
(2007) 10 JH CK 0018
In the Jharkhand High Court

Deula Santhal

APPELLANT

Vs

State of Bihar and Others

RESPONDENT

Date of Decision : 08-10-2007

Acts Referred:

Chotanagpur Tenancy Act, 1908 — Section 46, 71A

Citation : (2008) 1 JCR 152

Hon'ble Judges : M.Y. Eqbal, J;Dabbiru Ganeshrao Patnaik, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

M.Y. Eqbal, J.—This appeal under Clause 10 of the Letters Patent is directed against the judgment dated 21.7.2006 passed in CWJC No. 2470 of 1999 (R), whereby the learned single Judge dismissed the writ petition filed by the appellant and affirmed the order passed by the Commissioner, South Chotanagpur Division, Ranchi.

2. The facts of the case lie in a narrow compass:

The petitioner being a member of Schedule Tribe filed an application u/s 71A of the Chotanagpur Tenancy Act (hereinafter referred to as "the Act") against respondent No. 5- Shiv Charan Das claiming restoration of 36 decimals of land of village Satpura in the district of Singhbhum, The case of the petitioner-appellant was that the land in question comprised within R.S. Plot No. 22 under Khata No. 14 originally recorded in the Record of Rights prepared in the year 1934 in the name of the pre-decessor-in-interest of the appellant. The land in question was surrendered in favour of ex-landlord by a registered deed dated 16.10.1941 without permission of the Deputy commissioner. The said land was settled in favour of Puran Chandra Pusti and Krishna Chandra Das by registered deed dated 7.8.1952. The appellant's case was that he was in possession of the land in question till 1964 and thereafter he has been illegally dispossessed. The said application was allowed and the land in question was directed to be restored.

Respondent No. 5 then preferred appeal before the Deputy Commissioner against the said order passed by the D.C.L.R., Ghatsila, but the appeal was dismissed and the order of restoration was affirmed. Respondent No. 5 thereafter preferred revision before the Commissioner, South Chotanagpur Division, Ranchi. The Commissioner being the revisional authority, after hearing the parties, set aside the order of restoration passed by the D.C.L.R. as well as the Deputy Commissioner and held that the restoration application itself was barred by limitation. The appellant then challenged the order passed by the Commissioner by filing the aforementioned writ petition.

3. The learned single Judge after considering the entire facts of the case affirmed the order passed by the Commissioner and dismissed the writ petition.

4. We have heard Mr. K.P. Mitra, learned Counsel appearing on behalf of the appellant and Mrs. Jaya Roy, learned Counsel appearing on behalf of respondent No. 5.

5. The undisputed facts are that the land in question was originally recorded in the survey record of rights prepared in the year 1934 in the name of predecessor-in-interest of the appellant. The recorded raiyat, however, surrendered the land in question in favour of the ex-landlord by virtue of a registered deed of surrender dated 16.10.1941. The ex-landlord resumed the land and after 11 years i.e. in the year 1952, the ex-landlord settled the land in question in favour of Puran Chandra Pusti and Krishna Chandra Das by registered deed dated 7.8.1952. It appears that the said settlee paid all the demands before abolition of the zamindari and also paid rent and cess to the State of Bihar. In the current survey of the year 1964, the land in question was recorded in the name of Krishna Chandra Das, respondent No. 5, being the purchaser of the said land from Puran Chandra Pusti and Krishna Chandra Das. After about 51 from the date of surrender i.e. in the year 1992, the appellant filed an application for restoration of the land in question on the ground that he was illegally dispossessed in the year 1964.

6. The restoration application was contested by the appellant on the ground, inter alia, that the restoration application was barred by limitation, inasmuch as it was filed after 51 years from the date of surrender.

7. Mr. Mitra, learned Counsel appearing on behalf of the appellant, assailed the impugned order mainly on the ground that the surrender made by the recorded tenant in the year 1941 was itself illegal and contrary to law, inasmuch as no permission of the Deputy Commissioner was obtained and consequently, the settlement became illegal. Learned Counsel further submitted that since the surrender and transfer were Illegal, the appellant is entitled to get the land restored in his favour u/s 71A of the Act. In our view, the submission of the learned Counsel is wholly misconceived.

8. As noticed above, the land in question was surrendered in the year 1941 when no permission of the Deputy Commissioner under the law was required. Since

the settlement was made by the ex-landlord after 11 years from the date of surrender, it cannot and shall not be treated as illegal or violative of the provisions of Section 46 of the Act. Admittedly, the land in question was recorded in the name of the respondent No. 5 in the survey record of rights prepared in 1964. Nothing has been brought on record by the appellant to show that he ever made any objection with regard to the entry of the name of the appellant in the record of rights. At no point of time the appellant challenged the surrender of the year 1941, settlement of the year 1952 or the record of rights published in the year 1964. In that view of the matter, the Commissioner and the learned single judge rightly held that the restoration application was hopelessly barred by limitation.

9. Besides the above, since the surrender and settlement of the land in question was not in violation of any provisions of the C.N.T. Act, the appellant was not entitled to file application for restoration of land. Considering the entire facts and circumstances of the case, we do not find any merit in this appeal which is, accordingly, dismissed.

D.G.R. Patnaik, J.

10. I agree.