

Subhash Singh Vs. the State of Bihar and ors.

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Court : Jharkhand

Decided On : Apr-10-2006

Reported in : [2006(3)JCR442(Jhr)]

Judge : R.K. Merathia, J.

Acts : Chhotanagpur Tenancy Act - Sections 71A and 84(3); Transfer of Property Act

Appeal No. : Civil Writ Jurisdiction Case Nos. 486 and 1362 of 1997 (R)

Appellant : Subhash Singh;anil Linda

Respondent : The State of Bihar and ors.;The State of Bihar and ors.

Advocate for Def. : N.K. Prasad, Adv.

Advocate for Pet/Ap. : P.P.N. Roy, Adv.

Judgement :

R.K. Merathia, J.

1. Both the connected writ petitions are being disposed of by this common judgment.

2. Writ petitioner-Subhash Singh is aggrieved by the order dated 27.9.1996, passed by the Revisional Authority-Commissioner, by which he directed to

demarcate the area where the actual building claimed by Subhash Singh stands along with a reasonable set off, and to restore the rest of the land in favour of Buchwa Oraon. It is further ordered that Subash Singh will pay compensation to Buchwa Oraon only for such demarcated area.

Writ petitioner-Anil Linda is aggrieved by the same order to the extent that the Commissioner has not passed order in his favour in view of the fact that he purchased a portion of the land from Buchwa Oraon.

3. Buchwa Oraon, a scheduled tribe, filed an application under Section 71A of the Chhotanagpur Tenancy Act (the Act for short) for restoration of his 84 decimals of land of plot No. 1039-Khata No. 26, which was registered as S.A.R. Case No. 86/1984-85. His case was that he, a recorded tenant, was illegally dispossessed by Dhrub Narayan Singh and Raghubir Singh, about seven years ago. D.N. Singh and R. Singh did not appear inspite of notice. Ultimately, on 29.3.1986, his application was allowed, by the court of Special Officer. D.N. Singh and R. Singh filed an appeal but allowed it to be dismissed for non-prosecution and then filed a revision before the Commissioner. The Commissioner remanded the matter to the Appellate Authority- the Additional Collector, for hearing on merits but surprisingly the Additional Collector also remanded the matter to the Special Officer with a direction to examine the claim of the parties, consider their merit, including the claim of structure and payment of compensation (a copy of this order dated 18.12.1989, passed in S.A.R. Appeal No. 21 R15/1986-87 filed during the hearing, is kept on the record).

4. D.N. Singh and R. Singh justified their possession, on the basis of 'Chapparbandi' (Homestead) Settlement, and contended that Section 71A of the Act is not applicable to such settlement.

5. Though, as per the said order of remand, the matter was to be decided on merits but in his order dated 13.9.1991, the Special Officer observed that only the matter of compensation was to be decided and directed D.N. Singh and R. Singh to pay a sum of Rs. 2000/- per katha as compensation to Buchua Oraon. When the prayer of Buchua Oraon to review the said order was rejected, he filed appeal being S.A.R. Appeal No. 7R15/1991-92. A report was called for by the Appellate

Authority. In the report, it was said that only on 3-3 1/2 decimal, a house was found on the north-east side and the rest of the land was lying vacant. Unfortunately, the Additional Collector also without considering the case properly, affirmed the said order and enhanced the compensation to Rs. 3,000/- per katha, by his order dated 8.7.1993. Buchua Oraon filed a revision against the said orders, being Revision No. 397 of 1993.

6. During the said proceedings, writ petitioner-Anil Linda, also a scheduled tribe, purchased 40 decimals of land on the western side out of the land in question by a registered sale deed dated 6.10.1990 from Buchua Oraon after taking permission from the competent authority. Anil Linda, thus, being interested in the matter, challenged the said orders by filing a writ petition being CWJC No. 3896 of 1993 (R) which was disposed of on 7.1.1994 by passing the following order:

After making submissions for a while, counsel for the petitioner sought permission to withdraw this application.

This application is dismissed as withdrawn.

7. Anil Linda then filed a petition for intervening in the said revision, which was allowed on 26.2.1996.

8. Under the impugned order dated 27.9.1996, the Revisional Authority ordered for restoration of the land in favour of Buchwa Oraon except the area of construction for which he ordered for demarcation and payment of compensation to Buchua Oraon.

9. It was submitted on behalf of Subhash Singh that earlier writ, petition of Anil Linda, having been dismissed, this second writ petition is not maintainable and that in the petition for intervention he did not mention about the dismissal of writ petition. It was further submitted that Anil Linda got himself impleaded in the proceeding for restoration of land and thus he stepped into the shoes of his transferor. It was argued that he being a transferee could not claim restoration under Section 71A of the Act. It was lastly submitted that character of the land had changed from agricultural to non-agricultural. On these grounds, it was contended

that the impugned order is liable to be set aside and no relief should be granted to Anil Linda.

10. It is difficult to accept the said contentions raised on behalf of Subhash Singh. Anil Linda filed the said writ petition, when prayer of restoration made by his transferor, Buchua Oraon, was declined. The writ petition was dismissed as withdrawn. Then he got himself impleaded in the pending revision filed by Buchua Oraon. In the present writ petition he is complaining about the revisional order only to the extent that he being transferee, order for restoration ought to have been passed in his favour also to the extent of the land purchased by him. Thus, in my view, the present writ petition is not barred. The judgment reported in 1987 PLJR 1090, relied on behalf of Subhash Singh is of no help to him. In that case, a second writ petition was filed after a few days of withdrawal of the first writ petition on same facts. In that situation, it was held that the second writ petition was barred. Further, it cannot be said that there was suppression of a relevant fact if the withdrawal of writ petition was not mentioned in the intervention petition. Anil Linda is also a scheduled tribe and he purchased a portion of land from Buchua Oraon after due permission from the competent authority. Thus, he was interested party, and was entitled to intervene in the proceeding before the revisional authority.

