

(2017) 03 JH CK 0091
In the Jharkhand High Court
Case No : 4943 of 2005

Prastawit Ucha Vidyalaya

APPELLANT

Vs

The State of Jharkhand & Ors.

RESPONDENT

Date of Decision : 16-03-2017

Acts Referred:

[Chotanagpur Tenancy Act, 1908](#), Section 49, Section 46, Section 71(a)

Citation : (2017) 03 JH CK 0091

Hon'ble Judges : Aparesh Kumar Singh

Bench : SINGLE BENCH

Advocate : Rahul Kr. Gupta, Kislay Kumar, Amit Verma, J.K. Mazumdar

Judgement

1. Heard counsel for the parties.
2. In all these writ petitions, issues involved were the same and have been decided by common orders passed by the authorities under Chota Nagpur Tenancy Act. Therefore, they have been tagged together and heard analogous.
3. Respondent No. 5 purchased lands recorded in Khata No. 288, plot nos. 2768, 2769, 2770, 2793 and 2794 of Mouza Dilimirsch thana no. 108, Kolhan, West Singhbhum from the recorded raiyyat after obtaining permission under section 46 of Chota Nagpur Tenancy Act, 1908 in the year 1976 vide Registered Sale Deed bearing No. 2798 dated 21.06.1976. The total area of 1.63 acres of land was mutated in his name in Mutation Case No. 6/76-77. Respondent No. 5 applied for permission to sell the lands in question to one East India Industries through application made before the Additional Deputy Commissioner in Revenue Case No. 5/1980-81 under section 49 of Chota Nagpur Tenancy Act. Such permission was accorded on 10.06.1980, as per order at Annexure-1 series. The order dated 10.06.1980 passed by the Additional Deputy Commissioner, Singhbhum, Chaibasa also records the intention of M/s East India Industries, a Registered Firm, to set up Saw Mill Industry on purchase of the aforesaid land. On 19.06.1980 the Respondent No. 5 sold the aforesaid pieces of land having a

total area of 1.63 acres to M/s East India Industries by Registered Deed of Sale pursuant to the said permission. Lands were mutated in favour of M/s East India Industries also vide order dated 08.08.1981 passed in the Mutation Case No. 90/1981-82.

4. Individual petitioners herein purchased the lands in question through separate Registered Sale Deeds from M/s East India Industries on 05.06.2000. Thereafter, the Respondent No. 5 chose to initiate a proceeding under section 71(A) of Chota Nagpur Tenancy Act for restoration of possession, alleging fraudulent transfer and dispossession by the petitioners herein. M/s East India Industries was however not impleaded as a party in the said proceedings. Proceedings were registered as S.A.R. Case Nos. 25/2001-02, 22/2001-02, 24/2001-02, 23/2001-02 and 21/2001-02 before the Court of Land Reforms Deputy Collector, Sadar Chaibasa. By order at Annexure-3 dated 01.10.2003, Learned Land Reforms Deputy Collector rejected the application by a detailed reasoned order with a finding that the proceedings under section 71(A) of Chota Nagpur Tenancy Act is not made out as the transfer of the land has been made pursuant to the permission granted under section 49 of the Act of 1908 to M/s East India Industries in the year 1980. It found that the provisions to annul such transfer are contained in Section 49(5) of the Act itself.

5. Being aggrieved, Respondent No. 5 preferred S.A.R. Appeal Nos. 55/2003- 04, 56/2003-04, 52/2003-04, 53/2003-04 and 54/2003-04 before the Deputy Commissioner, West Singhbhum, Chaibasa. By the impugned order dated 31.12.2004 passed in the said appeals, the Deputy Commissioner set aside the order of LRDC and held that the case involved fraudulent transfer of land and is in teeth of the provisions of Section 49 of the Act. Since the power to annul such transfer is vested in the State Government under section 49(5), the matter was required to be referred to the Revenue and Land Reforms Department, Government of Jharkhand. Accordingly, directions were issued to the Additional Collector, Chaibasa and other Revenue Authorities.

6. Petitioners went in revision against the common order passed in appeal being S.A.R. Revision Case No. 09/2005, 08/2005, 06/2005, 07/2005 and 11/2005. The Revisional Authority cum Commissioner, Kolhan Division, Chaibasa agreed with the findings of the Appellate Authority that the matter falls within the scope of section 49 of the Act. He therefore came to an opinion that since the issue has been referred to the State Government, it would not be proper to pass any order on the revision petitions preferred by the present petitioners herein. Revision petitions were accordingly closed.

