties, held that so far the question as to whether fresh proceeding is barred by res judicata on the ground of similar proceedings having been dismissed is to be decided by the Special Officer and the respondents could have raised all the question and could have requested for preliminary hearing. However, so far the power of Special Officer directing the Officer Incharge to stop construction is concerned, the learned Single Judge held that the said order is illegal and without jurisdiction for the reason that the appellants failed to place any provision of law which empowers the Special Officer to pass such orders. The appellants, therefore, only challenged that part of the order whereby the learned Single Judge declared the interim order passed by the Special Officer as being illegal and wholly without jurisdiction.

4. We have heard the learned Counsel appearing for the appellants and the learned Counsel appearing for the respondents.

5. Before appreciating the rival contention of the parties, we would first like to discuss the brief history of the provisions of Section 71-A of the Act. Section 71-A of the Act was inserted by Scheduled Area Regulation, 1969 (Bihar Area Regulation 1 of 1969). It is worth to mention here that the Scheduled Area (Part-C of the Vth Schedule), 1950 was made by the President of India in exercise of power conferred upon him by paragraph 6 of the Vth Schedule to the Constitution. By the said order 1950, certain areas were specified as Scheduled Areas. By the aforesaid schedule Area Order, 1950, some part of the State of Bihar was declared as Scheduled Areas. Thereafter, the Governor of Bihar framed the Scheduled Area Regulation Act, 1969. By virtue of Scheduled Area Regulation, 1969, Section 71-A was inserted in the Chota Nagpur Tenancy Act. Paragraph 5 of Schedule-V of the Constitution empowers the Governor to make Regulation for the peace and good governance of any scheduled area in the State.

6. Part C of the Vth Schedule of the Constitution of India confers power upon the President of India to declare any area to be scheduled area. Article 244 read with Vth Schedule of the Constitution of India makes it clear that the main object of the framer of the Constitution and the framer of the Regulation is to protect the interest of the members of the Scheduled Tribes who were being exploited at the hands of the others. With the aforesaid object, Section 71-A conferred power upon the Deputy Commissioner to take action in accordance with the provisions of the Regulation. The Deputy Commissioner has been empowered to restore possession of the land belonging to members of Scheduled Tribes who have been dispossessed from their lands illegally and fraudulently or in contravention of the provisions of the Act. It has been well settled now that the Deputy Commissioner in exercise of power u/s 71-A can restore the land even in cases where he is satisfied that a collusive decree was obtained in respect of the land against the tribal by practising fraud, under influence or by collusive methods.

7. From perusal of the powers conferred by the Regulation, it is manifestly clear that the object of the framer of the Regulation is to protect and safeguard the

interest of the members of Scheduled Tribes. Section 71-A as inserted by Regulation 1969 is a beneficial legislation for the purposes of safeguarding and protecting the interests of raiyats who are the members of Scheduled Tribes.

8. At this stage, I would like to quote Section 71-A of the C.N.T. Act which reads as under:

71-A. Power to restore possession to member of the Scheduled Tribes over land unlawfully transferred. ?

If at any time, it comes to the notice of the Deputy Commissioner that transfer of land belonging to a raiyat or a Mundari Khunt-Kattidar or a Bhuinhari who is a member of the scheduled Tribes has taken place in contravention of Section 46 or Section 48 or Section 240 or any other provisions of this Act or by any fraudulent method, including decrees obtained in suit by fraud and collusion, he may, after giving reasonable opportunity to the transfer, who is proposed to be evicted, to show cause and after making necessary inquiry in the matter, evict the transferee from such land without payment of compensation and restore it to the transferor or his heir, or, in case the transferor or his heir is not available or is not willing to agree to such restoration, re-settle it with another Raiyat belonging to Scheduled Tribes according to the village custom for the disposal of an abandoned holding : Provided that if the transferee has, within 30 years from the date of transfer, constructed any building or structure on such holding or portion thereof, the Deputy Commissioner shall, if the transferor is not willing to pay the value of the same, order the transferee to remove the same within a period of six months from the date of the order, or within such extended time not exceeding two years from the date of the order as the Deputy 4 L.P.A. No. 254 of 2008 Commissioner may allow, failing which the Deputy Commissioner may get such building or structure removed:

