

(1997) 07 PAT CK 0051
In the Patna High Court
Case No : C.W.J.C. No. 98 of 1988 (R)

Situ Sahu and Others

APPELLANT

Vs

State of Bihar and Others

RESPONDENT

Date of Decision : 03-07-1997

Acts Referred:

Constitution of India, 1950 — Article 226, 227

Citation : (1997) 2 BLJR 1536 : (1997) 2 PLJR 425

Hon'ble Judges : Loknath Prasad, J; Choudhary S.N. Mishra, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

Choudhary S.N. Mishra and Loknath Prasad, JJ.—In this writ application under Articles 226 and 227 of the Constitution of India, the petitioners have challenged the orders dated 9.5.1980, 9.4.1986 and 2.12.1986 passed by the respondent-authorities, copies of which have been made Annexures 1,2, 3 respectively, whereby and whereunder the lands, in question, were restored in favour of respondent No. 5 in purported exercise of power u/s 71-A of the Chhotanagpur Tenancy Act (hereinreferred to as the said Act).

2. The relevant facts in dispute are that the disputed lands appertaining to R.S. Khata No. 13 of will Chochkapi were recorded in the names of Kochya Oraon, Bechua Oraon and Jagna Oranon, who are ancestors of respondent No. 5 Jagna Oraon died immediately after the revisional survey. Kochya Oraon and Bachua Oraon surrendered the plot Nos. 588, 1883, 1884 and 1885 appertaining to Khata No. 13 measuring an area of 2.65 acres to the Maharaja of Chotangpur by a registered deed of surrender on 7.2.1938. The landlord subsequently settled the land with the petitioners through a sada hukumama on 25.2.38 and followed by grant of rent receipts. It is stated that after the settlement of the land the petitioners invested a lot of amount for improvement of the land, in question, and made it cultivable. On 3.2.78 respondent No. 5 filed an application u/s 71 of the Act for restoration of the land, in question, on the ground that the petitioners

had fraudulently acquired the land by means of sada hukumnama which was registered as S.A.R. Case No. 415/77-78 The Special Officer under the Scheduled Area Regulation by his order dated 9.5.80 has restored the land in favour of respondent No. 5 and directed to pay compensation of Rs. 10/- on the ground that no improvement has been made of the land, in question. The special officer while restoring the land in favour of respondent No. 5 has held that surrender and settlement were part of the same transaction, copy of the said order is made Annexure 1 to this writ application. The petitioners being aggrieved by the order passed by the special officer has filed an appeal which was registered as S.A.R. Appeal No. 259/80-81 before the Additional Collector, Ranchi. The appeal was ultimately dismissed by the Additional Collector by his order dated 19.4.86. However, the appellate court enhanced the compensation to Rs. 200/-. The petitioners also approached the revisional court and the respondent Commissioner by his order dated 2.12.86 dismissed the revision filed by the petitioners. It may be stated here that the party has laid evidence both oral and documentary before the original authority, namely, Special Officer and all the courts on the evidence available on record have come to a finding that the surrender and settlement were part of the same transaction and in violation of Section 46 of the Act. It was further held that petitioners did not make any improvement of the land save and except constructed two kutchha wells. The appellate authority has also come to a finding that the surrender and settlement made in great haste. The order by-passed the Chhotanagpur Tenancy Act. The respondent-authority has also come to a finding that there is no iota of evidence to suggest that the petitioners have made any improvement of the land, in question.

3 . The learned lawyer for the petitioners firstly assailed the findings of the respondent-authorities on the ground that order to attract the petition for restoration u/s 71A of the said Act, there must be evidence to show that there was illegal transfer by a member of scheduled tribe and in the instant case the ancestors of respondent No. 5 surrendered the disputed land in favour of the ex-landlord as early as on 7.2.1938 followed by settlement on 25.2.1938 by a Sada hukumnama in favour of the petitioner. So surrender is actually neither illegal nor it comes within the mischief of Section 71A of the Act as it is not a transfer and if it is not a transfer, then such petition is not maintainable. In support of this contention, he has relied upon two decisions of this Court, he has relied upon two decisions of the Single Judge of this Court reported in 1987 BLT 301, Budhu Mato and Anr. v. State of Bihar and other reported at page 303, Bishram Sahu v. Bhairu Oraon. In these two decisions, a principle was laid down by a Single Judge of this Court that a settlement made after one month or even after few days of the surrender by a member of the scheduled tribe does not necessarily mean that the surrender and the settlement would form part of the same transaction and the settlement is virtually a transfer in the grab of settlement and violates the provision of Section 46 of the said Act.

