

(2009) 07 JH CK 0054
In the Jharkhand High Court

Smt Kant Devi, Janardan Prasad and Others and Smt Tarit
Barani Devi

APPELLANT

Vs

The State of Jharkhand and Others

RESPONDENT

Date of Decision : 17-07-2009

Acts Referred:

Chotanagpur Tenancy Act, 1908 — Section 71A

Citation : (2009) 07 JH CK 0054

Hon'ble Judges : D.G.R. Patnaik, J

Bench : Single Bench

Judgement

D.G.R. Patnaik, J.—Heard the counsel for the petitioners and the State.

All these three writ petitions are directed against a common order dated 28.8.1996 passed by the appellate authority, namely the respondent No. 2, in three separate appeals whereby the order dated 10.6.1994 passed by the Special Officer, Scheduled Area Regulation, Ranchi, was set aside and also against a common order dated 3.7.2002, passed in the three separate revision applications, by the Commissioner, South Chotanagpur Division, Ranchi, confirming the order of the appellate authority.

2. Facts and the disputes involved in all these writ petitions are identical and relate to a land bearing plot No. 1080, Khata No. 112, area 35 decimals, of village Pandra, district Ranchi, which was originally recorded as a raiyati land in the name of one Soma Oraon, in the records of right.

3. The facts in common of the petitioners' case are as follows:

(i) Much prior to the coming into force of the Chotanagpur Tenancy Act (Amendment Act 1947), the disputed land was acquired by Sukhram Prasad, father-in-law of petitioner Kanti Devi, in the year 1947 by way of purchase from the original recorded raiyat Soma Oraon for a consideration of Rs. 850/- and after the purchase, he came in possession thereof and continued to remain in peaceful occupation and possession of the same.

(ii) such acquisition and possession of the land by Sukhram Prasad was confirmed in Title Suit No. 30 of 1965 and Title Suit No. 511 of 1967 filed by Sukhram Prasad, and the suit was decreed in favour of Sukhram Prasad by a compromise decree dated 26.3.1965.

(iii) Later, Soma Oraon, filed an application u/s 71A of the Chotanagpur Tenancy Act for restoration of his land vide Misc. Case No. 49 of 1975. The application was dismissed by order dated 15.5.1978 passed by the Special Officer, Scheduled Area Regulation, on the ground that the CNT Act was not applicable to the lands falling within Municipal Area. No appeal was preferred by the claimant against the order of the Special Officer in SAR No. 49 of 1975.

(iv) Much later, in the year 1990, one Jaipal Oraon, son of the original recorded tenant Soma Oraon, filed a fresh application No. SAR No. 98 of 1990 against Sukhram Prasad u/s 71A of the Chotanagpur Tenancy Act for restoration of the same land. In this application, the petitioners in WP[C] No. 1123 of 2003, and petitioners in WP[C] No. 5605 of 2003 were also impleaded as opposite parties. The petitioners Kanti Devi had also got herself impleaded as an opposite party in the aforesaid restoration proceeding on the ground that she had acquired a valid right, title and interest over 11 decimals of disputed land by virtue of sale deed executed in her favour in the year 27.7.1991 by Sukhram Prasad.

(v) One Kauleshwar Pd Choudhary who was one of the opposite parties in the restoration case, got his case separated from the others on 1.7.1993. The Special Officer by order dated 13/9/1993 while disposing of the restoration application concerning the said Kauleshwar Prasad Choudhary, had ordered him to pay a sum of Rs. 21,900/- to the applicant as compensation, which having been paid by him and accepted by the applicant Soma Oraon, his case was closed.

(vi) The case in respect of the other remaining opposite parties including the present petitioners, was also disposed of by the Special Officer by directing them to pay compensation of specified amounts to the applicant. The compensation amount paid by the petitioners was accepted by the applicant Jaipal Oraon and his father Soma Oraon. However, Ghurta Oraon, another son of Soma Oraon who was also impleaded as a co-applicant in the proceedings, did not accept the amount and challenged the order passed by Special Officer in SAR No. 98 of 1990 in appeal.