Provided further that where the Deputy Commissioner is satisfied that the transferee has constructed a substantial structure or building on such holding or portion thereof before coming into force of the Bihar Scheduled Areas Regulation, 1969, he may, notwithstanding any other provisions of the Act, validate such transfer where the transferee either makes available to the transferor an alternative holding or portion thereof as the case may be, of the equivalent value of the vicinity or pays adequate compensation to be determined by the Commissioner for rehabilitation of the transferor : Provided also that if after an inquiry the Deputy Commissioner is satisfied tht the transferee has acquired a title by adverse possession and that the transferred land should be restored or re-settled, he shall require the transferor or his heir or another raiyat, as the case may be, to deposit with the Deputy Commissioner such sum of money as may be determined by the Deputy Commissioner having regard to the amount for which the land was transferred or the market value of the land, as the case may be and the amount of any compensation for improvements effected to the land which the Deputy Commissioner may deem fair and equitable.

Explanation I ? In this Section ?substantial structure or building? means structure or building the value of each on the day of initiation of inquiry, was determined by the Deputy Commissioner to exceed Rs. 10,000 but does not include structure or building of any value, the material of each can be removed without substantially impairing the value of.

Explanation II. ? A Bhuinhar or Mundari Khunt- Kattidar, who is deemed to be a settled Raiyat under the provisions of Section 18 of this Act shall also be deemed to be a Raiyat for the purpose of this Section.

9. It would also be useful to refer Section 46 of the Act which puts a restriction in the transfer of land by a raiyat belonging to a member of Scheduled Tribes. Section 46 reads as under:

46. Restrictions on transfer of their right by Raiyat. ?

(1) No transfer by a Raiyat of his right in his holding or any portion thereof -

(a) by mortgage or lease for any period expressed or implied which exceeds or might in any possible event exceed five years, or

(b) by sale, gift or any other contract or agreement, shall be valid to any extent:

Provided that a Raiyat may enter into a ?bhugut bundha? mortgage of his holding or any portion thereof for any period not exceeding seven years or if the mortgages be a society registered or deemed to be registered under the Bihar and Orissa Co-operative Societies Act, 1935 (B.& O. Act VI of 1935) for any period not exceeding fifteen years:

Provided further that ?

(a) an occupancy-Raiyat who is a member of the Scheduled Tribes may transfer with the previous sanction of the Deputy Commissioner his right in his holding or a portion of his holding by sale, exchange, gift or will to another person who is a member of the Scheduled Tribes and who is a resident within the local limits of the area of the police-station within which the holding is situate;

(b) an occupancy-Raiyat who is a member of the Scheduled Castes or Backward Classes may transfer with the previous sanction of the Deputy Commissioner his right in his holding or a portion of his holding by sale exchange, gift, will or lease to another person who is a member of the Scheduled Castes or, as the case may be, Backward Classes and who is a resident within the local limits of the district within which the holding is situate.

(c) any occupancy-Raiyat may, transfer his right in his holding or any portion thereof to a society or bank registered or deemed to be registered under the Bihar and Orissa Co-operative Societies Act, 1935 (Bihar and Orissa Act VI of 1935), or to the State Bank of India or a bank specified in column 2 of the First Schedule to the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1970 (5 of 1970) or to a company or a corporation owned by, or in which

less than fifty-one per cent of the share capital is held by the State Government or the Central Government or partly by the State Government, and partly by the Central Government, and which has been set up with a view to provide agricultural credit to cultivators; and

(d) any occupancy-Raiyat who is not a member of the Scheduled Tribes, Scheduled Castes or backward classes, may, transfer his right in his holding or any portion thereof by sale, exchange gift, will, mortgage or otherwise to any other person.

(2) A transfer by a Raiyat of his right in his holding or any portion thereof under Sub-section (1) shall be binding on the landlords.

(3) No transfer in contravention of Sub-section (1) shall be registered or shall be in any way recognized as valid by any Court, whatever in exercise, of civil, criminal or revenue jurisdiction.

