
(2006) 03 JH CK 0044

In the Jharkhand High Court

Case No : Civil Writ Jurisdiction Case No. 4242 of 1996

Sakhiya Kumari

APPELLANT

Vs

State of Bihar (now Jharkhand) and Others

RESPONDENT

Date of Decision : 30-03-2006

Acts Referred:

Chotanagpur Tenancy Act, 1908 — Section 46, 48(4), 68, 71, 71A

Citation : (2006) 3 JCR 204

Hon'ble Judges : R.K. Merathia, J

Bench : Single Bench

Advocate : Amar Kumar Sinha, for the Appellant; Pradip Modi, Government Pleader No. I for Respondent Nos. 1 to 4, for the Respondent

Final Decision : Dismissed

Judgement

R.K. Merathia, J.—Petitioner has prayed for quashing the order dated 31.3.1987 (Annexure 6) passed by the Sub-Divisional Officer, Khunti (respondent No. 4) in S.A.R. Case No. 2 of 1986-87 and also the order 10.9.1996 (Annexure 8) passed by the Commissioner, South Chotanagpur Division, Ranchi (respondent No. 2) in S.A.R. Revision No. 87 of 1989 confirming the said order.

2. By the said orders, the application for restoration of land filed by respondent No. 5 and his father u/s 71A of the Chotanagpur Tenancy Act, 1908 (hereinafter referred to as "the Act") was allowed.

3. Their case was that they have been dispossessed by petitioner from the lands in question which belonged to their agnate Mostt. Mangari Mundain. The land in question is 0.91 acres of land arising out of Revisional Survey Plot No. 75 and 0.79 acres of land out of the Revisional Survey Plot No. 79 of Khata No. 231 under Khewat No. 16 situated at village Rolagutu, P.S. Karra, District Ranchi.

4. Petitioner's case was that the said application u/s 71A was barred by res judicata; that the lands in question were taken over by the then Zamindar after the recorded raiyat Mostt. Mangari Mundain died issueless and it was given to the

petitioner who was the kept of the son of Zamindar; that she has been in possession since 1953-54; she got her name mutated in Mutation Case No. 261 of 1964-65 and has been paying rent; there being no ingredients of transfer, Sections 46, 68 and 71A of the Act were not attracted.

5. After hearing the parties, the Sub-Divisional Officer held that the alleged transfer of land by Zamindar in favour of the petitioner was hit by Section 46 and respondent No. 5, a member of the Scheduled Tribe community was illegally dispossessed. Moreover such dispossession was also hit by Section 68 of the Act. Accordingly, he directed the petitioner to restore the land to respondent No. 5.

6. Petitioner preferred appeal against the said order. It was allowed on the ground that-respondent No. 5 was dispossessed prior to 1965; that the petitioner is coming in possession since 30 years and that her name has been mutated.

7. Respondent No. 5 challenged the said order before the revisional authority. After perusing the documents and after hearing the parties, he held that-the contention of the petitioner that the land was transferred in her favour u/s 68 of the Act is untenable, as there was no decree or order ejecting respondent No. 5. He further held that admittedly respondent No. 5 was the descendant of the recorded tenant and, therefore, it follows that in the absence of any legitimate explanation as to how the land was transferred from the descendant of recorded tenant to the petitioner, any transfer has to be considered illegal and against the provision of Section 46 of the Act. He further held that the appellate authority without considering the relevant aspects and without any basis held that the petitioner was in possession of the land in question for the last 30 years. Accordingly, the revision petition was allowed in favour of respondent No. 5.

8. In my opinion, the first contention of res judicata raised by the petitioner is not tenable. Admittedly after the suit (T.S. No. 19 of 1980) was transferred, it was dismissed for non-prosecution on 25.5.1983. It appears that the suit was abandoned by respondent No. 5. Moreover, in view of paragraphs 4 to 6 of the judgment of Shivashankar Prasad Shah and Others Vs. Baikunth Nath Singh and Others, . and Paragraphs 17, 12, 24 and 25 of Ram Gobinda Dawan and Others Vs. Smt. Bhaktabala, . it cannot be held that the application of respondent No. 5 u/s 71 of the Act was barred by res judicata.

9. Petitioner's second contention that as per Section 48(4) of the Act, no claim for restoration of bhuinhari land is maintainable after 12 years is wholly misconceived. This is not a case of transfer u/s 48(4) of the Act. There is no transfer of any bhuinhari tenure by a member of bhuinhari family. Accordingly, the judgments relied on by the learned Counsel for the petitioner based on Section 48(4) are of no help to the petitioner.

10. The alleged surrender of the lands by the ancestors of respondent No. 5 to Zamindar amounts to transfer. Pandey Orson Vs. Ram Chander Sahu and others, .can be seen. Admittedly there is no permission for such transfer. Thus the alleged surrender/transfer is hit by Section 46 of the Act. Further petitioner

could not show that she was in possession from 1952-53. Surprisingly, she filed the mutation case only in 1964. Moreover, the order passed in mutation case and the rent receipts issued in her favour cannot validate the illegal transfer and illegal dispossession of respondent No. 5. Further, the dispossession of respondent No. 5 was hit by Section 68 of the Act in the absence of any order of the competent authority in this regard.

11 It may be noted that from the impugned orders it does not appear that petitioner claimed herself to be a member of scheduled tribe being Munda by caste, but in the writ petition, she has raised such claim. Otherwise also, she has been changing her stand on facts.

12. Thus on examining the matter from all possible aspects, I affirm the impugned order of Revisional Authority and dismiss the writ petition with cost of Rs. 5,000/- payable by the petitioner to respondent No. 5. If the land has not been restored, petitioner is directed to hand over it's possession to respondent No. 5 within a month from today.