
(2003) 12 JH CK 0037

In the Jharkhand High Court

Case No : CWJC No. 3823 of 1996 (R)

Mandu Prakhand Sahakari Grih Nirman Sahyog Samiti Ltd.
and Another

APPELLANT

Vs

State of Bihar and Others

RESPONDENT

Date of Decision : 17-12-2003

Acts Referred:

Chotanagpur Tenancy Act, 1908 — Section 46(1), 46(3A), 47, 49

Citation : (2004) 52 BLJR 380 : (2004) 1 JCR 402

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

Bench : Single Bench

Advocate : P.K. Prasad, for the Appellant; P. Modi, GP I, for the Respondent

Final Decision : Dismissed

Judgement

R.K. Merathia, J.—Heard the parties.

2. The Interpretation of Section 46(1)(c) of the Chotanagpur Tenancy Act (hereinafter referred to as the Act), is the main issue in this case.

3. The petitioner has prayed for quashing the order dated 18.10.1996, passed by the Commissioner, North Chotanagpur Division, Hazaribagh in Misc. Appeal No.93 of 1993 (Annexure 11). The Commissioner set aside the order dated 18.3.1991, passed by the Deputy Commissioner, granting permission u/s 46(1)(c) of the CNT Act, while allowing the appeal.

4. Petitioner's case is as follows :

The petitioner No. 2 by three registered sale deeds dated 9.2.1967 and the fourth dated 14.12.1966 purchased lands from the recorded raiyats or their heirs in plot No. 999, under Khata No. 44 and plot No. 1012, under Khata No. 27 and plot No. 1014, under Khata No. 16 of village Sewta. The said vendors were members of the Scheduled Castes and not Scheduled Tribes. The petitioner No. 2 is a member of Scheduled Tribe. For abundant precaution, petitioner No. 2 made

an application before the Deputy Commissioner, Hazaribagh u/s 46(1)(c) for a permission to sell about 3.13 acres of land in favour of petitioner No. 1, Society, which was registered as Permission Case No. 2/1991. The said permission was granted by the Deputy Commissioner by order dated 18.3.1991. Petitioner No. 2 by a registered sale-deed dated 2.8.1991 sold 3.13 acres of land in favour of petitioner No. 1. Petitioner No. 2 is also a member of petitioner No. 1 and her son is the President of the petitioner No. 1-Society. It is admitted at the bar that all the members of petitioner No. 1 do not belong to Scheduled Castes or Scheduled Tribes. Petitioner No. 1 sold and transferred lands in favour of its members by executing 35 registered sale-deeds, upon which most of them have constructed their residential buildings. The Deputy Commissioner by order dated 18.3.1993 recalled his order dated 18.1.1991 suo motu.

The petitioners challenged the said order dated 18.3.1993 (Annexure 8) vide CWJC No. 1684 of 1993 (R), which was disposed of on 30.7.1993 by quashing the said order on the ground that no power of review could be shown to the Court. However, this Court clarified that it will be open for the respondents to take appropriate steps in accordance with law for setting aside the said order dated 18.3.1993. The State Government then preferred an appeal on 16.12.1993 along with a petition for condonation of delay. On 6.1.1994, the said appeal was admitted without hearing the petitioners on the question of limitation. Section 46(1)(c) of the Act provides for grant of permission to any Co-operative Society and the same was rightly granted by the Deputy Commissioner on 18.3.1991. u/s 46(2), the transfer by a raiyat under Sub-section (1) is binding on the landlord and the State being landlord was bound by the said transfer and therefore it could not file the said appeal. No case of fraud was made out and therefore the appeal was not maintainable u/s 215(5).

Learned counsel for the petitioner submitted that the provisions which interferes with the right to property and its transfer has to be strictly construed. The word "has" used in the last portion of Section 46(c) is in singular form and therefore it relates only to the Government Company or Corporation. He admitted that there is no provision for permission u/s 41(1)(c) under which the application was made, but he submitted that the permission granted by the Deputy Commissioner on 18.1.1991 will be deemed to be u/s 49 of the Act and therefore, only the State Government and not the Commissioner, can interfere with it.

