

(1996) 11 PAT CK 0041
In the Patna High Court
Case No : C.W.J.C. No. 1647 of 1987 (R)

Harihar Sahu

APPELLANT

Vs

Commissioner South Chotanagpur and Others

RESPONDENT

Date of Decision : 27-11-1996

Acts Referred:

Chotanagpur Tenancy Act, 1908 — Section 48, 48(4), 83

Citation : (1997) 1 BLJR 401

Hon'ble Judges : M.Y. Eqbal, J

Bench : Single Bench

Final Decision : Allowed

Judgement

M.Y. Eqbal. J.

1. In this writ application the petitioner has prayed for quashing of the order dated 16.9.1981 passed by sub-divisional officer, Gumla and the order dated 4.6.1986 passed by Additional Collector, Gumla and the order dated 2.12.1986 passed by the Commissioner, South Chotanagpur Division in purported exercise of jurisdiction u/s 48 of the Chotanagpur Tenancy Act (hereinafter referred to as the "said Act"). There order are Annexure 1, 2 and 3 respectively to the writ application.

2. The fact of the case in short is that a proceeding u/s 48 of the said Act in respect of plot No. 106/107, 108 measuring total area 3.74 decimals under Khata No. 83 of village Samal Police Station-Sasai, District-Gumla was initiated by the Sub-divisional Officer, Gumla being S.A.R. Case No. 4 of 1980-81 for the restoration of land in favour of respondent No. 4 Learned Sub-divisional Officer passed the impugned order (Annexure-1) restoring the and in favour of private respondent. The said order was affirmed in appeal and revision by respondent Nos. 1 and 2. The case of the petitioner was that the on the basis of Gassaman Kabaza the landlord transferred the land in the proceeding to the father and uncle of the petitioner by registered deed in the year 1924. Thereafter, they

came into possession of the lands on payment of rent and after the death of the ancestor of the petitioner the petitioner came in possession of the lands. The petitioner's further case was that at the time of revisional survey the name of the father and uncle of the petitioner was noted in the remarks column of the Khatian. A photocopy of the Khatian has been filed and marked Annexure 5 to the writ application. It was further stated that at the time of revising survey a proceeding u/s 83 of the said Act bearing case No. 351 was started and the said proceeding was decided in favour of the father and uncle of the petitioner. The petitioner's further case was that during the current survey also the lands in question has been recorded in the case of the petitioner and the objection filed by Charo Pahan was rejected. A copy of the order Section 83 of the Chotanagpur Tenancy Act is Annexure 7 to the writ application. The petitioners further contention was that a similar proceeding under the said Act was initiated for restoration of the same land in the year 1971 vide S.A.R. case No. 39 of 1971-72 which was dismissed on merit. A copy of the order passed in the said restoration proceeding is Annexure 8 to the writ application. The petitioner, therefore, stated that the impugned orders passed by the concerned respondents are highly illegal and without jurisdiction.

3. No counter affidavit has been filed on behalf of the respondents, including private respondent and none appeared at the time of hearing.

4. Mr. P.N. Sahu, learned Counsel appearing on behalf of the petitioner assailed the orders passed by the concerned respondents as being illegal and without jurisdiction. Learned Counsel submitted that similar proceeding between the same party initiated in the year 1971 and having been dismissed on merit, the instant proceeding for restoration of the land was barred by res judicate. Learned Counsel further submitted that the instant proceeding initiated u/s 48 of the said Act was also barred by limitation in view of Section 48 (4) of the said Act. Learned Counsel further submitted that the concerned authorities have passed the impugned order failed to consider any of the questions raised by the petitioner. I find force in the submission of learned Counsel appearing on behalf of the petitioner.

5. From perusal of the order passed by Sub-divisional Officer it appears that the application for restoration was allowed by a non-speaking order only on the ground that the land is Bhumidhari land and they cannot go outside the Bhumidhari family. The appellate Court came to a finding that although the name of the appellant was recorded as Gassaman Kabaza in the survey record of right but the petitioner or his process or in interest did not cultivate the land as raiyat. On this finding the appellate court affirmed the order of the Sub-divisional Officer. Similarly, the revisional authority without giving its independent reasoning affirmed the order passed in appeal and dismissed the revision application.

6. The questions involved in this writ applications are no longer res Integra, In this connection reference may be made in the case of Bukan Ansari and Others

Vs. The State of Bihar and Others, a question arose as to what would be the period of limitation provided for restoration of land transferred in violation of Section 48. It was held as under:-

This aspect of the matter has been considered by me in great details in C.W.J.C. No. 965 of 1987 (R) disposed of on 23.9.1991. In that decision, it has been held that the limitation provided for restoration of the land for violation of Section 48 of the Act would be 12 years. It has further been held that under the Schedule Area Regulation, 1969 as amended in 1986 will be prospective in nature and thus only in the event, the aforementioned period of limitation had not expired at the time when the aforementioned Schedule Areas (Amendment) Regulation, 1986 came into force, the period of limitation, would be extended to 30 years. However, in this case, even if it would be held that zerpesghi leases were executed in the year 1944, evidently the application for restoration was barred by limitation.

7. Admittedly, in this case the land was transferred in 1924 and since then the petitioner's predecessor in interest alleged to have been in possession. Having the entry of the name of the petitioner's ancestor in the revisional survey record of right as Gassaman Kubaza is taken to be the date of transfer then the earlier application filed in 1971-72 was much beyond the period of 12 years. I am, therefore, of the view that respondents authorities failed to consider this aspect of the matter the application for restoration was barred by limitation. It is also well settled that once the application for restoration is dismissed on merit a subsequent application between the same parties is not maintainable as being barred by res indicate.

8. For these reason I am of the view that the impugned orders passed by learned court below cannot be sustained in law and are liable to be quashed.

This writ application is accordingly, allowed and the impugned orders passed by the respondents are hereby quashed. There shall be no order as to costs.