7. Petitioners have assailed the orders passed in appeal dated 31.12.2004 (Annexure-4) by the Respondent No. 3 and 12.04.2005 / 24.05.2005 (Annexure-5) passed by the Respondent No. 4 in the revision petition preferred by them. Learned counsel for the petitioners has inter-alia submitted that the proceedings under section 71(A) of Chota Nagpur Tenancy Act at the behest of the Respondent No. 5, is not maintainable. The transfer of land to M/s East India

Industries was effected pursuant to the permission granted in terms of section 49 of the Act by the Respondent No. 5. Permission and sale took place in June 1980. Provisions of Section 49(5) permit the State Government to annul the transfer on finding contravention of provisions of sub-section (1) and (2) and that consent has been obtained by misrepresentation or fraud, however within a period of twelve years from the date on which written consent is given by the Deputy Commissioner in regard to the transfer of any such holding. It is also pointed out that the Learned Land Reforms Deputy Collector vide order dated 01.10.2003 has taken note of the stand of the Respondent No. 5 also that Saw Mill Industries were set up by M/s East India Industries. It has also taken note of the existence of the industrial activities on the lands of the petitioners after their purchase in the year 2000. It is contended that Learned Division Bench of Patna High Court in the case of Sri Rajendra Nath Kapoor Versus The State of Bihar and others [1990 BLT (Rep. 352)] has categorically held that when transfer of occupancy-holding or Bhuinhari tenure has been made for the purposes permissible under section 49 of the Act after due consent from the Deputy Commissioner, any annulment thereof could only be sought for under section 49(5) of the Act and not under section 71(A) of the Act. Relying upon the said judgment, counsel for the petitioners contends that initiation of the proceedings itself under section 71(A) by the Respondent No. 5, is not maintainable. Learned Land Reforms Deputy Collector has rightly appreciated that the scope of the proceedings were not maintainable under section 71(A) of the Act and accordingly, rejected the application. It is submitted that the Appellate as well as Revisional Authority has misdirected themselves in recommending the matter to the State Government for annulment in terms of section 49(5) of the Act when the period of twelve years from the date of such written consent is long over. He also contends that once the purpose for which the transfer so permitted under section 49 of the Act has been carried out and prescription of time of twelve years has also exhausted, any subsequent transfer to the person like the petitioners twenty years after such permission, cannot be questioned even under section 49(5) of the Act. Therefore, the impugned order deserves to be quashed.

8. Learned counsel for the Respondent No. 5 has supported the impugned order. According to him, the effect of such transfer to these petitioners for residential purposes, is in clear teeth of the provisions of section 71(A) of the Act. The Respondent No. 5 being a Member of the Scheduled Tribe, has been illegally dispossessed by such fraudulent transfer. Therefore, application under section 71(A) was perfectly maintainable. He submits that the Appellate as well as Revisional Authority both have concurred on the issue relating to violation of conditions of written consent given at the time of initial transfer in the year 1980 and rightly recommended the matter to the State Government for appropriate decision. The decision of the State Government however, is still awaited. Learned counsel for the Respondent No. 5 has relied upon a judgment in the case of Situ Sahu Versus State of Bihar [1997 (2) PLJR 425] in support of his contention that the application for restoration under section 71(A) of Chota Nagpur Tenancy Act

is perfectly maintainable at the behest of the Respondent No. 5.

9. Learned counsel for the State submits that the impugned decision have been taken after consideration of the entire materials and evidences on record before the Appellate and Revisional Authorities. He further submits that the Appellate and the Revisional Authority have reached to an opinion that transfer was in violation of the provisions of Section 49(5) of the Act. Therefore, matter has been referred to the Revenue and Land Reforms Department, Government of Jharkhand. Learned counsel for the State however is not able to dispute the legal contention of the petitioners that the proceedings initiated by the Respondent No. 5 under section 71(A) of the Act would not lie in view of the special provisions contained in section 49(5) of the Act and the judgment rendered by the Learned Division Bench of Patna High Court in the case of Sri Rajendra Nath Kapoor (Supra).

10. I have considered the submissions of the parties at some length and gone through the relevant materials on record including the impugned orders.

11. The background factual matrix narrated in the foregoing paragraphs shows that the permission to transfer the land from the original raiyat, was accorded under section 46 of the Act in the year 1976 itself. Accordingly, lands stood transferred by way of Registered Deed of Sale to the Respondent No. 5 on 21.05.1976. The subsequent transfer to M/s East India Industries was made on 19.06.1980 by Registered Deed of Sale only after permission was granted by the Additional Deputy Commissioner in Revenue Case No. 5/1980-81 in terms of section 49 of Chota Nagpur Tenancy Act for the purposes of setting up of Saw Mill Industries. The said permission was granted on 10.06.1980. It is also not in dispute that M/s East India Industries continued to hold the lands till it was transferred in favour of the petitioners through a Registered Sale Deeds in June 2000 after twenty years. The Land Reforms Deputy Collector has, in the order dated 01.10.2003, taken note of the fact that Saw Mill was established on the lands in question with the consent of the Respondent No. 5 by M/s East India Industries. Learned LRDC has also observed that individual petitioners have, after purchase of the lands in question and coming into possession thereof, carried out certain industrial activity. The LRDC therefore came to a finding that the matter was not relatable to the provisions of section 71(A) of the Act as transfer were effected in terms of section 49 of the Act of 1908. Accordingly, application for restoration was rejected. The Appellate Authority as well as Revisional Authority both have come to a consistent finding that the matter falls within the scope of section 49 of the Act.