4. By the impugned appellate order dated 28.8.1996 the Deputy Commissioner, Ranchi, set aside the order of Special Officer as passed in SAR No. 98 of 1990 and directed the respondents in the appeal, namely the present petitioners, to restore the land to the originally recorded tenant, namely, Soma Oraon. Being aggrieved with the order of the appellate authority, the petitioners filed separate revision applications before the Commissioner, South Chotanagpur Ranchi. By the impugned order dated 3.7.2002, the Revisional authority dismissed the revision applications of the petitioners.

5. The grounds on which the petitioners have challenged the impugned orders of the appellate authority and of the Revisional authority in these writ petitions are as follows :

(i) both the impugned orders as passed by the appellate authority and the revisional authority, are bad and the findings recorded therein are perverse and contrary to the facts and the materials on record;

(ii) the restoration application filed by Jaipal Oraon son of Soma Oraon in which his father Soma Oraon and brother Ghutra Oraon were impleaded as co-applicants, was barred by the principles of res judicata in view of the compromise decree passed in favour of the predecessor in interest namely, Sukhram Prasad, in Title Suit No. 30 of 1965 and also in view of the order of dismissal of the earlier restoration application No. SAR No. 49 of 1975 which had attained finality, and an extinguished claim has been sought to be revived and the petitioners are being harassed by repetitive litigations.

(iii) The restoration application was barred by limitation as the aforesaid predecessor in interest Sukhram Prasad had remained in possession of the disputed land for more than 12 years since 1947 i.e. much prior to the date when the Schedule Area Regulation Act, 1969, came into effect. Bar of limitation also applied because of expiry of more than 30 years since 1947, prior to the date of institution of the subsequent restoration case.

(iv) the land, by change in user, was no longer an agricultural land and therefore the dispute u/s 71A of the CNT Act is not maintainable.

(v) There is no pleading or proof of any fraudulent act either on the part of the petitioners or their predecessor in interest Sukhram Pd.

(vi) In the matter of Kauleshwar Pd. Chaudhury, who is one of the opposite parties in SAR No. 98 of 1998, his case was separated and compensation was ordered to be paid and after acceptance of the compensation amount by the applicants, his case was finally closed. But case against the petitioners is being kept alive by applicant Ghutra Oraon who did not accept the amount of compensation.

(vii) Even otherwise, considering the fact that the petitioners remained in adverse possession of the land for more than 30 years and have constructed residential building and structures thereon, the court ought to have passed order under the third proviso to Section 71 A of the Act.

6. Assailing the impugned order and elaborating each of the grounds advanced by the learned Counsel for the petitioners Mr. B.B. Sinha, Senior Advocate, would argue that both the Appellate Authority and the Revisional Authority have committed serious error causing prejudice to the petitioners by failing to consider and accept that even as per the admission made by the recorded tenant Soma Oraon, the land was transferred in favour of Sukram Pd in the year 1947. On the date of transfer the restriction in respect of transfer of tribal land did not come

into force. The admission by the recorded tenant, Soma Oraon about the transfer of his land in favour of Sukhram Pd in the year 1947 was made not only in the Title Suit No. 30 of 1965 in which compromise decree was passed in favour of Sukhram Prasad, but also in the subsequent restoration case No. SAR No. 49 of 1975.

Learned Counsel submits that in view of the above admission by the recorded tenant, the fact as stood confirmed is that Sukhram Praad came in possession of the disputed land in the year 1947, that is, more than 12 years prior to filing of SAR case No. 49 of 1975 and 30 years prior to the date when the second restoration application was filed. Under such circumstances, the second Restoration Application was hopelessly barred by limitation. Placing support to his argument, learned Counsel refers to and relies upon the judgment of the Supreme Court in the case of *Situ Sahu and Others Vs. The State of Jharkhand and Others*, and in the case of *Fulchand Munda Vs. State of Bihar and Others*, .

