
(2003) 06 JH CK 0093
In the Jharkhand High Court
Case No : CWJC No. 2469 of 1993 (R)

Jainath Mahto

APPELLANT

Vs

State of Bihar and Others

RESPONDENT

Date of Decision : 25-06-2003

Acts Referred:

Chota Nagpur Tenancy Act, 1947 — Section 46(4), 72(1)
Criminal Procedure Code, 1973 (CrPC) — Section 145, 397

Citation : (2003) 3 JCR 517

Hon'ble Judges : Tapen Sen, J

Bench : Single Bench

Advocate : T.N. Jha, for the Appellant; Atanu Banerjee, JC to GA and Arjun Narayan Deo, for respondents No. 4 to 7, for the Respondent

Judgement

Tapen Sen J.

1. Heard Mr. T.N. Jha, learned counsel for the petitioner; Mr. Atanu Banerjee, learned Junior Counsel to the. Government Advocate for the State-Respondents and Mr. Arjun Narayan Deo, learned counsel for the respondent Nos. 4 to 7.
2. The Writ Petitioners has challenged the final order dated 27.04.1993 passed in Land Restoration Case No. 129 of 1992, whereby and whereunder the Land Reforms Deputy Collector, Ramgarh passed an order direction the Circle Officer to ensure possession of the first party, namely respondent Nos. 4 to 7.
3. According to the Writ Petitioners, the Land Reforms Deputy Collector (respondent No. 3) after having declined to grant the relief of the restoration of possession in favour of the respondents Nos. 4 to 7 should not have passed such an order which amounts to an act of deciding possession and/or title of the parties to the lis.
4. From the submissions made in the Writ Petition, it has been contended inter alia that 1.47 acres of land in khata No. 102 of plot No. 1530 at Village Beyang; P.S. Ramgarh belonged to the ancestors of the respondent Nos. 4 to 7. According

to the petitioners, there ancestors surrendered the lands by a registered deed dated 11.06.1947 to the ex-landlord. A certified copy of the deed of surrender has been brought on record vide Annexure 2 to the Writ Application. After the surrender, the petitioner has stated, that the land was then settled by the landlord in favour of the father of the petitioner, namely. Thakur Mahto by a sada hukumnama dated 31.03.1949. Subsequently, the name of the petitioner's father was duly mutated and rent receipt were granted and the petitioner relies upon Annexures 4 and 5 in support of the aforesaid contention.

5. The petitioner's further case is that upon death of his father, he came in possession and respondents Nos. 4 to 7 were never in possession of the lands in question and that the petitioner is continuing to pay rent to the State of Bihar, which, according to the petitioner, is evident from the rent receipts brought on record vide Annexures 5.

6. A proceeding u/s 144 of the Code of Criminal Procedure in respect of the same land being Case No. M-1/84 before the Sub-Divisional Magistrate, Sadar at Hazaribagh was initiated wherein the petitioner was the first party and the Private Respondents were the Second Parties. The petitioner has stated, with reference to paragraph 10 of the Writ Application, that rule in the aforementioned proceeding u/s 144 was made absolute against the respondent No. 4 and others. Mr. T.N. Jha, learned counsel for the petitioner further submits that while making the rule absolute against the private respondents, the Sub-Divisional Magistrate clearly recorded the fact that in spite of service of notice, they had not turned up before him, but, however, upon perusal of different documents such as hukumnama and rent receipts as also the report of the Circle Officer it was clear that the possession of the petitioner over the land in question for the last 30 (thirty) years was found to be correct.

7. Subsequently, another proceeding u/s 145 of the Code of Criminal Procedure between the petitioner and the respondent No. 4 was initiated vide Case No. 265/85 in the Court of Executive Magistrate, Sadar at Hazaribagh where the petitioner was the First Party and the respondent No. 4 and others were Second Parties. By order dated 11.11.1987 (Annexure-7 to the Writ Application), the Executive Magistrate, Hazaribagh declared possession in favour of the petitioner, i.e. Jai Nath Mahto after looking into and considering all evidences and documents on record and further observed that the possession of the petitioner (first party) would continue till such time till the same was not interfered with by a Court of competent jurisdiction.

