
(2003) 09 JH CK 0122
In the Jharkhand High Court
Case No : C.W.J.C. No. 567 of 1994

Deobrat Mishra

APPELLANT

Vs

State of Bihar and Others

RESPONDENT

Date of Decision : 12-09-2003

Acts Referred:

Bihar Land Reforms Act, 1950 — Section 4, 4A

Citation : (2003) 3 BLJR 2040

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

Bench : Single Bench

Advocate : Ramawatar Sharma, G.N. Chandra and Kavita Sharma, for the Appellant; R.S. Mazumdar, Government Advocate and Atanu Banerjee, for the Respondent

Final Decision : Dismissed

Judgement

S.J. Mukhopadhaya, J.—This application has been preferred by petitioner against the order dated 12th October, 1993 passed by 2nd respondent in Misc. Revision No. 100 of 1991. The Commissioner, North Chotanagpur Division, Hazaribagh on the basis of application filed by 3rd respondent suo motu took up the matter and registered a Misc. Revision case No. 100 of 1991 and after notice and hearing the parties, set aside the appellate order dated 14th November, 1991 passed by Collector, Giridih in Giridih Appeal No. 30 of 1990 which was decided in favour of petitioner.

2. The case of the petitioner is that his father late Prafulla Chandra Mishra got the land in question having plot No. 261, 262 and 263 under Khata No. 73 of village-Barmasia, P.S. & District-Giridih by raiyati settlement through a customary Hukumnama executed by Gaibi Nath Mishra, Ex-landlord on 18th Magh, 1341 Fasli, corresponding to the year 1934 A.D. His ancestors took possession and since then the predecessor in interest and thereafter the petitioner is in possession. The ancestors of petitioner paid the rent to the Ex-landlord till the vesting of intermediary interest under the Bihar Land Reforms

Act, 1950 (for short B.L.R. Act, 1950). In the return submitted to the State of Bihar, names of the raiyat with their respective possession over the land, tank etc, were shown. The name of Prafulla Chandra Mishra was mentioned as raiyat with respect to plot No. 261, 262, 263 and 264.

Further case of the petitioner is that the lands as shown below were mutated in the name of Prafulla Chandra Mishra in pursuance of order dated 15th December, 1971 passed in Misc. case No. 17/1971-72, such as:--

Khata Plot Area 73 261 0.30 acres Do 262 0.55 acres 0.85 acres

As the enquiry was going on with regard to other plots, they were not mutated at that time.

3. It appears that a dispute relating to land was raised by the Secretary of Indian Medical Association, Giridih Branch with regard to Plot Nos. 261, 262, 263 and 264 of Khata No. 73.

The plea as was taken by petitioner is that 18 decimals in plot No. 264 of Khata No. 73 adjacent to plot No. 263 was orally settled by the Ex-landlord with Jagarnath Mishra, grand father of Prafulla Chandra Mishra. Prafulla Chandra Mishra came in possession over the said plot No. 264 and paid rent to the Ex-landlord.

It is not clear as to why Jagarnath Mishra had not taken possession over the land measuring 18 decimals of plot No. 264, if it was orally settled with him by Ex-landlord.

It appears that a Title Suit No. 6 of 1975 was filed by the Indian Medical Association, Giridih Branch which was decreed against the petitioner and others. The details of the suit have not been given by the petitioner in the writ petitioner for the reasons best known to him.

Against the decree passed in suit, a Title Appeal No. 11 of 1981 was preferred by the aggrieved person which was decreed on the basis of a compromise petition filed by the parties i.e. heirs of Prafulla Chandra Mishra and Indian Medical Association, Giridih Branch. In view of the compromise made between the parties, the judgment of the trial Court was set aside. The details of the appeal have also not been given by the petitioner for the reasons best known to him though it relates to lands in question.

Subsequently, an application was preferred by 3rd respondent, who alleged that the appellate order was not passed on merit but on the basis of a fraudulent compromise reached between the parties. Taking into consideration the aforesaid allegation, the Commissioner, North Chotanagpur Division, Hazaribagh suo motu took up the matter and registered a Misc. Revision No. 100 of 1991. After notice and hearing the parties, the revisional authority reversed the appellate order.

4. Counsel for the petitioner submitted that the Commissioner, North Chotanagpur Division, Hazaribagh had no jurisdiction to register a revision case

on the basis of an application of a stranger i.e. 3rd respondent, who never claimed any interest over the land.

It was further submitted that the land having been settled in the year 1934 A.D., the respondents had no jurisdiction to reopen the matter to annual the settlement u/s 4 (h) of the B.L.R. Act, 1950. The authorities had jurisdiction to cancel settlement/transfer of a land, if made at any time after 1-1-1946 to defeat any provision of B.L.R. Act or with a view to cause loss to the State Government or to obtain higher compensation.

5. In the present case, the trial Court determined the question whether the transfer was actually made prior to 1st day of January, 1946 or thereafter in view of the direction of Ranchi Bench of the Patna High Court in C.W.J.C. No. 1692 of 1986 (R), Deobrat Mishra (petitioner herein) v. State of Bihar and Ors.. That case was preferred by petitioner before the Ranchi Bench of the Patna High Court against certain order of mutation. The Ranchi Bench of the Patna High Court vide order dated 21st July, 1987 directed the Collector under B.L.R. Act to initiate a proceeding u/s 4(h) of the Act with liberty to the petitioner to satisfy the Collector that the settlement was made prior to 1st January, 1946.

The trial Court on appreciation of evidence has come to a definite conclusion that the so-called settlement by Sada Hukumnama was, in fact, made much after 1-1-1946 with the object to defeat the provision of the Act and to cause loss to the State Government with a view to obtain higher compensation. Same finding has been given by the revisional authority.

The Collector has jurisdiction to enquire into the period of transfer to find out whether it was made on or after 1st day of January, 1946. He can also find out the genuineness of the transfer, as held by the Patna High Court in the case of "Moorahoo Singh v. Raja Rem Singh", reported in 1960 BLJR 738.

Similar is the direction given by the Ranchi Bench of the Patna High Court in the case of petitioner in C.W.J.C. No. 1692 of 1986 (R), as referred above.

In the aforesaid background, it is not open to the petitioner to question the jurisdiction of the authorities to determine the genuineness of the Hukumnama, nor can question the authority to find out the actual period of transfer of a land.

So far as suo motu power of Commissioner, North Chotanagpur Division, Hazaribagh is concerned, he has been vested with power of revision u/s 4A of the B.L.R. Act, 1950 and may at any time call for and examine the record of any proceeding under Clause (h) of Section 4 of the Act for the purpose of satisfying himself as to the correctness, legality or propriety of any finding or order recorded or passed in such proceeding whether before or after commencement of B.L.R. (Amendment) Act, 1950.

So far as genuineness of the sada Hukumnama in question and the exact period of transfer of land, there being concurrent findings, one by the 1st Court and the second by the revisional Court, this Court cannot sit in appeal under writ

jurisdiction.

6. There being no merit, the writ petition is dismissed. However, there shall be no order, as to costs.