
(1987) 03 PAT CK 0017
In the Patna High Court
Case No : C.W.J. Case No. 1243 of 1981

Jitu Oraon

APPELLANT

Vs

Commissioner, South Chotanagpur Division and Others

RESPONDENT

Date of Decision : 24-03-1987

Acts Referred:

Chotanagpur Tenancy Act, 1908 — Section 46, 46(4A), 71A

Citation : (1987) 35 BLJR 748

Hon'ble Judges : S.B. Sinha, J

Bench : Single Bench

Final Decision : Allowed

Judgement

S.B. Sinha, J.—The petitioner has filed this writ application challenging the orders as contained in Annexure 3, 4 and 5, dated 17-2-1979, 3-10-1980 and 3-3-1981 passed by respondents 3, 2 and 1 respectively.

2. Respondent No. 4 had filed an application before respondent No. 3, as it appears from Annexures 2, 3 and 4 to the effect that although he had all along been continuing in possession of the land in question, he had been forcibly dispossessed by the petitioner sometime in the year, 1966. The petitioner who figured as opposite party in the aforementioned case appeared and stated that the land in question was taken in settlement by him from the Ex-Zamindar of the area. Respondents 1, 2 and 3 in the order impugned in the writ application held that the Hukumnama produced by the petitioner was forged and as such he could not have taken forcible possession from respondent No. 3. learned Counsel appearing on behalf of the petitioner relying on the Division Bench decision of this Court in Jalpa Tudu and Others Vs. Commissioner of Bhagalpur Division and Others, . contended that as has been held by this Court, forcible dispossession does not come within the mischief of "transfer" as envisaged u/s 71-A of the Chhotanagpur Tenancy Act.

3. learned Counsel appearing on behalf of respondent No. 4, Mr. B.B. Sinha,

contended that by reason of the impugned orders, respondent Nos. 1, 2 and 3 have clearly held that the defence of the petitioner in the said proceeding that he obtained a settlement by virtue of a Sada Hukumnama was found to be baseless and as such no orders should be passed in this writ application interfering with the orders as contained in Annexures 3, 4 and 5. Mr. B.L. Sinha further contended that the question as to whether forcible dispossession is a transfer or not is pending consideration before a Full Bench of this Court.

4. The provision of Section 71-A of the Chhotanagpur Tenancy Act (in short, the Act) has been enacted in order to give protection to a member of scheduled tribe who had to transfer his Raiyati holding after being defrauded by a person who may or may not be a member of scheduled tribe and in violation of the provision of Section 46 and/or other provisions of the Act. The condition precedent for exercise of jurisdiction u/s 71-A being a transfer in violation of any of the provisions of Section 46 or any other provisions of the Act, there cannot be any doubt that unless and until these conditions precedent are satisfied, the Court will have no jurisdiction what-ever to initiate a proceeding in terms of the aforesaid provision. By reason of the provision of Section 71-A, a person who is in possession and has been continuing to be in possession may be dispossessed and deprived of his property so long held by him. This provision although has been made for the benefit of the members of the scheduled tribe, must be construed and given effect" to in its true perspective. It cannot be contended nor has it been that all source of litigation including cases of forcible dispossession should be decided in a proceeding u/s 71-A of the Act. The jurisdiction of the civil court is a plenary one and all such disputes not falling within the purview of Section 71-A, the civil court will be entitled to adjudicate in respect thereof.

5. Although the word "transfer" has got to be given a wide meaning, in view of fact that the provisions of the Scheduled Area Regulation has been enacted for the benefit of the members of Scheduled Tribe who belong to the weaker Section of the society, but in no circumstance, a forcible dispossession can be said to be transfer. Ordinarily the word transfer would connote an act on the part of a person transferring his right, title, and interest on possession in respect of some property whether movable or immovable. The provisions of Section 71-A if read in its entirety clearly show that a transfer however wide the connotation may be, must be an act of the member of the scheduled tribe himself whereby he transfers his right, title and interest or possession in respect of his Raiyati holding and that too without obtaining the prior permission of the Deputy Commissioner, that is, a transfer made in violation of the provisions of the Act, particularly, Section 46 thereof I, therefore, in respectful agreement with the aforementioned decision in Jalpatudu's case (supra) and hold that a forcible dispossession cannot in any circumstance amount to a transfer.

6. So far as the contention of Mr. B.B. Sinha learned Counsel for the respondents to the effect that the aforementioned point is pending consideration before the Full Bench, I am of the opinion that pendency of a case by itself before a Full

Bench cannot be ground for not following a Division Bench decision of this Court which is binding upon me. In this connection reference may be made to another Division Bench decision of this Court reported in 1983 B.B.C.J. 55 (Para 6) wherein this Court categorically held that unless and until a Division Bench decision is set aside by a higher Court, the same continues to be binding upon the other co-ordinate Benches. as also the Single Judges and the same cannot be ignored only on the ground that a similar matter is pending before a higher Court, fn the aforementioned decision reported in 1983 B.B.C.J. 55, the correctness of a judgment of the Supreme Court itself (Chelappan's case) was pending consideration before the Supreme Court. The counsel appearing for the Railways in that case prayed that in view of the fact that Chelappan's case is pending re-consideration before a larger Bench of the Supreme Court the said decision and other decisions of the Patna High Court following Chelappan's case should not be relied upon but same was negated by this Court in the aforementioned judgment.

7. Mr. B. B. Sinha, learned Counsel has further contended that in view of the fact that the defence of the petitioner has not been found favour by respondents 1,2 and 3, the same stands in his way in obtaining a relief from this Court.

8. By virtue of the provision of Section 264 of the Act the State of Bihar is to frame rules in relation to the proceeding under the Act. By virtue of Scheduled Area Regulation, 1949, the aforementioned provision of Section 71-A was inserted. Similar, by virtue of Chhotanagpur Tenancy (Amendment) Act, 1969, the provision of Section 46 (4-A) was inserted. The State of Bihar although framed rule in relation to the proceeding u/s 46 (4-A) of the Chhotanagpur Tenancy Act, but no such rule has been framed in relation to Section 71-A thereof. In absence of the rules, the proceedings must be governed by virtue of or under the provisions contained in the CPC as would appear from Section 265 of the Act. In the event the provisions of CPC are made applicable in relation to a proceeding u/s 71-A of the Act, the respondent No. 4 who filed the application for getting his land restored stand in the category of plaintiff and the petitioner would stand in the category of a defendant and such a proceeding should be treated as a suit and/or proceeding analogous thereto It is a settled principle of law that a plaintiff must stand or fall on his own case and cannot succeed on the basis of weakness in the defence. In the instant case, as has been contended by the learned Counsel for the petitioner, respondent No. 4 does not allege any transfer made by him in favour of the petitioner and as such question of adoption of any fraudulent method or for that matter contravention of the provisions of Section 46 or any other provisions of the Act does not and cannot arise. The learned Counsel is correct. As has been noticed hereinbefore, the provision of Section 71-A can be taken recourse to only when all of the conditions precedent for exercising such power exist, in the instant case, neither any allegation of any transfer has been made nor the courts below found any violation of any of the provisions of the Act. As such I have no other opinion but to hold that the proceeding in question had been initiated without any authority in law.

Respondent No. 4 may however initiate any legal proceeding for eviction of the petitioner to which he may be entitled to in law.

9. In the result, the orders passed by respondents 3, 2 and 3 as contained in Annexure 3, 4 and 5 respectively are hereby quashed. This application is accordingly allowed but in the circumstance there will be no order as to costs.