
(1987) 05 PAT CK 0045
In the Patna High Court
Case No : C.W.J.C. No. 364 of 1986 (R)

Bishram Sahu

APPELLANT

Vs

Bhairon Oraon and Others

RESPONDENT

Date of Decision : 13-05-1987

Acts Referred:

Chotanagpur Tenancy Act, 1908 — Section 217, 46, 71A

Citation : (1988) PLJR 610

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

Bench : Single Bench

Advocate : P.N. Sahu, for the Appellant; S.K. Chattopadhyay, Sekhar Sinha and D.K. Sarkar, for the Respondent

Judgement

S.B. Sinha, J.—In this writ petition, the petitioner has challenged the orders as contained in Annexures 1, 2 and 3 to the writ petition passed by respondent Nos. 4, 3 and 2 respectively. By reason of the aforementioned orders the said respondents directed that the lands bearing plot No. 647 appertaining to Khatian No. 148 measuring an area of 81 decimals of plot No. 778 of village Karge P.S. Mandar, District Ranchi be restored in favour of respondent No. 1 in purported exercise of their power conferred u/s 71-A of the Chotanagpur Tenancy Act. In this case, the facts are short and not in dispute. On 14.2.1945, the father of respondent No. 1 surrendered the aforementioned lands in favour of landlords and, thereafter, a fresh settlement was granted by the landlord in favour of petitioner. Respondent Nos. 3 and 4 while passing orders as contained in Annexures 2 and 3 to the writ petition held that the settlement having been made within a period of one month from the date of surrender, the surrender and settlement is part of same transaction and as such the same being a transfer having been made in contravention of the provisions of Section 46 of the Chotanagpur Tenancy Act, respondent No. 1 was entitled to get lands restored in his favour in terms of the provisions of Section 71-A thereof. However as this writ petition is being disposed of on a short question, I need not consider the question as to whether surrender made on 14.2.1945 and the subsequent

settlement dated 10.3.1945 was a part of the same transaction or not. Suffice it to say that only because a settlement is made after one month or even after a few days of the surrender, it does not necessarily mean that the surrender and the settlement would form part of the same transaction. The question as to whether a surrender and subsequent settlement would form part of the same transaction or not would depend upon the facts and circumstances of each case and has got to be decided on the basis of materials on record. However, in the instant case, it appears that respondent No. 4 refused to entertain the revision only on the ground that there were concurrent findings of fact by the courts below.

2. The power of revision is contained in Section 217 of the Chotanagpur Tenancy Act. Section 217 reads as follows:--

Bar to further appeals with proviso for revision by Board or Commissioner.- Orders passed by the Commissioner or Deputy Commissioner in appeals preferred u/s 215 shall not be open to any further appeal. But the Board or (in the case of appeals decided by the Deputy Commissioner), the Commissioner may call for the case and pass such orders thereon as it or he may think proper.

3. From a perusal of the aforementioned provision it would appear that the same confers upon the revisional authority a very wide power to entertain a revision application and in doing so he could not only correct the errors of law but also correct the errors of fact. There is no doubt that the scope of appeal and revision is different. Although even in terms of provision of Section 217 of the Chotanagpur Tenancy Act a revision cannot be treated as an appeal, but that does not mean that the revisional authority is not entitled to take into consideration the gross errors of fact committed by the courts below. In my opinion, the provision of Section 217 confers upon the revisional authority a very wide power which is not circumscribed by any statutory limitations. As the Commissioner does not appear to have applied his mind with regards to existence of his own power and/or jurisdiction, in the interest of justice, the order as contained in Annexures 3 to the writ petition, must be set aside and the matter is remitted to the Commissioner for fresh decision in accordance with law. The Commissioner while heaving the case shall apply his mind to the scope of Section 217 of the Chotanagpur Tenancy Act as stated hereinbefore. It is need" less to state that wherever legislature intended that the jurisdiction of the revisional authority should be curbed to a certain extent, the same is specifically mentioned in the legislation itself. In this connection, reference may be made to the provision of Section 115 of the CPC wherein a statutory limitation has been imposed on the power of the High Court to entertain a revision application. No Such limitation having been imposed upon the revisional authority u/s 217 of the Chotanagpur Tenancy Act, the revisional authority must consider the revision applications filed before it in their proper perspective. In the result, the order as contained in Annexure 3 is quashed and the revision application is allowed. Respondent No. 4 is directed to admit the revision application and pass a

speaking order with regard to the merit of the case. In the circumstances of the case, there will be no order as to costs.