12. Undoubtedly, when the permission to transfer was granted in terms of section 49 of the Act of 1908, application for restoration would not lie under section 71(A) of the Act in view of the special provisions contained under section 49(5) which have been consciously introduced by the Legislature by an amendment for the first time in 1976. The applicability of sections 71(A) vis-a-vis section 49(5) of the Act were squarely under consideration by the Learned

Division Bench of Patna High Court in the case of Sri Rajendra Nath Kapoor (Supra). Learned Court observed that sub-section (5) of Section 49 was for the first time introduced in the year 1976 and it can be presumed that the Legislature was conscious of the presence of Section 71(A) which had been introduced by Regulation 1 of 1969 with effect from February 1969. The Learned Division Bench was of the firm opinion that when there is a specific provision for annulling the transfer made with the consent of the Deputy Commissioner, recourse must be had to that and an application under the general provision i.e. under section 71(A) of the Act is barred. The opinion of the Learned Division Bench, contained at paragraphs-9 to 14, are being reproduced hereunder: "9. It is true that under both the sections, provisions have been made for restoration of the land, but the scope of the two provisions are different. So far section 49(5) is concerned, power has been given to the State Government to annul any transfer made with consent of the Deputy Commissioner if it is found that the consent had been obtained in contravention of the provisions of sub-sections (1) and (2) by misrepresentation or fraud. Under this section the forum is the State Government and what is required to be determined by the State Government is whether consent of the Deputy Commissioner had been obtained in contravention of the provisions to sub-sections (1) and (2) by misrepresentation or fraud. If the consent of the Deputy Commissioner was not obtained by misrepresentation or fraud, there is no question of annulling the transfer. Sub-sections (1) and (2) of section 49 of the Act reads as follows:

(1) Notwithstanding anything contained in sections 46, 47 and 48 any occupancy "raiyat" or any member of a "Bhuinhari" family who is referred to in section 48, may transfer his holding or tenure or any part thereof for any reasonable and sufficient purpose.

(2) The expression "reasonable and sufficient purposes" as used in sub-section (1), includes-

(a) in the case of a member of a Bhuinhari family, but not in the case of an occupancy-raiyat, building purposes generally:

(b) in any case, 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 purposes of manufacturer or irrigation or as building ground for any such purpose, or for access to land used or required for any such purpose.

(c) in any case, the use of the land for the purpose of mining or for any other purpose which the State Government may by notification declare to be subsidiary thereto or for access to land or required for any such purpose.

10. It will be noticed that sub-section (1) begins with a nonobstanti clause. A raiyat may transfer his holding or any part thereof for any reasonable and sufficient purpose. What is reasonable and sufficient purpose has been mentioned in subsection (2). Even if reasonable and sufficient purpose existed,

the transfer must be made by a registered instrument with the written consent of the Deputy Commissioner as provided in sub-section (3).

12. Section 71A provides for restoration of land if the transfer has been made in contravention of section 46 or any other provision of the Act or any any fraudulent method including decrees obtained in suit by fraud and collusion. The forum under section 71A of the Act is the Deputy Commissioner. Although in both the sections the word "fraud" has been used, whereas in section 49(5) it is referable to sub-sections (1) and (2) of that section, in section 71A, this is referable to fraudulent method.

13. Regulation 1 of 1989 came into force in February, 1969 and section 49(5) was introduced in 1976. It must be presumed that the Legislature knew that section 71A had been introduced in 1969 empowering the Deputy Commissioner to pass order under certain circumstances, yet the Legislature inserted subsection (5) in section 49 for the first time in 1976. This indicates that the scope of section 71A and 49(5) are completely different. The former speaks about fraud on the transferor/raiyat whereas the latter speaks about misrepresentation or fraud on the Deputy Commissioner. In section 49(5) the reference is to sub-sections (1) and (2) of section 49 whereas in section 71A, section 46 has been specifically mentioned. It is a general rule of interpretation of statutes that special provision will override the general provision. When there is specific provision for annulling transfer made with consent of the Deputy Commissioner, recourse must be had to that and an application under the general provision, i.e., under section 71A of the Act is barred. Moreover, as noticed, above the forum is also different.

