
(2006) 09 JH CK 0058
In the Jharkhand High Court

Lal Phanindra Nath Sahdeo	Vs	APPELLANT
The State of Bihar and Others		RESPONDENT

Date of Decision : 12-09-2006

Acts Referred:

Chotanagpur Tenancy Act, 1908 — Section 6, 71A

Citation : (2006) 4 JCR 517

Hon'ble Judges : R.K. Merathia, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

R.K. Merathia, J.—Heard.

Petitioner has challenged the orders dated 23.9.1997 passed by the Commissioner, South Chhotanagpur Division, Ranchi (respondent No. 2) dismissing his revisions -S. A. R. Rev. No. 29 and 30 of 1992 (Annexure 6 & 6A); and the orders dated 20.2.1992 and 28.2.1992 passed by the Additional Collector, Gumla (respondent No. 2) in S.A.R. Appeal Nos. 16R1.5 and 17R15 of 1989-90 (Annexure 5 & 5A) whereby the order dated 11.7.1989 passed by the D.C.L.R.-cum-Special Officer, Schedule Area Regulation, Gumla (respondent No. 4) in S.A.R. Case Nos. 85 and 86/1988-89 was set aside.

2. S.A.R. Case No. 85/188-89 was registered on the application dated 20.9.1988 for restoration of 25 decimals of land filed by Augustus Barwa Oraon (respondent No. 5) and S.A.R. Case No. 86/1988-89 was registered on the application dated 26.10.1988 filed by Habartus Tigga. (respondent No. 6), both members of Schedule Tribe, for restoration of 23 decimals of land (Plot No. 264, Khata No. 2/2 & 2/1, P.S. Chainpur-Gumla), u/s 71-A of the Chhotanagpur Tenancy Act ("the Act" for short).

Their case in short was as follows. They purchased the said lands from the petitioner by registered sale deeds dated 29.6.1973 and 12.6.1978 respectively. Mutation was done in their favour. But they were forcefully dispossessed by the

petitioner on 15.3.1988 after getting their endorsements done on the back of the sale deeds to the effect that- after receiving some more amount the lands were given back to the petitioner.

3. The case of the petitioner in short is as follows. The applications u/s 71-A of the Act were not maintainable. The lands were mortgaged with respondents No. 5 and 6, but they got the said documents registered as sale deeds fraudulently. After couple of years petitioner learnt about this fraud and accordingly, respondents No. 5 and 6 after receiving some more amounts, cancelled the sale deeds and returned the lands to the petitioner, which is clear from the endorsements made by them on the back of the sale deed. Respondents 5-6, could at best file suits for recovery of possession, as they themselves being transferees were not entitled to file applications for restoration u/s 71-A of the Act, in view of the judgment reported in 1990 PLJR 604 (Ram Chander Sahu). Moreover respondents 5 and 6 were not raiyats. In any event, they could not acquire any right over petitioner's privileged lands, in view of "the judgment reported in 1948 Patna 357 (Triveni Prasad Bhagat).

4. The said applications tiled by respondents No. 5 and 6 were dismissed by the D.C.L.R.-cum-Special Officer on 11.7.1989. He held that the cancellation of the sale deeds by such endorsements was not permissible but on the ground that forcible dispossession did not amount to transfer he held that applications u/s 71-A of the Act were not maintainable. In the appeals filed by respondents 5 and 6, the Additional Collector set aside the said orders and allowed the restoration application filed by them on the basis of the Judgment dated 18.7.1991 passed by the Supreme Court in Civil Appeal No. 955 of 1991, (Pandey Oraon v. Ram Chander Sahu 1992 Su (2) SCC 77 Against these orders, petitioner preferred revisions which were dismissed by the Commissioner.

5. The questions are whether the applications of respondents No. 5 and 6 u/s 71-A of the Act were maintainable and whether the orders of restoration calls for any interference?

6. It is not possible to accept the plea of the petitioner. that respondent Nos. 5 and 6 fraudulently got the deeds registered as sale deeds, in place of mortgage deeds. Petitioner himself executed the registered deeds in question in the years 1973 and 1978, Then on the back of second page of the deed of 1978, he wrote on 25.8.1990 that by mistake in place of 23 decimals he executed the deed for 20 decimals and therefore, after receiving some more amount he was relinquishing his right for further three decimals. Moreover even according to him, the original deeds remained with him. He kept quiet and on 15.3.1988 i.e. after 10 years of registration of one deed and after 15 years of registration of other deed, he claims to have got the said sale deeds cancelled by getting the endorsements done on the sale deeds by respondents 5 and 6. The Commissioner has rightly rejected such story set up by the petitioner. Furthermore, the registered sale deeds could not be cancelled by such endorsements.

