

---

**(2005) 01 JH CK 0015**

**In the Jharkhand High Court**

**Case No : Writ Petition (C) No. 5100 of 2004**

Harish Munjal and Others

APPELLANT

Vs

State of Jharkhand and Others

RESPONDENT

---

**Date of Decision :** 25-01-2005

**Acts Referred:**

Constitution of India, 1950 — Article 226

**Citation :** (2005) 2 JCR 56

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

**Bench :** Single Bench

**Advocate :** P.K. Prasad, V.K. Prasad and R. Kr, for the Appellant; Manjul Prasad, R. Mazumdar and Indrajit Sinha, for the Respondent

**Final Decision :** Allowed

---

## **Judgement**

M.Y. Eqbal, J.—In this writ application the petitioners seek direction upon the respondent particularly respondent No. 4 Circle Officer, Ranchi to accept rent and grant rent receipts in respect of the landed property of the petitioner, which was purchased as far back as in 1959.

2. Petitioner's case inter alia is that their predecessor in interest namely, Jiwan Lal purchased 2.90 acres of land comprised within plot Nos. 1947, 1948 and 1949 under khata No. 79 of Mouza Booty by virtue of registered deed of sale dated 2.12.1959 which was executed after obtaining permission of the Deputy Commissioner, Ranchi u/s 49 of the Chhotanagpur Tenancy Act in Misc. case No. 34-R (8) of 1959-60. Thereafter, the name of Late Jivan Lal was also mutated in the office of the Circle Officer being Mutation Case No. 51-R 27/1960-61.

3. Petitioner's further case is that although land was legally and validly purchased but the heirs of recorded tenant filed application for restoration of land u/s 71-A of the Chhotanagpur Tenancy Act in the year 1990, which was registered as SAR case No. 185/1990-91. The said case was contested mainly on the ground of maintainability of the restoration application. The Special officer,

Schedule Area Regulation, held that the restoration application was maintainable. Thereupon, late Jivan Lal challenged the said order passed by the Special officer by filing CWJC No. 2321 of 1991 (R). By a reasoned judgment dated 10.4.2001, this Court allowed the writ application and set aside the order passed by the Special officer, Schedule Area Regulation holding that restoration application was not maintainable since transfer was made after grant of permission by the Deputy Commissioner u/s 49 of the Chhotanagpur Tenancy Act. The said judgment of learned Single Judge was challenged in LPA No. 439 of 2001, which was ultimately withdrawn by order dated 10.9.2001. The said judgment of learned Single Judge was also challenged by the private respondents by filing WPC No. 2394/2001 which was dismissed on 13.6.2001 with the observation that the writ petitioner may seek review of the judgment. Thereafter, a review petition being Civil Review No. 55/2001 was filed which was also dismissed by order dated 10.8.2001. After the judgment and order attained its finality, the predecessor in interest of the petitioners filed application before the Circle Officer for issuance of rent receipts in respect of the aforesaid land measuring 2.90 acres. The Circle Officer by order dated 7.4.2003 recommended for continuing the jamabandi created in favour of Jivan Lal in Misc. Case No. 1/2002-2003. Thereafter, the matter was placed before the Land Reforms Deputy Collector, Ranchi who by order dated 3.5.2003 issued direction to the Circle Officer to accept the rent and grant rent receipt and continue the Jamabandi created in favour of late Jivan Lal and realize rent since 1961-62.

4. Petitioner's case is that after the direction issued by the Land Reforms Deputy Collector several applications were filed by the petitioners requesting the Circle Officer for realizing of rent and issuance of rent receipts but the Circle Officer has not issued rent receipts.

5. Surprisingly, respondent No. 4, the Circle Officer who recommended for issuance of rent receipts in favour of the petitioner filed a counter affidavit stating inter alia that the direction of the Land Reforms Deputy Collector, Ranchi for issuance of rent receipts in favour of the petitioner could not be complied with because the rent of the aforementioned land has already been realized from the legal heirs of the recorded tenant. It has also been stated that on enquiry it was found that the heirs of Sheikh Hussain, S/o Seikh Loda and others claim possession over the disputed land in question.

