
(2011) 07 JH CK 0143
In the Jharkhand High Court
Case No : Writ Petition (C) No. 3857 of 2002

Malati Murmu

APPELLANT

Vs

State of Jharkhand and Others

RESPONDENT

Date of Decision : 19-07-2011

Acts Referred:

Chotanagpur Tenancy Act, 1908 — Section 71(A)

Citation : (2011) 4 JCR 334

Hon'ble Judges : Prashant Kumar, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Prashant Kumar, J.—This application has been filed for quashing Annexures 2, 3 and 4 whereby the land pertaining to Thana No. 537, khata No. 8, Plot Nos. 48, 49, 88, 372, 418, 373, 549, 573, 574, 715 and 54 of village-Bhadua, measuring 5.98 acres has been restored to respondent Nos. 5 to 7 by holding that petitioner came in possession of the aforesaid land as Sikmi Dakhalkar without obtaining necessary sanction from the Deputy Commissioner.

2. It is submitted by Sri P.C. Roy, learned counsel for the petitioner that it is admitted position that petitioner's ancestor came in possession of lands in question from before 1960 which will manifest from Annexure-1. It is further submitted that Annexure-5, the khatian was prepared in the year 1964 and in the said khatian also petitioner's ancestor, namely, Tipu Santhal was shown as Sikmi Dakhalkar. It is then submitted that restoration application was filed sometime in the year 1999, thus it is apparent that the same was filed after 40 years from the date of dispossession of respondent Nos. 5 to 7.

3. It is submitted that as per the provision contained u/s 71(A) of the Chhotanagpur Tenancy Act, the restoration application is required to be filed within 30 years. It is submitted that their Lordship of Supreme Court in *Situ Sahu and Others Vs. The State of Jharkhand and Others*, held that if a

restoration application is filed after 40 years from the date of dispossession, the said restoration application is not maintainable being barred by law of limitation.

4. Sri R. Mukhopadhyay, learned S.C.-II had not disputed the aforesaid factual as well as legal position.

5. The record reveals that Sri Sidheshwar Prasad and Mahesh Kumar Verma filed vakalatnama on behalf of respondent Nos. 5 to 7 but they are not present in Court and they have not argued the case.

6. Having heard Sri P.C. Roy and Sri R. Mukhopadhyay, I have gone through the records of the case. From perusal of the writ application, it is manifestly clear that petitioner is a descendant of Tipu Santhal. From Perusal of Annexure-1, (the report Of Circle Officer) as well as Annexure-5, (the khatian), it appears that Tipu Santhal is a Sikmi Dakhalkar pertaining to lands of khata No. 8, Plot Nos. 48, 49, 88, 372, 418, 373, 549, 573, 574, 715 and 54 of village-Bhadua measuring 5.98 acres. It is also mentioned in Annexure-1 that the said Tipu Santhal came in possession of the aforesaid lands from before 1960. This fact also finds support from Annexure-5, which was admittedly prepared sometime in the year 1964. From perusal of Annexure-2, it appears that restoration application filed on 3.6.1999. Thus, it is clear that the application u/s 71(A) of the Chhotanagpur Tenancy Act filed after 35 to 40 years from the date when the petitioner's ancestors Tipu Santhal came in possession of the lands in question as Sikmi Dakhalkar.

7. It has been held by their Lordship of Hon"ble Supreme Court in *Situ Sahu and Others Vs. The State of Jharkhand and Others*, that if an application for restoration of lands u/s 71 (A) of the Chhotanagpur Tenancy Act is filed after 40 years then the same is not maintainable being barred by law of limitation.

8. Prom perusal of impugned orders, I find that learned Courts below had not considered aforesaid aspect of the matter and passed the orders for restoration of land, though application for restoration filed u/s 71(A) of the Chhotanagpur Tenancy Act is barred by law of limitation.

9. Under the said circumstance, I allow this writ application and quash the Annexures-2, 3 and 4. The restoration application is dismissed being barred by law of limitation.