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In the Jharkhand High Court

Case No : S.A. No. 192 of 2009

State of Jharkhand and Another — APPELLANT

Vs

Dewashish Goswami and Others — RESPONDENT

Date of Decision : 27-08-2013

Acts Referred:

Citation : (2014) 1 AJR 33 : (2013) 4 JLJR 223

Hon'ble Judges : Narendra Nath Tiwari, J

Bench : Single Bench

Advocate : V.K. Prasad, for the Appellant; Amar Kumar Sinha and K.K. Mishra, for the Respondent

Judgement

Narendra Nath Tiwari, J.—This appeal by the appellant-State is against the judgment and decree passed by the Additional District Judge-III, Hazaribagh in Title Appeal No. 23 of 2005, whereby the learned Lower Appellate Court has dismissed the appeal filed by the appellants. The respondents were plaintiffs in the learned court below.

2. They had filed suit in the court of learned Munsif, Hazaribagh, seeking a decree of permanent injunction restraining the defendants from interfering with their right, title, interest and possession over the suit land.

3. The suit land as described in Schedule-A of the plaint was the land, appertaining to Khata No. 309, Plot No. 3272, area 2.30 acres of Village-Ramgarh, P.S. & District-Ramgarh.

4. According to the plaintiffs, the suit land was recorded as Bakast in the survey record of rights in the names of ancestors of the plaintiffs and the same was in their Khas possession. On abolition of Zamindari under the provisions of Bihar Land Reforms Act, 1950 (hereinafter to be referred as ''the said Act''), the suit land remained in their Khas possession. The ancestors of the plaintiffs became raiyats of the said land under the provision of Section 6 of the said Act. Return was filed by the plaintiffs'' ancestors, showing the said land as Bakast. Bujarat

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was held thereafter and the plaintiffs'' ancestors were recognized as raiyats in respect of the suit land. When lands of suit plot alongwith other lands were acquired for the purpose of widening of Ramgarh-Bokaro-Gola Road, they were found interested persons and compensation in respect of the suit land was awarded and paid to them in Land Acquisition Case No. 27 of 1957-58. As the compensation awarded was inadequate, the plaintiffs'' ancestor preferred reference to the competent Court. The same was registered as Land Acquisition Reference Case Nos. 88/292 of 1964/64. The said Land Acquisition Reference Case was contested by the State. The reference case was decided in favour of the plaintiffs'' ancestor and compensation amount was enhanced. It is relevant to mention that Anchal Adhikari-cum-Block Development Officer, Ramgarh had taken up Bujharat under the provisions of the Land Reforms Act, 1950, being Case No. 118 of 1964-65. Notice was issued to the concerned parties for assessment of rent of the said land in the name of ancestor of the plaintiffs, namely, Bimla Nand Goswami alongwith the other family lands of Village-Ramgarh. The required documents were also submitted and facts were verified in the light of the return submitted by them. Thereafter, there was no progress in the said matter in spite of repeated requests and representations to Anchal Adhikari and the higher authorities. Portions of the plaintiffs'' land were sold to other persons and purchasers'' names have been duly mutated in the Anchal Office.

After the acquisition of portion of land, the plaintiffs intended to raise boundary wall for protecting the remaining portion of Plot No. 3272 in March, 1987. But the Anchal Adhikari and other officials of the State interrupted the plaintiffs and tried to forcibly enter into the suit land. Aggrieved by the said hostility, the plaintiffs filed writ petition, being CWJC No. 290 of 1987{R). The respondents appeared and stated that they would not enter into the plaintiffs'' land, which was not acquired. In view of the said commitment, the writ petition was disposed of.

The plaintiffs, thereafter, raised boundary wall on the western side. While they were proceeding with further construction, Anchal Adhikari sent Halka Karamchari alongwith the labourers and got the constructed boundary wall demolished by force. The plaintiffs, thereafter, served notice u/s 80 C.P.C. on the defendants asking them to hand over possession and for other reliefs accorded to. The plaintiffs filed the instant suit.

