

(2006) 08 JH CK 0081

In the Jharkhand High Court

Case No : Civil Writ Jurisdiction Case No. 1469 of 1999 (R)

Rajeshwari Devi and Others

APPELLANT

Vs

The Commissioner, South Chhotanagpur Division and Others

RESPONDENT

Date of Decision : 01-08-2006

Acts Referred:

Chotanagpur Tenancy Act, 1908 — Section 118, 217, 46, 71, 71A

Citation : (2006) 4 JCR 182

Hon'ble Judges : Amareshwar Sahay, J

Bench : Single Bench

Advocate : A.K. Sahani, for the Appellant; Rajiv Ranjan Mishra, G.P. - II for State and S.K. Ughal, P. Kumar and T. Kabiraj for Respondent Nos. 4 to 7, for the Respondent

Final Decision : Dismissed

Judgement

Amareshwar Sahay, J.—The Judgment/order of the Commissioner, South Chhotanagpur Division, Ranchi dated 20.04.1999 in S.A.R. Revision No. 288 of 1987 contained in Annexure - 3 to the writ application is under challenge, whereby the learned Commissioner, in exercise of the powers u/s 217 of the Chhotanagpur Tenancy Act (in short C.N.T. Act) has allowed the revision filed by the respondents by setting aside the order dated 24.09.1986 of the Special Officer, Scheduled Area Regulation (Annexure - 1) and the appellate order dated 25.08.1987 (Annexure - 2).

2. The land in question in the present case is Plot No. 608 of Khata No. 1 area 42 Decimals situated in village - Haradih, P.S. -Tamar, District - Ranchi. This land was recorded in the Survey Record of Rights as "Zirat" land of ex-landlord Manki Sita Nath Singh. The ex-landlord settled the above lands with the fattier of the Respondent Nos. 4 to 7 i.e. with Late Sukhu Mahto on 22.08.1951 by a Hukumnama.

3. The Petitioners herein filed an application u/s 71-A of the C.N.T. Act for

restoration of the lands in question on the ground that the settlement of the lands by their ancestors in favour of the Respondent's father Sukhu Mahto through Hukumnama dated 22.08.1951 was illegal since it was made in contravention of the provisions of Section 46 of the C.N.T. Act and no prior permission of the Deputy Commissioner was taken before transfer of the lands to Sukhu Mahto.

4. The application for restoration was allowed by the Special Officer, S.A.R. vide Annexure - 1 to this writ application. The said order of the Special Officer was challenged by present Respondents 4 to 7 in appeal but vide the appellate order dated 25.08.1987 (Annexure - 2), the appeal was dismissed. Thereafter, a revision was filed by the present Respondent Nos. 4 to 7 before the Commissioner, South Chhotanagpur Division which was allowed vide the impugned order dated 20.04.1999 contained in Annexure - 3 to this application.

5. The question for consideration in this case is as to whether Section 71-A of the C.N.T. Act can be made applicable for restoration of "Zirat" lands? "

6. There is no dispute of the fact that land in question was recorded in the Record of Rights as "Zirat" of ex-landlord Manki Sita Nath Singh. "Zirat" lands are privileged lands of the ex-landlord.

In order to decide the question, it is necessary to examine Section 46 and Section 71-A of the C.N.T. Act which reads as under.

Section 46 of the C.N.T. Act reads as under:

46. Restrictions on transfer of their rights by raiyats. -

(1) No transfer by raiyat of his right in his holding or any portion thereof-

(a) by mortgage or lease for any period expressed or implied which exceeds or might in any possible event exceed five years, or

(b) by sale, gift or any other contract or agreement,

shall be valid to any extent:

Provided that a raiyat may enter into a bhugut bandha "mortgage or his holding or any portion thereof for any period not exceeding seven years or if the mortgagee be a society registered or deemed to be registered under the Bihar and Orissa Co-operative Societies Act, 1935 (B & O. Act VI of 1935) for any period not exceeding fifteen years:

Provided further that-

(a) an occupancy - raiyat who is a member of the [Scheduled tribes] may transfer with the previous sanction of the Deputy Commissioner his right in his holding or a portion of his holding by sale, exchange, gift or will to [another person who is a member of the scheduled tribes and] who is a resident within the local limits of the area of the police-station within which the holding is situate;

71A. Power to restore possession to member of the Scheduled Tribes over land unlawfully transferred.

