
(2012) 05 JH CK 0026
In the Jharkhand High Court
Case No : Writ Petition (C) No. 6834 of 2004

Budhwa Munda

APPELLANT

Vs

State of Jharkhand and Others

RESPONDENT

Date of Decision : 18-05-2012

Acts Referred:

Chotanagpur Tenancy Act, 1908 — Section 71A

Citation : (2012) 05 JH CK 0026

Hon'ble Judges : Narendra Nath Tiwari, J

Bench : Single Bench

Advocate : Amar Kumar Sinha, for the Appellant;

Final Decision : Dismissed

Judgement

Narendra Nath Tiwari

1. In this writ petition, the petitioner has prayed for quashing the order dated 5.11.2000 passed by the Special Officer, Scheduled Areas Regulation, Ranchi in S.A.R. Case No. 56/1998-99 whereby he has dismissed the petitioner's application for restoration of the land in question under the provisions of Section 71A of the Chotanagpur Tenancy Act (hereinafter referred to as "the C.N.T. Act"). The petitioner has further prayed for quashing the order dated 31.3.2003 passed by the Additional Collector, Ranchi in S.A.R. Appeal No. 29R15/2000-01 and also the order dated 8.7.2003 passed by the Commissioner, South Chotanagpur Division, Ranchi in S.A.R. Revision No. 76/2003. The case of the petitioner was that the land of R.S. Plot No. 1599, under Khata No. 93, measuring an area of 0.93 acres besides other plots of the said Khata, Village - Morhabadi, P.S. - Ranchi (now Bariatu), Thana No. 192, District - Ranchi was recorded in the name of his ancestors, namely, Langru Munda, Birsa Munda and Bhado Munda.

2. The said plot was shown in the possession of Langru Munda, the petitioner's father.

3. The private respondent Nos. 5-8 dispossessed the petitioner from 46 and 1/2

decimals of land in the year 1988-89.

4. Aggrieved by his dispossession, the petitioner filed an application for restoration of the said land under the provisions of Section 71A of the C.N.T. Act before the Special Officer, S.A.R., Ranchi, The case was registered as S.A.R. Case No. 56/1998-99.

5. Notice was issued to the private respondents. They had appeared and filed their written statement stating, inter alia, that their ancestors had purchased the land in question by virtue of registered sale deed in the year 1939 and the said land was not acquired by fraudulent means, as alleged. There was no contravention of Section 46 or any other provision of the C.N.T. Act.

6. Learned Special Officer after hearing both the parties and considering the facts, materials and evidences on record dismissed the petitioner's application.

7. The petitioner, thereafter, filed appeal against the said order, before the Additional Collector, Ranchi. The same was registered as S.A.R. Appeal No. 29-R-15/2000-01.

8. Learned appellate Court heard the parties and considered the grounds of appeal and the facts and materials on record and dismissed the appeal upholding the order of the Special Officer. Learned Additional Collector also took notice of the fact that the petitioner had approached the Court for restoration of the land in question after about 50 years from the date of transfer i.e. after unreasonably long period.

9. The petitioner then preferred revision before the Commissioner, South Chotanagpur Division, Ranchi being S.A.R. Revision No. 76/2003. Learned Commissioner summarily dismissed the petitioner's revision.

10. Mr. Amar Kumar Sinha, learned counsel appearing on behalf of the petitioner submitted that learned Commissioner was exercising statutory power of revision against the order of the appellate authority and it was imperative for him to go through the facts and materials on record in detail and to apply his own independent mind and record his conclusion. But learned Commissioner has cryptically dismissed the revision without discussing the facts and materials on record and without recording speaking reasons. The said order being mechanical and non-speaking is liable to be set aside.

11. Learned counsel submitted that though the private respondents have claimed that they had purchased the land in question in the year 1939 by virtue of registered sale deed, legality of the sale deed and the possession claimed by the respondents should have been examined by the Courts below. The order have been passed on lop sided consideration of the fact that the respondents had acquired the said land by virtue of registered sale deed in the year 1939 and they have been in possession of the same for more than 50 years.

