

(2012) 08 JH CK 0188

In the Jharkhand High Court

Case No : Writ Petition (C) No. 6170 of 2004

Shyam Narayan Singh and Another

APPELLANT

Vs

The Commissioner, South Chhotanagpur Division, Ranchi and
Others

RESPONDENT

Date of Decision : 08-08-2012

Acts Referred:

Citation : (2012) 4 JLJR 312

Hon'ble Judges : P.P. Bhatt, J

Bench : Single Bench

**Advocate : P.K. Prasad, Ayush Aditya and Sidhant Suman, for the Appellant;
Bharat Kumar and Ashish Jha For the Respondent No. 4, for the Respondent**

Final Decision : Allowed

Judgement

P.P. Bhatt, J.—Heard the learned counsel for the parties and perused the impugned order. The present writ petition has been filed for quashing the order dated 10.11.2004 (Annexure-4) passed by the respondent No.-1 i.e. Revisional Authority in S.A.R. revision No. 179 of 1998, whereby the Revision application has been allowed and the original order passed by special officer dated 26.6.1989 and the appellate order passed by appellate authority dated 9.10.1998 i.e. respondent Nos. 3 and 2 respectively have been set aside.

2. In this case earlier Respondent No. 4 filed an application before the Deputy Commissioner, Ranchi claiming restoration of the lands comprised within R.S. Plot No. 1272 (57 Decimals), 1273 (5 Decimals) and 1274 (55 Decimals) under Khata No. 93 of Mouja-Morabadi, P.S. No. 192 District Ranchi and on the basis of the said application a S.A.R. Case No. 108A 87-88 was registered in the Court of the Special Officer, Scheduled Area Regulation. The learned S.A.R. officer by terms of judgment dated 26.6.1989 rejected the restoration application on the ground that the provisions of the Act were not applicable, to the land which has been converted into Chapperbandi by terms of registered sale deed dated 10.10.1947.

The Respondent No. 4 preferred S.A.R. Appeal No. 9R15/89-90 before the Additional Collector, Ranchi challenging the order dated 26.6.89 and the learned Additional Collector in terms of judgment dated 9.10.1998 dismissed the Appeal mainly on three grounds, firstly, on the ground that the land had been converted into chapperbandi land by way of registered sale deed dated 10.10.1947, therefore, the provisions of Section 71A of the CNT Act was not applicable, secondly, on the ground that the restoration application was barred by limitation and thirdly, on the ground that on 27.9.1946, the date of transfer of the land, there was no restriction in so far as transfer inter se Scheduled Tribes are concerned therefore there was no question of violation of the provisions of the Act.

Against the order passed by the Additional Collector, the Respondent No. 4 preferred S.A.R. Revision No. 179/98 before the Respondent No. 1, and the Respondent No. 1 in terms of order dated 10.11.2004 allowed the Revision Application and ordered for restoration of the land by setting aside the orders of the Special Officer dated 26.6.89 and the Additional Collector dated 9.10.98.

3. Learned Counsel for the petitioner has raised mainly three points. The first point is in respect of the transfer of land by recorded raiyat to other tribal and in this context he submitted that the land in question was transferred to a tribal one Alfes Kujur son of Pande Kujur by virtue of registered Sale Deed No. 6231 dated 27.9.1946 i.e. prior to 1947 therefore, the (sic) put by the Amending Act, 1947 which provides for taking prior permission of Deputy Commissioner before any transfer shall not apply to the present case. In support of his contention, the learned counsel for the petitioner referred to and relied upon the decision rendered in *Patras Oraon vs. State of Bihar* and *Ore*. Reported in (1991)2 BUR 1084 and submitted that in a case where both the parties are Scheduled Tribe and the transaction was made in the year 1944 therefore the embargo put by the Amending Act, 1947 shall not apply because the same was not given retrospective effect.

By referring the above judgment the learned counsel for the petitioners pointed out that the revisional authority has failed to appreciate and consider this question of law in its proper perspective. It is further submitted that competent authority as well as appellate authority have decided the issue in favour of the petitioners but the revisional authority has failed to appreciate this point of law and thereby committed an error in allowing the revision application.

