

(2008) 07 JH CK 0114
In the Jharkhand High Court

Devanand Munda and Others

APPELLANT

Vs

The Commissioner, North Chhotanagpur Division and Others

RESPONDENT

Date of Decision : 03-07-2008

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2008) 3 JCR 750

Hon'ble Judges : Ajit Kumar Sinha, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Ajit Kumar Sinha, J.—The present writ petition has been preferred for issuance of an appropriate writ, order or direction to quash the order dated 24.12.2001, passed by respondent No. 1 in Hazaribagh Land Restoration Revision No. 49 of 1995 and also the order dated 9.5.1995, passed by respondent No. 2 in R.A.N. 28 of 1994 and the order dated 7.11.1994, passed by respondent No. 3 in Restoration Case No. 5 of 1994.

2. The brief facts, as submitted by the petitioners, are that Khata No. 54 of Village-Kurum, Police Station-Ramgarh, District- Hazaribagh, was recorded in the survey in the name of the ancestors of the petitioners. Pursuant to the death of their ancestors, the petitioners herein by inheritance and partition got the share in the land of Plot Nos. 806, 808, 809 and 810 of Khata No. 54, measuring 0.32 Acres and they continued in possession for seven years before filing of Restoration Case No. 5 of 1984. It is the case of the petitioners that the private respondents, who belong to the family of Ex. Landlord, in or about 1978 obtained the signature of the petitioners' father late Kandan Munda on Sada paper for giving financial assistance to Kandan Munda and subsequently respondent No. 4 converted the said Sada paper into Sada Rehan deed and forcibly and by practicing fraud dispossessed Kandan Munda and petitioner No. 2 from the land. In the aforesaid background, father of petitioner Nos. 1 to 4 and petitioner No. 5 filed Restoration Case No. 5 of 1984 before the Land Reforms Deputy Collector,

Ramgarh, for restoration of land u/s 46 of the Chhotanagpur Tenancy Act to which the respondents filed their show cause, alleging that the petitioners are not the legal heirs of the recorded tenant. The learned Deputy Collector Land Reforms acting as Land Restoration Officer after considering the entire records and evidence vide its order dated 19.6.1985 allowed the Land Restoration Petition in favour of the petitioners and also found the claim of the respondents to be *ferzi* and bogus. It also held that the petitioners are the legal heirs of the recorded tenant and the paper, in question, of the respondents was not genuine and the rent receipt issued in favour of the respondents was without any order from the competent authority. An appeal was preferred challenging the order dated 19.6.1985, passed by the Land Restoration Officer before the Additional Collector, which was numbered as R.A.N. 24 of 1985 and the learned Additional Collector vide its order dated 1.7.1985 did not even admit the appeal and dismissed the same at the admission stage. Respondent No. 4 preferred revision petition being Revision No. 89 of 1985 before the learned Commissioner, North Chhotanagpur Division, challenging the order dated 1.7.1985, who after hearing both the sides and on perusal of the records vide its order dated 17.6.1986 dismissed the revision, upholding the judgment and order of the Deputy Collector Land Reforms/Land Restoration Officer.

3. It appears that Civil Revision No. 369 of 1997(R) was preferred challenging the order of the learned Commissioner dated 17.6.1986 and the Hon'ble High Court vide its order dated 4.9.1991 remanded the case with a direction to take oral as well as documentary evidence from both the parties on the point of dispossession and to pass a fresh order in accordance with law.

4. The contention of the petitioners, as reflected in paragraph No. 13 of the writ petition is that the delivery of possession had already been affected in favour of the petitioner before the order of the Hon'ble High Court. Upon remand, the learned Land Reforms Deputy Collector, Ramgarh, permitted both the parties to adduce oral evidence and vide its order dated 7.11.1994 rejected the claim of the petitioners herein. The petitioners herein preferred an appeal before the learned Additional Collector, challenging the order dated 7.11.1994, passed by the Land Reforms Deputy Collector/Land Restoration Officer and during pendency of Appeal No. 28 of 1994, Kandan Munda died on 28.12.1994, leaving behind the petitioner Nos. 1 to 4 herein as his legal heirs and they were, accordingly, substituted in place of their late father. The learned Additional Collector dismissed the appeal vide its order dated 9.5.1995 whereinafter the petitioners preferred a revision before the learned Commissioner, which was registered as Revision Case No. 49 of 1995, which was also dismissed vide order dated 24.12.2001. It has also been brought to my notice that pursuant to dismissal of the revision petition, a registered sale deed has been executed in favour of 3rd party on 22.8.2003. The main contention raised by the petitioners here is that the orders passed were in contravention of Section 46(1) of the Chhotanagpur Tenancy Act and the fact that the delivery of possession has already been affected in favour of the petitioners before the orders passed by the High Court.

It has also been contended that the learned appellate authority has failed to exercise the jurisdiction vested in it in not considering the evidence brought on record to hold that the petitioners being the raiyat have been dispossessed within seven years from the date of application of restoration in the year, 1985. It has also been contended that respondent No. 3 could not have held that the transfer has taken place prior to 12 years from the date of application.

5. According to the respondents, the writ petition preferred is not maintainable in view of concurrent findings of three authorities under the Chhotanagpur Tenancy Act pursuant to the remand order, issued by the Hon'ble High Court. It has also been contended that the matter involves disputed question of fact with regard to title and possession and it is not possible for the writ court to re-appreciate the evidence and go into the disputed question of fact, more so when there has been concurrent finding of facts. The respondents have also submitted that both the parties were given sufficient opportunity to adduce evidence in support of their respective claims and after considering the evidence, adduced by both the parties, the Land Reforms Deputy Collector vide order dated 7.11.1994 rejected the claim of restoration of the petitioners, which has been upheld by both the appellate authorities. The consistent finding is that no case for restoration of land "under the provisions of Section 46(4)(a) of Chhotanagpur Tenancy Act has been made out. The respondents have also submitted that the petitioners have full knowledge about the execution and registration of sale deed dated 22.8.2003 by the substituted legal heirs and representatives of deceased respondent No. 4 and in the aforesaid background under Article 226 of the Constitution of India, as per the settled law, there cannot be roving enquiry and the same, accordingly, deserves to be dismissed.

6. On consideration of the aforesaid submissions, it is clear that after the order of remand, passed by the Hon'ble High Court, the earlier proceedings came to an end and the order of remand attained finality. Thereafter, three authorities, including the appellate authority, consistently and concurrently after affording opportunity to adduce oral evidence and documentary evidence upheld the finding of the Deputy Collector Land Reforms that the tribal tenants were dispossessed twenty years back and, thus, they are not liable to claim restoration nor any case of restoration of land under the provisions of Section 46(4) of the Chhotanagpur Tenancy Act is made out. It is settled law that the High Court in its writ jurisdiction cannot re-appreciate the evidence more so when it is a case of concurrent findings of facts and evidence after elaborate enquiry and compliance of the orders of High Court. In the aforesaid background, this writ petition, being devoid of merit, is, accordingly, dismissed without any order as to costs.