5. The defendants contested the suit by filing written statement. It was, inter alia, averred that the suit is not maintainable. It is barred by Law of Limitation, estoppel, waiver and acquiescence. It is also barred under the provisions of Specific Relief Act and is bad for misjoinder and non-joinder of necessary party. It was alleged that the plaintiffs are not the settled raiyats of Village-Ramgarh, as claimed. Though the suit land was recorded in the names of the plaintiffs'' ancestor, namely, Bhagwati Charan Goswami as Bakast land, the plaintiffs'' ancestors did not continue with their Khas possession of the suit land and did not acquire raiyati right after vesting of the said land under the provision of the said

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Act. The suit land is being used for holding Sanichara Bazar and annual Mela for. decades and since before the vesting of Zamindari and as such, the said land vested in the State of Bihar under the provision of Sections 7(A) and 7(B) of the Act. All right, title and possession stand vested in the State. It was, however, admitted that the plaintiffs'' ancestors had submitted return with regard to their lands, including suit Plot No. 3272 and in that they were awarded compensation for acquisition of the part of the suit Plot No. 3272 by the Government for widening of Ramgarh-Gola-Bokaro Road. However, acquisition of land does not create any estoppel against the State to claim vesting of the suit land under the provision of the said Act. The proceeding for assessment of rent with regard to the suit land which vested in the State was untenable. The plaintiffs are not entitled to get any relief.

6. On the basis of the said pleadings, learned Trial Court framed as many as eight issues, which are as under:--

1. Is the suit maintainable?

2. Have the plaintiff any cause of action for the suit?

3. Is the suit barred u/s. 16 of Bihar Land Encroachment Act?

4. Is the suit barred by Law of limitation, estoppel, acquiescence and waiver?

5. Is the suit properly valued and court fees paid sufficient?

6. Is the suit lands had vested in the State of Bihar by virtue of operation of Sections 7Aand 7B of Bihar Land Reforms Act?

7. Whether acquisition of part of the suit lands creates any estoppel against the State of Bihar to plead vesting of the suit land in the State?

8. To what relief or reliefs, if any the plaintiffs are entitled?

7. Both the parties led oral as well as documentary evidences.

8. Learned Trial Court after thorough discussion and consideration of the evidences on record as also appreciation of the provisions of the Act and other legal provisions observed that the plaintiffs have been able to prove their case by adducing evidences. The defendants could not establish that any Haat, Bazar or annual Mela was being held on the suit land at the time of vesting. The defendants brought a Sairat Register in support of their claim and heavily relied upon the same. The first entry in the Sairat Register-Ext.-A is of the year 1963-64. There is no evidence on record to prove that the said land was used for the said alleged purpose at the time of vesting. Learned Trial Court further observed that even Sairat Register-Ext.-A is shrouded by doubts. The same has not been proved by competent witnesses. The suit Plot No. 3272 appears to be subsequently inserted alongwith other suit plots and there is overwriting in Column No. 5 wherein year 1963-64 has been mentioned.

9. Learned Trial Court discussed other facts and evidences in detail and held that

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the plaintiffs have been able to prove their past whereas the defendants failed to establish that the suit land vested in the State.

10. Learned Trial Court, thus, concluded that the plaintiffs have been able to establish their right, title and possession over the suit land and, accordingly, decided the Issue Nos. 6 and 7 and other issues in favour of the plaintiffs and decreed the suit.

11. The respondents preferred appeal against the said judgment and decree of the learned Trial Court in the court of District Judge, Hazaribagh, being T.A. No. 23 of 2005.

12. The said appeal was ultimately came to be heard and decided by Additional District Judge-III, Hazaribagh.

13. Learned Lower Appellate Court heard the parties and scrutinized the facts and evidences on record. He elaborately discussed and considered all the issues independently and came to the finding that never any Haat, Bazar or Mela held on the suit land at any point of time. The suit land continued to be agricultural land. The land was saved u/s 6 of the Act. A part of which was also acquired by the State on payment of compensation to the plaintiffs.

14. Learned Lower Appellate Court concurred with the findings of learned Trial Court and held that the plaintiffs/respondents have got valid right, title and they are entitled for a decree of permanent injunction against the defendants for restraining them from interfering with the right, title and possession of the plaintiffs over the suit land.

15. Learned Lower Appellate Court dismissed the appeal.

16. In this second appeal, the defendant-State-appellant has sought to assail the said judgment and decree mainly taking the ground the learned Trial Court as well as learned Lower Appellate Court have not properly appreciated the import and implication of Section 4 and Sections 7A and 7B of the Act and have passed their judgments and decrees erroneously and under misconception of law. The judgment and decree of the courts below as such are unsustainable.

17. Learned Standing Counsel (L&C), appearing on behalf of the appellants, submitted that Section 4 of the Act specifically speaks about consequences of vesting of an estate and tenure in the State. The tenure or the estate after vesting including the interest of the proprietor or tenure-holder in any building primarily used as office or cutchery for the collection of rent of such estate or tenure and interest in trees, forests, fisheries, Jalkars, Haats, Bazars (Mela) and ferries and all other Sairati interests including the interest of tenure-holder in all sub-soil including any right in mines and minerals whether discovered or undiscovered inclusive of such rights of a lessee of mines and minerals shall with effect from the date of vesting, absolutely vested in the State free from all encumbrances. Such proprietor or tenure-holder shall cease to have any interest in such estate except the interests expressly saved by or under the provisions of

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this Act.