14. Contention was made on behalf of the private respondent that the Regulation made by the Governor under clause 5(2) of V Schedule to the Constitution shall prevail over the Act of the Legislature. There is no basis for such submission. There is no conflict between the two provisions, i.e. Section 71A and Sections 49(5) of the Act. As noticed above, section 71A is a general provision, whereas section 49(5) is a general provision. As there is no conflict between the two provision, the submission that section 71A will prevail has no substance."

13. The case of the petitioner therefore is not one which would fall under the general provision of section 71(A) of Chota Nagpur Tenancy Act. The Appellate Authority as well as Revisional Authority both have also concurred on that issue that the petition for restoration was not within the scope of Section 71(A) of the Act, rather it could be a case of annulment on account of consent being obtained by fraud or misrepresentation upon the Deputy Commissioner in terms of Section 49(5) of the Act of 1908. The judgment relied upon by the counsel for the Respondent No. 5 however, are in different facts situation and do not apply to the facts of the instant case.

14. Section 49(5) of Chota Nagpur Tenancy Act, 1908 however prescribe a limitation of twelve years for the State Government to annul any such transfer.

Section 49 reads as under: "49. Transfer of occupancy-holding or Bhuinhari-tenure for certain purposes.-[(1) Notwithstanding anything contained in Sections 46, 47 and 48 any occupancy raiyat or any member of a Bhuinhari family, who is referred to in Section 48 may transfer his holding or tenure or any part thereof for the following purposes.-

(a) in any case, the use of the land for any industrial purposes or for any other purposes which the State Government may, by ratification declare to be subsidiary thereto or for access to land used or required for any such purpose.

(b) in any case, the use of the land for the purpose of mining or for any other purposes which the State Government may, by notification declare to be subsidiary thereto or for access to land used or required for any such purpose.

The transferee in such cases shall not be entitled to use the land so transferred for any other purpose except for which it was transferred.]

Every such transfer must be made by registered deed, and before the deed is registered and the land transferred, the written consent of the Deputy Commissioner must be obtained to the terms of the deed and to the transfer. Before consenting to any such transfer, the Deputy Commissioner shall satisfy himself that [adequate compensation is tendered to landlord for the loss (if any) caused to him by the transfer], and, where only part of a holding or tenure as transferred, may, if he thinks fit, apportion; between the transferee and the original tenant the rent payable for the holding or tenure.

[(5) The State Government may, at any time within a period of twelve years from the date on which written consent is given by the Deputy Commissioner in regard to the transfer of any holding or part thereof belonging to an occupancy-raiyat, who is a member of the Scheduled Tribes either on its own motion or on an application made to it in this behalf set aside such written consent and annul the transfer, if after holding an inquiry in the prescribed manner and after giving reasonable opportunity to the parties concerned to be heard it finds that the consent had been obtained in contravention of the provisions of sub-sections(1) and (2) by misrepresentation or fraud, and in case any holding or part thereof has been transferred on the basis of such written consent direct the Deputy Commissioner to take further necessary action under clause (c) of sub-section 4-A of Section 46.]"

15. A bare perusal of section 49(5) would show that the State Government, at any time within a period of twelve years from the date on which written consent is given by the Deputy Commissioner in regard to the transfer of any holding belonging to an occupancy raiyat, who is a member of the Scheduled Tribes, either on its own motion or on an application made to it in this behalf, set aside such written consent and annul the transfer, if after holding an inquiry in the prescribed manner and after giving reasonable opportunity to the parties concerned to be heard, it finds that the consent had been obtained in contravention of the provisions of sub-section (1) and (2) by misrepresentation

or fraud. Consequent upon such finding, it can direct the Deputy Commissioner to take further necessary action in the terms indicated in the said sub-section. The background facts, which are undisputed, show that the transfer made by M/s East India Industries to these petitioners were after twenty years of such consent given on 10.06.1980 by the Additional Deputy Commissioner. No such application have been made by the Respondent No. 5 to the State Government within the prescribed period of twelve years, nor were any proceedings initiated by the State Government within the time prescribed for annulment of the written consent and transfer. Such a recourse after twenty three years of transfer therefore would not be available to the Respondent State or the private Respondent to annul such transfer.

16. In the totality of facts and circumstances discussed hereinabove, therefore it has to be held that resort to the provisions of Section 71(A) on the part of the Respondent No. 5 for restoration of the land, was not maintainable. At the same time, the recommendation by the inferior authorities to the Respondent Department to take a decision on the question of annulment would also be in teeth of the specific provisions of Section 49(5) of the Act where a definite time limit has been prescribed by the Legislature with conscious purpose. Impugned orders therefore cannot be sustained in the eye of law as well as on facts and are accordingly quashed. Writ petitions are allowed.