

State of Jharkhand and ors. Vs. Arjun Das

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Court : Jharkhand

Decided On : Oct-05-2004

Reported in : 2004(3)BLJR1998; [2004(4)JCR535(Jhr)]

Judge : M.Y. Eqbal and ; Hari Shankar Prasad, JJ.

Acts : Mutation Law; Bihar Tenants Holdings (Maintenance of Records) Act, 1973 - Sections 12, 14, 15 and 16; Chotanagpur Tenancy Act, 1908 - Sections 46

Appeal No. : LPA No. 708 of 2003

Appellant : State of Jharkhand and ors.

Respondent : Arjun Das

Advocate for Def. : R.S. Mazumdar, Adv.

Advocate for Pet/Ap. : Md. Shamim Akhtar, S.C.-II, and; Arvind Kr. Mehta, J.C. to S.C.-II

Disposition : Appeal allowed

Judgement :

M.Y. Eqbal, J.

1. This appeal at the instance of the appellant- The State of Jharkhand is directed against the judgment and order dated 22.8.2003 passed in WP (C) No. 5126 of

2002 whereby the learned single Judge directed the appellants to mutate the name of the petitioner-respondent in respect of the land in question.

2. The fact of the case lies in a narrow compass.

3. Petitioner-respondent alleged to have purchased raiyati land measuring an area of 3 kathas appertaining to Mouza Dhaiya No. 6. khata No. 119. Plot No. 4051 from one Mohan Manjhi son of Late Gangu Manjhi a scheduled tribe by registered sale-deed dated 2.12.1988. It is stated by the petitioner-respondent that after purchase he came in peaceful possession of the said land and continuing possession since the date of purchase. Petitioner-respondent, therefore filed an application for mutation of the land in question by entering his name in the revenue register but the Circle Office, Dhanbad sat tight over the matter, The petitioner then filed a writ petition being WP (C) No. 3921 of 2001 for a direction to the respondent-Circle Officer, Dhanbad to mutate the land in his favour. The writ petition was disposed of on 24.8.2001 with a direction to the Circle Officer to pass appropriate order on the mutation application after hearing the parties. It is alleged that the Circle Officer without making any inquiry with regard to possession of the land rejected the application on the ground that transfer of the land itself was invalid and illegal and, therefore, mutation cannot be allowed. The petitioner challenged the said order by filing WP (C) No. 5126 of 2002 which was disposed of by the impugned Judgment and order dated 22.8.2003. Learned Single Judge held that the Circle Officer has no jurisdiction to see the right or title of the parties in respect of the land for which mutation application is filed. The relevant portion of the judgment of the learned Single Judge which is impugned in this appeal is quoted hereinbelow ;

'In a judgment passed in the case of Dipan Ram etc. v. State of Jharkhand passed in WP (C) No. 5522 of 2001' and other analogous cases reported in '2002(1) JCR page 146' it has been held that an authority vested with the power of mutating a land cannot refuse to register the land on the ground that the sale deed of the land had been executed outside the State.

It is well settled that mutation of land does not create any right and title in favour of one or another. It merely allows a person to have his name entered in Register-11

for purposes of payment of rent. If any application for mutation is preferred, the competent authority cannot refuse. This Court also had the occasion to deal with a similar matter in the case of Smt. Rita Chakraborty v. The State of Jharkhand and others, WP (C) No. 4847 of 2002.

For the foregoing reasons it is held that the first ground taken to the extent that there cannot be mutation on account of land having been registered outside the State, it is held that the Circle Officer had no authority or jurisdiction to make such observation. So far as the second reason is concerned, i.e. prior permission of the Deputy Commissioner not having been obtained, it is held that the mutating authority has no jurisdiction to see right or title in favour of the parties as the same can be done by any aggrieved person in an appropriate proceeding before an appropriate forum.

Consequently, the Writ Application is allowed and the impugned order is set aside and a writ of mandamus is issued upon the Circle Officer, Dhanbad to mutate.'

