
(1993) 10 PAT CK 0018

In the Patna High Court

Case No : Civil Writ Jurisdiction Case No. 1077 of 1990 (R)

Sarjug Sharan Singh and Others

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 06-10-1993

Acts Referred:

Citation : (1993) 10 PAT CK 0018

Final Decision : Allowed

Judgement

S.B. Sinha, J.—All these four writ applications involving common questions of fact and law were taken up for hearing together and are being disposed of by this common judgment.

2. The Petitioners in these applications have challenged the orders dated 27.5.1985 which are contained in Annexure 12 to CWJC No. 1077/90(R), Annexure 10 to CWJC No. 1076/90(R), Annexure 12 to CWJC No. 1075/90(R) and Annexure 9 to CWJC No. 1074/90(R).

3. The fact of the matter lies in a very narrow compass.

4. One Mangra Bhagat Oraon, son of Bosla Oraon executed a registered deed dated 14.8.1984 in favour of one Chakra Mahto, Bhola Mahto who are by caste Teli. The name of Chakra Mahto was entered into in the survey settlement record of rights being Khata No. 237, prepared in the year 1919, a copy whereof is contained in Annexure 1 to the application. Chakra Mahto died leaving his son Panu Mahto and Bhawar Mahto. In the revisional survey settlement records of right the lands in question were recorded in the name of Panu Mahto. A copy of Khatian in question has been annexed with the writ petition and marked as Annexure 2 to the application.

5. According to the Petitioners, after the death of Panu Mahto, his sons partitioned the recorded lands amongst themselves and got their names mutated in the office of the State of Bihar. Mukund, son of late Panu Mahto executed a deed of sale in favour of the Petitioners. The Petitioners got their names mutated

in the office of the State of Bihar and had been paying rent to it. The successor of Mohan Sahu also executed sale deeds in favour of some of the Petitioners in these applications.

6. Meanwhile, the Respondent No. 4 of each case filed restoration applications purported to be u/s 71A of the Chotanagpur Tenancy Act. In that proceeding the Petitioners were not noticed. A certified copy of the said application is contained in Annexure 11.

In column No. 6 of the said application, it has been stated that the transfers have only been made in an illegal manner. From a perusal of the said application it does not appear that any particulars of any transfer by a member of the Scheduled Tribe in favour of persons not belonging to Scheduled Tribe or their predecessor in interest had been furnished. In fact, from a perusal of the said application, it appears that the Respondent No. 4 categorically stated therein that transfer has not been made by any registered document. However, by reason of the impugned order, the said applications for restoration have been allowed.

7. Mr. Barnwal S. Lal, the learned Counsel appearing on behalf of the Petitioners has raised a short question in support of these applications. The learned Counsel submitted that from the unimpeachable public documents, as noticed hereinbefore, it would be evident that the Petitioners and their predecessor-in-interest have been in possession of the lands in question since 1884 when the Chotanagpur Tenancy Act, 1908 did not come into force.

8. In that situation, according to the learned Counsel, the question of annulment of the said transfers purported to be in terms of Section 71A of the Chotanagpur Tenancy Act does not arise.

9. The learned Counsel further submitted that in any event, as the transfers had been made in the year 1884, the applications for restoration must be held to be barred under the law of limitation.

10. In this case neither any counter affidavit has been filed nor the Respondent No. 4 has appeared to oppose these applications.

In this view of the matter, the statements made in the writ applications have to be accepted as correct.

11. Prior to coming into force of the Chotanagpur Tenancy Act, there does not appear to be any statutory embargo in transferring a land by a member of the Scheduled Tribe in favour of a person who was not a member of the Scheduled Tribe.

12. This Court in a series of decisions has clearly held that an application for restoration cannot be filed in terms of Section 71A of the Chotanagpur Tenancy Act upon expiry of the period of limitation.

13. In *Bukan Ansari and Others Vs. The State of Bihar and Others*, , this Court has held as follows:

Mr. Verma has rightly drawn my attention to the fact that only in the year 1986, Bhuinhari tenures came within the purview of Section 71-A of the Act and thus from 1986 alone, the period of limitation would be deemed to have been extended to 30 years. Respondent Nos. 2, 3 and 4, however, had not dealt with the case from this angle as Schedule Area Regulation was not amended at that time.

This aspect of the matter has been considered by me in great details in C.W.J.C. No. 695 of 1987 (R) disposed of on 23.9.1991. In that decision. It has been held that the limitation provided for restoration of the land for violation of Section 48 of the Act would be 12 years. It has further been held that under the Schedule Areas Regulation, 1969 as amended in 1986 will be prospective in nature and thus only in the event, the aforementioned period of limitation had not expired at the time when the aforementioned Schedule Areas (Amendment) Regulation, 1986 came into force, the period of limitation would be extended to 30 years. However, in this case, even if it would be held that zerpeshgi leases were executed in the year 1944, evidently the application, for restoration was barred by limitation.

14. This question had again come up for consideration in M.C. Mehta Vs. Union of India (UOI) and Others, , wherein it has been held as follows:

Further, in view of the amendments made in Articles 64 and 65 of the Limitation Act, 1963 effected by reason of the provisions of Schedule Area Regulation, 1969, the period of limitation for filing such an application would be 30 years.

15. However, it may be clarified that the period of limitation for filing an application would be 30 years subject to the condition that prior to coming into force of the Schedule Area Regulation, 1969, the transferee has not acquired title by virtue of adverse possession by continuously remaining in possession for a period of 12 years from the date of transfer. Only in a case where the transferee has not acquired defeasible title on the date of coming into force of Schedule Area Regulation, 1969, the period of limitation would be extended to 30 years.

16. For the reasons aforementioned, these applications are allowed and the impugned orders as contained in Annexures 12 to CWJC No. 1077, Annexure 10 to CWJC No. 1076, Annexure 12 to CWJC No. 1075 and Annexure 9 to CWJC No. 1074 of 1990 (R) are quashed. However, in the facts and circumstances of the case, there will be no order as to costs.