5. Mr. Modi appearing on behalf of the State, submitted that u/s 46(1)(c) of the Act, permission can be granted, in favour of a Co-operative Society or Bank or a Government Company which has been set up with a view to provide agricultural credit, to the cultivators, and not to any Co-operative Society or any Bank as contended by the petitioner. u/s 46(4-A) suo motu power is vested with the Deputy Commissioner for annulling the transfer on the ground that it was made in contravention of the provisions of Section 46. He submitted that this power was not brought to the notice of this Court otherwise the said order dated

18.3.1993 could not have been set aside by this Court vide (Annexure 9). The State being in fiduciary capacity had every right to file the said appeal in order to protect the interests of the persons for whose benefit the Act has been made. He pointed out to Section 46(3-A) of the said Act and submitted that the State acts in the capacity of guardians to save the interest of those persons who may lose their lands and thereby livelihood due to ignorance or other reasons. It cannot be imagined that for the Government Companies there will be a restriction and for the Co-operative Societies there will be no restrictions. He further pointed out to the restrictions provided under Sections 46 and 47 especially 47(bb) of the Act and submitted that there are restrictions on transfer of their rights by ralyats even by mortgage exceeding certain period. He submitted that in case of mortgage to a Cooperative Society there is some relaxation in the period of mortgage, but the restriction on sale is absolute. u/s 47, even restrictions are put on the Courts. An occupancy raiyat, who is a member of Scheduled Caste, Scheduled Tribes or backward classes, may transfer his right by sale to another person who is a member of Scheduled Castes or Backward Classes and who is a resident within the same district, within which the holding is situated, only with the previous sanction of the Deputy Commissioner. Thus, he submitted that even the purchase by the petitioner No. 2 from a member of Backward class was illegal as there is nothing to show that any permission was obtained.

He further submitted that Section 49 is not attracted in this case, as there is no notification of the State Government as contemplated therein. The Deputy Commissioner recalled his order dated 18.1.1991 recording a reason In his order dated 18.3.1993 that he believed that the in-charge Additional Collector has quoted the provisions correctly and he did not see the provision contained in Section 46 personally and passed order on the basis of the notings of the said Collector and thus, the order dated 18.1.1991 was passed without looking into the provision of law and on the basis of wrong facts and therefore the said order was void ab initio. Mr. Modi submitted that in these circumstances, the Deputy Collector suo motu recalled his order rightly in exercise of his powers contemplated u/s 46(4-A). In these circumstances, the order of the Commissioner is also justified and cannot be assailed. He also submitted that if the prayer of the petitioner is allowed, it will amount to reviving the legal order dated 18.1.1991, under which permission was granted to the petitioner No. 2 to sell his lands in favour of petitioner No. 1-Society.

6. First I am taking up the point raised by the petitioner that he was not heard on the point of delay, at the time of hearing of the appeal. It is true that if the petitioner was not heard on the point of limitation before admitting the appeal, he was entitled to be heard at the time of final hearing on the point of limitation also. From the order of the Commissioner, it is clear that the appellant was heard on the point of limitation and a clear finding was given in that regard, that there was no deliberate negligence on the part of the State as after the order of Deputy Commissioner a writ petition was filed and the appeal was filed after obtaining necessary sanction. He held that the delay In filing the appeal was,

therefore, explained. Only because she observed that in any case it would be presumed that the delay was condoned at the admission stage, it cannot be said that the petitioner was not heard in the matter of condoning the delay.

7. This Court is also not convinced with the argument of learned counsel for the petitioner that the State had no locus standi to prefer an appeal. As rightly pointed out by Mr. Modi with reference to the provisions of Section 46(3-A), the State was competent to prefer the appeal. State is to act as guardians of those for whose benefit the Act is made.

8. Now the main issue. There has been amendment in the Act including Section 46 by CNT Amendment Act 2 of 1996. The parties agree that the provisions at the relevant time, prior to the said amendment, are applicable in this case. The scheme and the relevant provisions of the Act are as follows.