(3-A) Notwithstanding anything contained in any other law for the time being in force. the Deputy Commissioner shall be a necessary party in all suits of a civil nature relating to any holding or portion thereof in which one of the parties to the suits is a member of the Scheduled Tribes and the other party is not a member of the Scheduled Tribes].

(4) At any time within three years after the expiration of the period or which a Raiyat has under Clause (a) of Sub-section (1) transferred his right in his holding or any portion thereof, the Deputy Commissioner shall on the application of the Raiyat put the Raiyat into possession of such holding or portion in the prescribed manner.

(4-A) The Deputy Commissioner may, of his own motion or on an application filed before him by an 6 L.P.A. No. 254 of 2008 occupancy-Raiyat, who is a member of the Scheduled Tribes, for annulling the transfer on the ground that the transfer was made in contravention of Clause (a) of the second proviso to Sub-section (1), hold an inquiry in the prescribed manner to determine if the transfer has been made in contravention of Clause (a) of the second proviso to Sub-section (1):

Provided that no such application be entertained by the Deputy Commissioner unless it is filed by the occupancy-tenant within a period of twelve years from the date of transfer of his holding or any portion thereof : Provided further that before passing any order under Clause (b) or Clause (c) of this Sub-section, the Deputy Commissioner shall give the parties concerned a reasonable opportunity to be heard in the matter.

(b) If after holding the inquiry referred to in Clause (a) of this Sub-section, the Deputy Commissioner finds that there was no contravention of Clause (a) of the second proviso to Sub-section (1) in making such transfer, he shall reject the application and may award such costs to the transferee to be paid by the transferor as he may, in the circumstances of the case, deem fit.

(c) If after holding the inquiry referred to in Clause (a) of this Sub-section, the Deputy Commissioner finds that such transfer was made in contravention of Clause (a) of the second proviso to Sub-section (1), he shall annul the transfer and eject the transferee from such holding or portion thereof, as the case may be and put the transferor in possession thereof:

Provided that If the transferee has constructed any building or structure, such holding or portion thereof, the Deputy Commissioner shall, if the transferor is not willing to pay the value of the same, order the transferee to remove the same within a period of six months from the date of the order, or within such extended time not exceeding two years from the date of the order as the Deputy Commissioner may allow failing which the Deputy Commissioner get such building or structure removed:

Provided further that where the Deputy Commissioner is satisfied that the transferee has constructed a substantial structure or building on such holding or portion thereof before the commencement of the Chota Nagpur Tenancy (Amendment) Act, 1969 (President's Act 4 of 1969) he may, notwithstanding any other provisions of this Act, validate such a transfer made in contravention of Clause (a) of the second proviso to Sub-section (1), if the transferee either makes available to the transferor an alternative holding or portion of a holding, as the case may, of the equivalent value, in the vicinity or pays adequate compensation to be determined by the Deputy Commissioner for rehabilitation of the transferor.

(5) Nothing in this Section shall affect the validity of any transfer (of otherwise invalid) of a Raiyat's right in his holding or any portion thereof made bona fide before the first day of January 1903 in the Chota Nagpur Division except the district of Manbhum, or before the first day of January 1909 in the district of Manbhum?.

(6) In this Section and in Section 47, -

(a) 'Scheduled Castes' means such castes, races or tribes as are specified in Part I) of the Scheduled to the Constitution (Scheduled Castes) Order, 1950;

(b) 'Scheduled Tribes' means such tribes or tribal communities or parts of or groups within such tribes or tribal communities as are specified in Part II of the Scheduled to the Constitution (Scheduled Tribes) Order, 1950; and

(c) 'Backward classes' means such classes of citizens as may be declared by the State Government, by notification in the Official Gazette, to be socially and educationally backward.

10. From bare perusal of the aforesaid provisions, it is clear that the Deputy Commissioner not only empowered to pass an order of restoration of possession but also empowered to take action for restoring possession of the land to the members of Scheduled Tribes. In other words, after passing an order of restoration, the Deputy Commissioner shall in exercise of that order, take action

to effect restoration of possession in favour of the members of Scheduled Tribes. The Deputy Commissioner in the event any construction is made on the land, shall get the same removed if the condition is not fulfilled.

