
(2016) 06 JH CK 0091

In the Jharkhand High Court

Case No : L.P.A No. 486 of 2003 [Against the judgment dated 25th June, 2003 passed in CWJC No.2969/1993(R)]

Jainath Mahto

APPELLANT

Vs

State of Bihar

RESPONDENT

Date of Decision : 16-06-2016

Acts Referred:

Citation : (2016) 4 AIRJharR 848 : (2017) 1 JCR 190 : (2016) 4 JCR 687

Hon'ble Judges : Mr. Virender Singh, CJ. and Mr. Shree Chandrashekhar, J.

Bench : Division Bench

Advocate : Mr. Atunu Banerjee, GA, for the Respondent/State; M/s. Harendra Kumar Mahato and Ahalya Mahato, Advocates, for the Petitioners; Mr. A.N. Deo, Advocate, for the Respondent Nos. 5(a) and 7(c)

Final Decision : Dismissed

Judgement

Mr. Virender Singh, C.J. - Being aggrieved of the order dated 25th June, 2003 passed in CWJC No.2969/1993(R) whereby writ petition filed by the appellant stands disposed of without recording any positive finding in favour of either of the parties (appellant and the private respondents), the instant Letter Patent Appeal has been filed by the appellant primarily assailing the observations made in para 14 and 15 of the impugned judgment.

2. Admitted position before the Court is that before the Land Restoration Case No.129/1992 was initiated at the instance of the private respondents on 31st August, 1992 under section 46(4A) of the Chotanagpur Tenancy Act, 1908 (hereinafter called as Tenancy Act,1908), proceedings under section 145 Cr.P.C were initiated at the instance of the appellant in which order dated 11th November, 1987 came to be passed in favour of the appellant, challenge to which was thrown by the private respondents in Cr.Revision No.312/1987 and the Additional Sessions Judge, vide his order dated 24th January, 1989, remanded the case back to the Executive Court by setting aside the order dated 11th November, 1987, reference thereof has also been made by the writ court in para

8. On specific query put to the learned counsel for both the parties about the status of the proceedings pending before the Executive Court, they have not been able to make any categorical statement in this regard. Be that as it may, in our considered view, that would have no effect on the merits of the case as the appellant is virtually assailing the final order dated 27th April, 1993 passed by the Land Reforms Deputy Collector in L.R.Case No.129/1992, in respect to which no finding has been recorded by learned writ court on merits.

3. After hearing learned counsel for the parties and perusing the relevant records, what appears to the Court is that the appellant has developed an altogether new case before the writ court as one finds from para 4 of the impugned judgment, whereas his case on facts was altogether different before the Land Reforms Deputy Collector. The case set up by the appellant before the writ court is that 1.47 acres of land in Khata No.102 of Plot No.1530 at village Beyang, P.S Ramgarh, in fact, belonged to the ancestors of the respondent nos.47 and that ancestors surrendered the land by a registered deed dated 11th June, 1947 to the ex-landlord. After surrender, the land was settled by the ex-landlord in favour of the father of the appellant namely, Thakur Mahto by a Sada Hukumnama dated 31st March, 1949 and that name of his father was duly mutated and rent receipts were also granted. The appellant in support of his case placed on record the alleged true copy of the surrender deed and the Hukumnama. What appears from the impugned order dated 27th April, 1993 passed by the Land Reforms Deputy Collector is that the case set up by the appellant has been disbelieved and the plea taken before the writ court was not set up by the appellant before the Land Reforms Deputy Collector.

4. Being that the factual position in the case in hand and on verification of the facts after carrying out spot inspection by the Circle Officer, the Land Reforms Deputy Collector came to a positive finding that the respondents were in possession of the land for the last 4550 years and for this reason only, a direction was given to the Circle Officer to ensure their possession as one finds from the order dated 27th April, 1993.

5. In our considered view, the appellant has not been able to pinpoint any infirmity in the impugned order dated 27th April, 1993 passed by the Land Reforms Deputy Collector, Ramgarh so as to disturb the order passed by the writ court. Even otherwise, it is well settled that the provision of the Tenancy Act,1908 has to be construed for protection of the members of the Scheduled Tribes. It has been held that the transfer on the plea that the land was surrendered by the Scheduled Tribe raiyat and resumed by the landlord would not avoid the rigors of the provisions of the Tenancy Act,1908. This view is strengthened by the judgment of the Hon"ble Supreme Court in the case of Pandey Oraon v. Ram Chander Sahu & Ors. reported in 1992 Supp (2) SCC 77 (refer para 7).

6. The net result is that the appeal on hand merits dismissal. Ordered accordingly.