11. The judgment reported in 1990 (1) BLJ 124 (Ram Chandra Sahu @ Ram Prasad Sahu @ Kolha Sahu v. State of Bihar) relied on behalf of Subhash Singh is also of no help to him. In that case, a member of scheduled tribe complained that his transferor (a non-tribal) is not parting with possession of the land which he claimed to have purchased, and in that situation, it was held that the said transferee could not file application for restoration under Section 71A of the Act. Here in this case, the transferee-Anil Linda has not filed application for restoration. His case is based on the order of restoration passed in favour of his transferor-Buchua Oraon. His intervention in the proceeding to protect his interest will not mean that he had become an applicant for restoration under Section 71A of the Act.

12. In the case of Murlidhar Gupta 1987 BLT 305, relied on behalf of Subhash Singh, the matter was remanded to enquire, whether the character of the land had changed, from agricultural to non agricultural, as claimed by the petitioner of that case, observing that the character of land could be lost by user. This judgment is also of no help to Subhash Singh as it is not his case that the character of land changed, from agricultural to non-agricultural. His claim is based on alleged 'Chapparbandi' (Homestead) Settlement.

13. It is submitted on behalf of Anil Linda that Buchua Oraon, a scheduled tribe, had been running from pillar to post demanding justice but, for about 20 years, the authorities played with him as the father of Subhash Singh was a 'Mukhia' and he influenced the authorities. In effect, the authorities directed Buchua Oraon to sell his land to the father of Subhash Singh, a non-tribe, at the price fixed by them. Ultimately, the revisional court corrected the questions of fact and law, which it was entitled to do, as per the judgment reported in 1988 PLJR 610 (Bishram Sahu v. Bhairon Oraon) and gave relief to Buchua Oraon. It was further submitted that Buchua Oraon by filing Khatiyani (Annexure-10) and other documents before the authorities proved that he was recorded tenant and the landlord was one 'Anant Lal Sahu'. It is further submitted that in view of said 'Khatiyani', published in 1935, about which there is a statutory presumption of correctness, as per Section 84(3) of the C.N.T. Act, the alleged 'Chapparbandi' settlement from Ratu Maharaja is apparently bogus document: Referring to paragraph 8 of the writ petition of Subhash Singh, it was further submitted that even according to Subhash Singh only 42 decimal was settled with his father and 42 decimal was settled with one Dudhanath Singh who has not challenged the order and thus Subhash Singh cannot challenge the entire order of the Commissioner, for restoration of the land in question. It was further submitted that Subhash Singh has not proved, which portion of 84 decimal land was settled with his father which also shows falsity of his claim. Criticizing the orders of Special Officer and the appellate authority, it was submitted that even the adequate compensation was not ascertained as per the law.

14. I find force in the submissions made on behalf of Anil Linda. It was held in the judgment reported in : AIR 1992 SC195 (Pandey Orson v. Ram Chander Sahu),

that where possession has passed from a scheduled tribe to a non-tribal, it would be a transfer and such a situation will warrant exercise of jurisdiction under Section 71A of the Act. The following portion is relevant.

6. In Section 71A in the absence of a definition of transfer and considering the situation in which exercise of jurisdiction is contemplated, it would not be proper to confine the meaning of transfer to transfer under the Transfer of Property Act or a situation where transfer has a statutory definition. What exactly is contemplated in the provision is where possession had passed from one to another and as a physical fact the member of the Scheduled Tribe who is entitled to hold possession and a non-member has come into possession would be covered by transfer and a situation of that type would be amenable to exercise of jurisdiction within the ambit of Section 71A of the Act.

6A. The provision is beneficial and the legislative intention is to extend 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 protection to the named category, the Court has to give a liberal construction to the protective mechanism which would work out the protection and enable the sphere of protection to be effective than limit by the scope.

15. Section 84(3) of the C.N.T. Act reads as follows-

84(3) Every entry in a record-of-rights so published shall be evidence of the matter referred to in such entry and shall be presumed to be correct until it is proved, by evidence, to be incorrect.

As per the record of rights prepared in 1935, the father and uncle of Buchua Oraon were the recorded tenants under the landlord Anant Lal Sahu. This has not been proved to be incorrect by Subhash Singh or his father or anybody. Thus apparently possession had passed from the family of Buchua Oraon, a member of scheduled tribe to a non-member. In view of Section 84(3) of the CNT Act; the judgment of Pandey Orson (Supra); and the facts and circumstances noticed above, there is no difficulty in holding that Buchua Oraon was illegally dispossessed, which amounts to illegal transfer. Accordingly, it is held that Buchua Oraon and his

transferee uncle Anil Linda were/are entitled to restoration of land, under Section 71A of the C.N.T. Act. By the impugned order dated 27.9.1996, justice has been done, between the parties by the revisional authority, who had jurisdiction to correct the questions of law and facts. However, it is modified to the extent that while demarcating the constructed portion, the land purchased by Anil Linda should also be demarcated so that restoration can be effected in favour of Buchua Oraon and Anil Linda, both. The authorities will see that adequate compensation is ascertained in accordance with law and paid to Buchua Oraon, against the constructed portion. The respondents are directed to see that the revisional order dated 27.9.1996, passed by the Commissioner, in Revision No. 397 of 1993 as modified by this order, is complied with as early as possible, but within two months from the date of commencement of this order.

16. With these observations and directions, both the writ petitions are disposed of. However, there will be no order as to costs.

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