

(2023) 09 JH CK 0029

In the Jharkhand High Court

Case No : Writ Petition (C) No. 3440 Of 2022

Deepali Mandal

APPELLANT

Vs

State Of Jharkhand And Others

RESPONDENT

Date of Decision : 14-09-2023

Acts Referred:

Chota Nagpur Tenancy Act, 1908 — Section 71, 71A, 74(A), 216

Citation : (2023) 09 JH CK 0029

Hon'ble Judges : Gautam Kumar Choudhary, J

Bench : Single Bench

Advocate : Mahesh Tewari, Ritesh Kumar Mahto, Krishna Kumar Bhatt, Abhijeet Kumar, Rishi Bharti

Final Decision : Allowed

Judgement

Gautam Kumar Choudhary, J

1. The instant Writ Petition (Civil) has been filed to quash/ set aside the order dated 17.01.2017 passed by Deputy Commissioner, Ranchi in SAR Appeal No.1R 2015/2012-13 and also the order dated 20.06.2022 passed in SAR Revision Case No.17 of 2017 by the learned Commissioner, South Chhotanagpur Division, Ranchi as being completely illegal, arbitrary, unjustified and colourable exercise of power.

2. The respondent no.4 filed an application under Section 74(A) of the CNT Act against one Phani Bhushan Mandal (vendor of the petitioner) for restoration of 10 decimals of land being portion of R.S. Plot No.1080, Khata No.112, situated at Village- Pandra, P.S. Sukhdeo Nagar, District- Ranchi.

3. The Special Officer, S.A.R., Ranchi in S.A.R. Case No.221 of 1999- 2000 rejected the petition for restoration filed under Section 71 of the CNT Act by the respondent no.4 and ordered to settle the said land in favour of the petitioner on payment of Rs.14,000/- per Katha. In pursuance of the order passed on 10.04.2003, the respondent No.4 received a sum of Rs.84,000/- in the year

2003.

4. After a lapse of about 11 years, the appeal was preferred against the order passed in the said SAR case before the Deputy Commissioner, Ranchi, which was allowed and the revision preferred by the petitioner was rejected and aggrieved by the order, the present Writ Petition has been filed.

5. It is submitted by learned counsel for the petitioner that the land, in question had been settled in favour of father of vendor of the petitioner on 05.06.1942 and thereafter the settlee came into settled possession of the said land since the date of settlement. The title of the property was conveyed to the petitioner by way of sale deed executed on 18.04.2005 and thereafter the petitioner is coming in peaceful possession.

6. It is submitted that a building has been constructed on the plot, in question, and the SAR case filed by Jaipal Oraon (R-6) was decided in favour of the petitioner, for which, the compensation amount has already been received by respondent no.4 through Bank draft. After 11 years of the receipt of the same, the appeal was preferred before the Deputy Commissioner which was barred by limitation under Section 216 of the C.N.T. Act wherein the period to prefer an appeal is only of 90 days, but without condoning the delay, the impugned order was passed by the Deputy Commissioner and has been affirmed by the learned Commissioner.

7. Reliance is placed on in the case of *Situ Sahu vs. State of Jharkhand & Ors.* (2004)7 Supreme 56 wherein it has been held that although the limitation period has not been prescribed under Section 71A of the C.N.T. Act, but the restoration petition should be filed within the reasonable time. In that case, it has been held that 40 years was not a reasonable time for preferring a restoration petition.

8. In reply to the question of limitation raised by the petitioner it is fairly admitted by the learned counsel on behalf of respondent no.4 that condonation order is not in the appellate order. It is however submitted that in revision the revenue Court of Commissioner, South Chhotanagpur Division, Ranchi in SAR Revision Case No.17 of 2017 remanded back the case to the Deputy Commissioner, Ranchi to enquire into and ensure the possession of dispossessed ST Raiyat from Plot No.1080. Further, Deputy Commissioner was also directed to investigate whether earlier order passed in Case No.234/1992-93 for giving physical possession, was complied with or not.

9. After having considered the rival submission advanced on behalf of both sides, this Court is of the view that as far as the Writ Court is concerned, its jurisdiction is limited to see whether there has been jurisdictional error in passing the order or order has been passed in violation of any statutory provision.

10. The impugned order suffers from serious infirmities and is not sustainable in the eyes of law. It is apparent that SAR Appeal No.R 2015/2012-13 was filed after expiry of limitation of eleven years much after the statutory period of

appeal as provided under Section 216 of the C.N.T Act.

This issue has not at all been addressed by either the appellate or revisional Court. The impugned order is completely silent on condonation of delay.

Strangely, new plea is being taken at this stage that respondent no.4 had not filed SAR case rather some imposter had filed the restoration on the behest of the petitioner. From the orders passed by in appeal or in revision it is apparent that no such plea had ever been taken. Although in the said SAR case, on the basis of the order passed, Rs.84,000/- has been deposited in the Account of respondent no.4, but still with impunity, this false plea is being taken at this stage. In the order passed in SAR No.221/1999-2000 on 29.09.2003 goes to show that a draft of Rs.84,000/- was handed over to the applicant and the same was deposited in the Bank of India in his account.

Under the afore said facts and circumstance of the case the impugned order 17.01.2017 passed by Deputy Commissioner, Ranchi in SAR Appeal No.1R 2015/2012-13 and also the order dated 20.06.2022 passed in SAR Revision Case No.17 of 2017 is set aside.

Writ Petition is allowed.