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Court : Jharkhand

Decided On : Jun-21-2004

Reported in : [2004(3)JCR343(Jhr)]

Judge : M.Y. Eqbal, J.

Acts : Chotanagpur Tenancy Act, 1908 - Sections 49, 49(5), 71A and 230; Limitation Act, 1963 - Sections 3 and 22

Appeal No. : C.W.J.C. Nos. 1500 and 2648 of 2000

Appellant : Kusum Devi, Etc.

Respondent : State of Bihar and ors.

Advocate for Def. : N.N. Tiwary, Adv.

Advocate for Pet/Ap. : S. Shrivastava, Adv.

Disposition : Petition allowed

Judgement :
ORDER

M.Y. Eqbal, J.

1. In these two writ petitions, since common questions of law and facts are involved, they have been heard together and disposed of by this common

judgment.

2. These writ petitions are directed against the common order, dated 4.4.2000 passed by the Commissioner, South Chotanagpur Division, Ranchi in S.A.R. Revision Nos. 172, 173 and 182 of 1998, whereby revisions filed by the petitioners have been dismissed and orders passed by the Special Officer, Scheduled Areas Regulation under Section 71-A of the C.N.T. Act and the orders passed by the Additional Collector in appeals filed by the petitioners have been affirmed.

3. The brief facts of the case are that the land of Khata No. 135 situated at village Gari was held and possessed by Sanicharwa Oraon and Bhokre Oraon as recorded Raiyats. In 1941, the recorded Raiyats applied before the Deputy Commissioner under Section 49 of the Chotanagpur Tenancy Act (in short the Act), seeking permission to transfer the land in favour of Bibi Taiba Khatoon. The Deputy Commissioner, vide order, dated 17.7.1941 accorded permission for transfer of the land in question. The ex-landlord then preferred appeal before the Commissioner, South Chhotanagpur Division, Ranchi being Revenue Appeals No. 1058 of 1941 which was dismissed and order was passed for filing draft agreement which was approved on 18.02.1942. The said draft agreement of transfer was finally registered and the land in question was sold in favour of the petitioners and a registered sale-deed was executed on 17.03.1942 and the transferee was put in possession of the said land.

4. Petitioners' further case is that in the year 1949 the disputed land was converted into chhaparbandi land by virtue of registered document, entered into by and between the ex-landlord and the transferee, namely, Taiba Khatoon. It is contended that Taiba Khatoon said to have continuously exercised right, title, interest and possession over the land in question and in the year 1975 she sold it to one Madhusudan Choudhary. The said Madhusudan Choudhary after exercising all right, title, interest and possession of the land till 1981, sold it in favour of the present petitioners.

5. In the year 1990-91, for the first time, a restoration application was filed by the concerned respondent under Section 71-A of the C.N.T. Act for restoration of the land. The petitioners appeared and filed their show-cause stating, inter alia, that

transfer of the land took place after obtaining due permission of the Deputy Commissioner, Ranchi under Section 49 of the Act and, therefore, restoration application under Section 71-A is misconceived and the Special Officer has no jurisdiction to entertain the restoration application. It was also specifically stated that the restoration applications are hopelessly barred by limitation. The Special Officer, after hearing the parties, by order, dated 16.10.1995 directed restoration of land and against that: order the petitioners preferred appeals before the Deputy Commissioner, Ranchi which was dismissed. The petitioners thereafter moved before the Commissioner. Chotanagpur Division. Ranchi by filing revision petitions which too have been dismissed by the impugned order.

6. Mr. S. Shrivastava, learned counsel appearing for the petitioners assailed the impugned orders as being illegal and wholly without jurisdiction. Learned counsel, firstly, submitted that in view of Sections 49(5), Section 71-A of the Act has no application and therefore, restoration application itself was wholly misconceived. Learned counsel further submitted that the authorities under the Act have committed serious error of law in holding that the restoration application was not barred by limitation, although it was filed after more than 50 years from the date of transfer of the land. Learned counsel in this connection relied upon the decision of the Supreme Court in the case of Jai Mangal Oraon v. Mira Nayak, 2000 (5) SCC 141.

7. Mr. N.N. Tiwary, learned counsel appearing for the concerned respondent, on the other hand, submitted that while granting permission under Section 49 of the said Act, the Commissioner imposed some conditions which were riot complied with and therefore, the entire transaction became invalid. Learned counsel further submitted that in 1941-42 there was no absolute transfer and possession acquired by the predecessor-in-interest of the petitioners, being a continuous wrong, the limitation will not apply.

