
(2016) 07 JH CK 0020

In the Jharkhand High Court

Case No : Writ Petition (C) No. 3709, 3710 of 2003.

Sanjay Oraon - Petitioner @HASH The State of Jharkhand

Date of Decision : 21-07-2016

Acts Referred:

Chotanagpur Tenancy Act, 1908 — Section 71

Citation : (2017) 1 AIRJharR 832 : (2016) 4 JBCJ 347 : (2017) 1 JCR 588 :
(2016) 4 JLJR 389

Hon'ble Judges : Aparesh Kumar Singh, J.

Bench : Single Bench

Advocate : Mr. R.R. Tiwari, Advocate, for the Petitioner; Mr. Vineet Prakash, J.C to S.C.(L and C) and Mr. Sahil, J.C to S.C.(L and C), for the State; M/s. Satish Kr. Ughal and Tapas Kabiraj, Advocate, for the Private Respondents

Final Decision : Dismissed

Judgement

1. Heard learned counsel for the parties.

2. In both the writ petitions, the common order dated 5.5.2003 passed by the Commissioner, North Chotanagpur Division, Hazaribag in Land Restoration Revision No. 62 of 2002 and 63 of 2002 are under challenge where under he has set aside the order dated 25.6.2002 passed by the Additional Collector, Chatra in Land Restoration Appeal No. 98 of 2002 and 99 of 2002 and has also set aside the order dated 8.5.2002 passed by the Sub Divisional Officer (S.D.O.), Chatra in Land Restoration Case No. 2/1994-95 and 1/1994-95. Petitioner in both the writ petitions are the same while the private respondents are different. In the Land Revision Case No. 62/02, restoration of plot no. 27, 32, 61, 77, 78,98,99, 105, 106, 116, 118, 188 and 189 involving 9.80 acres of Khata no. 7 and in Revision No. 63/02, restoration for plot no. 18,29,30,63,82,90,185,180, 242,195, 204, 205, 302,307, 350 of Khata no. 12 measuring an area of 9.46 acres of village Mangardaha, P.S. Piparwar District Chatra were in question. Petitioner claimed to be a Tribal Tenant whose name was recorded in the cadestral survey records and continued in possession over the aforesaid piece of land till he was dispossessed sometime in the year 1982-83 by the private respondents leading to the

institutions of Land Restoration cases in the year 1984-85.

3. It is incidental to state herein that the order dated 8.5.2002 passed by the Land Restoration Officer is on remand by the Additional Collector, Hazaribag. It is also relevant to mention here and as is evident from the impugned orders and the pleadings on record that the land in question stood acquired by the Central Coalfields Limited sometime in the year 1985 and compensation as well as employment has been given to the private respondents. The private respondents set up a plea before the inferior authority that the Tribal tenant failed to deposit the rent to the Zamindar and surrendered their land where after by way of a Hukumnaka on 10.5.1937, the land was settled in favour of the ancestors of the private respondents who made the land cultivable and paid rent to the Zamindar. The Zamindar filed his return after vesting which refer to the plots given in settlement to the ancestors of the private respondents. It is their case that it is only in 1984 that the petitioner filed a petition for restoration of the land in question in order to make a claim for job in Piparwar Project under C.C.L after the acquisition was over. The restoration case was registered as 16/1985-86 and 27/1986-87 before the Deputy Collector, Land Reform who dismissed the claim of the petitioner. Thereafter the Additional Collector, Chatra remanded the case to the S.D.O, Chatra who heard and passed the order dated 8.5.2002 allowing the restoration in favour of the Tribal applicant i.e. petitioner herein. The Additional Collector, Chatra dismissed the appeal at the admission stage and thereafter the private respondents preferred the revision petition before the Commissioner, North Chotanagpur Division, Hazaribag from whose order the instant writ petition arises.

4. Perusal of the relevant orders passed by the S.D.O, Chatra and the revisional authority, Commissioner, North Chotanagpur Division, Hazaribag reveal that claim of the private respondents were based on the basis of Hukumnana in their favour executed on 10.5.1937 and supported by the return filed by the Zamindar after vesting of Zamindari. Pursuant there to, their names were also entered in Register-II and continuously running. It is also evident that the land was acquired for C.C.L wherein the private respondents participated and got compensation. Petitioner herein had not been able to produce the occupancy raiyat certificate of the village in question. The claim finally got to be decided in favour of the private respondents by setting aside the order of the S.D.O, Chatra by the Commissioner on the following findings:-

(i) that the revenue documents and jamabandi record supported with valid document of settlement and return produced by the applicant/private respondents herein were questioned and doubted by the S.D.O, Chatra without any basis.

