
(2009) 11 JH CK 0081
In the Jharkhand High Court

Purushottam Kejriwal

APPELLANT

Vs

Commissioner, North Chhotanagpur Division and Others

RESPONDENT

Date of Decision : 03-11-2009

Acts Referred:

Citation : (2009) 11 JH CK 0081

Hon'ble Judges : Amareshwar Sahay, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Amareshwar Sahay, J.—Heard Mr. V. Shivnath, learned senior counsel appearing for the petitioner and Mr. V.K.Prasad, learned Counsel for the private respondents.

2. The petitioner prays for quashing the order dated 06/09/2000 passed by the Respondent No. 1 Commissioner, North Chhotanagpur Division, Hazaribagh, contained in Annexure-5 to this writ petition, by which the Revision petition being Land Restoration Revision No. 140 of 1996 filed by one Parmeshwar Munda was allowed and the order passed by the Additional Collector, Hazaribagh on 27/11/1995 in Restoration Appeal No. 4 of 1995 was quashed and the order of the Executive Magistrate dated 19/11/1994 in L.R. Case No. 528 of 1986 for restoration of the land appertaining to Khata No. 192, Plot No. 198, Area 0.88 Acres and Plot No. 200 Area 1.88 Acres in favour of the private respondents was upheld.

3. From perusal of the impugned order (Annexure-5) passed by the Commissioner, North Chhotanagpur Division, Hazaribagh, which has been challenged by the petitioner in this writ petition, it appears that the application for restoration was filed by the member of the Scheduled Tribe with respect to the lands of Khata No. 192, Plot No. 198, Area- 0.88 Acres and Plot No. 200, Area 1.88 Acres measuring total Area of 2.76 Acres situated in the Village Bongawar in the District of Hazaribagh, which was recorded in the name of the ancestors of the tribal applicants. The said case was registered as L.R.Case No.

528 of 1986 which after hearing the parties, was allowed by the Executive Magistrate by order dated 19/11/1994, and direction for restoration of the disputed lands in favour of the tribal applicants was made.

4. Against the said order of restoration passed by the Executive Magistrate, one Mahendra Singh, who was the opposite party in the said case, filed an appeal being Restoration Appeal No. 4/1995 before the Additional Collector, Hazaribagh and raised a point before the Appellate Court that the Executive Magistrate did not consider the point of res-judicata. The dispute, in fact, was already decided by the L.R.D.C. in case No. 4 of 1983 by order dated 30/12/1983. He also took the plea that the tribal was dispossessed more than 12 years ago and thus the application for restoration of the lands was barred by limitation.

5. The Additional Collector, i.e. the Appellate Court passed an ex-parte order and quashed the order of the Executive Magistrate on the ground of res-judicata and limitation. He also based his findings on the compromise decree passed in Title Suit No. 42 of 1969.

6. The aforesaid order of the Appellate Authority was challenged by the tribal petitioner before the Commissioner, North Chhotanagpur Division, Hazaribagh in revision and by the impugned order dated 06/09/2000 (Annexure-5), the Commissioner, allowed the Revision Application and set aside the order of the Appellate Court, i.e. of the Additional Collector and, thereby, upheld the order of restoration passed by the Executive Magistrate.

7. In this writ petition, the petitioner is challenging this order of the Commissioner dated 06/09/2000, on the ground that he purchased 80 decimals of land of Plot No. 198 of Khata No. 192 by a registered sale deed dated 29/03/1978 from one Chanclagi Lal Agrawal and he is coming in possession thereof and paying rent also. His vendor Chandagi Lal Agrawal acquired plot No. 198 area 0.88 acres and plot No. 200 area 1.88 acres of Khata No. 192 by means of a Dar-raiyati settlement from the heirs of the recorded tenants and also by virtue of a compromise decree in Title Suit No. 42 of 1960 of the Court of Munsif, Hazaribagh.

8. A counter affidavit has been filed by the respondent Nos. 5 to 8. From the averments made in the counter affidavit, as well as the judgment/order dated 10/09/2004, which has been annexed as Annexure-A/R-5 to the said counter affidavit, it appears that one "Mahendra Singh was also claiming to have purchased a portion of the disputed land by virtue of a registered sale deed said to have been executed by the aforementioned Chandagi Lai Agrawal from whom the petitioner of this writ petition has also purchased the lands. Against Mahendra Singh also an application for restoration was filed by the recorded tenants, for restoration of the disputed land on the ground that they were illegally dispossessed from their lands. The said case was registered as L.R. Case No. 528/1986. The Executive Magistrate allowed the application for restoration of lands in favour of the Tirbals but that order was set aside by the Appellate Court,

i.e. the Additional Collector, vide his order dated 27/11/1995. This order- of the Additional Collector was set aside by the impugned order dated 06/09/2000 by the Commissioner, North Chhotanagpur Division. Thereafter, the said Mahendra Singh challenged the order of the Commissioner dated 06/09/2000 by filing a writ petition before this Court being CWJC No. 224/2001, the judgment of which has been annexed as Annexure-A/R-5 to the Counter Affidavit,

