
(1989) 04 PAT CK 0039

In the Patna High Court

Case No : Civil Writ Jurisdiction Case No. 403 of 1984 (R)

Smt. Chhabi Rani Sahoo

APPELLANT

Vs

State of Bihar and Others

RESPONDENT

Date of Decision : 27-04-1989

Acts Referred:

Chotanagpur Tenancy Act, 1908 — Section 46

Citation : (1989) 37 BLJR 552

Hon'ble Judges : B.P. Singh, J

Bench : Single Bench

Judgement

B.P. Singh, J.—In this application, the petitioner has challenged the legality of the order passed by the Land Reforms Deputy Collector, Hazaribagh, respondent No. 3, dated 22/23rd August, 1982 whereby he ordered restoration of the lands in-question in favour of respondent No. 4. It appears that the Additional Collector, Hazaribagh in appeal set aside the order of the Land Reforms Deputy Collector. Thereafter, a revision was preferred before the Commissioner, North Chotanagpur Division. In revision, the Commissioner has set aside the order of the appellate authority and restored the order of the Land Reforms Deputy Collector by the impugned order dated 28th February, 1984. The proceeding in which these orders were passed was one u/s 46 of the Chotanagpur Tenancy Act.

2. Respondent No. 4 filed an application before the Land Reforms Deputy Collector stating that the lands in-question, namely, lands under Khata No. 104 plot No. 397 having an area of 0.39 acres of village Korra was originally recorded in the name of his grand father. After the death of his grand father, his father came in possession of the lands in-question. Thereafter, the petitioner himself came in peaceful possession of the aforesaid lands. In the year 1960, the petitioner changed his residence from village Korra to village Pundri, and thereafter began to live at village Pundri. In the year 1971, he came to learn that the petitioner had illegally and forcibly come in possession over the land without any right, title or interest over the same. On these facts, respondent No. 4

prayed that the lands may be restored. The, aforesaid application filed by respondent No. 4 purports to be one u/s 46 of the Chotanagpur Tenancy Act and is dated 25th October, 1980. The petitioner herein filed his show cause before the Land Reforms Deputy Collector in which it was alleged inter alia that one Dasrath Dusadh bought the aforesaid land from the recorded tenant in the year 1940 through a registered deed of sale. He transferred it to one Sita Devi. The petitioner claimed to be the transferee from the aforesaid Sita Devi in the year 1971. It was further alleged that the land did not belong to the respondent No. 4. It is not necessary to go into that question. The grievance of the petitioner is that she had built a house over the plot in-question after submitting and getting sanctioned a house plan from the Hazaribagh Municipality.

3. The Land Reforms Deputy Collector by his order Annexure-3 held that there was nothing to show that the ancestor of respondent No. 4 had sold the land to Dasrath Dusadh. It had not been established that the ancestor of respondent No. 4 had sold the land to Dasrath Dusadh. He also held that it was clear that the petitioner was in peaceful possession of the lands since not more than 12 years. In this view of the matter, he directed restoration of the lands in favour of respondent No. 4.

4. The Additional Collector by his appellate order Annexure-5 set aside the order of the Land Reforms Deputy Collector. The appellate authority allowed the appeal and set aside the order of the Land Reforms Deputy Collector. A revision was preferred before the Commissioner North, Chotanagpur Division, Hazaribagh. By order dated 28-2-84 the Commissioner set aside the order of the appellate authority and ordered restoration of the lands in favour of respondent No. 4.

5. Section 46 of the Chotanagpur Tenancy Act provides that no transfer by a raiyat of his right in his holding or any portion thereof by mortgage or lease for any period exceeding five years or by sale gift or any other contract or agreement shall be valid to any extent. It is not necessary to refer to the provisos to the aforesaid section since they are not relevant for the purpose of deciding this application. It is apparent that what is rendered invalid u/s 46 is the transfer by a raiyat of his right in his holding or any portion thereof. Therefore, before an application u/s 46 can be entertained, it must prima facie appear to the competent authority that there was a transfer, and that transfer related to the right of the raiyat in his holding. In the instant case, it is not even the case of respondent No. 4 that he had transferred his interest in his raiyati holding in favour of anyone. His case is that, the petitioner had come in possession over the land illegally and forcibly. If the case of the petitioner is to be accepted, there was no transfer of raiyati interest within the meaning of Section 46 of the Chotanagpur Tenancy Act.

6. If the defence set up by the petitioner is to be considered, it discloses that the ancestor of the respondent No. 4 sold his raiyati interest in the land in-question to one Dasrath Dusadh in the year 1940. Even if that be accepted an application u/s 46 of the Chotanagpur Tenancy Act was not maintainable since an application

u/s 46 of the Act cannot be entertained by the Deputy Commissioner unless it is filed by the occupancy tenant within the period of 12 years from the date of the transfer of holding or any portion thereof. However, no material was produced to establish that such a transfer in the year 1940 took place. In fact, learned counsel for respondent No. 4 vehemently contended that there was no document to establish this transfer. Even the Land Reforms Deputy Collector observed that there was no evidence to support such a transfer in the year 1940.

7. The revisional authority after considering material on record has observed that the only transfer of which he could take cognizance was the one which took place in the year 1970. Whereby Sita Devi purchased the land in-question. Thereafter a sale took place by which Sita Devi sold her interest to the petitioner herein. He observed that these transfers were part of the same design. He has not accepted the sale of the year 1940, because he found no proof of the alleged transfer of the year 1940. The Commissioner, was, however, in error in thinking that since there was transfer in the year 1970, and another transfer in the year 1971, such a transfer should be nullified under the provisions of Section 46 of the Act. He completely ignored the words used in the section namely "transfer by a raiyat". Section 46 does not deal with other transfers. It only concerns itself with what may be described as a transfer by a raiyat. Forcible dispossession is not a transfer and hence such a case is not covered by Section 46 of the Act. In this view of the matter, I hold that the Land Reforms Deputy Collector as well as the Commissioner South Chotanagpur Division clearly acted without jurisdiction. Their orders, therefore, deserve to be quashed. This application is allowed and Annexure-3, the order of the Land Reforms Deputy Collector dated 22/23rd August, 1982 and Annexure-6 the order passed by the Commissioner, North Chotanagpur Division. Hazaribagh dated 28th February, 1984 are hereby quashed. There will be no order as to costs.