
(2009) 06 JH CK 0027
In the Jharkhand High Court

Jitbahan Singh Munda and Others

APPELLANT

Vs

State of Jharkhand and Others

RESPONDENT

Date of Decision : 23-06-2009

Acts Referred:

Chotanagpur Tenancy Act, 1908 — Section 46, 71A

Citation : (2009) 06 JH CK 0027

Hon'ble Judges : Ajit Kumar Sinha, J

Bench : Single Bench

Judgement

Ajit Kumar Sinha, J.—The present writ petition has been preferred for issuance of an appropriate writ in the nature of certiorari for quashing the order dated 30.10.96 passed by respondent No. 4 in S.A.R. case No. 1 of 1996-97 whereby and whereunder the land bearing Revisional Survey plot No. 813, covered under Khata No. 175, area 2.35 acres, situated at village Haram Lohar, P.S. Tamar, P.S. No. 191, District: Ranchi has illegally been ordered to be restored in favour of respondent Nos. 5 and 6 and as also for quashing of order dated 17.4.98 passed by respondent No. 3 in S.A.R. Appeal No. 498 of 1996 arising out of said order of restoration by reason whereof the learned appellate court erroneously dismissed the appeal, and order dated 8.7.02/10.1.2004 passed respondent No. 2 in Ranchi S.A.R. Revision No. 74/98 dismissing this revision illegally.

2. The facts, in brief, are set out as under: The case of the petitioners is that the said recorded Raiyat surrendered the land in question in exercise of the statutory right in favour of the Zamindar on 09.6.1940 who accepted the said surrender and came in possession whereof treating the same as his Bakast land. The said landlord settled the land in question in favour of one Ghanshyam Singh Munda by virtue of Hukumnama dated 25.3.1942 and the said setlee came in actual possession of the said land on the date of settlement i.e. 25.3.1942 to the knowledge of all the persons of locality based on which he started cultivation and was accordingly assessed for rent at the Serista of Landlord/Khewatdar and continued to pay rent to the landlord in his own name till the vesting of

Zamindari. The rent receipts, Hukumnama as well as Zamindari receipts are annexed to the writ petition. On vesting of the said land of the Government in the year 1956 demand was created in the name of the setlee and rent was realized by the State of Bihar from the settled Raiyat and in token thereof receipt was also issued in his name since 24.3.1961. The aforesaid original setlee Ghanshyam Singh Munda died leaving behind three sons, who are the petitioners herein, as his legal heirs and successors who inherited the aforesaid land besides other properties and came in Khas cultivating possession and the Circle Officer mutated the name of the petitioners in respect of land in question. The petitioners continued to pay the rent to State of Bihar in their own names in token whereof even the Circle Officer, Tamar Circle, issued rent receipt. In the year 1976, during the current survey operation land in question was split and given two new plot No. 1448 under New Khata No. 155/Ka. Respondent No. 5, namely, Budhram Pahan filed a petition u/s 83 of Chotanagpur Tenancy Act vide Objection Case No. 254 in which Assistant Settlement Officer vide its order dated 29.12.1989 directed him to file application u/s 71A of the Chotanagpur Tenancy Act. Accordingly, S.A.R. case No. 1/96-97 was filed for restoration of land in question. The Special officer vide its order dated 31.10.1996 passed the order for restoration in favour of respondent No. 5 and 6. Being aggrieved, the petitioners herein preferred an appeal against the said order before the court of Additional Collector, Ranchi which was registered as S.A.R. Appeal No. 498/1996 and the same was also dismissed vide order dated 17.4.1998. The petitioners thereafter filed a revision against the aforesaid order in the court of Commissioner, South Chotanagpur Division, Ranchi which was registered as S.A.R. Revision No. 74/1998 and the judgment was reserved on 8.7.2002 and after a lapse of 17 months Revision petition was rejected on 1.1.2004. The aforesaid impugned orders passed by all the three authorities below are the subject matter of challenge in the present writ petition.