6. The matter was heard on 14.10.2004 and this Court passed the following order :

"Heard the parties.

Stand taken by the Circle Officer in the counter affidavit is contrary to the recommendation made by him for issuance of rent receipt in favour of the petitioners. It is stated in the counter-affidavit that the heirs of recorded tenant are in peaceful possession of the land and they are regularly paying the rent to the State Government and obtaining rent receipt.

The Circle Officer is directed to produced before this Court the original register and the entire counterfoil rent receipt issued him since 1960-62 till date in favour of the heirs of Deepak Pahan as alleged by him in the counter affidavit. These statements made by the Circle Officer are on the basis of the information which the gathered from the records of the case. The Circle Officer is warned that he should produce genuine documents and not the documents after fabrication. If some doubt is created then this Court may go further and direct the respondents to produce before this Court the entire challan by which the rent alleged to have been collected by concerned person were time to time deposited in the treasury since 1962.

Pending hearing of this application, the person who is in possession of the land today shall remain in possession.

Put this case in 19th November, 2004.

Let a copy of this order be handed over to Mr. M. Prasad, learned SC (L and C)."

7. The matter again heard on 9.11.2004 and this Court passed the following order :

"Reference may be made to the order dated 14.10.2004, which reads as under :

"Heard the parties.

Stand taken by the Circle Officer in the counter affidavit is contrary to the recommendation made by him for issuance of rent receipt in favour of the petitioners. It is stated in the counter-affidavit that the heirs of recorded tenant are in peaceful possession of the land and they are regularly paying the rent to the State Government and obtaining rent receipt.

The Circle Officer is directed to produce before this Court the original register and the entire counterfoil rent receipt issued him since 1960-62 till date in favour of the heirs of Deepak Pahan as alleged by him in the counter affidavit. These statements made by the Circle Officer are on the basis of the information which the gathered from the records of the case. The Circle Officer is warned that he should produce genuine documents and not the documents after fabrication. If some doubt is created then this Court may go further and direct the respondents to produce before this Court the entire challan by which the rent alleged to have been collected by concerned person were time to time deposited in the treasury since 1962.

Pending hearing of this application, the person who is in possession of the land today shall remain in possession.

Put up this case in 19th November, 2004.

Let a copy of this order be handed over to Mr. M. Prasad, learned SC (L and C)."

Pursuant to the aforesaid order only two counterfoils of two rent receipts of 2002-03 have been produced. One rent receipt was issued on 31.3.2003 for

payment of rent for the year 1990-97 and another rent receipt was issued on 12.4.2003 in which rent was received for the year 2003-04.

As noticed above, the petitioners and their predecessors- in-interest transferred the land in the year 1959 after obtaining permission of the Deputy Commissioner u/s 49 of the CNT Act. The Circle Officer allowed mutation in the name of the purchaser in the year 1960-61. Thereafter in the year 1990 which was dismissed and ultimately the matter came to this Court and the heirs of the recorded tenant lost the battle, A review petition was also dismissed by this Court. Thereafter, at the instance of the petitioners, Deputy Collector, Land Reforms after considering the entire facts of the case directed the Circle Officer to issue rent receipt in favour of the petitioners. In spite of the fact that the heirs of the recorded tenant filed a fresh restoration application-alleging dispossession from the land in question but the Circle Officer in the counter affidavit filed by him stated that the heirs of the recorded tenant are in possession of the land and they have been regularly getting the rent receipt. In the light of these facts, the aforesaid order dated 14.10.2004 is quoted here in above.

Surprisingly the Circle Officer has not produced the counterfoil of the rent receipts regularly issued to recorded tenant and their heirs save and except two rent receipts as referred here-in-above.

Mr. Manjul Prasad, learned counsel appearing for the State prays for some more time for the production of original counterfoils and rent receipts issued regularly to the recorded tenant and their heirs.

As prayed for, put up this case on 25th November, 2004.

