
(2014) 12 JH CK 0095
In the Jharkhand High Court
Case No : W.P.(C) No. 7048 of 2011

Justina Orain

APPELLANT

Vs

State of Jharkhand and Others

RESPONDENT

Date of Decision : 02-12-2014

Acts Referred:

Chotanagpur Tenancy Act, 1908 — Section 83, 89

Citation : (2015) 1 JLJR 345

Hon'ble Judges : S. Chandrashekhar, J

Bench : Single Bench

Advocate : Parwez A. Khan, Advocates for the Appellant; Debolina Sen and Yogesh Modi, J.C. to A.A.G, Advocates for the Respondent

Judgement

S. Chandrashekhar, J.—Aggrieved by order dated 02.06.2011 in Misc. Case No. 02 of 2010-11, the petitioner has approached this Court.

2. The brief facts of the case are that, on 11.02.1955 land ad-measuring 2.30 acres was purchased by one Simon Oraon for a consideration amount of Rs. 350/- vide unregistered sale deed from predecessor-in-interest of respondent Nos. 3 to 7 namely, Basiruddin Khan. In the year, 1981, the father of respondent Nos. 3 to 7 namely, Basiruddin Khan filed a case for cancellation of demand running in the name of the petitioner vide Misc. Case No. 02 of 1981-82 which was dismissed vide order dated 21.04.1981. The said Basiruddin Khan @ Basir Khan filed an objection petition under Section 83 of CNT Act, which was also rejected vide order dated 05.03.1981. Aggrieved by order dated 05.03.1981 in Objection (Badr) petition (under Section 83 of CNT Act) vide Case No. 2, a revision case was preferred under Section 89 of the CNT Act (Revision Case No. 66 of 1981) however, the said revision petition was also dismissed vide order dated 01.10.1982. The respondent Nos. 3 to 7 thereafter filed a petition for "jama" before the CO. Mahuadanr being, Case No. 02 of 2010-11 in which, the Circle Officer submitted a report. In the meantime, a Misc. Case No. 02 of 2010-11 was also filed by respondent Nos. 3 to 7 and, in the said case, the

Deputy Collector Land Reforms, Latehar passed order dated 12.08.2010 and forwarded the report to the Additional Collector, who passed order dated 21.06.2010. Aggrieved by order dated 21.06.2011, the present writ petition has been filed.

3. A counter-affidavit has been filed on behalf of the respondents stating that land in question stands recorded in the name of Mosahel Khan in the last survey Record of Rights. However, the Jamabandi of the land in question stands recorded in the name of Smt. Jastina Orain in Register- II at page 33/3. Out of the total area of 2.30 acres of land in Mouza Amba Toli, Khata No. 40, Plot No. 116, 0.60 acre land has already been transferred to one Antony Bara, son of Paulus Bara, resident of village- Amba Toli in whose name a Jamabandi has been created and it stands recorded in Register-II at page 122/3. The petitioner has claimed that an agreement to sell of the land was executed in favour of the predecessor-in-interest of petitioner by the predecessor-in-interest of respondent Nos. 3 to 7 however, the ancestors of the respondent Nos. 3 to 7 did not execute the sale deed in favour of the ancestors of the writ petitioner. The report of the Circle Officer indicates that there exists houses constructed over an area of 0.60 acres in old Plot No. 116 and over an area of 0.11 acre in Plot No. 118. The Circle Officer recommended for Jamabandi of the land in Mouza Amba Toli P.S. No. 137, Khata No. 40, Plot No. 74 ad-measuring area of 0.43 acres and in Plot No. 118, area 1.16 acre in the name of the heirs of the recorded tenant namely, Haider Ali Khan, Razaque Khan, Sarwar Alam Khan, Jabir Khan and Mofid Khan.

4. Heard learned counsel appearing for the parties.

5. The learned counsel appearing for the petitioner submits that a long running Jamabandi in the name of the petitioner could not have been cancelled by the Land Reforms Deputy Collector. The petitioner is in possession of the land by virtue of an agreement to sell and thus, he has acquired valid right, title and interest in the land in question. He has relied on decisions in Dilip Kumar Mahto Vs. State of Bihar and Others and in "Chandra Shekhar Banerjee v. State of Bihar", reported in 2003(1) JLJR 95.

6. Per contra, the learned counsel appearing for the respondent-State of Jharkhand submitted that by virtue of an agreement to sell, the petitioner cannot claim to have acquired title over the land in question. The report of the Circle Officer has indicated that there are houses constructed over a part of the plot and the names of the heirs of the recorded tenants are entered in the revenue records. The learned Land Reforms Deputy Collector after hearing both the parties passed an order against which the petitioner has remedy of Revision.

