
(2006) 11 JH CK 0084
In the Jharkhand High Court

Shiv Shankar Sahu

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 09-11-2006

Acts Referred:

Chotanagpur Tenancy Act, 1908 — Section 71A

Citation : (2006) 11 JH CK 0084

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

Bench : Single Bench

Final Decision : Allowed

Judgement

R.K. Merathia, J.—Petitioner has prayed for quashing the order dated 7.1.1998 passed by respondent No. 4 in SAR Case No. 57 of 1976 (Annexure-3) and the order dated 14.4.1979 passed by respondent No. 3 in SAR Appeal No. 148 of 1979 (Annexure-4) as also the order dated 25.8.1998 passed by respondent No. 3 in Ranchi Rev. Revision No. 128 of 1979 (Annexure-7) allowing the application of respondent No. 5 filed u/s 71A of the Chotanagpur Tenancy Act ("the Act" for short).

2. Respondent No. 5 filed an application u/s 71A of the Act on 18.3.1976 for restoration of possession of 1.67 decimal of land of Khata No. 158. His father Turia Oraon surrendered the land in question on 14.2.1945 by a registered document to the landlord, who settled the same on 10.3.1945 by Sada Hukumnama to the father of the petitioner.

3. Respondent No. 4 allowed the said petition for restoration.

However, respondent No. 5 was directed to pay Rs. 170/- on account of development made by the petitioner. Petitioner filed an appeal which was also dismissed. The revision filed by the petitioner was rejected. Petitioner filed writ petition being C.W.J.C. No. 364 of 1980 (R). While hearing the matter, this Court found that on 14.2.1945 the father of respondent No. 5 herein, surrendered the land in question in favour of the landlord and thereafter fresh settlement was

granted by the landlord in favour of petitioner. This Court did not consider the question as to whether the surrender and settlement were part of same transaction or no... Though it was observed that only because settlement is made within a few days of surrender, it does not necessarily mean that the surrender and settlement form part of same transaction and such question would depend upon the facts and circumstance of each case. By order dated 13th May" 1987 this Court quashed the revisional order and the Commissioner was directed to pass a speaking order in the revision petition on merits. Thereafter, the revisional court heard the parties and dismissed the revision by the impugned order dated 25.8.1998.

4. It is admitted position that the Father of respondent No. 5 surrendered the land in question by a registered deed on 14.4.1945 with the landlord. In the case of Pandey Orson Vs. Ram Chander Sahu and others, , the non-tribal transferee failed to establish resumption of property by his transferor. Thus the case of Pandey Oraon (Supra) is of no help to respondent No. 5. Relying on the said judgment of Pandey Oraon (Supra), it was held by the Division Bench in the case of Situ Sahu and Others Vs. State of Bihar and Others, , that as the surrender and settlement were in quick succession, it was a case of transfer attracting Section 71A of the Act. The Supreme Court set aside the judgment of Situ Sahu (Supra) in the case reported in Situ Sahu and Others Vs. The State of Jharkhand and Others, . In paragraph 13 of the said judgment it was held that assuming that surrender and settlement were in quick succession and could be viewed as part of same transaction within the meaning of term transfer, nonetheless there was nothing to show that the transfer was contrary to any other provision of the Act. The Supreme Court further held that 40 years was not a reasonable lime for exercise of powers u/s 71A of the Act. In the case on hand, even according to the respondent No. 5, his father surrendered the land in question by registered deed on 14.4.1945. There is nothing to show that the settlement was contrary to any other provision of law. Moreover the application u/s 71A of the Act was filed after 30 years of such surrender/settlement. The contention of respondent No. 5 that petitioner did not derive any title by Sada Hukumnama cannot be gone into in this proceeding u/s 71A of the Act.

In the circumstances, there is no option than to allow the writ petition. Accordingly, the impugned orders are set aside. However, there will be no order as to costs.