
(2009) 07 JH CK 0096
In the Jharkhand High Court
Case No : C.W.J.C. No. 2130 of 1997 (R)

Md. Kalam and Another	Vs	APPELLANT
The State of Bihar (Now Jharkhand) and Others		RESPONDENT

Date of Decision : 07-07-2009

Acts Referred:

Chotanagpur Tenancy Act, 1908 — Section 46, 71A

Citation : (2009) 07 JH CK 0096

Hon'ble Judges : Narendra Nath Tiwari, J

Bench : Single Bench

Advocate : Alok Lal, for the Appellant; S.K. Ughal, for the Respondent No. 4 and Ram Prakash Singh, G.P-II, for the Respondent

Final Decision : Allowed

Judgement

Narendra Nath Tiwari, J.—In this writ petition the petitioners have prayed for quashing the order dated 9.5.1997 passed by the respondent No. 2 in S.A.R. Appeal No. 277-R-15/96-97 contained in Annexure-5 as also the order dated 12.8.1996 passed by the respondent No. 3 in S.A.R. Case No. 203/1991 contained in Annexure-4 and for quashing the entire proceeding of S.A.R. Case No. 203/1991.

2. According to the petitioners, a portion of the land of Plot No. 1576 corresponding to Holding No. 488 of Hindpiri, Ranchi was a part of holding which was recorded in the names of Sahoba Munda, Jagarnath Munda, Zagru Munda, Etwa Munda and Mangra Munda, all sons of Homa Munda. The plot in question was recorded as Makan Sahan. Sometime after the municipal survey, Sahoba Munda and other co-tenants died one after the other. The land in question was then surrendered by the surviving tenants to the ex-landlord on 27.9.1936. The ex-landlord came in possession of the said land and subsequently after about three years they settled the land of Plot Nos. 1576 and 1577 with the father of the petitioners by virtue of a Sada Hukumnana dated 15.9.1939 and put him in possession of the said land. The petitioners' father thereafter constructed a

house and a shop over the said land after investing a substantial amount. It has been submitted that the ex-landlord had converted the said land into a Chhaparbandi holding. Since thereafter the house and the land have been in continuous possession of the petitioners. The petitioners paid rent to the ex-landlord and after vesting of the Estate under the provisions of the Bihar Land Reforms Act, Jamabandi in respect of the said land was created in the name of the petitioners. Suddenly in the year 1991 the respondent No. 4 alleging illegal dispossession by the petitioners from the said land, filed an application for restoration of possession in his favour, under the provision of Section 71A of the Chota Nagpur Tenancy Act (hereinafter referred to as "the C. N. T. Act"). The said case was registered as S.A.R.Case No. 203/90-91 in the Court of the Special Officer, Schedule Area Regulation, Ranchi.

3. Notice was issued to the petitioners. They appeared and filed their reply stating, inter alia, that the claim of illegal possession of the respondent No. 4 is wholly false and baseless. The land was validly acquired several decades ago, residential house and shop were also constructed long back, demand was opened in the circle office and they have been in continuous possession. They also brought on record the documents in support of their claim.

4. The Special Officer, however, passed an order dated 12.8.1996 (Annexure-4) allowing the petitioners the respondent No. 4 and directing restoration of possession of the said land in his favour.

5. The petitioners then preferred appeal before the Deputy Commissioner, Ranchi being S.A.R.Appeal No. 277-R-15/96-97. Learned Appellate Court affirmed the order of the Special Officer and dismissed the appeal. Aggrieved by the said order, the petitioners have preferred this writ petition.

6. Learned Counsel appearing on behalf of the petitioners submitted that the land was surrendered in the year 1936 and settlement was made in favour of the petitioners' father in the year 1939. After settlement of the said land, a house and a shop were constructed over the land on investment of a huge sum of Rs. 50,000/- The members of petitioners' family have been residing in the said house and they have been running their shops which is the source of their livelihood. The petitioners have been in continuous possession of the said land and the house for more than four decades without any objection or obstruction of the said respondent. The respondents were aware of the fact that the said land was validly acquired by the petitioners in accordance with law. It has been submitted that the petitioners have acquired valid title also by adverse possession and the application for restoration of the said land having been filed after several decades, was not fit to be entertained. The claim of the respondent No. 4 is also barred by limitation.