(ii) There was no dispute in respect of the land at the time of vesting in 1953 and by that fact the dispossession, if any of the petitioner herein/Tribal was beyond more than 31 years.

(iii) Learned Commissioner also took into account that the permission for surrender was added in the C.N.T. Act in 1947 where as surrender was done prior to 1937.

By the impugned orders, it has been held that the S.D.O, Chatra had no reason to dispute and ignore the basic revenue documents produced by the private respondents, which were conclusive of their title and possession in respect of the said piece of land for more than 50 years.

5. Learned counsel for the petitioner has relied upon the order passed by the S.D.O, Chatra and made the following submission:-

(i) that the documents of vesting of Zamindari and Register-II produced by the private respondents, herein could not be verified in the absence of original documents in the office of Revenue authority.

(ii) evidence produced by the petitioner before the S.D.O, Chatra by the local villagers did show continuance of possession of the petitioner on the aforesaid piece of land till 1982.

(iii) The claim for restoration was not beyond limitation period as prescribed under Section 71 of the C.N.T Act, 1908.

The S.D.O, Chatra therefore, rightly disbelieved the claim of the private respondents herein of continuous possession of the land for the period claimed by them and directed restoration of the land in favour of the petitioner as he was a dispossessed Tribal who needs to be protected in terms of the provisions of C.N.T Act from any such illegal dispossession.

6. Learned counsel for the petitioner however has not been able to give categorical answer to the issue that when the land in question were being acquired by the C.C.L under the provisions of Land Acquisition Act, 1894 and the property in question had passed encumbrance free in favour of the State/C.C.L on payment of compensation to the private respondents, whether the petitioner herein had at any point of time made an objection to such acquisition in the land acquisition proceedings.

7. Land have been acquired in favour of C.C.L as has also been taken note of by the S.D.O, Chatra in the order dated 8.5.2002. However, he has proceeded to hold that amount of compensation etc. obtained by the private respondents herein should now be tendered in favour of the petitioner. That is how he has decided the case in favour of the petitioner.

8. The private respondents have defended the impugned order on a number of grounds. It is submitted that the evidence of settlement of land in favour of the ancestors of the private respondents, documents showing return filed by the Zamindar at the time of vesting and opening of jamabandi in the name of ancestors of the private respondents in Register-II are such documents, which are unimpeachable in nature, which should not have been disbelieved by the

S.D.O, Chatra to pass an order in favour of the petitioner when the land itself was acquired by C.C.L and compensation was also received by the private respondents. The claim of restoration by the petitioner is therefore much belated after a period of 50 years since it was settled much earlier in favour of ancestors of the private respondents and more than 31 years after vesting of zamindari.

9. I have considered the rival pleas of the parties and perused the relevant materials on record and the impugned orders as well as order passed by the S.D.O, Chatra. The documents produced by the private respondents before the inferior revenue authorities relating to settlement through Hukumnana appears to be supported by returns filed by the Zamindar at the time of vesting of Zamindari and pursuant thereto, the names of the ancestors of the private respondents were also opened in the Jamabandi in Register-II. These documents have been disbelieved by the S.D.O, Chatra simply on the ground that the originals were not available in the office of the Revenue authorities. The S.D.O, Chatra has however refused to take into account the fact that petitioner had failed to produce any occupancy certificate of the Village in respect of which he claimed restoration of the piece of land. The Commissioner, North Chotanagpur Division, Hazaribag in the impugned orders has considered all aspects of the matter and rival pleas of the parties and rightly arrived at a finding that the petitioner herein had failed to establish any ground for restoration of the aforesaid piece of land under Section 71 of the C.N.T. Act. The acquisition of the land by the C.C.L prior to filing of application for restoration is another fact which goes against the petitioner in any such claim for restoration as he does not seem to have made any objection to such acquisition and compensation in favour of the private respondents at the relevant point of time. There does not appear to be any legal or factual infirmity in the order impugned passed by the learned Commissioner, North Chotanagpur Division, Hazaribag. Therefore, no ground for interference are made out.

10. The writ petitions are accordingly dismissed.