

(2006) 04 JH CK 0049
In the Jharkhand High Court
Case No : CWJC No. 1351 of 1994 (R)

Ganesh Sao

APPELLANT

Vs

Commissioner, Palamau Division and Others

RESPONDENT

Date of Decision : 07-04-2006

Acts Referred:

Chotanagpur Tenancy Act, 1908 — Section 71A

Citation : (2006) 2 JCR 474

Hon'ble Judges : R.K. Merathia, J

Bench : Single Bench

Advocate : A.K. Sahani, H.K. Mehta, G.A, for the Appellant; P.P.N. Roy and Sahid Khan, for the Respondent

Judgement

R.K. Merathia, J.—I.A. No. 243 of 2003 was filed by Mr. P.P.N. Roy, for substitution of heirs and legal representatives of respondents Nos. 4 and 5, Bandhan Tana and Jauru Tana, Mr. Sahani has got no Objection to such prayer.

2. Accordingly, the application for substitution is allowed, respondents Nos. 4 and 5 are deleted and Mahrang Tana Bhatat, Suita Tana Bhagat, Dineshwar Bhagat, Mahavir Tana Bhagat and Bablu Bhagat are substituted as respondents Nos. 4, 5, 6, 7 and 8 in their place.

3. LA. No. 243 of 2003 stands disposed of.

4. Petitioner has prayed for quashing the order dated 31.1.1994 (Annexure-4), passed by the respondent No. 1 (Commissioner, Palamau Division, Daltonganj), in Land Restoration Case No. 25/93 whereby the order dated 24.11.1992 passed by the respondent No. 2, (Addl. Collector, Palamau at Daltonganj), in appeal No. 7/5 of 1991-92, was set aside and also for quashing the orders dated 17.12.1991/6.3.1991 (An-nexure-2), passed in Land Restoration Case No. 1 of 1990-91, by the respondent No. 3, (Sub-Divisional Officer, Latehar, District Palamau), by which the land in question was directed to be restored in favour of the original respondent Nos. 4 and 5.

5. Mr. Sahani submitted that while passing the impugned orders, the authorities have not considered the respective cases of the parties and, therefore, they reached to erroneous conclusions. He further submitted that a proceeding was initiated u/s 71-A of the C.N.T. Act by the original respondent Nos. 4 and 5, against the petitioner, being Eviction Case No. 81 of 1971-72, but the same was dropped by order dated 25.3.1972 (Annexure-1) by respondent No. 3 with regards to Plot Nos. 908, 921 and 883 of khata No. 60 area 3.71 decimal; on the basis that the land in question was auction sold in the year 1938 and was purchased by the predecessor-in-interest of the petitioner on 20.10.1938 which is supported by rent receipt for the period prior to the time of vesting in the name of Dhanu Sao father of the petitioner, who took raiyati Dawami settlement from Mostt. Snder Kuer, the auction purchaser and the said lands, are in the name of the ancestor of the petitioner.

The Sub-Divisional Officer further considered the order dated 24.6.1970 passed in Misc. Case No. 26 of 1965 by D.C.L.R, Latehar which was filed by the respondent Nos. 4 and 5 themselves. The S.D.O. found that the said order was passed on the petition filed by predecessor-in-interest of respondents Nos. 4 to 8 under which a compromise was arrived at between the parties, according to which, Plot Nos. 908, 921 and 883 of total area 3.71 decimal were to remain in possession of the petitioner and the rest 39.39 acres, with respect to the plots mentioned in the order, were to remain in possession of respondent Nos. 4 and 5.

6. Mr. Sahani further submitted that the said order dated 25.03.1972 (Annexure-1) became final. After about twenty years, the respondents initiated a proceeding u/s 71(A) of the C.N.T. Act claiming themselves to be Tana Bhagat. Petitioner could not participate in this subsequent proceeding and thus an ex parte order was passed by S.D.O. on 6.3.1991 (Annexure- 2) holding that respondent Nos. 4 and 5 were Tana Bhagat against whom the right of adverse possession could not be acquired under the Ranchi District Tana Bhagat Agricultural Land Restoration Act, 1947. He further found that entering the name of the petitioner in the Demand Register was doubtful and against the provisions of C.N.T. Act.

The S.D.O. accordingly ordered for restoration of land in question in favour of the original respondent Nos. 4 and 5. Petitioner preferred an appeal against the said order. The same was allowed by order dated 24.11.1992 (Annexure-3) by the Addl. Collector, who found that the original respondent Nos. 4 and 5 were not Tana Bhagat. Accordingly, the appeal was allowed and the order dated 6.3.1991 (Annexure-2) was set aside.

Against the said order, the respondent Nos. 4 and 5 preferred a revision before the Commission and it was allowed by the impugned order dated 31.1.1994 (Annexure-4).

7. It appears that the Commissioner passed the order only on the basis of the order passed by the S.D.O. (Annexure-2) and he did not apply his mind

independently to the respective cases of the parties, and as such, in the circumstances, I am satisfied that the impugned order cannot be sustained.

8. Accordingly, the impugned order dated 31.1.1994, passed in case No. 25/93, is set aside and the matter is remitted back to the Commissioner, Palamu Division, Daltonganj for passing fresh order, after hearing the parties, in accordance with law within six months from appearance of the parties. The parties will appear before him on 24th April, 2006, when he will fix a date and will thereafter proceed with the matter. This Court has not gone into the merits of the respective cases of the parties and as such this order will not prejudice them, before the revisional authority.

9. With these observations and directions, the writ petition stands disposed of. However, there will be no order as to costs.