7. Referring to the second ground, learned Counsel would argue that the claim raised by the applicant in SAR case No. 49 of 1975 which was dismissed, has been sought to be revived and the petitioners are being harassed by repeated litigations. Referring to the order of the Special Officer in SAR No. 49 of 1975, learned Counsel submits that the Special Officer had recorded a finding that the provision of 71A of the CNT was not applicable in respect of land which fell within the municipal areas as per law at the relevant time. No appeal having been filed against the aforesaid order, the same had attained finality and could not be re-agitated by the applicant. Learned Counsel argues further that even otherwise, the original recorded tenant Soma Oraon who had sold the land to Sukhram Prasad in the year 1947 being alive, his sons, Jaipal Oraon and Ghurta Oraon, had no locus standi to file the second restoration application. Learned Counsel contends that in view of the aforesaid fact, the second restoration application was barred by the principles of *res judicata*. In support of his contention learned Counsel would refer to and rely upon the judgment passed by this Court in the case of *Gadia Oraon and Others Vs. State of Jharkhand and Others*, and to an earlier decision of this Court in the case of *Md. Salimuddin v. Commissioner, South Chotanagpur Division, Ranchi 1993(1) PLJR 14*.

8. Referring to the next ground, learned Counsel submits that the disputed land, by change in user, had no longer remained agricultural land and as such the provisions of Section 71A of the CNT Act was not applicable. The fact that agricultural land came to be subsequently converted into chaparbandi land has been held in the findings recorded in SAR No. 98 of 1990 by the special officer. This fact has been erroneously ignored by both the appellate authority and the revisional authority. To buttress his argument, learned Counsel relies upon the judgment of the Patna High Court in the case of *Akhileshwar Pd Srivastava v. Commissioner, South Chotanagpur Division 1990 PLJR 707*.

Adding further to his arguments, learned Counsel submits that in the light of the admitted fact that the petitioners had constructed buildings and structures on the

disputed land, and in the light of findings of the special officer in SAR Case No. 49 of 1975, the petitioners having remained in adverse possession of the land for more than 30 years, the provision of Section 71(3) of the Act is applicable and the benefit thereof ought to have been given to the petitioners. In support of his argument, learned Counsel refers to and relies upon the judgment of this Court passed in *Lucas Kharia v. Baraik Bahadur Singh* and also on the earlier judgment in the case of *Md. Salimuddin (supra)*.

9. In the counter affidavit, the respondent State has denied and disputed the entire claim of the petitioners. The stand taken by the respondents is as follows :

(i) In absence of any documentary evidence, the claim of petitioners that the land stood transferred in the year 1947 in favour of Sukhram Pd cannot be tenable. Such transfer being in violation of the provisions of Section 46 of the CNT Act, cannot be accepted as a valid transaction.

(ii) There is no valid evidence that the petitioners or their predecessor-in-interest, namely Sukhram Pd came in possession of the disputed land in the year 1947.

(iii) The decree in Title Suit No. 65 of 1970 being a collusive decree, the same does not create any right in favour of the petitioners since it is in violation of mandatory provisions of the CNT Act.

(iv) There is no proof to confirm that the raiyati land has been converted into chaparbandi land. Even if the raiyat is authorized to erect building/house on raiyati land, on the basis of the prevailing customs, the respondents are not authorized to change the nature of land.

(v) The order passed in SAR No. 49 of 1975 is not applicable in the present case, inasmuch as the judgment was delivered on the basis of the existing ruling laid down by the judgment of the Patna High Court at that time. The ruling having undergone change, the position is now different and, as held by several judgments of the High Courts, the provisions of the C.N.T Act are applicable also in respect of raiyati lands which fall within municipal areas and as such, the judgment in SAR No. 7 of 1975 does not create a bar against the second restoration application.

(vi) The plea of petitioners that Jaipal Oraon had no locus standi to file restoration case during the life time of his father Soma Oraon, who is the recorded tenant, is misconceived and irrelevant in view of the fact that the Deputy Commissioner who is the competent authority under the Act, can proceed under the provisions of Section 71A of the CNT Act to restore the raiyati land/ tribal land of the raiyat.

10. Though no separate counter affidavit appears to have been filed by the private respondents namely the widow and sons of Ghutra Oraon, son of Soma Oraon, but Mr. PPN Roy, learned Counsel representing them, has contested the claim of the petitioners in these cases by adopting the stand taken by the respondent State.