4. Mr. Shamim Akhtar, learned S.C.-II submitted that the Circle Officer while considering the application for mutation is empowered to consider *atlas* the *prune facie* title of the petitioner besides possession of the land. According to the learned counsel, when transfer itself is illegal and void mutation of the land in favour of the transferee can be refused. Learned counsel relied upon the decision of the Supreme Court in the case of *Lincari Garmango v. Dayanidhi Jena* reported in 2004 (3) PLJR 212

5. First I would like to discuss the decision referred to by the learned Single Judge in the impugned Judgment, in the case of *Dipan Ram v. State of Jharkhand* reported in 2002 (1) JCR 146 the question for consideration was whether mutation of land can be refused on the ground that the sale-deed in respect of the land was executed and registered outside the State. The Single Bench of this Court held that mutation of land cannot be refused on that ground. In the case of *Smt. Rita Chakraborty v. State of Jharkhand and Ors.* WP (C) No. 4847 of 2002 the land was purchased from Pranab Kumar Mitra a non-tribal by registered sale-deed dated 4.2.1994 registered at Kolkata and after the purchase petitioner came in possession of the land. The Circle Officer refused to mutate the land in favour of

the purchaser on the ground that the sale-deed was registered at Kolkata. On these facts, a Bench of this Court held that mutation cannot be refused on the ground that registration was done outside the State.

6. There is no dispute with regard to the legal proposition of law that mutation proceedings is not judicial proceeding and the right, title and interest cannot be determined in such proceedings. It is a fiscal inquiry only for the purpose of collection of revenue.

7. In the case of (Thakur) Nirman Singh and Ors. v. Thakur Lal Rudra Partab Narain Singh and others. AIR 1926 PC 100 it was held that it is an error to suppose that the proceedings for the mutation of names are judicial proceedings in which the title to and the propriety rights in immovable property are determined. They are nothing of the kind as has been pointed out times innumerable by the Judicial Committee. They are much more in the nature of the fiscal inquiries instituted in the interest of the State for the purpose of ascertaining which of the several claimants for the occupation of certain denominations of immovable property may be put into occupation of it with greater confidence that the revenue for it will be paid,

8. Orders in mutation proceedings are not evidence that the successful applicant was in possession as sole -legal owner in a propriety sense to the exclusion, for example, of all claims for the other member of the family as co-owners or for maintenance or otherwise as revenue authorities have no Jurisdiction to pronounce upon the validity of a such a claim,

9. In the case of Nand Kishwar Bux Roy v. Gopal Bux Rai and Ors., AIR 1940 PC 93 it was held that mutation proceedings are merely in the nature of fiscal inquiries. instituted in the interest of the State for the purpose of ascertaining which of the several claimants /or the occupation of the property may be put into occupation of it within the greater confidence that the revenue for it will be paid.

(emphasis given)

10. In the case of *Depta Tewari and Ors. v. State of Bihar and Ors.* 1987 PLJR 1037 it was held as follows :

'6. From a perusal of the impugned order it appears that the respondent Nos. 2 and 3 have rightly decided the case of the respective parties on the basis of the possession. It is not disputed nor can it be in law, that an order with regard to mutation has to be passed on the basis of possession only inasmuch as the authorities concerned cannot decide in such a case a disputed and complicated question of title. The findings of facts by aforementioned respondents having been arrived after taking into consideration all relevant facts and as such I am not in a position to interfere therewith.

9. In my view the Officers passing the orders on mutation matter do not exercise any Judicial, or quasi-judicial function. They arrive at a decision, of possession on the basis of the evidences placed before them including the reports of the officers concerned. Respondent Nos. 2 and 3 in my opinion, cannot be said to be a 'Court' within the meaning of Section 3 of the Evidence Act and as such it was not necessary for them to follow the procedure laid down under the Evidence Act for the purpose of proving any document or otherwise.'

(emphasis given)

11. In the light of the settled proposition of law laid down by various Courts we are also of the view that in a mutation proceedings the Circle Officer is not supposed to determine the title and the proprietary right in immovable property for the reason that orders in mutation proceedings are not evidence that the successful applicant is in possession as sole legal owner in a proprietary sense to the exclusion of others. But at the same time the Circle Officer is not precluded from considering the evidence on the basis of which applicant is claiming possession, (emphasis given)

12. The doctrine that possession follows title is well recognized. That means that when rightful owner is not in actual physical possession, he would in the eye of law be deemed to be in possession. The benefit of such presumption can accrue in favour of the rightful owner but not in favour of wrong doer. If the applicant wants

deletion of name of the tribal being rightful owner from the revenue record and entering his name on the basis of document of transfer which is illegal, void and non-est in the eye of law then in our view the Circle Officer cannot and shall not mutate the name of the applicant-purchaser in respect of the land owned by tribal.