4. On the other hand, it was contended on behalf of respondent No. 5 that the

principle as laid down by the learned Single Judge in Budhu Mahto and Bishram Sahu (supra) are now no more applicable and a good law in view of the several decisions of this Court and that the Apex Court. He has relied on a Full Bench decision of this Court reported in 1985 PLJR 732 Bina Rani Ghosh v. Commissioner South Chotanagpur, and that of the Supreme Court reported in Pandey Orson Vs. Ram Chander Sahu and others, . It was held in Bina Rani Ghosh and that of Pandey Oraon (supra) that in Section 71- A in the absence of definition of transfer and consideration the situation in which exercise of jurisdiction is contemplated, the meaning of transfer cannot be confined to transfer under the Transfer of Property Act or a situation where transfer has a statutory definition. The provision contemplates that where possession has passed from one to another and has a physical fact the member of the scheduled tribe who is entitled to hold possession has lost it and a non- member has come into possession would be covered by transfer and a suit of that type would be amenable to exercise of jurisdiction within the ambit of Section 71A of the Act.

The provision is beneficial and the legislative intention is to extent protection to a class of citizens who are not in a position to keep their property to themselves in the absence of protection. Therefore, when the legislature is extending special liberal construction to the protective mechanism which would work out the protection and enable the spheres of protection to be effective.

5. Thus, now the matter is well settled and in that case also admitted the land belonged to the member of the Scheduled tribe and the so-called alleged surrender and settlement by the ex-landlord in favour of the petitioner are definitely n quick succession. So the authorities-respondent rightly held that it is a case of transfer and, thus, the provision of Section 71A is applicable. So, so far the contention of the learned lawyer for the petitioner that it is not a transfer has actually no force at all.

6. Secondly the counsel for the petitioner submitted that even if it may be construed to be transfer the still the authorities below have not been able to decide the entire case of the petitioner throughout that petitioner made substantial improvement in the land in question and, thus, they are entitled to adequate compensation and it was further submitted that in case of decision in S. Shahdul, v. State of Bihar and Ors. 1987 BLT 280, it was held by Single Judge of this Court that the quantum of compensation has to be determined after taking into consideration the factors enumerated in the 3rd proviso to Section 71A of the Tenancy Act and the compensation should not be illusory not to be given to the transferee by way of token grant and in this case only Rs. 200/- was granted as compensation by the authorities which is definitely a token grant, and, thus, the case is fit to be remanded for reconsideration of this matter.

7. On the other hand, from the submission of the learned lawyer for respondent No. 5 and form the findings of all the authorities concerned, it can be said that the claim of the petitioner that they made considerable improvement has not been proved; rather only this fact has been brought on the record that only two

kutchra well were constructed and for that a compensation of Rs. 200/- for the reason that the disputed lands are all cultivable lands and the petitioner remained in illegal possession of the same and enjoyed the usufruct of the land for pretty long period. In that view of the matter, we are of the opinion that the authorities below has taken into consideration every aspect of the matter and has awarded a reasonable compensation and it does not requires any interference.

8. Lastly it was argued on behalf of the petitioner by his learned Counsel that the application for restoration u/s 71A of the said Act was filed after expiry of period of limitation and in support of this contention has relied upon a decision of the Single Judge reported in 1994 2 PLJR 621 wherein it was held that application for restoration of the land in terms of Section 71A of the Act cannot be filed on expiry of the period of limitation. However, it was clarified in para. 15 of the judgment in the following terms:

"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 the 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."

9. On the other hand, it was contended on behalf of the private respondents that this plea of limitation was not taken at the initial stage or even up to revisional stage and for the first time this matter is being agitated, that too in the writ jurisdiction. Moreover, even if the petition for restoration was filed beyond the period of limitation, in that view of the matter, the petitioners will be entitled to compensation in terms of provision of Section 71A of the Act and for that compensation has already been awarded by the authorities which was found to be adequate. Considering the submission and as compensation has already been awarded, we are of the opinion, that there is no merit in this contention also.

10. After having heard learned Counsel for the parties and going through the various decisions cited at the Bar, we are of the opinion that the petitioners are not entitled to the relief sought for in the writ application.

11. In the result, this writ application is dismissed but without any costs.