If at any time it comes to the notice of the "Deputy Commissioner that transfer of land belonging to a raiyat who is a member of the Scheduled Tribes has taken place in contravention of Section 46 or any other provision of this Act or by any fraudulent method [including decrees obtained in suit by fraud and collusion] he may, after giving reasonable opportunity to the transferee who is proposed to be evicted, to show cause and after making necessary enquiry in the matter, evict the transferee from such land without payment of compensation and restore it to the transferor or his heir, or in case the transferor or his heir is not available or is not willing to agree to such restoration, re-settle it with another raiyat belonging to the Scheduled Tribes according to the vitiating custom for the disposal of an abandoned holding

Thus, it appears that Section 46 of the C.N.T. Act provides that a prior permission of the Deputy Commissioner is required to be taken before a raiyat transfers his land to another person who is a Scheduled Tribe and who is a resident of the area of same Police Station within which the holding is situated and if in violation of Section 46 of the C.N.T. Act, a transfer of raiyati land is made then in that case, such transfer is said to be illegal.

Section 71 clearly says that if at any time it comes to the notice of the Deputy Commissioner that transfer of land belonging to a "Raiyat" who is a member of the Scheduled Tribe has taken place in contravention of Section 46 or any of the provisions of this Act or by any fraudulent method, he may after enquiry evict the transferee.

7. In the present case, the petitioners are no doubt aboriginals but their ancestors were the ex-landlords of the village and they had settled their privileged land i.e. "Zirat" land to Sukhu Mahto, father of the Respondent Nos. 4 to 7 by Hukumnama dated 22.08.1951.

"Zirat" lands which are defined u/s 118 of the C.N.t. Act are the landlord's privileged lands which are cultivated by the landlord himself or by his servants.

The petitioner's ancestors Manki Sita Nath Singh was the ex-landlord and the lands in question was his "Zirat" land.

Section 46 of the C.N.T. Act does not provide that a landlord is required to take permission of the Deputy Commissioner to create a raiyat or tenant under him.

Therefore, the settlement of the lands in question by Hukumnama dated 22.08.1951 by Manki Sita Nath Singh, the ex-landlord in favour of the father of the Respondent Nos. 4 to 7, cannot be said to be illegal on the ground that no prior permission of the Deputy Commissioner was taken. As a matter of fact, no such permission was required to be taken and therefore, the said transaction was not in violation of Section 46 of the C.N.T. Act.

So far as the applicability of Section 71-A of the C.N.T. Act with respect to "Zirat" lands of landlord is concerned, I hold that Section 71-A of the C.N.T. Act can be invoked only when an illegal transfer of a raiyati land of a raiyat belonging to a member of Scheduled Tribe has taken place in contravention of Section 46 Or any other provision of the Act and not otherwise. A "Zirat" land which is privileged land of ex-landlord cannot be said to be a "raiya" land and therefore, Section 71-A has got no application so far as "Zirat" lands are concerned.

In the present case, the petitioner were neither raiyats nor their raiyati lands were transferred in contravention of Section 46 of the C.N.T. Act and therefore I hold that application for restoration filed by the petitioners or their father u/s 71-A of the C.N.T. Act was not maintainable. The learned Commissioner rightly set aside the order dated 24.09.1986 of the Special Officer (Annexure - 1) and the appellate order dated 25.08.1987 (Annexure - 2) and he rightly held that Section 71-A was not applicable in this case.

Accordingly, this writ application has got no merit and as such, the same is dismissed.

No costs.