11. The moot question that falls for consideration is as to whether the Deputy Commissioner or any of the Special Officer, Scheduled Areas Regulation duly notified in that behalf in exercise of power u/s 71-A of the Act can pass interim order in the form of an injunction.

12. Section 264 empowers the State Government to make Rules for the purposes of carrying out the object of the Act. Similarly, Section 265 confers power upon the State Government to make Rules to procedure on application of Code of Civil Procedure. Section 265 reads as under:

265. Power to make Rules to procedure, on application of the Code of the Civil Procedure. ?

(1) the State Government may make rule ?for regulating the procedure of the Deputy Commissioner in matters under this Act for which a procedure is not provided hereby; and may, by any such rule, direct that any provisions of the Code of Civil Procedure, 1908 (5 of 1908) shall apply, with or without modification to all or any classes of cases before the Deputy Commissioner.

(2) When any provision of the said Code is applied by such ruels, the rules may further declare that any provisiono f this Act which is superseded by, or inconsistent with, any provision so applied shall be deemed to be repealed.

(3) Until rules are made under Sub-section (1), and subject to those rules when made and to other provisions of this Act, the provisions of the Code of Civil Procedure, 1908 [5 of 1908]. shall, so far as may be, and insofar as they are not inconsistent with this Act, apply to all suits, appeals and proceedings before the Deputy Commissioner under this Act and to all appeals from decisions passed in such suits or proceedings.

13. It is, therefore, manifestly clear that the State Government shall have to frame Rules for the purpose of applying the procedure provided under Code of Civil Procedure. In Sohan Mahto and Ors.'s case 1987 BLR 234, a Bench of the Patna High Court held that till the Rule is framed by the State Government u/s 265 of the C.N.T. Act, laying down the procedure in respect of proceedings u/s 71-A of the Act, the procedure laid down under CPC shall apply in view of Section 265 thereof.

14. As noticed above, an object of Section 71-A of the Act is to protect the interest of the members of Scheduled Tribes who were being exploited at the hands of the others. Not only that, in order to deprive the tribals from their raiyati lands, various defences are raised including defence of adverse possession. In a similar situation, the Supreme Court in the case of Situ Sahu and Others Vs. The State of Jharkhand and Others, while deciding the question of limitation for an application u/s 71-A of the Act observed:

11. We are, therefore, of the view that the use of the words 'at any time' in Section 71-A is evidence of the legislative intent to give sufficient flexibility to the Deputy Commissioner to implement the socio-economic policy of the Act viz. to prevent inroads upon the rights of the ignorant, illiterate and backward citizens. Thus, where the Deputy Commissioner chooses to exercise his power u/s 71-A it would be futile to contend that the period of limitation under the Limitation Act has expired. The period of limitation under the Limitation Act is intended to bar suits brought in civil courts where the party himself chooses to exercise his right of seeking restoration of immovable property. But, where, for socio-economic reasons, the party may not even be aware of his own rights, the legislature has stepped in by making an officer of the State responsible for doing social justice by clothing him with sufficient power. However, even such power cannot be exercised after an unreasonably long time during which third-party interests might have come into effect. Thus, the test is not whether the period of limitation prescribed in the Act of 1963 had expired, but whether the power u/s 71-A was sought to be exercised after unreasonable delay.

15. After giving our conscious consideration to the various provisions of the Chota Nagpur Tenancy Act and the intention of the Legislature and the framer of the Regulations, we have no doubt in holding that all power of courts have been conferred upon the Deputy Commissioner including the power to issue interim protection for the purpose of safeguarding the interest of the members of the Scheduled Tribes. It cannot, therefore, be held that pending restoration application, the Deputy Commissioner has no jurisdiction to direct the person, against whom restoration is sought, to stop any construction over the land in question. However, we are further of the view that such powers shall be exercised by the Deputy Commissioner only when there exists strong prima facie case and after giving reasonable opportunity of hearing to the other side.

16. For the reasons aforesaid, this appeal is allowed and the view of the learned Single Judge that the Deputy Commissioner has no jurisdiction to issue such direction is set aside. However, it is clarified that before issuing direction to stop construction by the Special Officer, the respondents must be given reasonable opportunity of hearing.