
(2008) 12 JH CK 0044
In the Jharkhand High Court

Pradeep Vijay Toppo

APPELLANT

Vs

State of Jharkhand and Others

RESPONDENT

Date of Decision : 17-12-2008

Acts Referred:

Chotanagpur Tenancy Act, 1908 — Section 46, 71A

Citation : (2008) 12 JH CK 0044

Hon'ble Judges : Dabbiru Ganeshrao Patnaik, J

Bench : Single Bench

Final Decision : Allowed

Judgement

D.G.R. Patnaik, J.—Petitioner in this writ application has prayed for, quashing the order dated 27.8.2007 (Annexure-4) passed by the Commissioner, South Chota Nagpur Division, Ranchi (Respondent No. 2} in Case No. 27/2007. A further prayer has been made for staying the operation of the impugned order (Annexure-4) during the pendency of this writ application.

2. Petitioner's case in brief is as follows:

One Bhosa Oraon was the recorded owner of the lands within M.S. Plot No. Ward No. 4, measuring an area of 314 is within village-Konka in the district Ranchi.

By a registered sale-deed dated 21.11.1940, the recorded tenant Bhosa Oraon sold and transferred the said property in favour of Rilhana Orain. The transfer was made by a member of the Scheduled Tribe in favour of another member of the Scheduled Tribe.

After purchase of the lands, the purchaser Rilhana Orain came into possession of the lands and her name was duly mutated in the records of Ranchi Municipality. Upon her death, her son Jacob Cornelius Toppo came in possession of lands and constructed a residential house thereon and continued to remain in possession over the said land. After his death, his two sons namely, the petitioner and his brother Yashpal Toppo, came in possession of the land and their names were

mutated in the records of Ranchi Municipal Corporation and they have been paying rent regularly against grant of rent receipts.

Sometime in the later part of the year 2003, the private respondents 5 and 6 filed an application u/s 71-A of the CNT Act before the Special Officer, SAR, Ranchi (Respondent No. 4) praying for restoration of the aforesaid lands to them. A proceeding vide SAR Case No. 970/03-04 was initiated. Without serving any notice upon the petitioner, an ex parte order of restoration was passed by the Special Officer (Respondent No. 4) in favour of the private respondents 5 and 6 on 28.8.2004.

On being informed about the ex parte order, the petitioner filed SAR Appeal No. 88R-15/06-07 before the Additional Collector, Ranchi (Respondent No. 3).

After hearing the parties, the respondent No. 3, by his order dated 17.1.2007 (Annexure-3), allowed the appeal and quashed the order of restoration passed by the Special Officer.

Much later, in the month of June 2008, the petitioner could learn that the order of Additional Collector was set aside by the impugned order passed by the Commissioner, South Chotanagpur Division, Ranchi (Respondent No. 2) in the revision Case No. 27 of 2007 preferred by the private respondents 5 and 6. While setting aside the order of the Additional Collector, the Commissioner had remanded the case to the Special Officer, SAR, Ranchi for passing a fresh order after giving opportunity to the petitioner to be heard and after examining the documents adduced by the parties.

3. Assailing the impugned order, Mr. V. Shivrath, learned senior counsel appearing on behalf of the petitioner, submits that the impugned order has been passed without proper appreciation of the facts of the case and the law on the subject relating to the dispute and without application of judicial mind. Learned Counsel submits that the impugned order of the Commissioner was passed ex parte without affording any opportunity to the petitioner of being heard and even without serving any notice upon the petitioner. Referring to the copy of the order-sheet pertaining to the records of the Revision proceeding, learned Counsel explains that from a bare reading of the entire order-sheet, it would transpire that the revision application was filed by the private respondents on 6.3.2007 before the respondent No. 2 on the basis of which, the Revision case No. 27 of 2007 was registered. The respondent No. 2 heard the applicants on the point of admission and thereafter allowed the revision application by the impugned order, without issuing any notice to the petitioner and without affording any opportunity to the petitioner of being heard. Learned Counsel explains that the respondent No. 2 had no jurisdiction to pass the impugned order and to set aside the order passed by the Additional Collector in view of the fact that transfer of the lands in favour of the ancestor of the petitioner was effected on 21.11.1940 when there was no restriction of transfer between the members of the Scheduled Tribes. As such, restoration application itself was not maintainable and was liable to be

dismissed.

