

Anupama Roy Vs. State of Bihar and ors.

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Court : Jharkhand

Decided On : Jul-31-2003

Reported in : 2003(3)BLJR1899; [2003(3)JCR548(Jhr)]

Judge : M.Y. Eqbal, J.

Acts : Chotanagpur Tenancy Act, 1908 - Sections 71A; [Constitution of India](#) - Article 226

Appeal No. : CWJC No. 2765 of 1994 (R)

Appellant : Anupama Roy

Respondent : State of Bihar and ors.

Advocate for Def. : R.S. Mazumdar, G.A.,; A.K. Sahani, Adv. for Respondent No. 5 and;

Advocate for Pet/Ap. : L.K. Lal, Adv.

Disposition : Appeal allowed

Judgement :

M.Y. Eqbal, J.

1. This writ application is directed against the order dated 18.8.1994 passed by the Commissioner, South Chotanagpur Division, Ranchi in Ranchi Revenue Revision

No. 17/1992 whereby he has affirmed the order dated 27.12.1991, passed by the Deputy Commissioner, Ranchi in SAR Appeal No. 17R-15/1986-87 and 22R-15/1987-88, and directed for restoration of the land out of plot No. 633 of khata No. 55 situated at village Kokar, P.S. Lalpur, district-Ranchi under the provisions of Section 71-A of the Chotanagpur Tenancy Act, 1908 (shortly CNT Act).

2. The facts of the case lie in a narrow compass :

Respondent No. 5 who is the member of scheduled tribe filed an application against the petitioner under Section 71-A of the CNT Act for restoration of three and half kathas of land of R.S. plot No. 633, khata No. 55 situated at village Kokar, Ranchi on the ground that he has been dispossessed from the said land. The restoration application was contested by the petitioner stating, inter alia, that he along with his brother purchased one acre of chapperbandi land out of the said R.S. plot No. 633 from Lakho Oraon and another by virtue of registered deed of sale dated 29.5.1959 for valuable consideration and came in possession of the same. The petitioner and his brother got their names mutated vide Mutation Case No. 252/1965-66 and have been paying chapperbandi rent to the State of Bihar. It is contended by the petitioner that they also got their names mutated in the office of Ranchi Municipality and they are regularly making payments of taxes for the same: After purchase, they constructed a pucca house in accordance with the plan sanctioned by the Ranchi Improvement Trust. According to the petitioner, the land being the chapperbandi land, application for restoration of the said land under Section 71-A of the CNT Act is not maintainable.

3. It appears that in the earlier restoration proceedings orders were passed by the Special Officer, appellate authority and the revisional authority who directed for restoration of the land and ultimately the matter came to this Court in CWJC No. 713 of 1980(R) filed by the petitioner. This Court allowed the writ application in terms of the judgment and order dated 10.1.1984 and remitted the matter back to the Special Officer, Scheduled Area Regulation with a direction that he will allow the parties to lead evidence in support of their respective cases. The relevant portion of the order passed in the said writ petition is quoted hereinbelow which reads as under :

'Learned Government Pleader No. 1 made his submission in support of the order passed by respondent No. 2. When we brought to his notice the order of the appellate, Court as contained in paragraph 5 of annexure 12 that it did not apply its mind in depth with regard to the contention of the petitioner that the land in question was chapperbandi, he fairly conceded that the matter should go back to respondent No. 4 to enable the parties to lead evidence on that question. As a final Court of fact that respondent No. 3 was required to come to a definite finding as to whether the land in question was chapperbandi, as alleged by the petitioner. It cannot be disputed that if a land is chapperbandi, no proceeding under Section 71-A of the Act can be initiated for restoration of that land. If the land was chapperbandi, as alleged by the petitioner, it will be governed by the Transfer of Property Act and not by the Ghotanagpur Tenancy Act. Since the moot point is whether the land in question was chapperbandi land or not, for the ends of justice, it is necessary that the parties should be given opportunity to lead further evidence, if any, in support of their respective cases. We must observe that the reasoning given by respondent No. 3 in cursory manner that the land was not chapperbandi did not appeal to us. He discarded the certified copy of the return filed by the ex-landlord which showed that the land was chapperbandi on the ground that the original had not been brought on record. When there was nothing to controvert the certified copy of the return, respondent No. 3 could not have discarded it. Respondent No. 4, therefore, must take into consideration the certified copy of the return filed by the ex-landlord, a copy of which is annexure 8 to this application along with other materials regarding chapperbandi.'