Learned Counsel would argue that the plea of the petitioners that the land was acquired by virtue of sale deed executed in favour of Sukhram Pd cannot be tenable in absence of proof by way of registered sale deed. Learned Counsel submits that the petitioners have not adduced reliable evidence, that they came in possession of the dispute land in the 1947.

Referring to the compromise decree relied upon by the petitioners passed in Title Suits No. 30 of 1965 and 511 of 1967, learned Counsel submits that the decrees passed in both the aforesaid suits are apparently collusive and even though the purported agreement between the raiyat Soma Oraon and Sukhram Prasad may not be a fraud on the court, but it certainly is a fraud against the statute since the law under the CNT Act specifically prohibits transfer of tribal land in favour of a non- tribal. The petitioners are therefore not entitled to take advantage of such collusive decree in their favour.

Learned Counsel adds further that the applicant Ghurta Oraon, son of Soma Oraon who was impleaded in the restoration proceeding, had challenged the order of the Special Officer passed in restoration application on the ground that he had not received compensation, nor did his father Soma Oraon receive any amount of compensation. In this context, relying upon the judgment in the case of Mahendra Singh Vs. State of Jharkhand and Others, learned Counsel adds further that the petitioners' claim of title by adverse possession for more than 30 years is also incorrect and misleading and the further claim of petitioners that they had constructed building and structures over the land much prior to 1969 is also incorrect and misleading and the same cannot be accepted in absence of any cogent and reliable evidence.

Learned Counsel adds further that in the light of the categorical admission of the respondent Ghurta Oraon that he has not been paid any compensation whatsoever by the petitioners, it clearly indicates that the petitioners had practised fraud upon the respondent Ghurta Oraon.

11. As stated above, the main grounds of the petitioners on which the impugned order has been assailed is that the vendor of the petitioners namely Sukhram Prasad had purchased the disputed land from the original recorded tenant raiyat Soma Oraon in the year 1947 and at that time, the rigors of the provisions of Section 46 was not introduced in the Chotanagpr Tenancy Act. The petitioners have wanted to confirm the purported acquiring of the land by relying upon the compromise decree passed in the Title Suit.

12. As it appears from the facts admitted by the petitioners themselves, no document of transfer was produced either by the petitioners or their vendor, to confirm that the land was transferred by way of sale to Sukhram Prasad. If, according to the petitioners, the land stood legally transferred from the original recorded raiyat to Sukhram Prasad, then there could be no occasion for Sukhram Prasad to file the title Suit in the year 1963 against the raiyat and to obtain a compromise decree. The fact that the original raiyat namely Soma Oraon had

filed a petition u/s 71A of the Chotanagpur Tenancy Act in the year 1975 before the appropriate authority for restoration of his land, amply indicates that Soma Oraon had not accepted to have transferred his land in favour of Sukhram Prasad. These facts suggest that the claim of the petitioners that the land stood transferred in favour of their vendor Sukhram Prasad in the year 1947, has not been substantiated by any legally tenable evidence. On the contrary, the facts indicate that the alleged transfer even if made was in violation of the provisions of Section 46 of the C.N.T. Act, and in such view of the matter, the compromise decree passed in the title suit would amount to a fraud upon the Statute itself and cannot create any right in favour of the petitioners or their vendor Sukhram Prasad.

13. The petitioners' next claim is that after dismissal of the first restoration application filed by the recorded tenant in 1975, the second restoration application in which the impugned orders were ultimately passed, is barred by the principles of *res judicata*. This ground is apparently misconceived. The dismissal of the earlier restoration application was not on consideration of the merits of the claim, but was solely on the ground that since the disputed land fell within the municipal area, the provisions of the CNT Act being not applicable to such lands, the application for restoration was not maintainable. By a subsequent Amendment in the corresponding Act, the land belonging to the members of the Scheduled Tribes falling within Municipal area, was also included and the provision of Sections 71 and 71A of the Act applied in equal measure also to the lands falling within municipal area. Under such circumstances, the order passed in the claim of the original tenant for restoration of his lands made in the year 1992, cannot be said to be barred by the principles of *res judicata*.