8. From the impugned orders it appears that permission granted by the Deputy Commissioner under Section 49 was finally approved by the Commissioner, subject to certain conditions but in the sale-deed those conditions were not incorporated and not complied with. The Commissioner in his order took notice of

the fact that the purpose for which permission was granted under Section 49 of the Act was not complied with, inasmuch as, tank was not constructed in order to irrigate the adjacent land. On the question of application of Section 71-A of the Act and also on the question of limitation, the Commissioner recorded the following conclusion :

'The petitioners have further submitted that as per Sub-section (5) of Section 49, the State Government is in competent to restore the land if it is found after due enquiry and opportunity to the parties concerned that the Deputy Commissioner has violated Sub-sections (1) and (2) of Section 49 while granting permission and the State Government can also order for restoration of the land only within 12 years of such a transaction and not thereafter. According to them, the permission was granted in the year 1942 and therefore, at this stage no action can be taken under Sub-section (5) of Section 49 also. They further submitted that Section 71-A does not apply in the present case, because remedy was available under Sub-section (5) of Section 49 and the orders passed by the lower Courts are, therefore, without jurisdiction. The O.P. has opposed the contention of the petitioners. The provisions of Sub-section (5) of Section 49 apply in a case, where allegation is that the Deputy Commissioner while approving the terms of the deed violated the provisions of Sub-sections (1) and (2) of Section 49. This is not the case here. The case here is that the terms of deed approved by the Divisional Commissioner (Appellate Authority) were intentionally violated and were not included in the sale-deed, which means that the permission of the Deputy Commissioner cannot be presumed in the present case and therefore, the provisions of Section 71 -A apply in the present case.

The petitioners further submitted that the application for restoration is hopelessly time barred. Law provides 30 years limitation. In the present case, the land was transferred in the year 1942 and application for restoration was filed after about 50 years and therefore, is hit by limitation. The O.P. has replied that it is a case of continuous wrong and therefore, the limitation does not apply in the present: case. I agree with the O.P. Intentional violation of terms of deed approved by the Divisional Commissioner constitutes continuous wrong.'

9. Admittedly, the land was transferred in the year 1942 after obtaining permission of the Deputy Commissioner under Section 49 of the said Act, which was approved by the Commissioner, subject to certain conditions to be incorporated in the sale-deed. Even assuming that those conditions were not incorporated in the sale-deed of the year 1942 but by virtue of the aforesaid transfer, the transferee, namely, Taiba Khatoon came in possession of the said land and in the year 1949 the land was converted into chhaparbandi land by the Ex-landlord. The restoration application was filed after about 50 years as held by the Commissioner. But the Commissioner in the impugned order took the view that violation of the terms of the deed, as approved by the Commissioner in the year 1942, constitutes continuous wrong and, therefore, the limitation will not apply.

10. Before considering the legality and the propriety of the order of the Commissioner, I would like to refer Section 49 of the C.N.T. Act which reads as under :

'49. Transfer of occupancy-holding or Bhuinhari tenure for certain purposes.--

(1) Notwithstanding anything contained in Sections 46, 47 and 48, any occupancy-raiyat, or any member of a Bhuinhari family who is referred to in Section 48, may, without the consent of the landlord, transfer his holding or tenure or any part thereof for any reasonable and sufficient purpose having relation to the good of the holding or tenure, or of the tenure or estate in which it is comprised.

(2) The expression 'reasonable and sufficient purpose', as used in Sub-section (1), includes,--

(a) in the case of a number of a Bhuinhari family, but not in the case of an occupancy-raiyat, building purposes generally, and

(b) in any case, the use of the land for any charitable, religious or educational purpose, or for the purposes of manufacture or irrigation, or as building ground for any such purpose, or for access to land used for required for any such purpose.

(3) Every such transfer must be made by registered deed, and, before the deed is registered and the land transferred, the written consent of the Deputy

Commissioner must be obtained to the terms of the deed and to the transfer.

(4) Before consenting to any such transfer, the Deputy Commissioner shall satisfy himself that the landlord is adequately compensated for the transfer, and, where only part of a holding or tenure is transferred, may, if he thinks fit, apportion between the transferee and the original tenant the rent payable for the holding or tenure.

(5) The State Government may, at any time within a period of twelve years from the date on which written consent is given by the Deputy Commissioner in regard to the transfer of any holding or part thereof belonging to an occupancy-raiyat who is a member of the Scheduled Tribes either on its own motion or on an application made to it in this behalf set aside such written consent and annul the transfer, if after holding an inquiry in the prescribed manner and after giving reasonable opportunity to the parties concerned to be heard if finds that the consent had been obtained in contravention of the provisions of Sub-sections (1) and (2) by misrepresentation or fraud, and in case any holding or part thereof has been transferred on the basis of such written consent direct the Deputy Commissioner to take further necessary action under Clause (c) of Sub-section (4-A) of Section 46.'

