

(2010) 05 JH CK 0067
In the Jharkhand High Court

Dhena Hansda and Others

APPELLANT

Vs

State of Jharkhand and Others

RESPONDENT

Date of Decision : 19-05-2010

Acts Referred:

Government of India Act, 1935 — Section 299(2)

Citation : (2010) 05 JH CK 0067

Hon'ble Judges : Sushil Harkauli, J; Prashant Kumar, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

1. This appeal is directed against the order dated 18.06.2003 passed by learned Single Judge in W.P.(C) No. 3771 of 2002, whereby and whereunder the writ application filed by appellants, challenging the order of Divisional Commissioner, Santhalparagana in R.M. Appeal Case No. 142 of 1997-98, has been dismissed.

2. Sans unnecessary particulars, the facts of the case are that the disputed lands, recorded in the names of appellants' ancestors, acquired by the Deputy Commissioner in L.A. Case No. 5 of 1936-37 for the purpose of "hat" in Village-Sarasdangal. It then appears that after acquisition of the said lands, the same were settled with the ex-landlord. Thereafter, the disputed lands were settled with Basudeo Bhagat by registered deed of settlement dated 2.04.1938. It is alleged that the lands are non-transferable agricultural lands, therefore, cannot be transferred by way of sale, gift, mortgaged or otherwise. It is further stated that the purpose for acquisition of lands is for "hat" and not for Basouri, therefore, cannot be transferred in violation of provisions of Santhalparagana Tenancy Act. It appears that the appellants filed an application before the Settlement Officer, Dumka for eviction of respondents from the disputed land and for recording of their names in the record of rights. On the basis of application of the appellants R.E. Case No. 1 of 1997-98 was instituted. It further appears that vide order dated 20.06.1997, the Settlement Officer, Dumka allowed the aforesaid application of the appellants and ordered that the names of the

appellants to be entered in the record of right and respondents be evicted from the land in question. Against the aforesaid order respondents filed an appeal before the Divisional Commissioner, Santhalparagana Division, Dumka which was registered as R.M. Appeal Case No. 142 of 1997-98. The Divisional Commissioner vide his order dated 23.05.2002 allowed the appeal and set aside the order of Settlement Officer, Dumka. Against the aforesaid order, appellants filed writ petition in this Court vide W.P.(C) No. 3771 of 2002 which was dismissed by a learned Single Judge vide order dated 18.06.2003. Against the said order the present appeal filed.

3. The respondents on being noticed appeared before the learned Single Judge and filed counter affidavit stating therein that it is true that earlier the lands in question was recorded in the name of ancestors of appellants, but the said lands were acquired in L.A. Case No. 5 of 1936-37 u/s 25A of Regulation II of 1886. It is further stated that after acquisition, the lands in question settled with ex-landlord through the machinery of Court. It is stated that subsequently ex-landlord settled the land in favour of ancestors of respondents. It is further stated that under the Santhalparagana Tenancy Act, once the land acquired u/s 25A of Regulation II of 1886, it becomes Basouri land, consequently, it can be transferred. Thus, the settlement by ex-landlord in favour of respondents ancestors is legal and not in violation of the provisions of Santhalparagana Tenancy Act. It is further stated that in the year 1976-77, the Circle Officer, Shikaripara filed an application before the Sub-Divisional Officer, Dumka for eviction of respondents from lands in dispute. The said application was registered as R.M. Case No. 207 of 1976-77. The S.D.O., Dumka vide his order dated 05.06.1979 dismissed aforesaid application. Against that an appeal filed before the Deputy Commissioner, Dumka vide Revenue Misc. Case No. 665 of 1979-80, which was allowed and order of S.D.O., Dumka set aside. It is stated that against the said order of Deputy Commissioner, Dumka an appeal filed by the respondents before the Divisional Commissioner, Bhagalpur. It is stated that in the said appeal ancestors of appellants filed an application for impleading them as party, which was allowed. It is further stated that the Divisional Commissioner, Bhagalpur, after considering the case of the parties, allowed the appeal and set aside the order passed by Deputy Commissioner, Dumka. It is stated that the aforesaid order of Divisional Commissioner, Bhagalpur has not been challenged by the appellants or his ancestors. It is submitted that the subsequent application filed by the appellants, before the Settlement Officer, Dumka, is barred by res-judicata. It is also stated that the Settlement Officer, Dumka has no jurisdiction to hold that Section 25A of the Regulation II of 1886 is ultra vires to the Constitution of India, and Section 299(2) of the Government of India Act, 1935. Accordingly, respondents stated that the order of Divisional Commissioner, Dumka in R.M. Appeal Case No. 142 of 1997-98 as well as the impugned judgment passed by learned Single Judge based on sound legal principle, thus, do not require any interference.

