
(2003) 10 JH CK 0022
In the Jharkhand High Court
Case No : L.P.A. No. 425 of 2001

Gadia Oraon and Others

APPELLANT

Vs

State of Jharkhand and Others

RESPONDENT

Date of Decision : 13-10-2003

Acts Referred:

Chotanagpur Tenancy Act, 1908 — Section 71A

Citation : (2004) 1 JCR 237

Hon'ble Judges : Vishnudeo Narayan, J; Gurusharan Sharma, J

Bench : Division Bench

Advocate : P. Gangopadhaya and Shailendra Kumar Singh, for the Appellant;
S.N. Lal and Rajiv Anand for respondents 5 to 7, for the Respondent

Final Decision : Dismissed

Judgement

1. Admittedly in the Record of Rights, finally published in the year 1930 names of the appellants ancestors stood recorded as raiyats for the land in question, comprising of an area of 7.15 acres, consisting of Plot Nos. 217, 218, 219, 220 and 292, situated in village Achudih, District Ranchi.

2. In the year 1970, the recorded tenants, namely, Lohra Oraon and Chhotu Oraon filed S.A.R. Case No. 37 of 1970-71, u/s 71A of the Chotanagpur Tenancy Act, 1908 (hereinafter to be referred to as "the Act") for restoration of possession, against Bilia Devi and Phutki Devi, which was dismissed by the Special Officer, S.A.R. Khunti on 23.9.1974 and the said order became final, as neither any appeal nor revision under the said Act was preferred against the said order.

3. After a lapse of 17 years thereafter, the appellant No. 2, who is none-else but son of the aforesaid recorded tenant, Lohra Oraon along with appellants Sanichar Oraon filed a fresh application, purporting to be u/s 71 -A of the Act, which was registered as Case No. 96 of 1991, before the Special Officer S.A.R Khunti and was allowed on 24.4.1991, S.A.R. Appeal No. 3 of 1990-91 filed by the

respondents No. 3 to 7 was also dismissed on 25.9.1993.

4. However, the revision filed before the Commissioner by the respondents 3 to 7, being Revision No. 477 of 1993 was allowed on 16.3.1999 and both the original as well as the appellate orders aforesaid were set aside solely on the ground that the claim of restoration purported to have been filed u/s 71-A of the Act was barred by the principle of res-judicata.

5. The appellants challenged the said order in CWJC No. 1251 of 1999 (R) before this Court, which was heard and dismissed by the learned Single Judge by impugned order dated 4.6.2001.

6. The learned Single Judge observed that the writ-petitioners were fighting under the same title and after the Commissioner held that the subsequent restoration application in the year 1991 was barred by principle of res-judicata, there was no occasion to interfere with the said order under Article 226 of the Constitution of India.

7. The first Court and the statutory Court both erred in law in entertaining the second restoration application after a lapse of 17 years, when the first such application filed by the recorded tenant himself had been rejected and the said rejection order in course of time, in the absence of any appeal had already become final.

8. We, therefore, find no reason to interfere with the impugned orders of the Commissioner as well as the learned Single Judge. This appeal is dismissed. No order as to costs.