11. From bare perusal of aforesaid provision it is manifestly clear that Sub-section (5) of Section 49 lays down a provision for annulling the transfer and the State Government has been vested with the power to annul the transfer within 12 years from the date, permission is given by the Deputy Commissioner under Section 49 of the said Act.

12. In the case of Jiwan Lal v. State of Bihar, 2001 (2) JCR 127 (Jhr) : 2001 (1) JLJR 225, a Bench of this Court after considering the provision of Sections 46 to 49 of the said Act, held that if transfer has been effected after obtaining permission of the Deputy Commissioner under Section 49 of the Act, such transfer can be annulled by the State Government only in the manner provided under Sub-section (5) of Section 49 of the said Act. His Lordship observed (See JCR para 12 at page 130) :

'Now on reading the entire provisions of Section 49 of the said Act, it is clear that notwithstanding the provisions of Sections 46, 47 and 48, an occupancy raiyat or a member of Bhuinhari family may transfer their holding for any reasonable and sufficient purposes but such transfer must be made by registered deed and before deed is registered and the land is transferred, written consent of the Deputy Commissioner must be obtained to the terms of the deed and transfer. Sub-section (5) of Section 49 empowers the State Government to annul such transfer at any time within 12 years if the State Government finds that the consent of the Deputy Commissioner was obtained in contravention of the provisions of Sub-sections (1) and (2) by misrepresentation, or by fraud. In other words, if transfer has been effected after obtaining permission of the Deputy Commissioner under Section 49 of the said Act then such transfer can be annulled by the State Government in the manner provided under Sub-section (5) of Section 49 of the said Act.'

13. In the case of Sri Rajendra Nath Kapoor v. State of Bihar, 1990 BLT (Rep.) 352, a Division Bench of Patna High Court after considering a similar question, held that the scope of the two provisions, namely, Section 49(5) and Section 71-A of the said Act are different. Their Lordships observed :

'It is true that, under both the sections provisions have been made for restoration of the land, but the scope of the two provisions are different. So far Section 49(5) is concerned, power has been given to the State Government to annul any transfer made with consent of the Deputy Commissioner if it is found that the consent had been obtained in contravention of the provision of Sub-sections (1) and (2) by misrepresentation or fraud. Under this section the forum is the State Government and what is required to be determined by the State Government is whether consent of the Deputy Commissioner had been obtained in contravention of the provisions to Sub-sections (1) and (2) by misrepresentation or fraud. If the consent of the Deputy Commissioner was not obtained by misrepresentation or fraud, there is no question of annulling the transfer.'

Their Lordships further held :

'Regulation 1 of 1969 came into force in February, 1969 and Section 49(5) was introduced in 1976. It must be presumed that the Legislature knew that Section 71-A had been introduced in 1969 empowering the Deputy Commissioner to pass order under certain circumstances yet the Legislature inserted Sub-section (5) in Section 49 for the first time in 1976. This indicates that the scope of Sections 71-A and 49(5) are completely different. The former speaks about fraud on the transferor-raiyat whereas the latter speaks about misrepresentation or fraud on the Deputy Commissioner. In Section 49(5) the reference is to Sub-sections (1) and (2) of Section 49 whereas in Section 71-A, Section 46 has been specifically mentioned. It is a general rule of interpretation of statutes that special provision will over ride the general provision. When there is specific provision for annulling transfer made with consent of the Deputy Commissioner, recourse must be had to that and an application under the general provision, i.e., under Section 71-A of the Act is barred. Moreover, as noticed above the forum is also different.'

14. So far the conclusion arrived at by the Commissioner that violation of condition put by the Commissioner on the approved agreement constitute continuous wrong and, therefore, limitation does not apply, I am of the opinion that the Commissioner has committed serious error of law and misunderstood and misconstrued the meaning of continuous wrong.

15. According to Black's Law Dictionary, a wrong may be described, in the largest sense, as anything done or omitted contrary to legal duty. Similarly, civil wrong means violation of or breach of contract or trust or of a breach of statutory duty or a defect in performing a public duty. According to that dictionary, meaning continuing wrong in an ongoing wrong, i.e., capable of being corrected by specific enforcement.

16. The new Limitation Act, 1963 has taken care of the cases where there is a continuing tort. A tort is a wrong independent of contract. The very essence of a continuing wrong is that it is an act which creates a continuing source of injury and renders the doer of the act responsible and liable for the continuance of the injury. In the case of continuing wrong also if the wrongful act is completed there is no continuing wrong though damage resulting from the act may continue.