9. From perusal of the judgment, passed in the aforesaid CWJC No. 224/2001, which has also been reported in Mahendra Singh Vs. State of Jharkhand and Others, , it appears that in Para-14 thereof, the learned Single Judge has held that the compromise decree obtained by Chandagi Lal Agrawal in Title Suit No. 42/1960 was collusive one. Paragraphs 14, 30 and 32 of the aforesaid judgment are relevant for the purpose of this case and, therefore, the same are quoted herein below:

14. Taking into consideration the facts discussed above, I have no hesitation in holding that the decree obtained by one Chandagi Lai Agrawal in Title Suit No. 42/60 was collusive one and in absence of nay evidence of possession from the side of the petitioner it cannot be held that the predecessor-in-interest of the petitioner came in possession over the land in question in the year 1960. Consequently, any document of transfer executed by Chandagi Lal Agrawal in favour of one Kamta Prasad Singh transferring the land in question will not in any way be binding upon the applicant/respondents who are the members of Schedule Tribe and were not party in the said transaction. It was for the first time the dispute arose in 1976 when the applicant respondents were sought to be dispossessed from the land for which application for restoration was filed in the year 1986. The Commissioner therefore rightly held that the applicants were dispossessed within 10 years from the date of filing of application and such dispossession amounted to transfer and therefore application was within time. I fully agree with the view taken by the Commissioner.

30. In the instant case, as noticed above, no transfer of the land was made by the respondents or their predecessor-in-interest who are the members of the Schedule Tribe rather their case is that they were dispossessed in 1976. It is the petitioner's case that one Chandagi Lal Agrawal got darraiyati settlement of the land in the year 1946 but no evidence was produced in support of such settlement. The petitioner alleged to have purchased the land in the year 1969 from one Kamla Prasad Singh who, in turn, had purchased it from Chandagi Lal Agrawal in the year 1969. In other words, Chandagi Lal Agrawal sold the land to Kamta Prasad by registered deed of sale dated 6.2.1969 and in the same year Kamta Prasad Singh sold the land to Kailash Singh, the father of the petitioner. The respondents, who are the members of Schedule Tribe, are not parties to any of such transfers made in favour of Kamta Prasad Singh or Kailash Singh. The finding of facts recorded by the Special Officer, Scheduled Area Regulation and the Commissioner, south Chhotanagpur Division is that the respondents were dispossessed in the year 1976. It has been well settled that dispossession

amounts to transfer and in that view of the matter the Commissioner rightly held that application for restoration was filed within 10 years from the date of dispossession.

32. After giving my anxious consideration in the fact of the case and considering the law discussed herein above, I am of the opinion that the Commissioner, South Chhotanagpur Division, Ranchi has rightly held that since the private respondents who belong to Schedule Tribe were dispossessed in 1976, restoration proceeding is neither barred by limitation nor barred by principles of res judicata. I do not find any reason to interfere with the said order.

10. From the findings given by the learned Single Judge, quoted above, it is clear that the points, which have been raised by the petitioner for challenging the impugned order passed by the Commissioner, dated 06/09/2000, contained in Annexure-5, were all considered and, thereafter, the learned Single Judge on consideration of the points raised, affirmed the order of the learned Commissioner, which is under challenge in this writ petition.

11. The learned Counsel for the respondents has further brought to my notice by producing a copy of the order passed in L.P.A. No. 686/2004, from which it appears that the judgment/order passed by the learned Single Judge aforementioned has been affirmed by a detailed order by the Division Bench on 29/04/2008. The copy of judgment passed in LPA No. 686/2004 has been kept on record.

12. Thus, considering the entire facts and circumstances mentioned above, since the impugned order of the learned Commissioner, dated 06/09/2000, contained in Annexure-5 to this writ petition, has already been tested and has been affirmed by the learned Single Judge by a judgment already noticed above and, thereafter, the said judgment of the learned Single Judge has already been approved by the Division Bench and, therefore, now the petitioner cannot be allowed to challenge the same very order of the Commissioner. In my view, this writ petition challenging the same very impugned order of the commissioner, dated 06/09/2000, contained in Annexure-5, is not maintainable. Accordingly, the same is hereby dismissed. However, there shall be no order as to cost.