On that day counterfoil of all the rent receipts regularly issued by the Circle Officer and corresponding challans by which the amount was deposited in the Treasury by sowing the case number and also the corresponding challan to the aforementioned two rent receipts issued on 31.3.2003 and 12.4.2003 shall be produced before this Court.

Let a copy of this order be handed over to Mr. M. Prasad learned SC (L and C)."

8. As noticed above, the heirs of the recorded tenant had filed restoration application which was held not maintainable by this Court in CWJC No. 2321/91 R. This Court observed :

"Admittedly in the instant case before transfer was effected in the years 1936 and 1959, due permission was accorded by the Deputy Commissioner in permission case No. 7 R 8 (2) of 1936-37 and Case No. 34 R (2) of 1956-60, copies of the orders passed by the Deputy Commissioner according permission have been annexed as annexure 1 to the writ application. In such circumstances, I am of the opinion that such transfer can be annulled only by the State Government under Sub-section (5) of Section 49 of the said Act if an application to that effect is made within 12 years, from the date of such transfer and if the State Government finds that consent of the Deputy Commissioner was obtained

in contravention of Sub-sections (1) and (2) by misrepresentation or fraud.

As noticed above, applications u/s 71-A of the said Act have been filed in 1990-91 i.e. after about 50/30 years of the transfer on the sole allegation that transfer was made by illegal manner. In my considered opinion such application u/s 71-A of the said Act is not maintainable. Had it been a case where transfer was effected without obtaining permission of the Deputy Commissioner u/s 49 of the said Act, then the application u/s 71A of the said Act could have been entertained on the ground that transfer was affected in contravention of the provisions of the said Act."

9. The letters patent appeal being LPA No. 439/2001 filed by the recorded tenant was dismissed on 10.9.2001. A review petition being Civil Review No. 55 of 2001 was also dismissed. Petitioners there after applied before the Circle Officer for issuance of rent receipts which was registered as Misc. Case No. 1/2002-03. The Circle Officer by order dated 4.3.2003 recommended for holding an enquiry that petitioners have been in possession recommended for issuance of rent receipts. The operative portion of the order of Circle which reads as under :

"Atah Halka Karamchari avm Anchal Nirikshak ke janch prativedan avm sambandhit rajaswa kaagjaat ke aalok mein mouza Booty Thana No. 182 khata No. 79 plot Nos. 1947, 1948 and 1949 rakba 0.67 acre, 0.70 acre and 1.53 acre kul 2.90 acre bhumi ka Jamabandi Shri Jiwanlal, S/o late Naryan Das, Gram Kadru Diversion Chutia Road ke naam khola ja sakta hai."

10. The Land Reforms Deputy Collector after issuing notice to the parties by order dated 3.5.2003 directed the Circle Officer for issuance of rent receipts in favour of the petitioners. Curiously enough the same Circle Officer for the reason best known to him filed false affidavit stating that the heirs of the recorded tenant have been regularly paying rent since 1959-60. When this Court called upon the Circle Officer to produce counterfoils of rent receipts and challans, the same could not be produced excepting two carbon copies of the rent receipts by which Circle Officer accepted rent in 2003 for a period of forty (40) years and granted one rent receipt. Obviously, the Circle Officer did this in order to frustrate the judgment passed by this Court and the order passed by the Land Reforms Deputy Collector.

11. Mr. Manjul Prasad, learned counsel for the State very fairly submitted that the action of the Circle Officer cannot be supported as he has issued rent receipts for the reason best known to him. Although, one intervention petition was filed by one Somra Pahan claiming continuous possession over the land in question. But at the time of hearing, learned counsel appearing for the intervenor submitted that the intervenor does not want to press intervention petition.

12. Taking into consideration the entire facts and circumstances of the case and the sequence of facts stated herein above, I have no doubt in my mind in holding that non-issuance of rent receipts by the Circle Officer in favour of the petitioned was illegal, malafide and wholly unjustified.

13. This writ application is, therefore, allowed and the Circle Officer, Ranchi is directed to issue rent receipts in favour of the petitioner forthwith.