17. In the Limitation Act, 1963, a new word 'tort' has been defined. As observed by the Law Commission, there should be a definition of the word 'tort' so as to include within it not only torts strictly so-called, but also any breach of statutory duties of care which result in injury and damage to the person or property. Section 22 of the Limitation Act has taken care of the period of limitation in case of continuing breach of contract or continuing tort. There is a distinction between breaches of contract and wrongs independent of contract.

18. The principles of 'ubi jus ibi remediam' is well-established. There is no right without a remedy or there is no wrong without a remedy. Every breach of duty would be a wrong. The duty may arise under a contract or independently of it. The duty may be either positive or negative. In the case of a positive duty the test to find out whether a breach of it would amount to a continuous wrong is to see whether the duty is one to continue to do the act. In other words, where the wrong consist in the omission of a legal duty which is to continue to do something, the omission to do it is a continuous wrong.

19. Applying the aforesaid principles of law, in the instant case, even if breach of duty imposed by the Deputy Commissioner under the agreement in the year 1942, constitute, a wrong much less a continuous wrong, the said act of wrong was completed in the year 1949 itself when the nature of the land was converted into chhaparbandi holding and also in 1975 when building and structures were constructed on the said land. In case of violation of the provisions of Section 49 of the C.N.T. Act remedy cannot lie under Section 71-A of the said Act. Even if the said application under Section 71-A is held to be entertainable the same became hopelessly barred by limitation, inasmuch as, the act of continuing wrong was complete more than three decades on the date of filing of application.

20. In the case of Bhagwat Mahto v. Bhikari Mahto, 1963 BLJR 730, a similar question arose for consideration before the Division Bench of the Patna High Court and the Bench considering the provisions of Sections 23 and 28 of the Limitation Act, 1908 (corresponding to Section 22 of 1963 Act) held that whether the wrong amounts to dispossession of the plaintiff, though, it may be a continuing wrong, still the right of recovery of possession does not exist after 12 years.

21. In the case of Balakrishna Savalram Pujari Waghmare and others v. Shree Dhyaneshwar Maharaj Sansthan and Ors., AIR 1959 SC 798, their Lordships of the Supreme Court after considering the application of the provision of Section 23 of the Act observed as under :

'In dealing with this argument it is necessary to bear in mind that Section 23 refers not to a continuing right but to a continuing wrong. It is the very essence of a continuing wrong that it is an act which creates a continuing wrong of injury and renders the doer of the act responsible and liable for the continuance of the said injury. If the wrongful act causes an injury which is complete, there is no continuing wrong even though the damage resulting from the act may continue. If, however, a wrongful act is of such a character that the injury caused by it itself continues, then the act constitutes a continuing wrong. In this connection it is necessary to draw a distinction between the injury caused by wrongful act and what may be described as the effect of the said injury. It is only in regard to the acts which can be properly characterised as continuing wrongs that Section 23 can be invoked.'

22. In the case of Bai Mannchha widow of Nathubhai Bhagwanji and Ors. v. Sardar Sajjadanashin Saiyad Mohamad Boker Edrus, AIR 1963 Guj 168, a Division Bench of Gujarat High Court also dealt with a case under Section 23 of the Act and observed that this section refers not to a continuing right but to a continuing wrong. It is an act which creates a continuing source of injury and renders the doer of the act responsible and liable for the continuance of the said injury. If the wrongful act causes an injury which is complete there is no continuing wrong even though the damage resulting from the act may continue. If, however, a wrongful act is of such a character that the injury caused by it itself continues, then the act constitutes a continuing wrong. In this connection it is necessary to draw a distinction between an injury caused by the wrongful act and what may be described as the effect of the said injury.

23. Besides the above by Section 230 of the Chotanagpur Tenancy Act, the provision of Limitation Act, so far as they are not inconsistent with the provisions of Tenancy Act, are made applicable to all suits under the Act. Section 3 of Limitation Act provides that subject to the provisions contained in Sections 4 to 25, every suit

instituted after the period of limitation prescribed therefrom by Schedule 1 shall be dismissed. Section 3 thus brings into operation of that Act.

24. Taking into consideration the aforesaid provision, I have no difficulty in holding that through a wrong may be a continuing wrong and the respondent may be entitled to a recurring start of limitation under Section 22, the respondents' right itself has been extinguished after the lapse of certain period from the time when the wrong was first committed.

25. In the light of the aforesaid discussion, it can be safely concluded that the Commissioner has totally failed to appreciate as to what constitute continuous wrong. The Commissioner also erred in law in holding that in case of continuous wrong provision of law of limitation does not apply. Besides the above, since the remedy under Section 49(5) of the C.N.T. Act was not available to the opposite-parties the impugned orders directing restoration of land under Section 71-A of the C.N.T. Act cannot be sustained in law.

26. For the aforesaid reason, these writ petitions are allowed and the impugned orders passed by the authorities are quashed.

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