
(2001) 08 JH CK 0041
In the Jharkhand High Court
Case No : CWJC No. 3397 of 1999 (R)

Budhram Bhagat and Others

APPELLANT

Vs

State of Bihar and Others

RESPONDENT

Date of Decision : 22-08-2001

Acts Referred:

Chotanagpur Tenancy Act, 1908 — Section 17(1)A, 46, 46(1), 71A, 72
Limitation Act, 1963 — Article 64, 65

Citation : (2001) 08 JH CK 0041

Hon'ble Judges : S.J. Mukhopadhaya, J

Bench : Single Bench

Advocate : S.N. Lal and N. Prasad, for the Appellant; P. Mahapatra, JC to GP-2, V.K. Prasad, P.K. Prasad, Nitesh Kumar and Pratyush Kumar, for the Respondent

Final Decision : Allowed

Judgement

S.J. Mukhopadhaya, J.—The dispute in this case relates to land, measuring 2.22 Acres of Plots No. 922 and 930 under Khata No. 82 of Vil-lage-Patratu. Police Station-Kisko, Lohardaga. Respondents No. 5 to 7 filed application u/s 71A of Chotanagpur Tenancy Act. 1908--"C.N.T. Act" for short--for restoration of land in question, which was registered as S.A.R. Case No. 5/94-95. It was allowed in their favour vide order dated 1st February, 1996 by the Land Reforms Deputy Collector, Lohardaga. S.A.R. Appeal No. 10R 15/96-97, as was preferred by the petitioners, was also dismissed by order dated 21st July. 1997. passed by the Additional Collector. Lohardaga. Thereafter, the Revenue Revision No. 45 of 1998 was preferred by the petitioners, which was also dismissed vide order dated 6th September, 1999, passed by the Commissioner, South Chotanagpur Division, Ranchi.

All the aforesaid three orders have been challenged by the petitioners on the ground that the petition for restoration u/s 71A of the C.N.T. Act was not maintainable and the orders have been passed on wrong presumption of law.

2. The brief facts of the case are that one Ropni Grain was the raiyat, who by

registered deed of surrender dated 21st January, 1938 surrendered the total land of Khata No. 82 to the then landlord. The then landlord, thereafter, settled the land having Revisional Survey Plot Nos. 922, 930, 892, 884. 932 besides other lands out of the aforesaid Khata No. 82 and also the land of Khata No. 63 to one Syed Zahiruddin by registered deed of raiyati settlement dated 1st February, 1938. Respondent No. 5 Marwari Oraon also took raiyati settlement of some of the lands of Khata No. 82 from the then landlord by a registered deed of settlement dated 1st February. 1938.

3. The aforesaid Syed Zahiruddin after settlement came in cultivating possession of the land, paid rent to the then landlord and after vesting of estates, paid rent to the State of Bihar. He transferred, the land of Khata No. 82 by a registered deed of Balmukasha dated 17th July, 1962 to his wife Bibi Sohago in lieu of Den Mohars. said Bibi Sohago. thereafter, paid rent to the State of Bihar.

4. Bibi Sohago later on, sold the land of Plot No. 930 under Khata No. 82 to Bifana Bhagtain, wife of petitioner No. 1 by two registered sale deeds dated 11th April, 1984. It followed by transfer of Plot No. 922 under Khata No. 82. made by Bibi Sohago in favour of Sukra oraon, father of petitioners No. 2 to 6. by virtue of a registered sale deed dated 28th June, 1984.

5. After more than 56 years of surrender, respondents no 5 to 7 filed an application u/s 71A of the C.N.T. Act for restoration of R.S. Plot Nos. 922 and 930. measuring 2.22 Acres. The S.A.R. Case No. 5/94-95 was registered and on contest by the petitioners, was allowed in favour of respondents No. 5 to 7 and the Land Reforms Deputy Collector, Lohardaga, vide the impugned order dated 1st February, 1996 ordered for restoration of the land in question. S.A.R. Appeal No. 10R 15/96-97 was also dismissed on contest. The Additional Collector, Lohardaga held that the surrender was made without permission of the Deputy Commissioner, in violation of Section 46 of the C.N.T. Act and as such, dismissed the appeal by order dated 21st February, 1997. The revisional authority, namely. Commissioner. South Chotanagpur Division, Ranchi, affirmed such findings and dismissed the Revenue Revision No. 45 of 1998 by the impugned order dated 6th September, 1999, as was preferred by the petitioners.

6. Counsel for the petitioners submitted that land having been surrendered by the ancestor of respondents No. 5 to 7 to the then landlord in the Year, 1938, there was no requirement to obtain permission of the Deputy Commissioner u/s 46 of the C.N.T. Act, the provision having been inserted in the Act subsequently. It was also pleaded that the application u/s 71A of the C.N.T. Act was barred by limitation, having been preferred after 56 years of surrender.

7. According to the counsel for respondents No. 5 to 7. u/s 71A of the C.N.T. Act order of restoration of land, belonging to the member of Scheduled Tribe, can be passed without any limitation with respect to time, if found to have been transferred in contravention of Section 46 or any other provision of the Act. Section 46 of the C.N.T. Act prohibits any type of transfer without prior sanction

of the Deputy Commissioner, including surrender.

