
(2001) 04 JH CK 0019

In the Jharkhand High Court

Case No : CWJC No's. 2321 of 1991 (R) and 1584 of 1992 (R)

Jiwan Lal, Hemant Kumar and Others

APPELLANT

Vs

State of Bihar and Others

RESPONDENT

Date of Decision : 10-04-2001

Acts Referred:

Chota Nagpur Tenancy (Amendment) Act, 1975 — Section 49
Chota Nagpur Tenancy Act, 1947 — Section 46, 46(4)

Citation : (2001) 04 JH CK 0019

Hon'ble Judges : M.Y. Eqbal, J

Bench : Single Bench

Advocate : N.K. Prasad, Debi Prasad, A.K. Sahani, Amar Kumar and Pratyush Kumar, for the Appellant; T.N. Jha, R.K. Merathia, GP 2 and R.N. Sahay, SC I, for the Respondent

Final Decision : Allowed

Judgement

M.Y. Eqbal, J.—In these two writ applications since common question of law is involved, the same are disposed of by this common judgment.

2. The question that falls for consideration is whether in view of specific provision made under Sub-section (5) of Section 49 of the Chotanagpur Tenancy Act (in short CNT Act or the said Act) for annulment of transfer, the provision of Section 71-A of the said Act can be resorted to for restoration of land?

3. In CWJC No. 2321/91 (R) petitioners' case is that he purchased land comprised within R.S. plot Nos. 1947, 1948 and 1949 under Khata No. 79 of village-Booti, district Ranchi from the sons of Bipta Pahan, the recorded tenant who inherited him after his death. Before purchase of the land permission was duly accorded by the Deputy Commissioner u/s 49 of the said Act by order dated 11.11.1959 in Misc. Case No. 34-R (2) of 1959-60. The transfer of the land was then made by virtue of a registered sale deed dated 2.12.1959 and the consideration amount fixed by the Deputy Commissioner was paid to the vendors. Petitioner's further case is that after purchase he got his name mutated

in the office of the State of Bihar vide Mutation Case No. 51-R 27/1960-61. In the year 1991 respondent No. 4 claiming himself to be the heir of the recorded tenant filed an application purported to be u/s 71-A of the CNT Act against the petitioner claiming restoration of the land on the ground, inter alia, that the transfer was effected by illegal manner. The said application was registered as SAR case No. 185/1990-91 in the court of respondent No. 3, the Special Officer. Scheduled Area Regulation. Ranchi. On being noticed, the petitioner filed show cause and also a separate application challenging the jurisdiction of the Special Officer to entertain the application u/s 71-A of the said Act. The Special Officer, by the impugned order, held that the application u/s 71A of the said Act is maintainable.

4. In CWJC No. 1584/92(R) petitioner's case is that the land of khata No. 224, plot Nos, 2613 and 2615 situated at village- Bargain. PS Ranchi (now Bariatu) stood recorded under Bhujnhari Khewat No. 10/3 in the name of ancestors of Khudia Pahan. Kudia Pahan, the successor of recorded Bhumidhar made an application before the Deputy Commissioner, Ranchi in the year, 1937 for permission u/s 49 of the said Act for transfer of the said land and the Deputy Commissioner accorded permission vide order dated 19.10.1936 in Permission Case No. 7R 8(2) of 1936-37. On the basis of the permission granted by the Deputy Commissioner, the land was transferred in favour of the predecessor in-interest of the petitioners by virtue of a registered deed of sale dated 24.1.1940. The land in question was then came in different hands by transfer and ultimately in the hands of the petitioners. In the year 1990 respondent Nos. 3 and 4 allegedly claiming themselves to be the legal heirs of Khudia Pahan, filed an application for restoration of the said land u/s 71A of the said Act on the ground that the transfer was made in contravention of Section 49 of the said Act, the said application was registered as SAR Case No. 157 of 1990-91. In this writ application also the petitioners have challenged the jurisdiction of the Special Officer to entertain the said application u/s 71A of the said Act and the Special Officer by the impugned order held that the application u/s 71A of the said Act is maintainable.