8. Being aggrieved, the respondent No. 4 and others filed a Criminal Revision before the learned Additional Sessions Judge, Hazaribagh vide Criminal Revision No. 312 of 1987 and by judgment dated 24.01.1989 (Annexure 8 to the Writ Application), Mr. John Dhan, learned Second Additional Sessions Judge set aside the order of the learned Executive Magistrate on the ground, inter alia, that the deed of surrender should not have been taken into consideration by the Executive Magistrate as "it was prohibited" for consideration by any Civil.

Criminal or Review Court. This Court is unable to understand as to how such an observation could have been made because the deed of surrender which is registered and which has been brought on record vide Annexure 2 is dated 11.06.1947. Such prohibition was apparently not there in the Chhotanagpur Tenancy Act, in the year 1947 because the previous sanction of the Deputy Commissioner was made mandatory on and from 05.01.1948. In this context. Section 72(1) of the Chhotanagpur Tenancy Act reads as follows:--

"72. Surrender of land by Raiya.--(1) A Raiyat not bound by a lease or other agreement for a fixed period may, at the end of any agricultural year surrender his holding 1 [with the previous sanction of the Deputy Commissioner in writing]."

9. The aforementioned provision relating to the previous sanction of the Deputy Commissioner in writing was inserted by Act 25 of the Chhotanagpur Tenancy (Amendment) Act. 1947 whereby and whereunder 5th June, 1948 was fixed as the appointed date for coming into force of the said amendments. Consequently the learned Second Additional Sessions Judge while making the aforesaid observation does not appear to have taken into consideration the aforementioned legal provision. However, since the petitioner did not challenge the same, this Court refrains from making any further observations in relation to the order of the Second Additional Sessions Judge and merely hastens to observe that the observation to the effect that the deed of surrender could not have been considered was not a proper observation at all.

10. Reverting to the facts, after the aforementioned observations, the Second Additional Sessions Judge set aside the order of the Executive Magistrate and remanded the case to him for fresh consideration in accordance with law.

11. No statement whatsoever is coming forth as to the status of the proceedings after remand. Neither the learned counsel for the Writ petitioner is able to throw light nor does the learned counsel for the respondents have been able to, make any statement in relation thereto.

12. However, it appears that a petition was tiled by the respondents being Land Restoration Case No. 129 of 1992 before the Land Reforms Deputy Collector wherein in allegation was made of the effect that the petitioner had illegally occupied his lands therefore the same should be restored under the provisions of Section 46(4)(a) of the Chhotanagpur Tenancy Act. That petition has been brought on record as Annexure A to the counter- affidavit. It has further been slated that: after perusal of documents etc. the respondent No. 3 came to the, conclusion that the land had not been alienated in any manner and that since it was still in possession of the respondents, therefore no order of restoration was passed.

13. From the documents brought on record and the pleadings made it is apparent that the possession etc. were found to be in favour of the respondents and therefore, the question of restoring the lands to the private respondents was refused. However the order of the Land Reforms Deputy Collector certainly

amounts to certainly amounts to creating a dispute between the petitioner and the private respondents and goes against the facts recorded earlier in the foregoing paragraphs. If the Executive Magistrate had found possession in favour of the petitioner, though the same was set aside by the Second Additional Sessions Judge, then the outcome of the matter relating to the remand should have been taken to be the yardstick for purposes of giving a finding. By passing the impugned order holding that the private respondents were all along in possession goes totally against the earlier findings of the Courts indicates above. i.e. up to the Court of Executive Magistrate.

14. Moreover, the direction of the Land Reforms Deputy Collector to the effect that the Circle Officer must ensure possession of the private respondents also has the effect of upsetting the findings made in favour of the petitioner by the earlier Courts. However, the order of the learned Second Additional Sessions Judge having never been challenged by the petitioner will always be deemed to have attained finality and therefore even if the observations of the Executive Magistrate were in favour of the petitioner this could not have gone in his favour unless and until the same were set aside on remand or by a Higher Court. Mr. T.N. Jha, learned counsel for the petitioner has not been able to give any information with regard to the remanded matter as has already been indicated above.

15. In that view of the matter this Court is unable to give any positive finding in favour of any of the parties and proceeds only to observe that whatsoever observations that the Land Reforms Deputy Collector may have made in the impugned order shall be subject to the final outcome of the matter which had been remanded by the Additional Sessions Judge vide his order dated 21.04.1995.

With the aforesaid observations and directions. This Writ Application is disposed off. No order as to costs