14. The next ground advanced by the petitioners is that the restoration application is bared by limitation in as much as, it was filed more than 30 years from the date of dispossession of the raiyat.

From the facts as it would appear, the petitioners have not been able to bring any convincing evidence on record to confirm that the petitioners' vendor, namely Sukhram Prasad, had acquired the disputed land and had come in possession and occupation of the same in the year 1947. It was for the first time when the title suit was filed by Sukhram Prasad in 1963 and in which compromise decree was obtained in 1967, that evidences were sought to be introduced that Sukhram Prasad had come in occupation of the disputed land and had also constructed his dwelling house thereon in the year 1964. Thus, even though the compromise decree in the Title Suit does not create any right in favour of the purported purchaser Sukhram Prasad, but an inference may, at best, be drawn from the admission made by the petitioners themselves in the restoration proceedings before the Special Officer, that they came in absolute possession of the disputed land only after the compromise decree was passed in the title suit in the year 1967 and they had constructed their respective dwelling houses thereon. These observations were made by the Special Officer in the

restoration proceeding filed by Jaipal Oraon, son of Soma Oraon in the year 1990. Since apparently, the restoration application filed by Jaipal Oraon in the year 1990 was well within the period of 30 years from the date on which the petitioners came in absolute possession of the disputed land, the Special Officer had rightly rejected the petitioner's claim of the restoration proceeding being barred by limitation.

15. The next ground advanced by the petitioners is that since after the petitioners came in occupation of the disputed land, they had constructed their dwelling houses thereon after incurring expenditure of more than Rs. 10,000/- and therefore the petitioners are entitled to the benefit of the proviso to Section 71A of the CNT Act. The contention of the petitioners is that such benefit in respect of a portion of the same plot of land was extended in favour of Kauleshwar Pd Choudhary and the same was accepted by the applicants. The petitioners standing on the same footing cannot be discriminated.

16. From perusal of the order passed by the Special Officer in the restoration application, it appears that pleadings and evidence was adduced in the proceedings by the parties which were accepted and relied upon by the Special Officer to the effect that since the land was situated by the side of Ranchi Daltonganj Road, the villagers had converted part of the land for use as access road and in the remaining portion of the land, the dwelling house of Sukhram Prasad and that of the petitioners existed and as such the nature of the land did not remain as agricultural land any more. Evidence was also adduced by and on behalf of the petitioners that they had constructed their respective dwelling houses on their individual portions of the disputed land much prior to the year 1969. These facts do not appear to have been denied or disputed by the applicants in the restoration proceedings. On considering all these aspects, the Special Officer had, by extending the benefit of the second proviso to Section 71A of the Act, had directed the petitioners either to give the same area of land of equal value to the applicant or to pay compensation @ Rs. 7,000/ per katha to the applicant. It also appears that an identical order was passed separately in favour of Kaulsehswar Pd. Choudhury in respect of a portion of land within the same plot and the amount of compensation as ordered, was paid by the said Kauleshwar Pd. Choudhury and was received by Soma Oraon, father of Jaipal Oraon. It may be noted that though the restoration application was filed by Jaipal Oraon, son of the originally recorded tenant Soma Oraon, but later on, Soma Oraon's second son Ghurta Oraon was allowed to be impleaded as a party intervener. No attempt by the applicant Jaipal Oraon or his brother Ghurta Oraon was made to implead their father in the restoration proceedings .

It also appears that while neither Soma Oraon or his sons including the appellant Ghurta Oraon, raised any dispute or grievance against the order passed by the Special Officer in the restoration application filed against the said Kauleshwar Pd Chaudhury and had even accepted the compensation amount, yet Ghurta Oraon, being not satisfied, had filed appeal against the order of the Special Officer

passed in the restoration proceeding.

