

(2010) 03 JH CK 0101
In the Jharkhand High Court

Gopal Chettri

APPELLANT

Vs

State of Jharkhand and Others

RESPONDENT

Date of Decision : 31-03-2010

Acts Referred:

Chotanagpur Tenancy Act, 1908 — Section 48, 71

Citation : (2010) 4 JLJR 421

Hon'ble Judges : Dhirubhai Naranbhai Patel, J

Bench : Single Bench

Judgement

D.N. Patel, J.—The present petition has been preferred against the order, passed by the Special Officer, S.A.R., Ranchi in SAR Case No. 110 of 2005-06 dated 1st of September, 2008 (Annexure-"9") mainly on the ground that on earlier occasion also similar type of litigation has already been decided between the parties to the dispute for the very same land, in question.

2. It is submitted by the Learned Counsel for the petitioner that initially, the property was vested in Mr. Bigalaha Pahan. Thereafter, he sold the property with proper permission, in the Month of October, 1944 to Rai Bahadur Harak Chand Jain, who upon proper permission, transferred the land, in question, on 27th March, 1955 to one Smt. Sumitra Devi by converting the land into Chapparbandi by registered document. Upon transfer of the land to Sumitra Devi, there was a construction of super-structure thereupon and ultimately the property was transferred by Sumitra Devi to Brigadier Frank. Huge Stevens and this property was transferred to him on 1st June, 1973. Thereafter as the petitioner was serving with the aforesaid Brigadier, ultimately the property, in question, by way of a will, executed by the said Brigadier and by proper probate etc., was transferred in favour of the petitioner, and this is how he become owner of the property, in question. The property has been transferred to the petitioner from a non-tribal and it is, therefore, submitted by the Learned Counsel for the petitioner that the provisions of Section-48 of the Chotanagpur Tenancy Act is not applicable in the facts of the present case and, therefore, the order, passed

by the Special Officer, S.A.R., Ranchi dated 1st September, 2008 in S.A.R. Case No. 110 of 2005-06 at Annexure-"9" to the memo of petition, deserves to be quashed and set: aside.

3. I heard Learned Counsel for the respondents, who has submitted that in fact, S.A.R. Case No. 110 of 2005-06, is decided in favour of the respondents i.e. private respondent No. 4 and the respondent No. 4 is the owner of the property and therefore, he has preferred an application u/s 71 of the Chotanagpur Tenancy Act.

4. Learned Counsel for the respondents has submitted that his client is not aware about earlier proceedings.

5. Having heard Learned Counsel for both the sides and looking to the contentious issues, raised in this petition, this writ petition is "Admitted" for final hearing.

6. Learned Counsel for the respondents waives notice of Rule on behalf of respective respondents.

7. So far as the interim relief is concerned, there is a, prima facie, case in favour of the present petitioner. Balance of convenience is also in favour of the present petitioner. It appears that the present petitioner has obtained the property, in question, from a non-tribal i.e. from Brigadier Frank Huge Stevens. His predecessor-in-title had obtained property from Sumitra Devi by way of a registered sale-deed dated 1st June, 1953 and further predecessor-in-title i.e. Sumitra Devi got the property again from Rai Bahadur Harak Chand Jain on 27th March, 1955. There is a super-structure also upon the said property since earlier than 1973 because it was constructed by Sumitra Devi. Moreover, looking to contention raised by the Learned Counsel for the Respondent No. 4 that respondent is not in possession of the property since last more than one decade and the petitioner is in possession of the property and, therefore, if the stay, as prayed for, is not granted it will cause irreparable loss to the petitioner and I, therefore, stay the operation, implementation and execution of an order, passed by the Special Officer, S.A.R., Ranchi, dated 1st August, 2008, as well as I further stay the proceedings of S.A.R. Case No. 110 of 2005-06, pending in the Court of learned Special Officer, S.A.R., Ranchi, during the pendency and final hearing of this writ petition.