7. Mr. S.K. Ughal, learned Counsel appearing on behalf of the respondent No. 4, submitted that the land was recorded as a Raiyati land in the names of the members of the Scheduled Tribes. Raiyati land cannot be transferred in favour of

the persons other than the members of the Scheduled Tribes. Such transfer is barred u/s 46 of the C.N.T Act. Dispossession of the respondent No. 4 is violation of Section 46 of the C.N.T Act which comes within the mischief of Section 71A and the said land has been rightly restored in favour of the respondent No. 4 by the Special Officer, Schedule Area Regulation. The appellate authority has also validly upheld the order of the Special Officer. He further submitted that no period of limitation has been prescribed u/s 71A C.N.T Act for restoration of the land of a member of the Scheduled Tribes, who is illegally dispossessed from his raiyati holding. Section 71A of the C.N.T Act provides for restoration of possession over the land at any time, if it comes to the notice of the Deputy Commissioner that a land belonging to a member of the Scheduled Tribes has been transferred in contravention of Section 46 or any other provision of the C.N.T Act. The Special Officer has found contravention of the legal provisions and has rightly restored possession of the respondent No. 4 who is the member of the Scheduled Tribe. The ground of limitation taken by the petitioners has no substance. The order of the Special Officer as well as the appellate authority are wholly legal and sound and the same do not warrant any interference by this Court.

8. Learned Counsel for the respondent No. 4 and learned J.C to G.P-II appearing on behalf of the State-respondent Nos. 1-3 contested the petitioners' claim. It has been, inter alia, stated that the respondent No. 4 is a member of the Scheduled Tribes and the land in question has been recorded in the name of his predecessor-in-interest in the survey record of right in the year 1939. The predecessor of the respondent No. 4 had been dispossessed forcibly and illegally. The claim of surrender and settlement of the said holding is wholly baseless and the documents brought on record are not genuine. It has been stated that the law does not permit transfer of a Raiyati land belonging to the members of the Scheduled Tribes to any person other than the Scheduled Tribe. The said transfer is, thus, per se illegal. There is no document to show that the said Raiyati land of the respondent No. 4 was ever transferred to Chhaparbandi land by order of any competent authority. The claim of the petitioners is, thus, wholly without any basis.

9. I have heard learned Counsel for the parties and considered the facts, and materials on record and provisions of law. It is an admitted position in this case that the settlement was made in favour of the predecessor of the petitioners in the year 1939 and a house and a shop were constructed over the same thereafter. The land in question has been in continuous possession of the petitioners for more than 40 years. Although the document said to be settlement (Annexure-1) is a Sada paper the same is of year 1939.

10. Section 71A of the C.N.T Act does not prescribe any period of limitation. It opens with the words: "if at any time it comes to the notice of the Deputy Commissioner...." That being the position, I find substance in the submission of learned Counsel for the respondent No. 4 that there is no prescribed period of

limitation for filing an application u/s 71(A) of the C.N.T Act. The said provision, however, has been interpreted by the Apex Court in several decisions. In *Jai Mangal Oraon Vs. Smt. Mira Nayak and Others*, and *Situ Sahu and Ors. v. State of Jharkhand and Ors.* 2004 (4) JLJR SC 109 it has been held that though there is no prescribed period of limitation for filing an application for restoration u/s 71(A) of the C.N.T Act, the application must be filed within a reasonable period. In the said decisions lapse of period of 40 years has been said to be the unreasonable for exercising power u/s 71A C.N.T Act. This case is squarely covered by the said decisions. In this case, the power has been exercised after lapse of more than 40 years which is held to be unreasonable period in the said decisions of the Apex Court.

11. In view of the above, without going into other ground taken in this writ petition, the order of restoration passed by the Special Officer and the order of the Appellate Court upholding the said order of restoration cannot be said to be proper and justified. The Special Officer as well as the appellate authority failed to take into consideration the said important aspect.

12. Even if it is accepted that there was merit in the claim of the respondent No. 4, such claim being unreasonably and unconscionably stale and lost in antiquity cannot be entertained by a Court of law.

13. In the result, this writ petition is allowed. The impugned orders dated 12.8.1996 (Annexure-4) and dated 9.5.1997 (Annexure-5) as also the entire proceeding of S.A.R Case No. 203/1991 are quashed.

14. However, there is no order as to costs.