4. It is submitted by learned Counsel for the appellants that the lands in question

are non-transferable land, therefore, transfer made by the ex-landlord in favour of ancestors of respondents is illegal. It is further submitted that though the ancestors of appellants filed application in S.P. Rev Misc. Appeal No. 60 of 1982-83 for impleading them as parties, but they have not been impleaded in the said appeal. Thus, the finding of Divisional Commissioner, Dumka in R.M. Appeal Case No. 142 of 1997-98 that the application filed by ancestors of appellants has been allowed is off the record. Therefore, application filed by the appellants before the Settlement Officer, Dumka is not hit by res-judicata.

5. On the other hand, learned Counsel appearing for the respondents submits that once the land acquired u/s 25A of the Regulation II, 1886 and re-settled with ex-landlord, it becomes Basouri land, consequently, it becomes transferable land. Thus, transfer by the ex-landlord in favour of ancestors of respondents is valid and enforceable. It is further submitted that though there is specific finding of Divisional Commissioner, Santhalparagana, Dumka that ancestors of appellants are impleaded by the Divisional Commissioner, Bhagalpur in S.P. Rev Misc. No. 60 of 1982-83, the appellants did not file any chit of paper to show that their ancestors have not impleaded in that case. In the absence of any documentary evidence the finding of a competent court cannot be altered. The aforesaid finding accepted by learned Single Judge, but inspite of that the appellants did not take any pain to file order sheets of aforesaid Appeal No. 60 of 1982-83 in this appeal to show that their ancestors had not been impleaded as parties in the aforesaid appeal. Accordingly, it is submitted that the subsequent application filed by the appellants before the Settlement Officer, Dumka in the year 1997 is barred by the principles of res-judicata.

6. Having heard the submission, we have gone through the record of the case. It is admitted that the lands in question, recorded in the names of ancestors, in L.A. Case No. 5 of 1936-37 and settled with the ex-landlord for holding "hat". Paragraph No. 30 of Gantzer's Survey and Settlement Report of Santhalparagana 1922-35 provides that Basauri land can be created in two ways, firstly by settlement of waste land, secondly by acquisition under the provisions of Section 25A of the Regulation II of 1886. Admittedly, in the instant case, the lands in question acquired u/s 25A of Regulation II 1886. Thus, subsequent settlement of lands in favour of ex-landlord becomes a Basouri tenancy. The learned Commissioner after taking into account Gartzter's Survey and Settlement Report concluded that after acquisition the lands in question cease to be Rayati land and after re-settlement becomes Basouri land, therefore, there is no legal impediment in transferring the said land by the ex-landlord. Accordingly, he decided that there is no illegality in the aforesaid transfer, which requires any interference. The aforesaid finding is accepted by learned Single Judge.

7. It is submitted by the appellants that the application filed by their ancestors for impleading them parties in S.P. Rev. Misc. Appeal No. 60 of 1982-83 was not allowed by Divisional Commissioner, Bhagalpur. However, from perusal of order of Divisional Commissioner, Santhalparagana Division, Dumka dated 23.05.2002, it

appears that he found that the application of appellants ancestors was allowed by the Divisional Commissioner, Bhagalpur. There is nothing on record to show that the aforesaid finding given by the Divisional Commissioner, Santhalparagana is against the record. It is worth mentioning that the appellants without filing the order sheet of S.P. Rev. Appeal No. 60 of 1982-83 challenged the aforesaid finding of Divisional Commissioner, Santhalparagana that the said finding is wrong. In our view as an appellate authority had given aforesaid findings after considering the record, in the absence of any documents in rebuttal, only on the basis of bald statement of appellants, it is not desirable to disturb the said finding. Therefore, we find that learned Single Judge has rightly accepted the said finding and concluded that the second application filed by the appellants before the Settlement Officer, Dumka is hit by principles of res-judicata.

8. In view of the discussions made above, we find no reason to interfere with the findings of the learned Single Judge.

9. In the result, we find no merit in the present appeal, the same is, accordingly, dismissed. However, the parties shall bear their own cost.