
(1995) 03 PAT CK 0021

In the Patna High Court

Case No : Civil. Writ Jurisdiction Case No. 1152 of 1988 (R)

Hari Krishana Prasad Keshari and Others

APPELLANT

Vs

State of Bihar and Others

RESPONDENT

Date of Decision : 24-03-1995

Acts Referred:

Chotanagpur Tenancy Act, 1908 — Section 71A

Citation : (1995) 1 BLJR 604

Hon'ble Judges : R.N. Sahay, J

Bench : Single Bench

Judgement

R.N. Sahay, J.—Heard Shri S.N. Lal, learned Counsel for the petitioner and Mr. Triveni Mishra, learned Counsel for the respondent Nos. 5 and 6.

2. In this application the impugned orders are (1) order dated 28.12.1987 passed by the Deputy Commissioner, Gumla in S.A.R. Appeal No. 33/86 (Annexure-6) and (2) order dated 29.3.1988 passed by the Commissioner, South Chotanagpur Div. Ranchi in Gumla Revenue Revision No. 53/88 (Annexure-7) confirming the order of the Deputy Commissioner, Gumla dated 28.12.1987.

3. It is admitted fact that the lands of Khata No. 407 within the Plot No. 1000 measuring an area 0.77 acres in village Basoowa, P.S. Gumla was recorded in the name of Fekua Mahali and Bandhua Mahali, father of respondent Nos. 5 and 6 respectively in the revisional survey record of rights. The recorded tenant by virtue of registered deed of surrender dated 9.11.1936 surrendered the said land to the Manager, Bhargaon Encumbered v. Estate (Annexure-1). By virtue of registered Hukumnama dated 21.7.1938, the Manager aforesaid settled the land with one Seikh Mohiuddin and put him in possession of land and also granted rent receipts. The aforesaid Seikh Mohiuddin by virtue of a registered sale deed dated 16.1.1963 sold the said land to these petitioners and put them in possession of the same. Thereafter the name of the petitioners were mutated in the Government record and the petitioners are paying rent to the State (rent receipt is Annexure-2 (series)).

4. The 5th respondent filed a case u/s 71A of the C.N.T. Act for restoration of Plot No. 1000 besides other lands. The case was registered as S.A.R. Case No. 409/80-81, the Special Area Officer dropped the proceeding by order dated 17.9.1981 (Annexure-3). After a lapse of four years the said respondent filed another application for the same relief against the father of the petitioners and one Badri Sahu. The case was registered as S.A.R. Case No. 94/85-86. The aforesaid case was dismissed by the order dated 13.6.1986 (Annexure-5). The order was passed after hearing both the parties and considering the show cause filed by the father of the deceased. The respondent No.5 preferred an appeal against the aforesaid order which was allowed vide Annexure-6. The petitioners preferred revision which was dismissed and now the petitioners have come to this Court for quashing the aforesaid orders.

5. The petitioners' case is that the first petition for restoration which was filed by the 6th respondent in 1971 being S.A.R. Case No. 228, 1/71-72 was dismissed by order dated 14.8.1972.

6. Mr. S.N. Lal, learned Counsel for the petitioners has submitted that two earlier proceedings having been dismissed, the third application for restoration was barred by general principle of res judicata, as observed by this Court in *Ramchandra Sahu v. State of Bihar* 1991 PLJR 604 (DB)). Mr. Lal submitted that the application for restoration itself was not maintainable because there was no illegality in surrendering of the land by the recorded tenants. The Deputy Commissioner allowed the restoration on the ground that the surrender was made without taking prior permission as required u/s 46A of the Act. This view is plainly erroneous for the simple reason that Section 46A was enacted for the first time in 1947 and so there was no need for taking prior permission from the Deputy Commissioner in 1946.

7. The contention of learned Counsel is well founded and must be accepted. The third application for restoration was barred by principle of res-judicata and the findings of the Deputy Commissioner is also of the revisional authority that surrender was bad for want of necessary sanction is erroneous. This application, therefore, must be allowed. Orders contained in Annexure-6 and 7 are without jurisdiction and are hereby quashed. It is stated that the petitioners are only concerned with respect to Plot No. 1000. The petitioners are not making any claim with regard to Khata No. 467 which according to the learned Counsel for the respondent Nos. 5 and 6 are in their possession. This application is allowed in respect of Plot No. 1000 only. There shall be no order as to costs.