5. I have heard Mr. N.K. Prasad, learned Sr. counsel and Mr. A.K. Sahani appearing on behalf of the petitioners and Mr. T.N. Jha, learned counsel appearing for respondent No. 4 and Mr. R.K. Merathia, learned Govt. Pleader No. II.

6. Mr. N.K. Prasad, learned Sr. Counsel appearing for the petitioners assailed the impugned order as being illegal and wholly without jurisdiction. Learned counsel firstly submitted that the application u/s 71A of the said act for restoration of land is not maintainable in a case where transfer has taken place in pursuance of the permission granted by the Deputy Commissioner u/s 49 of the said Act. Learned counsel submitted that respondent No. 3, the Special Officer being the delegate of the Deputy Commissioner, cannot sit in judgment over the order of the Deputy Commissioner granting permission to transfer the land u/s 49 of the

said Act as far back as in 1936 and 1959. Learned counsel further submitted that the Authority to annul the order of permission u/s 49 of the said Act is the State Govt. and that too within a period of 12 years only. According to the learned counsel in any view of the matter the special provision made u/s 49(5) of the said Act shall prevail over the general provisions of Section 71-A of the said Act. Learned counsel put heavy reliance on a decision of the Division Bench of the Patna High Court in the case of Rajendra Nath Kapoor v. State of Bihar and Ors., 1990, BLT 352.

7. On the other hand, Mr. R.K. Merathia, learned GP 2 firstly submitted that the application u/s 71A of the said Act for restoration of land is maintainable in all such cases where transfer has been made in contravention of the provisions of not only Section 46 but the other provisions of the said Act also. Learned counsel submitted that if transfer is effected in contravention of Sub-sections (3) and (4) of Section 49 of the said Act then the land can be restored by entertaining the application u/s 71A of the said Act. According to the learned counsel the Special Officer has rightly held that transfer was not effected in conformity with the provisions of Section 49 of the said Act and, therefore, the vendors or their successors in-interest can take recourse to Section 71A of the said Act.

8. Before appreciating the rival contentions made by the learned counsels I will first deal with the relevant provisions of the CNT Act. Section 46 of the said Act puts restriction on transfer of rights of raiyats in their holding. Sub-section (11) of Section 46 of the said Act puts a general restriction on transfer of a raiyati holding either by way of sale, gift or by mortgage or lease. However, under the proviso transfer can be effected under certain circumstances with the previous sanction of the Deputy Commissioner, the proviso, inter alia, provides that an occupancy raiyat who is a member of scheduled tribe may transfer his holding or part thereof with the previous sanction of the Deputy Commissioner. Section 46(4-A) of the said Act empowers the Deputy Commissioner to annul the transfer on the ground that transfer was made in contravention of Clause (a) of the second proviso of the said section. However, the proviso to Sub-section (4A) says that such application for annulment of transfer can be entertained by the Deputy Commissioner if it is filed within a period of 12 years from the date of transfer.

9. Section 49 of the said act provides that any occupancy raiyat or any member of Bhuinhari family may transfer his holding or tenure or any part thereof for any reasonable or sufficient purposes. Section 49 of the said Act, as it originally stood prior to 1975 Amendment, reads as under :

"49. Transfer of occupancy-holding or Bhuinhari-tenure for certain purposes:--

(1) Notwithstanding anything contained in Sections 46, 47 and 48, any occupancy "raiyyat" or any member of a Bhuinhari family who is referred to in Section 48, may transfer his holding or tenure or any part thereof for any reasonable and sufficient purpose.

(2) The expression "reasonable and sufficient purposes" as used in sub-section

(1), includes-

(a) in the case of a member "bhuinhari" family, but not in the case of an occupancy "raiya" building purposes generally.

(b) in any case, the use of the land for any charitable, religious or educational purpose, or for any other purpose which the State Govt. may, by general or special order, declare to be a public purpose or for the purpose of manufacture or irrigation or as building ground for any such purpose, or for access to land used or required for any such purpose, and

(c) in any case, the use of the land for the purpose of mining or for any other purpose which the State Govt. may by notification declare to be subsidiary thereto or for access to land used or required for any such purpose.

