

(1986) 03 PAT CK 0016
In the Patna High Court
Case No : C.W.J.C. No. 522 of 1978 (R)

Hazari Sahu

APPELLANT

Vs

Commissioner, South Chotanagpur Division and Others

RESPONDENT

Date of Decision : 13-03-1986

Acts Referred:

Bihar Scheduled Areas Regulations, 1969 — Section 2
Chotanagpur Tenancy Act, 1908 — Section 71 A, 71 B

Citation : (1986) 34 BLJR 573

Hon'ble Judges : U.P. Singh, J

Bench : Single Bench

Final Decision : Allowed

Judgement

U.P. Singh, J.—This writ application raised the question regarding the jurisdiction of the Additional Sub-divisional Officer, Latehar, who passed the order u/s 71-A of the Chotanagpur Tenancy Act (in short "the Act") on 14-4-1977 which is contained in Annexure 3.

2. The petitioner is a settled raiyat and continued to be in exclusive occupation and possession over an area of 0.85 acre of land in village Chatakpur. The land originally belonged to one Balu Uraon and Mangra Uraon. After the death of Mangra Uraon, Balu Uraon became the sole owner of the entire land and was recorded as a raiyat in the survey record. On account of some financial need for domestic purposes, he borrowed money from one Jitan Sahu about thirty-three or thirty-four years ago and in exchange thereof, he put Jitan Sahu into possession over the said piece of land and verbally settled the land with him. Since then Jitan Sahu is occupying the land and exercising his full right of title and possession over the said land for the last thirty-four years and continued in his own independent right. He became the absolute owner of the said land. Until 1970, he was not disturbed in his possession by any person or authority including the respondents. After his death, the petitioner got the land jointly with his father in the year 1970.

3. In the year 1970, the respondents demanded restoration of the said land. The petitioner then filed a title suit being Title Suit No. 63 of 1970. After contest, the suit was decreed on the basis of a compromise petition filed by the parties which was incorporated in the decree, and the title and possession of the petitioner over the land was recognised by the defendants in that suit.

4. In the year 1976, respondents 4 and 5 filed an application before the Additional Sub-divisional Officer, Latehar for restoration of the land alleging therein that they were dispossessed fraudulently. On the aforesaid allegation, the Karamchari of the said Office enquired into the matter and submitted a report to the Circle Inspector, Mahuadaur. The eviction case was started by the Additional Sub-divisional Officer, Latehar against the petitioner u/s 71-A of the Act. A notice was issued to the petitioner to show cause as to why the possession of the respondents be not restored under the Bihar Scheduled Areas Regulation, 1969. The petitioner filed his show cause on 5th of April, 1977 stating amongst others that after the compromise decree in the title suit, the petitioner's name was mutated in the revenue record. No objection was filed during the mutation proceeding and the petitioner's name was mutated. The petitioner is paying rent to the State of Bihar.

5. The Additional Sub-divisional Officer passed an order of eviction of the petitioner, from the said land without payment of compensation. Against the said order, an appeal was preferred before the Additional Collector, Palamau, which was dismissed on 26-8-1977. The petitioner then filed a revision before the Commissioner, South Chotanagpur Division, Ranchi, and the learned Commissioner also maintained the order passed by the Additional Sub-divisional Officer, Latehar. The present application is directed against the said order whereby the orders contained in Annexures 3, 4 and 5 are being challenged.

6. Although, several questions were raised but there is no necessity of dealing with the other questions regarding limitation and further as to whether the settlement amounts to transfer within the meaning of Section 46 (a) of the Act. It is not necessary to go into other details since the very first question raised regarding the jurisdiction of the Additional Sub-divisional Officer in passing the order (Annexure 3) is found to be substantiated.

7. It is relevant to notice the provision of Section 2 of the Bihar Schedule Areas Regulation, 1969 which defines "Deputy Commissioner" as follows:

For the purposes of this regulation, the expression "Deputy Commissioner" means Deputy Commissioner exercising jurisdiction in the Scheduled Areas within his respective local limits and shall include such person as may be especially empowered by the State Government to discharge any of the junctions of the Deputy Commissioner.

Mr. Dey, appearing for the petitioner contended that in the present case the Additional Sub-divisional Officer, Latehar, who passed the impugned order u/s 71-A of the Act (Annexure 3) had not been especially empowered by the State

Government to discharge the functions of the Deputy Commissioner.

8. A supplementary counter affidavit has been filed on behalf of the State wherein a Notification No. 6/A. T. 208/75, dated 8th September, 1976 has been annexed in support of its contention that the Additional Sub-divisional Officer, Latehar, Sri Ram Swash Ojha was empowered to hear and dispose of cases u/s 71-A and 71-B of the Act. But it is rightly contended by Mr. Dey that the said notification is not in exercise of the powers conferred by Section 2 of the Bihar Scheduled Area Regulation, 1969 and, therefore the said notification is of no avail. In support of his argument, certain other notifications published in exercise of such powers conferred by Section 2 of the Scheduled Area Regulation has been placed before me. In the present case, therefore, it must be held that no such notification was published by the State of Bihar in exercise of its power conferred by Section 2 of the Bihar Scheduled Area Regulation, 1969 empowering the said Additional Sub-divisional Officer to discharge the function of the Deputy Commissioner under Sections 71-A and 71-B of the Act within the limits of their respective jurisdiction. The undisputed fact is that the area involved in the present case is covered under the Bihar Scheduled Area Regulation and, therefore, u/s 2 of the Bihar Scheduled Area Regulation it was imperative to empower the said Additional Sub-divisional Officer, Latehar to discharge the function of the Deputy Commissioner u/s 71-A and 71-B of the Act. That having not been done, the order passed by him contained in Annexure 3 is held to be without jurisdiction and accordingly quashed. The subsequent orders passed by the appellate Court and the revisional Court also suffers from the same infirmity and they are also quashed.

9. Since, this question does not appear to have been raised in the proceeding of the Court below, therefore, this Court by its order, dated 21-5-1985 asked the State counsel to inform whether such notification specifically empowering the said Additional Sub-divisional Officer, Latehar to exercise the powers of the Deputy Commissioner u/s 71-A and 71-B of the Act was issued or not. A counter affidavit has now been filed and it is found that no such notification was ever issued.

10. In the result, the application is allowed and the impugned order contained in Annexures 3, 4 and 5 are set aside, but there will be no order as to costs.