12. Learned counsel submitted that the Courts below swayed by the long delay in

filing application for restoration without taking into consideration that there is no prescribed period of limitation for filing an application for restoration of Sand u/s 71A of the C.N.T. Act.

13. Learned counsel for the respondents contested the writ petition. It has been, inter alia, submitted that the private respondents are the members of the Scheduled Tribe. They had acquired the said land by virtue of registered sale deed in the year 1939 from the ancestors of the petitioner. They are also the residents of the same village within the same Police Station. When the said land was acquired, there was no legal requirement to get permission of the Deputy Commissioner for transfer of land. After the transfer of the said land in their favour, the respondents have been in continuous peaceful possession of the same for more than five decades. There was no contravention of the provisions of the C.N.T. Act and / or no fraudulent means was adopted in the said transfer. The provision of Section 71A of the C.N.T. Act is, thus, not attracted in the instant case. Learned Special Officer as well as the appellate authority have considered the facts, materials and evidences on record in detail and have concurrently held that there was no contravention of the provisions of the C.N.T. Act in the said transfer and that the respondents have been in peaceful possession for more " than five decades after having purchased the land in question by virtue of registered sale deed in the year 1939. The revisional authority, after considering the order of the appellate authority with concurrent findings, did not disagree with the same and instead of going in detail, he has held that those orders were-passed after detail consideration and dismissed the revision petition.

14. Learned counsel submitted that though the Commissioner's order should have been in more detail the said order cannot be said to be bad, arbitrary or illegal, as she has agreed with the concurrent findings of the two Courts below and going in detail would have mere repetition of the reasons recorded by the two Courts below. There is, thus, no illegality in the said order as well.

15. Learned counsel further submitted that even if the petitioner has any grievance, he has got adequate opportunity to place his grounds before this Court and as such he cannot be said to have been prejudiced by the short order of learned Commissioner.

16. I have heard learned counsel for the parties and considered their submissions. I have also perused the impugned orders.

17. On going through the record, I find that it is not in dispute that the land in question was purchased by the father of the private respondents by registered sale deed in the year 1939. It is also not in dispute that before coming into force of the Amending Act of 1947, the permission of the Deputy Commissioner for transfer of the land was not required. The Special Officer as well as the appellate authority have considered the said facts and other relevant aspects and have come to the conclusion that there was no violation of the provision of the C.N.T. Act and no fraudulent means was adopted in acquisition of the said land by the

private respondents. Learned lower appellate Court has further considered that the claim of restoration of the land in question has been made by the petitioner after lapse of more than 50 years i.e. after unreasonably long time.

18. In *Situ Sahu & Ors. Vs. State of Jharkhand & Ors.* [2004 (4) JLJR (SC) 109, the Supreme Court has held that seeking exercise of jurisdiction u/s 71A of the C.N.T. Act after unreasonably long delay is not permissible. In that case, the application was filed after lapse of 40 years and the Apex Court has held that the lapse of 40 years is certainly not a reasonable time for exercise of power, even if it is not hedged in by a period of limitation.

19. In the instant case, the petitioner has filed application for restoration of the land in question after lapse of about 50 years. On that ground alone, the application filed by the petitioner was not maintainable. Though I find that the order of the Commissioner is cryptic and non-speaking, since she has agreed with the orders of the two Courts below, which are well reasoned, the same cannot be held to be vitiated on that ground.

20. Moreover, the petitioner got ample opportunity to argue his case on all possible grounds and the same have also been considered. Since the matter is more than 12 years old, it would not be proper to remit the matter to the revisional authority for passing a fresh order. The writ petition has been heard on merit by this Court giving ample opportunity to both the parties.

21. Having heard the parties at length and after considering the facts and materials on record and other relevant aspects, I find no ground made out to interfere with the impugned orders. This writ petition is, accordingly, dismissed.