

(1987) 07 PAT CK 0005
In the Patna High Court
Case No : C.W.J.C. No. 1202 of 1982 (R)

Deotu Ohdar

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 27-07-1987

Acts Referred:

Bihar Land Reforms Act, 1950 — Section 35
Chotanagpur Tenancy Act, 1908 — Section 46, 71A

Citation : (1988) PLJR 211

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

Bench : Single Bench

Advocate : Debi Prasad, A. Sahay and Miss I. Choudhary, for the Appellant; S.B. Gadodia, S.C. and P.R. Bhagat, J.C. to S.C.I. and A.K. Sahani, for the Respondent

Judgement

S.B. Sinha, J.—In this writ petition the orders as contained in annexures 5 and 7 passed by respondent Nos. 4 and 2 are under challenge. By reason of the aforementioned orders the aforementioned respondents, in purported exercise of their powers conferred upon them u/s 71A of the Chotanagpur Tenancy Act (shortly C.N.T. Act) directed that the lands in question be restored in favour of respondents 5 and 6. The facts of the case lie in a very narrow compass. Respondent no. 6 and one Laxman Munda (since deceased) filed an application for restoration of the lands in terms of section 71A of the C.N.T. Act in respect of plot No. 90 Khata No. 31 measuring an area of 0.50 acres of land situate in village, Barkuli.

2. Pursuant to a notice given in the aforementioned proceeding, the petitioner appeared and filed his show cause wherein it was specifically admitted that the recorded tenants surrendered the land in favour of the petitioner in the year, 1954 whereafter he allegedly resumed the land and treated the same as his Bakast land, filed returns in form "K" prescribed under the Bihar Land Reforms Rules and the rent was assessed in terms of the said Rules and his name was entered into the register kept in form "M".

3. By reason of the orders impugned in this writ application, it has been held that the purported surrender amounts to sale as while doing so the petitioner paid a sum of Rs. 500/- to the recorded tenant as consideration for the aforementioned surrender. In the aforementioned orders the respondent Nos. 2 and 4 categorically held that the aforementioned arrangement was entered into with a view to defeat the provisions of section 46 of the C.N.T. Act.

4. Mr. Debi Prasad, the learned senior counsel, appearing on behalf of the petitioner raised a simple question. He submitted that in view of the fact that the petitioner was the landlord in respect of the land in question and surrender had been effected in his favour by the recorded tenant and as he had been continuing to hold the said land, being in possession thereof, treating the same as his bakast land, and further in view of the fact that the petitioner had been accepted as a tenant by the State of Bihar by virtue of acceptance of rent from him, the question of his eviction therefrom does not arise. Mr. Prasad further submitted that in view of section 35 of the Bihar Lands-Reforms Act, no civil suit is maintainable and in that view of the matter even an application u/s 71A of the C.N.T. Act would also not be maintainable.

5. The legislative background for enactment of Bihar Scheduled Area Regulation, 1969 whereby and whereunder the aforementioned provisions of section 71A of the C.N.T. Act was inserted, has been dealt with in detail by a Full Bench of this court in Smt. Bina Rani Ghosh Vs. Commissioner, South Chota Nagpur Division and Others, . The aforementioned decision has also been recently followed in a second appeal by a Full Bench of this court reported in 1987 PLJR 354 (Paritosh Maity v. Ghashiram Maity).

6. In the aforementioned Full Bench decisions it has been clearly held that the provisions of section 71A of the C.N.T. Act is a beneficial legislation enacted for the purpose of safeguarding the interest of the members of the Scheduled Tribes.

7. The said legislation had to be made for the purpose of remedying the wrongs done to the members of the scheduled tribes by the persons who were not the members of the scheduled tribes. By reason of the aforementioned provision of the aforementioned Act, any transfer which has been made by a member of the scheduled tribe in favour of any other person in contravention of the provisions of section 46 of the C.N.T. Act or any other provision of the C.N.T. Act or if the said transfer has been obtained by any fraudulent method, the same are liable to be annulled in terms thereof.

8. In the instant case the surrender which was effected in the year, 1954, was, obviously, bad in law. Further, there is a concurrent finding of fact in the orders as contained in annexures 5 and 7 to the writ application made by respondent Nos. 2 and 4 respectively wherein they have definitely found that the execution of the deed of surrender was one of the fraudulent methods adopted by the Landlord for avoiding the rigours of the provisions of section 46 of the C.N.T. Act. In this view of the matter, in my opinion, the submission of Mr. Debi Prasad

cannot be accepted. This writ petition, being devoid of merits is dismissed accordingly.