17. From perusal of the impugned appellate order, it appears that the grievance of the appellant Ghurta Oraon against the order of the Special Officer passed in the restoration application, is his dissatisfaction over the amount of compensation and also on the ground that the petitioners have not paid the amount of compensation at all. It also appears that a petition purportedly containing the LTI of Soma Oraon along with his affidavit was filed in the proceedings before the appellate authority, stating that Soma Oraon has not received any compensation amount from the petitioners.

18. The principles of law relating to the claim for restoration of the land belonging to the member of a Scheduled Tribe is clear and specific and the Deputy Commissioner u/s 71 of the Act has the power to evict the transferee from the land if he finds that the transfer has taken place in contravention of Section 46 Act, or any other provision of the Act, or by fraudulent method and such power can be exercised by him at any time. However, the second proviso to Section 71 A of the Act is equally relevant and cannot be ignored. The second proviso to Section 71A of the Act reads as follows :

Section 71A. Power to restore possession to member of the Scheduled Tribes over land unlawfully transferred :

Xxx xxxx Xxx xxxx

Provided further that where the Deputy Commissioner is satisfied that the transferee has constructed a substantial structure or building on such holding or portion thereof before coming into force of the Bihar Scheduled Areas Regulation, 1969, he may, notwithstanding any other provisions of the Act, validate such transfer where the transferee either makes available to the transferor an alternative holding or portion thereof as the case may be, of the equivalent value of the vicinity or pays adequate compensation to be determined by the Commissioner for rehabilitation of the transferor.

Xxx xxxx

19. It appears that the claim of the petitioners that they had constructed their dwelling houses over the disputed land much prior to the year 1969 and the supporting evidence adduced in this regard was accepted by the Special Officer in absence of any denial by the applicants, the same has been brushed aside by the appellate authority on the ground that the petitioners did not adduce satisfactory evidence to confirm that they had constructed their dwelling houses after incurring expenditure of more than Rs. 10,000/-prior to the year 1969 and that even otherwise, the very transfer of the land being against the provisions of law, the petitioners could not have converted the agricultural lands into dwelling houses.

As observed above, it is not a case where the petitioners have not adduced any evidence whatsoever in support of their claim that they had constructed their

dwelling houses over the disputed land much prior to the year 1969. The order of the Special Officer categorically indicates that the claim of the petitioners that the nature of the land was altered even by the villagers for the purpose of using portion of the same as an access road and the fact that the petitioners had established their dwelling houses on the remaining portion of the land was not denied and disputed by the applicants. It also appears that an identical claim advanced by the said Kauleshwar Pd. Choudhury having established his dwelling house prior to the year 1969, was accepted by the original raiyat/applicant Soma Oraon and his sons including the appellant Ghurta Oraon and they had even accepted the awarded compensation amount from him. Having accepted such compensation the benefit of the second proviso to Section 71A of the Act was extended to said K.P. Choudhury without any dispute and no further grievance has been raised against him either by Soma Oraon or his sons. It also appears that the main grievance of the appellant Ghurta Oraon was on account of his dissatisfaction over the compensation amount awarded by the special officer and also his contention that even the compensation amount was not paid to him. The appellate authority, as would be evident from the impugned appellate order, does not appear to have adverted to the above aspects as appearing in the evidence in the restoration proceedings, nor has recorded any reason as to why the petitioners should be treated differently from the said K.P. Choudhury who is admittedly in occupation of a portion of the same disputed land.

20. The petitioners have rightly claimed that in the matter of application of the second proviso to Section 71A of the Act, they have been discriminated and this has perpetrated injustice to them. In this view of the matter, there is reason to infer that while passing the impugned order, the appellate authority did not apply his judicial mind to the evidences on record, and therefore, it is manifest that the findings recorded in the impugned order, is perverse and fit to be set aside. It also appears that the revisional authority has also not adverted to above aspects appearing in the evidences in the restoration proceedings and has merely adopted the impugned order of the appellate authority.

21. For the reasons aforesaid, these writ petitions are allowed and the impugned orders passed by the appellate authority and the revisional authority are hereby quashed.

The matter is remitted back to the appellate authority to record a fresh finding by passing a reasoned and speaking order within four months from the date of receipt/production of a copy of this order, after considering the entire evidences and materials on record in the restoration proceedings.