7. I have considered the rival contentions raised on behalf of the counsel appearing for the parties and perused the documents on records.

8. From the materials on record, I find that with respect to the land which is claimed to have been acquired by the ancestors of the petitioner, an unregistered agreement to sell was executed. On the basis of the agreement to sell, the

petitioner cannot claim any title over the land in question unless a declaration is made in favour of the petitioner by a competent court. The rent receipts issued in favour of the petitioner on the basis of an unregistered agreement to sell is illegal.

9. A perusal of the proceeding in Misc. Case No. 2 of 2010-11 discloses that on an application filed by Haider Ali Khan and others who are respondent Nos. 3 to 7 in the writ petition for opening "demand" in their name, the Circle Officer, Mahuatand ordered for report of the Revenue Karamchari. After the public notice was issued and report of the Halka Karamchari-cum-Revenue Inspector was received, notices were issued to both the parties. On 25.05.2010, the Circle Officer formed a prima facie opinion that the demand in favour of the opposite party/writ petitioner was illegal and thus, ordered local inspection. Order dated 21.06.2010 records that the Circle Officer after the local inspection by himself found that on Plot No. 118, a house with courtyard of Justina Oraon is situated over an area of 0.11 acre. Accordingly, he recommended creation of jamabandi in favour of respondent Nos. 3 to 7 over the rest of the land. The record was forwarded to the Land Reforms Deputy Collector, who also examined the records and recommended creation of jamabandi with respect to 1.59 acres of land in favour of the legal heirs of the khatiany raiyat, that is, respondent Nos. 3 to 7. Order dated 02.06.2011 of the Additional Collector, Latehar discloses that in Khata No. 40, Plot Nos. 74, 116 and 118 an area of 2.35 acre is recorded in the survey khatian in the name of Musaheb Khan who was the predecessor-in-interest of respondent Nos. 3 to 7. However, an area of 0.60 acre in Plot No. 116 was sold by Justina Oraon to Antony Bara and vide Misc. Case No. 32 of 1993-94, the demand with respect to the rest of the land is created in the name of Justina Oraon. However, no evidence was produced by the opposite party how the demand was created in her name. She has produced an unregistered agreement to sale executed by the predecessor-in-interest of the respondent Nos. 3 to 7. The Additional Collector observed that in the revenue record the name has been transferred illegally and the opposite party has illegally sold an area of 0.60 acres of land. The Additional Collector, Latehar approved the recommendation for creation for jamabandi in favour of respondent Nos. 3 to 7 with respect to an area of 1.59 acre in Khata No. 40, Plot Nos. 74 and 113. The learned counsel for the petitioner has submitted that the Additional Collector being the Appellate Authority could not have passed the order for creation of jamabandi in favour of respondent Nos. 3 to 7. Moreover, the order dated 02.06.2011 in Misc. Case No. 2 of 2010-11 is barred by res-judicata inasmuch as, the application filed for cancellation of demand vide Misc. Case No. 2 of 1981-82 was dismissed on 21.04.1981 and the Objection (Badr) Petition under Section 83 of CNT Act being Case No. 2 was also dismissed vide order dated 05.03.1981. I am of the view that whether the order dated 02.06.2011 in Misc. Case No. 2 of 2010-11 is barred by res-judicata or not can be decided only upon examination of the pleadings in both the cases. In the present proceeding, except the order passed in both the cases, the petitioner has not produced any

document. Moreover, under the Bihar Tenants Holdings (Maintenance of Records) Act, 1973, the petitioner has an alternate remedy of revision before the Commissioner. The scheme of the Act of 1973 discloses that the remedy of appeal and revision is efficacious remedy. The plea which has been taken by the petitioner can be raised by the petitioner before the Revisional Authority and the Revisional Authority upon examination of the materials on records, including the report of Halka Karamchari and the Revenue Inspector can pass appropriate order. The issue whether by virtue of an unregistered agreement to sale, demand in the name of the petitioner could have been opened or not, can also be gone into in the revision petition, if any, filed by the petitioner. The matter involves serious disputes with respect to title and in this view of the matter also, I am not inclined to entertain the present writ petition. However, in view of possession of the petitioner and her predecessor-in-interest over the lands in question, till the time the revision petition, if any, filed by the petitioner is decided, the petitioner would not be dispossessed from the property transferred through the unregistered agreement to sell dated 11.02.1955.

10. Accordingly, the present writ petition is dismissed as not maintainable. However, it would be open to the petitioner to approach the Revisional Authority by filing appropriate application/petition.