(3) Every such transfer must be made by registered deed, and before the deed is registered and the land is transferred, the written consent of the Deputy Commissioner must be obtained to the terms of the deed and to the transfer.

(4) Before consenting, to any such transfer, the Deputy Commissioner shall satisfy himself that adequate compensation is tendered to landlord for the loss (if any) caused to him by the transfer, and, where only part of a holding or tenure as transferred, may, if he thinks fit, apportion between the transferee and the original tenant the rent payable for the holding or tenure."

10. In the year, 1969 a Regulation, namely, Scheduled Area Regulation, 1969 was enacted to give special protection and safeguard to the member of scheduled tribe as specified in Part III of the Schedule to the Constitution (Scheduled Tribes) Order, 1950. By the said regulation certain provisions have been inserted and certain laws were amended in their application to the scheduled areas in the State of Bihar. Section 71-A of the said Act was inserted in the Chotanagpur Tenancy Act, this provision was inserted with the sole intention and object to undo any wrong committed to the members of scheduled tribes and also to safeguard their interest. Section 71A empowers the Deputy Commissioner to evict the transferee from the land and restore the same to the member of the scheduled tribe when after inquiry it is found that such transfer has been effected in contravention of Section 46 or any other provisions of the said Act or by any fraudulent method. In other words, if a raiya belonging to a member of scheduled tribe is dispossessed from his raiya holding on the basis of a transfer made in contravention of Section 46 or other provisions of the said Act or by any fraudulent method including decrees obtained in a suit by fraud and collusion, then the Deputy Commissioner may evict the transferee from such holding and restore possession to the raiya or the successor in-interest of such raiya.

11. It is pertinent to note that although the legislators were aware about the insertion of Section 71A in the said Act by enacting Scheduled Area Regulation, 1969, yet they thought it proper to insert such provision in Section 49 of the said

Act also. Accordingly sub-section (5A) was inserted in Section 49 of CNT (Amendment) Act, 1975 (Act II of 1976). Sub-section (5) which was inserted in Section 49 reads as under :--

"(5) "The State Government may, at any time within a period of twelve years from the date on which written consent is given by the Deputy Commissioner in regard to the transfer of any holding or part thereof belonging to an occupancy raiyat who is a member of the Scheduled Tribes either on its own motion or on an application made to it in this behalf set aside such written consent and annul the transfer, if after giving reasonable opportunity to the parties concerned to be heard, it finds that the consent had been obtained in contravention of the provisions of Sub-sections (1) and (2) by misrepresentation or fraud, and in case any holding or part thereof has been transferred on the basis of such written consent, direct the Deputy Commissioner to take further necessary action under Clause (c) of Sub-section 4-A of Section 46--"

12. Now on reading the entire provisions of Section 49 of the said Act it is clear that notwithstanding the provisions of Sections 46, 47 and 48, an occupancy raiyat or a member of Bhuinhari family may transfer their holding for any reasonable and sufficient purposes but such transfer must be made by registered deed and before deed is registered and the land is transferred, written consent of the Deputy Commissioner must be obtained to the terms of the deed and transfer. Sub-section (5) of Section 49 empowers the State Govt. to annul such transfer at any time within 12 years if the State Govt. finds that the consent of the Deputy-Commissioner was obtained in contravention of the provisions of Sub-sections (1) and (2) by misrepresentation, or by fraud. In other words, if transfer has been effected after obtaining permission of the Deputy Commissioner u/s 49 of the said Act then such transfer can be annulled by the State Govt. in the manner provided under Sub-section (5) of Section 49 of the said Act.