8. Reliance was placed on Section 72, which deals with surrender and inserted vide Amendment Act. 1947, which came into effect from May. 1948, wherein, provision has been made to surrender land only after permission of the Deputy Commissioner. It was submitted that after surrender having been made, if settlement is done by Ex. landlord, then surrender and settlement can be held to be part and parcel of one transaction and such action will amount to a collusive method of transfer, attracting regours with respect to transfer, as prescribed under the Act.

9. So far as limitation is concerned, counsel for the respondents No. 5 to 7 submitted that u/s 71A of the C.N.T. Act, no limitation having been prescribed, the competent authority can entertain the application. By virtue of Scheduled Area Regulation. 1969 amendment was made in Article 64 and 65 of the limitation Act and by such amendment in cases relating to the members of Scheduled Tribes, period of limitation has been amended as 30 years.

10. In the cases where title has been acquired by adverse possession, according to the counsel for respondents No. 5 to 7, there the action should be under 3rd proviso of Section 17(1)A of the C.N.T. Act.

11. Counsel for the respondents relied on Full Bench's decision of Patna High Court in the case of Smt. Vina Rani Ghosh v. The Commissioner, South Chhotanagpur Division, reported in 1985 BLT 279 (FB). In the said case, the Court held that Section 46 of the Act prescribes stringent restriction on the transfer of rights by a raiyat. Clause (b) of Sub-section (1) of Section 46 invalidates all such transfers by sale, gift or any other contract or agreement and equally any mortgage or lease, which may or tend to go beyond a period of five years. The proviso to Sub-section (1) of Section 46. within very narrow confines, permits transfer of rights by a raiyat, if the detailed conditions specified therein stand well satisfied. It further held that surrender amounts to transfer within the meaning of Section 71A of the Act.

12. Counsel for the respondents also relied on a decision of Patna High Court, Ranchi Bench, in Md. Salimuddin v. The Commissioner, South Chhotanagpur Division, Ranchi, reported in 1993(1) PLJR 14, wherein, the Court held that Section 71A, if read with Articles 64 and 65 of the Limitation Act. 1963 any application filed after expiry of period of limitation will be barred. Only the third proviso to Section 71A which postulates that in a case where a person has acquired title by adverse possession, recourse of the said provision may be taken if the conditions precedent therefore are satisfied. It was suggested that the provision of Articles 64 and 65 of Limitation Act, 1963 having come into effect later on the petition u/s 71A was filed well within the period of limitation.

13. The Full Bench decision of Patna High Court in Smt. Beena Rani Ghosh (supra) fell for consideration before the Patna High Court, Ranch! Bench, in Nand Kumar Sahu v. State of Bihar. reported in 1998 BLT 18 (Pat). In the said case,

the Court distinguished the Full Bench decision in Smt. Veena Rani Ghosh (supra) in respect to surrender and settlement made prior to introduction of Section 72 vide Amended Act, 1947. In respect to two of the plots surrendered by raiyats in 1944 and again settled by Ex. landlord in 1944, the Court held that the requirement of obtaining previous permission of the Deputy Commissioner for such surrender was not required, the provision of Section 72 of the Act having been introduced in the year, 1947.

14. The aforesaid view was consistently taken by the Patna High Court in Mangni Ghana! v. State of Bihar. reported in 1988 BLT 184 and in the case of Jhalku Ahir v. State of Bihar, reported in 1994(1) PLJR 28.

15. In the case of Jai Mangal Oraon Vs. Smt. Mira Nayak and Others, . the Supreme Court, taking into consideration the fact that the surrender of land was made in the said case in the year, 1942, held that the previous sanction from the Deputy Commissioner was not necessary and the provision of Section 71A requiring such sanction, was not applicable. Though Section 71A does not prescribe any limitation, the Supreme Court while discussed the meaning of the words "if at any time", held as follows:

"....Merely because Section 71A commences with the words "if at any time....." it can not be taken to mean that those powers could be exercised without any point of time limit, as in this case after nearly about forty years unmindful of the rights of parties acquired in the meantime under the ordinary law and the law of Limitation. We consider it. therefore, inappropriate to countenance any such contentions in these proceedings."

16. In the present case, admittedly land was surrendered in January. 1938 and the application u/s 71A was filed after 56 years. In the light of decisions, as referred above, including the Supreme Court's decision in Jal Mangal Oraon v. Mira Nayak (supra) it can be safely stated that there was requirement of prior permission by the Deputy Commissioner at that stage and thus, the surrender can not be held to be in contravention of Section 46 of the CNT Act.

Further 56 years having passed after the surrender of land, it was not open for the authorities to re-open the issue relating to legality and propriety of transfer and. thus, the application u/s 71A being time barred, was not maintainable.

17. For the reasons aforesaid, order dated 1st February, 1991 passed in SAR Case No. 5/94-95, appellate order dated 21st July, 1997, passed in SAR Appeal No. 10R 15/96-97 and revisional order dated 6th September. 1999, passed by Commissioner South Chhotanagpur Division, Ranchi, in Revenue Revision No. 45 of 1998 are hereby set aside. The writ petition is accordingly, allowed.

18. Writ allowed.