
(2000) 07 JH CK 0001
In the Jharkhand High Court
Case No : C.W.J.C. No. 1412 of 1983 (R)

Kesho Sao and Others

APPELLANT

Vs

Additional Member Board of Revenue and Others

RESPONDENT

Date of Decision : 14-07-2000

Acts Referred:

Chotanagpur Tenancy Act, 1908 — Section 46, 46(4A), 71A, 73

Citation : (2000) 07 JH CK 0001

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

Bench : Single Bench

Advocate : P.K. Prasad and C.S. Prasad, for the Appellant; S.N. Lal and A.B. Mahto, J.C. to GP2, for the Respondent

Final Decision : Dismissed

Judgement

M.Y. Iqbal, J.—In this writ application the petitioner has prayed for quashing the orders passed by the respondents/Authorities whereby the land in question has been ordered to be restored in favour of respondent Nos. 5 and 6 under the provisions of Section 46(4A) of the Chotanagpur Tenancy Act (herein after referred as the said Act).

2. The facts of the case lies in narrow campus. One Shankari Mundain filed an application for restoration of lands of various plots of Khata No. 32 against the present petitioners and three others. In her application she claimed that she was absolute owner of the land of Khata No. 32 consisting of 13 plots having total area of 6.33 acres situated in village Marar. Police station Ramgarh in the district of Hazaribagh and alleged that petitioners illegally dispossessed her about 5 to 6 years ago. The said application was registered as Land Restoration Case No. 13 of 1977-78 by the Land Reforms Deputy Collector, Hazaribagh. So far present petitioners are concerned they have only claimed for restoration of three acres of land of various plots of Khata No. 32. Petitioners' case is that on receipt of notice they appeared and filed their show-cause stating inter alia that the recorded tenant namely Lachuwa Munda had abandoned the lands about 30-35 years ago.

The fore-fathers of the petitioners had taken the lands in their possession and improved the same and began to cultivate. They alleged to have constructed house over plot No. 226. Petitioners further case is that in 1968 the claimant/respondent Shankari Mundain and her sister Sohari Mundain filed Title Suit No. 1673/1968 against the petitioners in the Court of Munsif, Hazaribagh for declaration of title and recovery of possession of the lands claimed by the petitioners. The said suit was decreed on compromise and in the compromise petition possession of the petitioners was admitted by the said respondents. The Land Reforms Deputy Collector disallowed the objection filed by the petitioners and held that compromise decree was collusive, one and accordingly by order dated 6.10.78 directed for restoration of land in favour of respondent No. 5. A copy of the said order has been annexed as Annexure-1 to the writ application, Petitioners then preferred appeal before the Additional Collector which was registered as L.R. Appeal No. 31 of 1978. and the said appeal was dismissed by the Additional Collector who affirmed the order of the Land Reforms Deputy Collector. It was however, held that the petitioners will be entitled to get compensation of Rs. 1,000/- for the construction made by them over the lands in question. A copy of the Appellate order has been annexed as Annexure-2 of the writ application. Petitioners then tiled Revision before Commissioner North Chhotanagpur Division which was registered as Land Restoration Revision No. 60 of 1980. The said. Revision was also eventually dismissed and the order of restoration was confirmed.

3. Mr. P.K. Prasad, learned counsel for the petitioner assailed the impugned order as being illegal and wholly without jurisdiction. Learned counsel firstly submitted that application for restoration u/s 46(4-A) of the said Act was barred by limitation inasmuch as admittedly in compromise decree the respondents admitted the possession of the petitioners over the land in question. Learned counsel submitted that recorded tenant abandoned the lands and the petitioners came in possession of the same much before the filing of the Title Suit. According to the learned counsel the application for restoration having been filed much after the expiry of 12 years, the same ought to have been disallowed by the respondents. On the other hand Mr. S.N. Lal, learned Counsel for the respondents firstly submitted that at the initial stage that is before the Land Reforms Deputy Collector petitioners took defence that they got the lands by virtue of a compromise decree passed in Partition Suit. Subsequently at the belated stage petitioners changed their stand and took their defence that the land was abandoned. Learned Counsel submitted that no material whatsoever was produced by the petitioners before the authorities to substantiate that they were in possession immediately after the land was abandoned by the recorded tenant.

4. From perusal of the order passed by the Land Forms Deputy Collector it appears that the petitioners in their objection claimed their title and possession on the basis of compromise decree passed in Title Suit No. 1673/1968. The Land Reforms Deputy Collector, therefore, rightly held that the compromise decree

was collusive one and even if the petitioners acquired title and possession by virtue of compromise decree of the year 1968, restoration application having been filed in 1977, the same cannot be said to be barred by limitation. Similarly from perusal of the appellate order petitioners took the stand that the land was abandoned by the recorded tenant Lachuwa Munda and thereafter petitioners came in possession of the said land. There is no pleading that the petitioners are the landlords and after the alleged abandonment they resumed the land and came in possession of the same. Moreover, no material has been produced by the petitioners to substantiate the case of abandonment as contemplated u/s 73 of the Act nor there is any evidence in support of the case of the petitioners that they were in possession of the land much before 1968. In that view of the matter. I am of the definite opinion that the impugned orders passed by the respondent authorities are legal and Justified. It is well settled that compromise decree passed by Civil Court declaring the title and possession of a party who is not a member of Schedule Tribe in respect of land of recorded raiyat belonging to member of Schedule Tribe cannot be given effect to and such decree will amount to dispossessing the raiyat by fraudulent method. Suffice it to refer only one Division Bench decision of this Court in the case of Ram-narain Sah v. State of Bihar, 1975 BBCJ 433. Their Lordship after considering earlier full Bench decisions have observed as under :

"Sub-section (5) of Section 20 of the Act, as substituted by Bihar Regulation 1 of 1969, give wide power to the revenue authorities to annul any transfer to land belonging to a Raiyat. who is a member of the Scheduled Tribe, as mentioned above, in contravention of Sub-sections (1) and (2) or by any "fraudulent method. The expression "any fraudulent method" is wide enough to include a collusive compromise decree. The amendment brought by Bihar Regulation I of 1972, by adding after "any fraudulent method", the expression, including decrees obtained in suits by fraud or collusion, only elucidates and clarifies the position in this regard. The views I have taken, against some support from a Full Bench decision of this Court in the case of Bhauri Lal Jain v. The Sub-divisional Officer. Jamtara and others in which case, in relation to case filed, even before the amendment brought by Regulation I of 1972; this Court did not consider a compromise decree as ousting the jurisdiction of the revenue authorities from going into the question of a compromise decree being fraudulent or otherwise. A compromise decree is after all an agreement between the parties with the seal of the Court super added thereto. It is well settled that a party cannot be permitted to do indirectly what it is prohibited from doing directly. A transfer in contravention of the provisions of the Act will not cease to be so only because the parties have agreed in a compromise before a Court to effect transfer in contravention of the Act. It will be nothing but a fraud on the Court as well as a fraud against the statute, apart from being a case of transfer in contravention of the Act, it will also be a case of transfer by fraudulent method and clearly within the ambit of Sub-section (5) of Section 20 of the Act, even without the amendment by Regulation I of 1972."

5. Having regard to the facts and circumstances of the case and the discussions made "herein above, I am of the view that the orders passed by the Respondents need no interference by this Court.

6. In the result, there is no merit in this writ application, which is accordingly dismissed.