4. A counter-affidavit has been filed on behalf of the respondents 1 to 4. It is explained that the proceeding for restoration of lands was initiated by the Special Officer, SAR, Ranchi on the basis of the application filed by the private respondents u/s 71-A of the CNT Act. Notice was issued to the petitioner in the said proceeding, but despite issuance of notice when the petitioner did not appear, the Special Officer, SAR Ranchi decided the case ex parte allowing the prayer for restoration of the lands in favour of the private respondents.

It is further explained that against the order of the Special Officer, the petitioner preferred an appeal before the Additional Collector, Ranchi vide SAR Appeal No. 88R-15/06-07. In the appeal, both the parties were heard. While allowing the prayer of the petitioner, the Additional Collector recorded his findings on two issues, firstly, that adequate opportunity was not given to the petitioner of being heard since, notices though issued, were sent on incorrect names and addresses and the second issue being that the validity of transfer made by the original recorded tenant in favour of the ancestor of the petitioner by a registered sale-deed dated 21.11.1940, was a valid transfer and was not hit by the provisions of Section 46 of the CNT Act since, no permission was required for transfer of lands by a member of the Scheduled Tribe to another member of the Scheduled Tribe in the year 1940 and the provisions of the CNT Act cannot be applied with retrospective effect.

It is further explained that the proceeding in the revision application filed by the private respondents against the order of the Additional Collector, was heard by the Commissioner (Respondent No. 2), who by the impugned order, had remanded the case back to the Special Officer, SAR, Ranchi for recording a fresh order after hearing the parties and after examining the documents adduced by the parties.

5. The private respondents 5 and 6 have also filed their counter-affidavit wherein they have denied and disputed the entire claim of the petitioner and have even gone to the extent of challenging the sale-deed relied upon by the petitioner as being a fake and manufactured document and making a counter assertion that the lands stood recorded in the name of their ancestor Bhosa Oraon and the petitioner had forcibly dispossessed them from the land and even proceeded to make construction of a house thereon.

6. From the rival pleadings, the undisputed fact which emerges is that though, the Commissioner (Respondent No. 2) had initiated a revision proceeding on the basis of the application filed by the private respondents 5 and 6 against the order of the Additional Collector, but no notice was issued to the petitioner, nor was any opportunity afforded to the petitioner of being heard. Apparently, the impugned order was passed ex parte against the petitioner. It also appears that the learned Commissioner did not make any discussion on the findings as recorded by the Additional Collector on the two main issues namely, that the Special Officer,

Ranchi had passed an ex parte order of restoration in favour of the private respondents without ensuring service of notice upon the petitioner and on the other issue, on the point of law, that transfer of lands in question made by the original recorded tenant in favour of the petitioner's ancestor being a transfer by one member of the Scheduled Tribe made to another member of the Scheduled Tribe by virtue of the registered sale-deed executed in the year 1940, did not suffer from any illegality in view of the fact that there was no restriction on such transfer at the relevant time and that such restriction came for the first time into force only after enforcement of the CNT Act in 1947 and the Act cannot be applied with retrospective effect.

7. In the light of the manner in which the impugned order has been passed by the respondent No. 2. it is manifest that the impugned order has been passed without application of mind and without even issuing notices to the petitioner and affording any opportunity to the petitioner of being heard. Such an order against the principles of natural justice, as such, it cannot be sustained in law. An objection has been raised by the respondents on the ground that since the impugned order merely remands the case back to the Special Officer. SAR for a fresh decision on the application for restoration, it cannot be said that the issues involved in the dispute have been finally adjudicated and as such this writ application is not maintainable.

In reply, learned Counsel for the petitioner submits that in view of the patent illegality and perversity in the impugned order, this Court in exercise of its supervisory jurisdiction can certainly interfere with the impugned order and pass appropriate orders for correcting the illegality. I find force in the arguments advanced by the counsel for the petitioner. The impugned order suffers from perversity, lack of application of Judicial mind by respondent No. 2 and is against the principles of natural justice and also amounts to abdication of his responsibility as a Revisional Court.

8. In the light of the above discussions, I find merit in this application.

Accordingly, the same is allowed. The impugned, order (Annexure-4) is hereby set aside.

9. However, without expressing any opinion on the merits of the case, the matter is remitted back to the Commissioner, South Chota Nagpur Division. Ranchi (Respondent No. 2) to pass a fresh order on the revision application filed by the private respondents 5 and 6, after giving adequate opportunity of hearing to the parties concerned.