Section 46 provides inter alia that no transfer by a raiyat of his right in his holding by a mortgage or lease exceeding certain period, and by sale, gift or any other contract or agreement, shall be valid to any extent. The first proviso makes some relaxations regarding the period in case of certain type of mortgage or if the mortgagee is a Society, registered under the Societies Act of the State. Clause (a) to the second proviso provides that an occupancy raiyat, who is a member of Scheduled Tribe, may transfer with the previous sanction of the Deputy Commissioner his right in his holding by sale etc. to another member of Scheduled Tribe, who is resident within the local limits of the Police Station, within which the holding is situated. Clause (b) of the second proviso makes a similar provision with regard to the Scheduled Castes or Backward Classes.

In this case, Clause (c) to the second proviso is relevant which provides that any occupancy raiyat may transfer his right in his holding "to a" Society or Bank, registered under the Co-operative Societies Act or to the Scheduled Banks or to a Company or a Corporation owned by the State Government or the Central Government, and which has been set up with a view to provide agricultural credit to cultivators. Petitioners contention is that the words, "and which has been set up", has been used in singular form which is referable to only the Government Company, specified in this clause. He further submitted that if the intention of the Legislature was that the transfer can be made to any Society/Bank/ Government Company, which has been set up with a view to provide agricultural credit to cultivators, the Word "have" should have been used in place of the word "has".

This argument of learned counsel for the petitioner cannot be accepted that as the word "has", has been used it only relates to the Government Companies/ Corporations, which are mentioned just before the said word "has". The use of the word "to a" in the beginning of the clause makes it clear why the word "has", has been used. It is clear that any occupancy raiyat may transfer his right in his holding to a" Society or Bank, registered under the Cooperative Societies Act or to a Scheduled Bank or to a Government Company, "and which has been

set up with a view to provide agricultural credit to cultivators". Mr. Modi rightly submitted that if the interpretation of Clause (c) as put forward by the petitioner is accepted then it will mean that transfer can be made to any Co-operative Society or Bank, for whatever purpose it has been set up, but if transfer is made to a Government Company then the Government Company must have been set up with a view to provide agricultural credit to cultivators.

Section 47 provides that no decree or order shall be passed by any Court for the sale of the right of raiyat in his holding, nor shall any such right be sold in execution of any decree or order. The scheme of the Act shows that there are serious restrictions on the transfer of the right of a raiyat in his holding by sale.

Section 47(bb), provides that any holding belonging to any occupancy raiyat may be sold under the procedure provided under the Public Demand Recovery Act for recovery of loan granted by a Co-operative Society or Bank or by the Scheduled Bank or by a Government Company which has been set up with a view to provide agricultural credit to cultivators so, however, that if such holding or portion thereof belongs to a member of the Scheduled Tribes or Scheduled Castes, it shall not be sold to any person who is not a member of the Scheduled Tribes/ Scheduled Castes. This provision read with Section 46(1)(c) makes it very clear that the transfer can be made only to such Co-operative Society/Bank/ Government Company, which has been set up with a view to provide agricultural credit to cultivators. In the present case, petitioner No. 1-Society has been set up for providing residential lands to its members. Therefore, I find no difficulty in holding that the transfer by the petitioner No. 2 in favour of petitioner No. 1 was against the restrictions contained in the Act. Keeping in view the objects sought to be achieved by the Act, several restrictions have been made on the transfer.

9. This Court is also not in a position to accept the argument of learned counsel for the petitioner that the said permission to transfer should be deemed to be u/s 49 of the Act. u/s 49 of the Act, the transfer can be made for any reasonable and sufficient purpose. The reasonable and sufficient purpose includes the use of the land for any charitable, religious or educational purpose, or for any other purpose which the State Government, may by general or special order, declare to be a public purpose or for the public purposes of manufacture or irrigation or as building ground for any such purpose or for access to land used or required for any such purpose. Admittedly, the transfer in question was not for any such purpose.

10. On the whole, I am satisfied that there is no ground for Interfering with the impugned order dated 18.10.1996 passed by the Commissioner (Annexure 11). In the result, the writ petition is dismissed. However, there will be no order as to costs.