3. The main contention raised by the learned Counsel for the petitioners is that rent receipts were issued initially by the Zamindar followed by State of Bihar in favour of the father of the petitioners herein, who was throughout recognized as Raiyat in whose name the land was settled originally. It has also been contended that the petition for restoration filed in the year 1996 i.e. after a lapse of 50 years was barred by the limitation. The further contention raised by the learned Counsel for the petitioners is that Section 46 of the Chotanagpur Tenancy Act and other provisions of Chotanagpur Tenancy Act will not apply since the recorded Raiyat surrendered the land in question on 09.06.1940. Further, the land was resettled by the landlord to one Ghanshyam Singh Munda on 25.03.1942. It is also submitted that the permission of Deputy Commissioner was not required at that point of time for the purpose of surrender in favour of the landlord and the settlement of the land in question was made in favour of the petitioners' father, since deceased. It has also been contended on behalf of the petitioners that Section 71A of Chotanagpur Tenancy Act cannot be invoked in the aforesaid facts and circumstances of the case and thus, the order of

restoration was illegal.

4. The respondents have referred to and relied upon three concurrent findings of three authorities below to suggest that the writ petition should be dismissed on this ground alone. They have further submitted that no right can be created by Sada Hukumnama or rent receipt issued by the then Zamindar or the landlord and the surrender cannot be accepted in absence of documentary evidence.

5. I have considered the rival submissions and pleadings. In the instant case the admitted position remains that there was a Hukumnama of settlement, there was rent receipts issued by the land lord/Zamindar followed by the State of Bihar in the year 1956 after vesting of Zamindari and also the fact that the rent receipts thereby issued by the said recognized petitioners as Raiyat after the death of the original setlee, namely, Ghanshyam Singh Munda, who was the father of the petitioners herein and there is no dispute about the fact that at the relevant time there was no requirement of prior permission of Deputy Commissioner and thus, these facts needed in depth consideration. It is also an admitted position that the S.A.R. case for restoration u/s 71A of Chotanagpur Tenancy Act was filed after lapse of 56 years and the issue of limitation was raised but has not been considered. The matter with regard to limitation has been considered time and again by the Hon"ble Supreme Court as well as this Court and it has been conclusively held that application for restoration filed beyond 40 years is barred by limitation.

6. In the case of Situ Sahu and Others Vs. The State of Jharkhand and Others, , the Apex Court has held that the use of the words "at any time" in Section 71A is evident of the legislative intent to give sufficient flexibility to the Deputy Commissioner to implement the socio-economic policy of the Act viz. to prevent inroads upon the rights of the ignorant, illiterate and backward citizens. Thus, where the Deputy Commissioner chooses to exercise his power u/s 71-A it would be futile to contend that the period of limitation under the Limitation Act has expired. The period of limitation under the Limitation Act is intended to bar suits brought in civil courts where the party himself chooses to exercise his right of seeking restoration of immovable property. But, where, for socio-economic reasons, the party may not even be aware of his own rights, the legislature has stepped in by making an officer of the State responsible for doing social justice by clothing him with sufficient power. However, even such power cannot be exercised after an unreasonably long time during which third-party interests might have come into effect. Thus, the test is not whether the period of limitation prescribed in the Act of 1963 had expired, but whether the power u/s 71A was sought to be exercised after unreasonable delay.

7. Considering the aforesaid in Situ Sahu and Ors.(Supra), the Hon"ble Supreme Court finally held that lapse of 40 years is certainly unreasonable time for exercising such power even if it is not hedged in by a period of limitation. Similar issue again came-up for consideration before Hon"ble Supreme Court reported in (2000) 5 SCC 414 (Jai Mangal Oraon v. Mira Nayak) and at para-16 it has been

held that the period of 40 years could not be condoned in view of the rights of parties having been acquired in the meantime under the ordinary law as well as law of limitation. A Division Bench of this Court again in L.P.A. No. 61/2004 at para-50 reiterated the same view on the issue of limitation.

8. Considering the aforesaid facts and circumstances of the case, the impugned orders are set aside on the reasoning and ground stated hereinabove since restoration case was filed after 56 years which is certainly an unreasonable period of time as held time and again by Hon"ble Supreme Court as well as by this Court and the same was liable to be allowed on that ground.

9. Regard being had to the facts and circumstances of the case, this writ petition is allowed and the impugned orders dated 31.10.1996, 17.4.1998 and 8.7.02/10.1.2004 passed by the authorities below are hereby quashed.