4. The another point raised by the learned counsel for the petitioners is in respect of applicability of Section 71A of the Chhotanagpur Tenancy Act to Chhaparbandi land. He submitted that the land in question has been converted into Chhaparbandi land on 10.10.1947 and therefore, the provisions of Section 71A of CNT Act shall not be attracted. In this context, the learned counsel for the petitioner has referred to and relied upon the judgment reported in 1987 BLT (Rep.) 332 (Pat)(RB) [*Ashwini Kumar Roy vs. State of Bihar*] and submitted that Section 71A of the CNT Act is not applicable In Chhaparbandi land and this vital

point has not been considered at all by the revisional authority. Learned counsel for the petitioner submitted that the appellate authority has considered this issue but the revisional authority has failed to consider this point.

5. The last point raised by the learned Counsel for the petitioner is that the application for restoration was barred by law of limitation as the case was filed after 41 years of dispossession. And in support of his argument he referred to and relied upon judgment of Hon"ble Supreme Court rendered in the case of (i) Jai Mangal Oraon Vs. Smt. Mira Nayak and Others, , and (ii) Situ Sahu and Others Vs. The State of Jharkhand and Others,

With regard to the submission of the petitioner I perused the record and found that the opposite party dispossessed from the land on 27.9.1946, the date on which the recorded tenants have transferred the land to one Alfes Kujur son of Pande Kujur by virtue of registered Sale Deed and the application for restoration was filed in the year 1987 after about 41 years from the date of dispossession. I have also perused the judgments cited by the learned counsel for the petitioner.

The Hon"ble Supreme Court in the case of Jai Mangal Oraon Vs. Smt. Mira Nayak and Others, while interpreting the words "If at any time" given in Sec. 71A of the C.N.T. Act, held in para 16 as follows:--

16....it cannot be taken to mean that those powers could be exercised without any point of time-limit, as in this case after nearly about forty years unmindful of the rights of the parties acquired in the meantime under the ordinary law and the law of limitation. We consider it, therefore, inappropriate to countenance any such contentions in these proceedings.

In the case of Situ Sahu and Others Vs. The State of Jharkhand and Others, , the Hon"ble Supreme Court in Para 11 held as follows:--

11. We are, therefore, of the view that the use of the words "at any time" in Section 71A is evidence of the legislative intent to give sufficient flexibility to the Deputy Commissioner to implement the socio-economic policy of the Act viz. to prevent inroads upon the rights of the ignorant, illiterate and backward citizens. Thus, where the Deputy Commissioner chooses to exercise his power u/s 71A it would be futile to contend that the period of limitation under the Limitation Act has expired. The period of limitation under the Limitation Act is intended to bar suits brought in civil courts where the party himself chooses to exercise his right of seeking restoration of immovable property. But, where, for socioeconomic reasons, the party may not even be aware of his own rights, the legislature has stepped in by making an officer of the State responsible for doing social justice by clothing him with sufficient power. However, even such power cannot be exercised after an unreasonably long time during which third-party interests might have come into effect. Thus, the test is not whether the period of limitation prescribed in the Act of 1963 had expired, but whether the power u/s 71A was sought to be exercised after unreasonable delay.

From the guidelines given by the Hon"ble Supreme Court in the aforesaid cases I am of the view that in the present case also delay of 41 years shall be treated as unreasonable and the power for restoration cannot be exercised after delay of 41 years.

6. In view of the aforesaid discussion, this court is of the view that the revisional authority has not properly considered and decided the issue involved in the present case and thereby committed an error in allowing the revision application. It also appears that the competent authority as well as appellate authority has properly considered and decided the issue in favour of the present petitioners.

7. Learned counsel appearing on behalf of the respondents vehemently opposed the argument advanced by the learned counsel for the petitioners, While supporting the order passed by the revisional authority but the argument advanced by the learned counsel for the respondents cannot be accepted in view of the foregoing discussion in this matter.

8. In view of the facts and circumstances of this case, this court is of the view that the order dated 10.11.2004 passed by the revisional authority is not in accordance with the provision of law and as such it cannot sustain in eye of law and deserved to be set aside. Therefore, the order dated 10.11.2004 passed by the revisional authority is set aside. The writ petition is allowed, accordingly.