
(2004) 01 JH CK 0069
In the Jharkhand High Court
Case No : CWJC No. 3748 of 1997 (R)

Bibi Makho and Others

APPELLANT

Vs

State of Bihar and Others

RESPONDENT

Date of Decision : 19-01-2004

Acts Referred:

Chotanagpur Tenancy Act, 1908 — Section 46, 71A, 72

Citation : (2004) 2 JCR 107

Hon'ble Judges : Amareshwar Sahay, J

Bench : Single Bench

Advocate : Amar Kr. Sinha, for the Appellant; I. Sen Choudhury and Pankaj Kuwat, for the Respondent

Final Decision : Allowed

Judgement

Amareshwar Sahay, J.—In this application, the petitioner has challenged the order dated 9.11.1993 passed by the Additional Collector, Lohardaga, in SAR Case No. 5 of 1993-94 as contained in Annexure-4 to the writ application, whereby the Additional Collector, Lohardaga, ordered to restore 0.82 acres out of plot No. 395 of Khata No. 62 situated at Village-Kasidih, PS-Kisko, District-Lohardaga in favour of the Respondent No. 4, in a proceeding u/s 71-A of the Chotanagpur Tenancy Act. The petitioner has also challenged the order dated 2.9.1996 passed by the Commissioner, South Chotanagpur Division, Ranchi, in Lohardaga Revenue Appeal No. 463 of 1993 as contained in Annexure-5 to the writ application, whereby the learned Commissioner, South Chotanagpur Division, Ranchi dismissed the appeal filed by the petitioner against the order of the Additional Collector dated 9.11.1993.

2. The case of the petitioner is that Birsu Oraon son of Gora Oraon was the recorded Raiyat with respect to the aforesaid Khata No. 62. He, by a registered deed of surrender, dated 4.5.1935, surrendered the land in question to the ex-landlord, since he was not in possession to cultivate the land and thereafter it is said that the husband of the petitioner acquired the aforesaid land in question by

settlement from the landlord and his name was also mutated and he was paying the rent also.

3. The Respondent No. 4, filed an application u/s 71-A of the Chotanagpur Tenancy Act before the Land Reforms Deputy Collector, Lohardaga, for restoration of the aforesaid land i.e. 0.82 acres of plot No. 395 within Khata No. 62 which was registered as SAR Case No. 2 of 1992-93. The said proceeding u/s 71-A of the Chotanagpur Tenancy Act was contested by the petitioner and then the learned LRDC by order dated 12.2.1993 as contained in Annexure-3 to the writ application, dismissed the application for restoration of the land, holding that the applicant failed to establish that any fraud was committed in transfer of the land in question and further that the deed of surrender was also not challenged by the applicant.

4. The order of the LRDC, Lohardaga dated 12.2.1993 became final as no appeal was filed against the said order.

5. It appears that a second proceeding u/s 71-A of the Chotanagpur Tenancy Act with respect to the same very land, was initiated at the instance of the Respondent No. 4, before the Deputy Commissioner, Lohardaga which was registered as SAR Case No. 5 of 1993-94. The Deputy Commissioner, Lohardaga transferred the said proceeding to the Additional Collector for disposal. The Additional Collector by order dated 9.11.1993 as contained in Annexure-4 to the writ application allowed the application of the Respondent No. 4 for restoration of the aforesaid land and directed the Respondent No. 4 to deposit Rs. 100/- by way of compensation after holding that since no prior permission of the Deputy Commissioner, Lohardaga was taken prior to surrender of the land and, therefore, the registered deed of transfer dated 4.5.1935 executed by Birsu Oraon was invalid.

6. Being aggrieved by the said order of the Additional Collector, Lohardaga, the petitioners, filed an appeal u/s 215 of the Chotanagpur Tenancy Act before the Commissioner, South Chotanagpur Division, Ranchi, which was registered as Lohardaga Revenue Appeal No. 463 of 1993. The learned Commissioner, South Chotanagpur Division, Ranchi, by his order dated 2.9.1996 dismissed the appeal filed by the petitioners and affirmed the order of the Additional Collector.

7. Learned counsel appearing for the petitioner has firstly submitted that since an earlier proceeding u/s 71-A of the Chotanagpur Tenancy Act was already decided by the LRDC on contest in between the parties with respect to the same very land and, therefore, the subsequent proceeding initiated by the respondent No. 4 and entertained by the Deputy Commissioner, Lohardaga being SAR Case No. 5 of 1993-94 was barred by res judicata and, therefore, was not maintainable.

8. In support of his submission, learned counsel for the petitioner has relied on a Division Bench decision of the Ranchi Bench of Patna High Court in the case of Smt. Satyabati Devi v. The state of Bihar and Ors. reported in [1996 (2) PLJR

719] and also on a decision in the case of Sohan Mahto and Ors. v. State of Bihar and Ors., reported in 1987 BLT 234.

9. It was next contended by the learned counsel for the petitioners that the findings of the Additional Collector that prior permission of the Deputy Commissioner was necessary to be taken for surrender of the lands in question even if the surrender was made prior to 1947, was absolutely wrong in view of the decision of the Supreme Court in the case of Jai Mangal Oraon Vs. Smt. Mira Nayak and Others, 10. No counter affidavit has been filed by the Respondent No. 4 or the State, controverting the statements made in the writ application.

11. Having heard the learned counsel for the parties and on perusal of the orders under challenge, relying on the decisions in the case of Smt. Satyabati Devi and Sohan Mahto and Others (supra), I hold that the second application for restoration u/s 71-A of the Chotanagpur Tenancy Act, which was registered as SAR Case No. 5 of 1993-94 was not maintainable as the same was barred by res judicata, in view of the fact that earlier a proceeding u/s 71-A of the Chotanagpur Tenancy Act had already been decided by the LRDC in respect to the same very land.

12. In the present case, the surrender of the land by registered deed was made in the year 1935, whereas the provision for taking prior permission of the Deputy Commissioner was enacted by Amendment Act in the year 1947. The said amendment was prospective and not retrospective and, therefore, it cannot be said that any prior permission of the Deputy Commissioner was required to be taken for surrender of the land by any Raiyat prior to 1947 i.e., before the Amendment Act came into force and, therefore the finding of the learned Additional Collector and the Commissioner in their orders as contained in Annexures 4 and 5 are absolutely Illegal. This point has also been settled by the Supreme Court in the case of Jai Mangal Oraon (supra), wherein it has been held that provision of Sections 46 and 72 as amended and Section 71-A as inserted by the amendment Act, are not applicable in case of surrender, appointment made prior to 1947.

13. In view of my discussions and findings above, I hold that the orders as contained in Annexures 4 and 5 to the present writ application are absolutely illegal and, therefore, cannot be sustained.

14. Accordingly, this application is allowed. The orders as contained in Annexure-4 passed by the Additional Collector, Lohardaga in SAR Case No. 5 of 1993-94 and also the order passed by the Commissioner as contained in Annexure-5 in Lohardaga Revenue Appeal No. 463 of 1993 are hereby quashed, however there shall be no order as to cost.