4. After remand by this Court the Special Court reconsidered the matter afresh by allowing the parties to lead evidence. The Special Officer recorded a finding that the land appears to have been converted into chapperbandi land and, therefore, Section 71-A of the CNT Act is not applicable. Against the said order respondent No. 5 preferred an appeal before the Deputy Commissioner and Deputy Commissioner being the appellate authority allowed the appeal filed by respondent No. 5 and set aside the order passed by the Special Officer holding that the land in question was never converted into chapperbandi land. The petitioner then preferred revision before the Commissioner, South Chotanagpur Division who dismissed the revision application and affirmed the order passed by the Deputy

Commissioner. Hence this writ application by the petitioner.

5. Mr. L.K. Lal, learned counsel for the petitioner assailed the impugned orders passed by the Deputy Commissioner and the Commissioner as being illegal and wholly without jurisdiction. Learned counsel submitted that both the appellate authority and the revisional authority have failed to take into consideration that the jamabandi submitted by the ex-landlord in respect of the land in question shows that the land was converted into chapperbandi land and the said conversion was accepted by the revenue authorities by issuing chapperbandi rent receipts in favour of the petitioner. Learned counsel submitted that the Special Officer, after reappraisal of the entire evidence rightly recorded a finding that the land was converted into chapperbandi land. Learned counsel further submitted that in the earlier writ application a Bench of this Court also observed that prima facie the land in question appears to have been converted into chapperbandi land. Despite all these facts the appellate authority and the revisional authority have committed grave error of law in ignoring the observation made by this Court.

6. The Special Officer in his order recorded a finding that the ex-landlord, Thakur Mahendra Nath Shahdeo had created chapperbandi in the name of Lakho Oraon and also filed return before the DCLR Ranchi for compensation. The Special Officer also found from the certified copy of Misc. Case No. of 1/1953-54 that return was verified by the LRDC. He has also come to the conclusion that the rent receipt issued by Lakho Oraon also transpires that the land is chapperbandi. The Circle Officer, in his report, also stated that chapperbandi holding has been entered in Register II.

7. However, the Deputy Commissioner in appeal reversed the said finding on the ground that the petitioner in support of his case only filed a photo copy of return submitted by the ex-landlord. The appellate authority in his order has discussed the photo copy of return and was of the view that neither the certified copy of the return was filed by the petitioner nor the return appears to have been filed before the competent authority. The appellate authority, therefore, finally held that on the basis of the photocopy of the return it cannot be accepted that the land was converted into chapperbandi land.

8. Curiously enough neither the appellate authority nor the revisional authority has met the reasonings given by the Special Officer on the basis of other evidence that the chapperbandi holding was created in the year, 1953 by the ex-landlord by submitting return Which was accepted by the LRDC. It was further found that the LRDC verified the return by the original jamabandi and found it correct. The issuance of chapperbandi rent receipt by the Circle Officer and LRDC has not be denied or disputed by the respondents.

9. From the sale deed dated 29.5.1959 by which the petitioner purchased the land in question it appears that there is a recital in the deed that the land is chapperbandt and chapperbandi rent has been paid vide various chapperbandi receipts referred in the sale deed. In my opinion, therefore, the findings recorded by the appellate authority and the revisional authority is based on no evidence, rather, on extraneous considerations ignoring series of documents referred by the Special Officer in his order while recording a finding that the land was converted into chapperbandi in 1953.

10. Be that as it may, the nature of the land in question has always been treated as chapperbandi since 1953 and chapperbandi rent and taxes have been paid not by the petitioner only but also the vendor of the petitioner which has been admitted in the sale deed and is supported by the chapperbandi receipts granted by the ex-landlord as also the State of Bihar. Subsequently the municipality also issued holding taxes and sanction was accorded for construction of building. The land has been used for residential purposes'. It cannot, therefore, be said as held by the appellate authority and the revisional authority, that the land is not chapperbandi land and that too without any evidence.

11. For the aforesaid reasons, this writapplication is allowed and the impugnedorders passed by the appellate authorityand the revisional authority are quashedand the order passed by the Special Officerdismissing the restoration petition is restored.