18. Learned counsel submitted that by producing Sairat Register-Ext.-A, the State has been able to prove that the land, in question, is Sairat and is used for holding Haat and Mela. The said evidence is sufficient to establish the said fact and no further evidence was required. He further submitted that the provisions of Sections 7, 7A and 7B clearly provide that any land, which was used for holding of Haat or Bazar at any time within one year prior to the date of vesting to the State, nothing in Sections 5, 6 and 7 of the Act shall be deemed to confer any right on the intermediary in respect of such land. In view thereof, even a Bakast land of the ex-landlord is not saved and does not become raiyat under the provisions of Section 6 of the Act. He contended that the contrary findings and judgments and decrees of learned courts below are vitiated on account of non-consideration of the Ext.-A and the said provisions of the said Act.

19. Having heard learned counsel and perused the relevant provisions, I find that the said contentions are devoid of any substance.

20. In view of the concurrent findings of facts of both the courts below holding that the suit land has not vested in the State and that the appellants completely failed to establish their claim regarding the use of the suit land for holding Haat, Bazar or Mela prior to or at the time of vesting of the estate of the plaintiffs or their ancestors, the suit land cannot be treated as ''Sairat'' by the State.

21. Learned Trial Court as well as learned Lower Appellate Court, after thorough discussion of facts and evidences on record, have concurrently found that on the date or prior to the date of vesting, the suit land was not used for holding any Haat, Bazar or Mela.- The suit land was ''Bakast'' of the plaintiffs and all along used for agriculture purpose and remained in Khas possession on the date of vesting and be deemed to be settled by the State with them and they are entitled to retain possession thereof and hold the same as raiyats under the provision of Section 6(1)(b) of the Act.

22. Section 6 of the said Act runs as follows:--

6. Certain other lands in khas possession of intermediaries to be retained by them on payment of rent as raiyats having occupancy rights.--(1) On and from the date of vesting ail lands used for agricultural or horticultural purposes, which were in Khas possession of an intermediary on the date of such vesting, including--

(a)(i) proprietor''s private land let out under a lease for a term of years or under a lease, from year to year, referred to in Section 116 of the Bihar Tenancy Act, 1885 (8 of 1885),

(ii) landlord''s, privileged lands let out under a registered lease for a term exceeding one year or under a lease, written or oral, for a period of one year or less; referred to in Section 43 of the Chota Nagpur Tenancy Act, 1908 (Ben. Act 6 of 1908),

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(b) lands used for agricultural or horticultural purposes and held in the direct possession of a temporary lessee of an estate or tenure and cultivated by himself with his own stock or by his own servants or by hired labour or with hired stock, and

(c) lands used for agricultural or horticultural purposes forming the subject-matter of a subsisting mortgage on the redemption of which the intermediary is entitled to recover khas possession thereof;

shall, subject to the provisions of Sections 7A and 7B, be deemed to be settled by the State with such intermediary and he shall be entitled to retain possession thereof and hold them as a raiyat under the State having occupancy rights in respect of such lands subject to the payment of such fair and equitable rent as may be determined by the Collector in the prescribed manner.

Provided that nothing contained in this subsection shall entitled an intermediary to retain possession of any naukarana land or any land recorded as chaukidari chakran or goraiti jagir or Mafigoraiti in the record of right has already accrued to a raiyat before the date of vesting.

23. In view of the clear provision of Section 6, particularly, sub-section (1)(b) the suit lands used for agricultural purpose by the plaintiffs'' predecessor-in-interest and held in the direct possession on the date of vesting is deemed to be settled by the State in their favour and their status becomes that of a raiyat with occupancy right.

24. An occupancy raiyat is protected from ejectment from his holding except in execution of a decree passed in terms of Section 22 of the Chhotanagpur Tenancy Act. The State has no right to settle the said land for holding Haat or Mela.

25. The Sairat Register-Ext.-A, which has been held to be doubtful by learned courts below, even if accepted as valid document, has absolutely no overriding effect of defeating the valuable statutory right of the plaintiffs and is of no consequence.

26. A unilateral declaration of a raiyati land as Sairat by the State cannot take away/abridge the statutory right of an occupancy raiyat protected under law or create any right in favour of the State.

27. Since it has been concurrently found and held by two learned courts of facts that ''Haat'' or ''Mela'' was never held over the suit land, there is no application of Section 7A or 7B of the said Act.

28. In view of the above discussions, I find no ground made out, giving rise to any substantial question of law to be framed and decided by this Court in this second appeal. This appeal is, accordingly, dismissed.

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