
(2006) 07 JH CK 0062

In the Jharkhand High Court

Case No : Civil Writ Jurisdiction Case No. 473 of 1998 (R)

Situ Ram Barai

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 24-07-2006

Acts Referred:

Chotanagpur Tenancy Act, 1908 — Section 71A, 72(4)

Citation : (2006) 4 JCR 415

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

Bench : Single Bench

Advocate : S.N. Lal and Rajiv Anand, for the Appellant; H.K. Mehta, for the Respondent

Final Decision : Allowed

Judgement

R.K. Merathiha, J.—Petitioner has challenged the order dated 23.9.1997, passed by respondent No. 2 in Lohardaga Revenue Revision No. 64 of 1991 (Annexure-9), confirming the order dated 30.4.1991, passed by the Additional Collector, respondent No. 3 in S.A.R. Appeal No. 20/1989-90 (Annexure-8), whereby the appeal filed by respondent No. 5 was allowed and the order dated 25.8.1989, passed by respondent No. 4 in S.A.R. Appeal No. 30/1980-81 was set aside.

2. According to the petitioner, the land of R.S. Plot No. 1174 appertaining to Khata No. 146, measuring in area 1.67 acres of village-Bethath, Thana-Lohardaga, now Kisko P.S., Thana No. 143, District-Ranchi, now Lohardaga was recorded in the Revisional Survey Record of Rights in the name of Rijha Oraon and Surja Oraon, who voluntarily and without receiving any consideration, surrendered the said land to the then landlords-Banshidhar Modi, Nagarmal Modi and Shri Sheo Narayan Modi, under registered deed dated 20.7.1934 (Annexure-1). After surrender, the then landlords entered on the said land and it became "bakast" land of the then landlords. Thereafter, the then landlords in terms of Section 72(4) of the Chhotanagpur Tenancy Act (the Act for short)

settled the said land to another tenant, namely Ishwar Dayal Barai @ Ishwar Ram Barai on 2.10.1934, who in turn executed a registered Deed of Kabuliyat on 2.10.1934 in favour of the then landlords (Annexure-2). After the said settlement, the settlee-Ishwar Dayal Barai came in Khas cultivating possession of the said land of R.S. Plot No. 1174 and he was paying rent to the then landlords (Annexure-3). Ishwar Dayal Barai died issue-less and after his death, his interest in the property devolved upon his nephew Lochan Ram Barai, who was his only heir and successor, and he came in exclusive and Khas cultivating possession of the said land besides other land so left by Ishwar Dayal Barai. After vesting of the estate, in the State of Bihar, return was filed by the then land-lord in the name of settlee and demand was also opened by the State in the name of Barai. Lochan Ram Barai also died leaving behind this petitioner as his legal heir and successor and the petitioner came in exclusive Khas cultivating possession of the said land and he was/is also paying rent to the State of Bihar. (Annexure-4). But in the year 1980-81, i.e. after lapse of more than 46 years, the respondent No. 5 filed an application u/s 71A of the Act for restoration of the land. Petitioner appeared and filed show cause stating inter alia the aforesaid facts and the certified copies of the said registered deed of surrender, Kabuliat and other papers like rent receipt etc. were also filed. After considering the entire case, respondent No. 4 rejected the application for restoration of respondent No. 5, against which he filed appeal, which was also dismissed. Then he filed Revision. The revisional court remitted the matter back to the appellate court and the appellate court also remanded the matter to respondent No. 4. Again, respondent No. 4 dismissed the restoration application vide Annexure-7, against which respondent No. 5 again filed an appeal. This time, the appellate court by order dated 30.4.1991 allowed the appeal mainly on the ground that prior permission of the Deputy Commissioner was not taken before such surrender and settlement and it appeared that the settlor and settlee tried to defeat the provisions of the Act: as only within three months of the surrender, settlement was done. Petitioner filed a revision, which was also dismissed mainly on the ground that the said documents-registered deed of surrender and Kabuliat were not available on the record and in any event such transaction was made within three months to defeat the provisions of the Act.

3. Mr. Lal, appearing for the petitioner, submitted that the revisional court committed an error of record inasmuch as the said documents were filed before respondent Nos. 3 and 4 and they considered them and passed orders on that basis. He further submitted that at the time of the said surrender and settlement, no permission of the Deputy Commissioner was required. He relied on the judgment of Supreme Court reported in Jai Mangal Oraon Vs. Smt. Mira Nayak and Others, to show that the statutory provisions as they stood in force neither envisaged permission from the Deputy Commissioner before a surrender by a tenant could be made of his interest in favour of landlord, nor could such surrender be held bad. Merely because Section 71-A commences with words "if at any time" it cannot be taken to mean that those powers could be exercised

without any point of time limit. He further submitted that in the said case also, more than 40 years had passed.

4. In spite of notice, nobody appeared for respondent No. 5.

5. Mr. Mehta, appearing for the State, produced the records as per the last order and fairly submitted that on going through the records, it appears that the said documents were filed but were taken back by the petitioner and therefore the Commissioner had to observe that the same were not available on the record.

However, he could not deny the said legal position put forward by Shri Lal.

But, Mr. Mehta submitted that in the aforesaid deed of surrender, there was no signature or thumb impression of the executant. Mr. Lal, in reply, rightly submitted that petitioner produced the certified copies of the originals, which clearly show that there was a signature of the executant thereon.

6. After hearing the parties, I am satisfied that the impugned orders are liable to be set aside in view of the said judgment of Jai Mangal Oraon (supra). Accordingly, this petition is allowed. The impugned orders are set aside. However, there will be no order as to costs.