7. The Full Bench of Patna High Court in 1991 BLJ 251 Ram Chander Sahu v. the Commissioner held that an act of forcible dispossession of a raiyat belonging to Scheduled Tribe by another person, does not amount to transfer in violation of the provision of the Act and therefore, Section 71-A will not be attracted.

The said judgment was set aside in the case of Pandey Oraon(Supra), relevant portion of which reads as follows:

6. In Section 71A in the absence of a definition of transfer and considering the situation in which exercise of jurisdiction is contemplated, it would not be proper to confine the meaning of transfer to transfer under the Transfer of Property Act or a situation where transfer has a statutory definition. What exactly is contemplated in the provision is where possession has passed from one to another and as a physical fact the member of the Scheduled Tribe who is entitled to hold possession has lost it and a non-member has come into possession would be covered by transfer and a situation of that type would be amenable to exercise of jurisdiction within the ambit of Section 71-A of the Act.

7. The provision is beneficial and the legislative intention is to extend protection to a class of citizens who are not in a position to keep their property to themselves in the absence of protection. Therefore when the legislature is extending special protection to the named category, the court has to give a liberal construction to the protective mechanism which would work out the protection and enable the sphere of protection to be effective than limit by (sic) the scope....

8. Relying on the said judgment of Pandey Oraon (Supra) in the case of Haru Oraon v. State (2001(1) J CR 156 (Jhr.) it has been held that if a member of Schedule Tribe is dispossessed by any means then he becomes entitled to get restoration of the land (emphasis supplied). It was also held that the deed of exchange relied to resist the claim of restoration, was invalid for want of registration,

9. In the case of Ram Chander Salu v. State of Bihar 1990 PLJR 604, relied by the learned Counsel for the petitioner, it was held inter alia that Section 71-A of the Act does not contemplate a case where a member of Scheduled Tribe complains that his transferor is not parting with possession of the land which he claims to have purchased.

In the case on hand though respondents No. 5 and 6. who are members of Scheduled Tribe purchased the lands from IMC petitioner, but after 10-15 years they were dispossessed by the petitioner after getting the aforesaid endorsements done on the back of the registered sale deeds. Petitioner has not produced anything in support of his case that even after registration of the said deeds, he remained in possession of the lands in question. Rather as per the said deeds themselves respondents 5 and 6 were put in possession and their names were also mutated. As already noticed above such endorsements having effect of annulling the registered sale deeds were apparently invalid. In my opinion, it is a

case of forceful dispossession adopting illegal ways and means which amounts to a fraudulent method contemplated u/s 71-A of the Act. It has been held in the case of Pandey Oraon (Supra) that the provisions of the Act are beneficial and the legislative intention is to extend protection to a class of citizens who are not in a position to keep their property to themselves in the absence of protection and therefore, the court has to give liberal construction to the protective mechanism intended by the legislature.

In the facts and circumstances noticed above, in my opinion, the case of Ram Chander Sahu 1990 PLJR 604 is of no help to the petitioner.

10. The other contentions raised by the petitioner that respondents 5 and 6 were not raiyat; and that they could not acquire any right over petitioner's privileged lands are also not tenable.

Section 6 provides that "raiyat" means primarily a person who has acquired a right to hold land for the purpose of cultivation. The meaning of "raiyat" given in Section 6 of the Act is not restrictive. It appears from the sale deeds that respondents No. 5 and 6 purchased the lands for cultivation. Cultivation is the main source of sustenance of Scheduled Tribes. There appears to be no reason, why a member of Scheduled Tribe, who purchased land for cultivation cannot be called a "raiyat". After all, in view of the judgment of Pandey Oraon (Supra) a liberal construction is to be given to the provisions of the Act in order to achieve the intended purpose.

In view of the fact that petitioner himself transferred his privileged lands to respondents 5 and 6, he cannot be heard to say that they could not acquire right over his privileged lands.

11. In view of the facts, circumstances and the law noticed above, in my opinion, the applications filed by respondents 5 and 6 u/s 71-A of the Act for restoration of their lands were maintainable and the orders of restoration do not call for any interference.

12. In the result this writ petition is dismissed. However, there will be no order as to costs.