
(1992) 03 PAT CK 0016

In the Patna High Court

Case No : Civil Writ Jurisdiction Case No. 1583 of 1987 (R)

Bukan Ansari and Others

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 10-03-1992

Acts Referred:

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

Citation : (1992) 2 BLJR 986 : (1992) 2 PLJR 238

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

Bench : Single Bench

Judgement

S.B. Sinha, J.—The petitioners in this application have prayed for quashing the order dated 27-7-1987 passed by respondent No. 2 in Ranchi Revenue Revision No. 105 of 1982 as contained in Annexure-5 to the writ petition whereby and whereunder the said learned court allowed the revision application filed by respondents No. 5 and 6 against an order dated 27-7-1982 passed by respondent No. 3 in S.A.R. Appeal Nos. 129-R-15 of 1981-82, as contained in Annexure-4, which in turn arose out of an order dated 25-8-1981 passed by respondent No. 4, as contained in Annexure-3 in S.A.R. Case No. 8 of 1980-81.

2. Respondent No. 6 and the father of respondent No. 5 filed an application before respondent No. 4 for restoration of four plots being Plots No. 301, 304, 305 and 308 appertaining to Khata No. 2 of village Bukru. On the said application S.A.R. Case No. 114 of 1976 was registered. The petitioners having been noticed filed their show cause alleging therein that a deed of Zerpesgi was executed in the year 1883 and 1892 i.e. prior to the coming into force of the Chotanagpur Tenancy Act, 1908 (the Act). The respondent No. 4 allowed the said application. The petitioners preferred an appeal against the said order which was numbered as S.A.R. Appeal No. 836 of 1976-77 and the said appeal was allowed with regard to Plot Nos. 304 and 303. No revision was filed against the said appellate order. Another application was filed by respondent No. 6 in respect of Plot Nos. 304 and 308 wherein also the petitioners filed show cause having been directed

to do so. By an order dated 25-5-1981, as contained in Annexure-3 to this writ application, lands in question were directed to be restored in favour of respondent No. 6, The petitioners preferred an appeal against the said order which was allowed by the appellate court, by order dated 27-7-1982 as contained in Annexure-4. Respondent No. 6 filed a revision application which was numbered as Ranchi Revenue Revision No. 105 of 1982 and by reason of the impugned order as contained in Annexure 5, the said application has been allowed.

3. Mr. Debi Prasad, learned Counsel appearing on behalf of the petitioners submitted that respondent No. 2 in passing the impugned order as contained in Annexure 5 failed to take into consideration the effect of the order passed by respondent No. 3 in Appeal No. 836 of 1976-77, by reason whereof the private respondents application for restoration of the land was rejected. It was further submitted that in any view of the matter the said application for restoration was barred by limitation.

4. Mr. P. K. Verma, learned Counsel appearing on behalf of respondent No. 6 on the other hand submitted that from a perusal of the order dated 23-9-1976 passed by respondent No. 3 in Appeal No. 836 of 1976-77, it would appear that the aforementioned appeal was allowed, inter alia, on the ground that the provision of Section 71-A of the Act at that stage has no application in relation to bhuinhari lands. According to the learned Counsel, as now the bhuinhari lands come within the purview of the provision of Section 71 A of the Act by reason of the Bihar Schedule Area Amendment Regulation, 1986, the impugned order as contained in Annexure-5 cannot be said to be barred under the principles of resjudicata. Learned Counsel further submitted that in view of the fact that now the provision of Section 71-A of the Act applied to the facts of the case, the period of limitation must be held to have been extended from 12 years to 30 years.

5. In this case, successive applications were filed by respondent No. 6 u/s 71-A of the Act. Respondent No. 3 in Appeal No. 836 of 1976-77 (Annexure-1) not only held that bhuinhari tenuers do not come within the purview of Section 71-A of the Act but allowed the said appeal also on the ground that so far as Plot Nos. 304 and 308 are concerned, there has been zirpeshgi thereto in relation there to created in 1883 and 1989 i.e. much prior to the coming into force of the Act and the statutory period of redemption has elapsed. This finding and order has been passed by respondent No. 3 in appeal, in my opinion, shall operate as resjudicata. Further respondent No. 6, as noticed hereinbefore, filed another application which was purported to have been u/s 48 of the Act. Respondent No. 4 by reason of the order dated 25-8-1981 as contained in Annexure-3 to the writ application and without considering the order as contained in Annexure-1 to the writ petition held that the petitioners have not produced any evidence to show as to how Dukan Ansari and Gul Azam Ansari had been possessing the said lands. Respondent No. 4, therefore, misdirected himself in ignoring the findings of fact

arrived at by respondent No. 3 in Appeal No. 836 of 1976-77 on the ground that zarpesei leases were created at a point of time when the Act did not come into force Respondent No 2 also by reason of the impugned order as contained in Annexure 5 to the writ petition merely took into consideration that plot Nos. 304 and 308 were recorded as bakast bhuinhari land in the name of the forefathers of respondent No. 6. He committed an error of record in holding that the said zarpeshgi leases were created in the year 1944. If the zarveshgi leases were executed in 1881 and 1893 as contended by the petitioners, the question of obtaining prior permission of the Deputy Commissioner in terms of Section 46 of the Act did not arise. Despite the said fact, respondent No. 2 held that zerpeshgi leases were created in violation of the provision of Section 46 of the Act as also Sub-section (4) of Section 48 of the Act. Respondent No. 2, therefore, completely misdirected herself in law in arriving at the same finding. Respondent No. 2 further erroneously held that the period of limitation has been extended in respect of bhuinhari tenure to 30 years Mr Verma has rightly drawn my attention to the fact that only in the year 1986, bhumhan tenures came within the purview of Section 71-A of the Act and thus from 1986 alone, the period of limitation would be deemed to have been extended to 30 years. Respondent Nos. 2, 3 and 4, however, had not dealt with the case from this angle as Schedule Area Regulation was not amended at that time.

6. This aspect of the matter has been considered by me in great details in C.W.J.C. No. 685 of 1987 (R) disposed of on 23-9-1991. In that decision, it has been held that the limitation provided for restoration of the land for violation of Section 48 of the Act would be 12 years. It has further been held that under the Schedule Area Regulation, 1969 as amended in 1986 will be prospective in nature and thus only in the event, the aforementioned period of limitation had not expired at the time when the aforementioned Schedule Areas (Amendment) Regulation, 1986 came into force, the period of limitation would be extended to 30 years. However, in this case, even if it would be held that zerpeshgi leases were executed in the year 1944, evidently the application for restoration was barred by limitation.

7. However, the application for restoration u/s 71-A of the Act may be entertained even after the expiry of period is 30 years, only for the purpose of third proviso appended to Section 71-A of the Act. However in view of the fact that in this case it has been held by respondent No. 3 in its order dated 23-9-1976 as contained in Annexure 1 that zerpeshgi leases were created prior to the coming into force of the said Act, the said finding being binding upon respondent No. 6, the question of applicability of third Proviso appended to Section 71-A does not arise.

8. In the result, this application is allowed and the impugned orders as contained in Annexures 3 and 5 are quashed. However, in the facts and circumstances of the case, there will be no order as to costs.