13. In Rajendranath Kapoor's case (supra) the Division Bench of the Patna High Court after considering a similar question held that the scope of the two provisions, namely, Section 49(5) and Section 71-A of the said Act are different. Their lordships held :

"It is true that under both the sections provisions have been made for restoration of the land, but the scope of the two provisions are different. So far Section 49(5) is concerned, power has been given to the State Govt. to annul any transfer made with consent of the Deputy Commissioner if it is found that the consent had been obtained in contravention of the provision of Sub-sections (1) and (2) by misrepresentation or fraud. Under this Section the forum is the State Govt. and what is required to be determined by the State Govt. is whether consent of the Deputy Commissioner had been obtained in contravention of the provisions to Sub-sections (1) and (2) by misrepresentation or fraud. If the consent of the Deputy Commissioner was not obtained by misrepresentation or fraud, there is no question of annulling the transfer."

Their lordships further held :--

"Regulation 1 of 1969 came into force in February, 1969 and Section 49(5) was introduced in 1976. It must be presumed that the legislature knew that Section 71A had been introduced in 1969 empowering the Deputy Commissioner to pass order under certain circumstances, yet the Legislature inserted Sub-section (5) in Section 49 for the first time in 1976. This indicates that the scope of Section 71-A and 49 (5) are completely different. The former speaks about fraud on the transferor raiyat whereas the latter speaks about misrepresentation or fraud on the Deputy Commissioner. In Section 49(5) the reference is to Sub-sections (1) and (2) of Section 49 whereas in Section 71-A, Section 46 has been specifically mentioned. It is a general rule of Interpretation of Statute that special provision will override the general provision. When there is specific provision for annulling transfer made with consent of the Deputy Commissioner, recourse must be had to that and an application under the general provision i.e. u/s 71A of the Act is barred. Moreover, as noticed above the forum is also different."

14. Admittedly in the instant cases before transfer was effected in the years 1936 and 1959, due permission was accorded by the Deputy Commissioner in permission case No. 7R 8(2) of 1936-37 and case No. 34R (2) of 1959-60. Copies of the orders passed by the Deputy Commissioner according permission have been annexed as Annexure 1 to the writ application. In such circumstance, I am of the opinion that such transfer can be annulled only by the State Government under Sub-section (5) of Section 49 of the said Act if an application to that effect is made within 12 years, from the date of such transfer and if the State Government finds that consent of the Deputy Commissioner was obtained in contravention of Sub-sections (1) and (2) by misrepresentation or fraud.

15. As noticed above, applications u/s 71-A of the said Act have been filed in 1990-91 i.e. after about 50/30 years of the transfer on the sole allegation that transfer was made by illegal manner. In my considered opinion such application u/s 71-A of the said Act is not maintainable. Had it been a case where transfer was effected without obtaining permission of the Deputy Commissioner u/s 49 of the said Act, then the application u/s 71 -A of the said Act could have been entertained on the ground that transfer was effected in contravention of the provisions of the said Act.

16. Recently in the case of Jai Mangal Oraon Vs. Smt. Mira Nayak and Others, , their lordships was considering a question whether land can be restored under the provisions of Section 71-A of the said Act when the parties acquired right more than 40 years back. In that case surrender of the land by the recorded tenant was made in the year. 1942 when permission of the Deputy Commissioner for surrender of land was not necessary. Necessary provision was inserted u/s 72 of the said Act in 1947 to the effect that for surrender also permission of the Deputy Commissioner has to be obtained. The applicant claiming himself to be the successor-in-interest of the recorded tenant filed an application after 40 years for restoration of land on the ground that the land was transferred illegally.

Their lordships held that since transfer was effected by virtue of a registered instrument and permission of the Deputy Commissioner was not necessary for such surrender in 1942, the transfer cannot be said to be illegal. Consequently application for restoration of land u/s 71 -A of the said Act when parties had acquired right 40 years back, is not maintainable.

17. Having regard to the entire facts and circumstances of the case and the law discussed hereinabove I am of the opinion that the impugned order passed by the Special Officer holding that the application u/s 71A of the said Act is entertainable, cannot be sustained in law.

18. These two writ applications, therefore, are allowed and the impugned orders passed by the Special Officer, Scheduled Area Regulation, are set aside. However, there shall be no order as to costs.

19. Applications allowed.