
(2015) 02 JH CK 0152
In the Jharkhand High Court
Case No : WP(C) No. 6487 of 2014

Dinesh Prasad

APPELLANT

Vs

The State of Jharkhand and Others

RESPONDENT

Date of Decision : 19-02-2015

Acts Referred:

Chotanagpur Tenancy Act, 1908 — Section 71-A

Citation : (2015) 3 AJR 437 : (2015) 2 JLJR 193

Hon'ble Judges : S. Chandrashekhar, J

Bench : Single Bench

Advocate : Manoj Prasad, for the Appellant; V.K. Prasad, Advocates for the Respondent

Final Decision : Allowed

Judgement

S. Chandrashekhar, J.

1. Aggrieved by the decision to prefer appeal against order dated 13.8.2013 by which, transfer in the name of the petitioner has been validated, the present writ petition has been filed. The brief facts of the case are that, land in Khata No. 103 Plot Nos. 1533 and 1534 measuring 5.4 Kathas of Mauza-Hinoo, Thana No. 225 was recorded in the name of one Yugal Kishor Bhagat, the landlord of the village. The land in question was settled with one Kanta Singh in permanent Bandobasti with transferable and inheritable Chhaparbandi right by the erstwhile landlord namely, Yugal Kishor Bhagat. At the time of vesting of Jamindari, Jamabandi return was filed by the landlord and in the Government records, the land in question has been shown as Chhaparbandi land in possession of Kanta Singh and Sita Ram Singh. The said Kanta Singh and Sita Ram Singh executed sale deed on 26.11.1990 in favour of mother of the petitioner and it was mutated in the name of Smt. Raj Kumari Devi vide Mutation Case No. 712/1991-92. The petitioner thereafter, constructed pucca building in which, the petitioner is residing. The Ranchi Regional Development Authority vide B.C. Case No. 269/1994 has accorded sanction for the building and the petitioner is paying rent. The

respondent Nos. 5 and 6 filed SAR Case No. 68/2013-14 under Section 71-A of CNT Act, 1908 alleging dispossession for the last 35-40 years. The petitioner appeared in the proceeding and filed his objection and the Special Officer, SAR Court, Ranchi vide order dated 30.8.2013 granted compensatory amount of Rs. 2,20,000/- per decimal payable to the respondent Nos. 5 and 6. The petitioner accordingly paid a part of the compensation amount to the respondent Nos. 5 and 6. However, SAR Appeal No. 178-R-15/2014-15 has been filed against the order passed by the Special Officer, Ranchi. Challenging the jurisdiction of the Deputy Commissioner, Ranchi-respondent No. 3 in preferring appeal against the order passed in SAR Case No. 68/2013-14, the present writ petition has been filed.

2. Heard the learned counsel appearing for the parties.

3. Challenging the jurisdiction of the respondent No. 3 in issuing direction for preferring appeal against the order passed in SAR Case No. 68/2013-14, the learned counsel for the petitioner submits that the provision of the CNT Act is not applicable in the present case. The Deputy Commissioner is not an aggrieved party against the order passed by the Special Officer (SAR Court) and therefore, no appeal can be preferred by the State. The provisions under CNT Act are intended at protecting the right of the tribals and there is a specific provision under Section 71-A of the CNT Act for grant of compensation to the aggrieved tribal. In the present case, admittedly the petitioner has constructed a pucca building and he has been residing there since last more than 20 years and therefore, keeping in view the above facts, the Special Officer, SAR Court exercised power under proviso to Section 71-A of the CNT Act and granted compensation of Rs. 2,20,000/- per decimal. The applicant Nos. 5 and 6 are not aggrieved by order passed by the Special Officer and they have received part-payment in terms of order dated 30.8.2013 in SAR Case No. 68/2013-14 and therefore, the SAR Appeal No. 178-R-15/2014-15 has been filed without authority of law and therefore, the proceeding in SAR Appeal No. 178-R-15/2014-15 is liable to be quashed.

4. As against the above, Mr. V.K. Prasad, S.C. (L and C) appearing for the respondent-State of Jharkhand submits that the State is duty-bound to protect the right of a tribal and therefore, a decision was taken by the Deputy Commissioner-respondent No. 3 to file appeal against the order passed by the Special Officer (SAR Court).

5. Mr. Suraj Kumar Verma, the learned counsel appearing for the respondent Nos. 5 and 6 admits that the original applicants have not filed appeal against order dated 30.8.2013 in SAR Case No. 68/2013-14. The learned counsel states that the respondent Nos. 5 and 6 have received part-payment in terms of compensation awarded by the SAR Court.

6. Having heard the learned counsel appearing for the parties and after perusing the documents on record, I am of the opinion that the present writ petition

deserves to be allowed. In the present writ petition the petitioner has challenged authority of the respondent No. 3 in directing the Circle Officer to file SAR Appeal against order dated 30.8.2013 in SAR Case No. 68/2013-14. Against the order passed by the Special Officer under Section 71-A of the CNT Act, the respondent-Deputy Commissioner cannot be said to be an aggrieved party. Second proviso to Section 71-A of the CNT Act provides that compensatory amount can be awarded to the applicant-aggrieved tribal. There is no allegation that there is collision between the applicant-tribals and the petitioner. It is also not the case of the respondent-State of Jharkhand that a fraud has been played upon the SAR Court. A perusal of Section 71-A of the CNT Act, 1908 discloses that the power under the said provision is exercised by the Deputy Commissioner. It appears that the power under Section 71-A of the Act has been delegated to the Special Officer, SAR Court and thus, the Special Officer is a delegatee of the Deputy Commissioner. The proceeding under Section 71-A is a judicial proceeding and thus, the Special Officer exercises a judicial power while entertaining application under Section 71-A of the CNT Act, 1908. An appeal against order passed by the SAR Court lies before the Deputy Commissioner. Admittedly, no instruction has been issued by the Government of Jharkhand in compliance thereof, the Deputy Commissioner ordered filing of appeal against order dated 30.8.2013. In the proceeding of SAR Case No. 68/2013-14, the aggrieved persons that is, respondent Nos. 5 and 6 submitted an affidavit stating that they have filed the application under Section 71-A of the Act for compensation. The Special Officer, SAR Court has taken note of the stand taken by the respondent Nos. 5 and 6 and in such view of the matter, directed the petitioner either to make available land or to pay compensation. The learned counsel for the respondent Nos. 5 and 6 stated that the respondent Nos. 5 and 6 have accepted part-payment and they are not aggrieved by order dated 30.8.2013 in SAR Case No. 68/2013-14.

7. Considering the above, I am of the opinion that the Deputy Commissioner-respondent No. 3 has no authority to direct the Circle Officer to file appeal against order passed by the Special Officer in SAR Case No. 68/2013-14. Accordingly, the present writ petition is allowed and consequently, the SAR Appeal No. 178-R-15/2014-15 is dismissed.