13. Besides the above, the Bihar Tenants' Holdings (Maintenance of Records) Act, 1973 has been enacted laying down the procedure to be followed by the Circle Officer before mutating the name of a person applies for mutation,

14. Section 12 of the said Act is substituted by Bihar Act 1973 reads as follows :

'Persons claiming interest by partition effected either privately or through Court or intestate or testamentary succession. transfer, exchange, agreement, settlement, lease, mortgage, gift or by any other means to file application before the Anchal Adhikari-After the commencement of this Act in any area every person having interest in a holding or part thereof in that area by partition effected either privately or through Court, or intestate or testamentary succession, transfer, exchange, agreement, settlement, lease, mortgage, gift of by any other means, shall within three months or accrual of such interest file application in the prescribed form before the Anchal Adhikari or the area in whose jurisdiction that Land is situated for mutation of his name in respect of that holding or part thereof in the continuous Khatian and the Tentant's Ledger Register and on receipt of such application, the Anchal Adhikari shall grant a receipt to such person.'

15. Section 14 of the said Act provides manner of disposal of mutation cases. Section 14 read as under :

'Requisition and disposal of mutation cases.-(1) On receipt of notice under Sections 4, 5, 6, 7, 8, 9 and 10 or an application under Sections 11 and 12 or a report under Section 13. the Anchal Adhikari shall start a mutation proceedings and after entering it in the mutation case register which shall be maintained in the prescribed form, shall cause such enquiry to be made as may be deemed necessary.

(2) The Anchal Adhikari shall issue a general notice and also give notice to the parties concerned to file objection. if any, within fifteen days of the issue of the notice. On receipt of objection, if any, the Anchal Adhikari shall give reasonable opportunity to the parties concerned to adduce evidence, if any, and of being heard and dispose of the objection and pass such orders as may be deemed necessary,

(3) In cases in which no objections are received the Anchal Adhikari shall dispose them of within one month of the date of expiry of filing objection and in cases in which objections are received, the Anchal Adhikari shall dispose them of in not more than three months from the date of expiry of the period of filing objections'

16. Sections 15 and 16 lays down the provisions of appeal and revision against the order passed by the Circle Officer.

17. From bare perusal of the aforesaid provisions, it is manifest that before passing order of mutation the Circle Officer is required to give notice to the person whose name is running in the revenue record and also general notice inviting objections. On receipt of objection the Circle Officer shall give opportunity to the parties to adduce evidence for the purpose of ascertaining which of the claimant for the occupation of the property may be put in occupation of it with great confidence for the recovery of revenue being made feasible. In our considered opinion, therefore. the Circle Officer is not supposed to recognize possession of a person on the basis of a void and illegal sale deed as against a rightful owner who is member of tribal community. It is not in all cases but in cases where at the first hand a person purchased the property from a tribal person in contravention of the provisions of law then it would be unjust and improper to enter the name of the purchaser in revenue record by deleting name of the tribal person. At this stage, I would like to quote Section 46 of the Chotanagpur Tenancy Act.

'Restrictions on transfer of their rights by raiyats.-(1) No transfer by a raiyati of his right in his holding or any portion thereof-

(a) by mortgage of lease for any period expressed or implied which exceeds or might in any possible event exceed five years, or

(b) by sale, gift or any other contract or agreement,

shall be valid to any extent:

Provided that a raiyati may enter into a bhugut bundha mortgage of his holding or any portion thereof for any period not exceeding seven years or if the mortgage be a society registered or deemed to be registered under the Bihar and Orissa Co-operative Societies Act, 1935 (B. & O. Act VI of 1935) for any period not exceeding fifteen years :

Provided further that.....'

(2) A transfer by a raiyati of his right in his holding or any portion thereof under sub-section (1) shall be binding on the landlord.

(3) No transfer in contravention of sub-section (1) shall be registered or shall be in any way recognized as valid by any Court, whether in exercise of civil, criminal or revenue jurisdiction.

(3-A)

18. Sub-section (3) of Section 46 of the C.N.T. Act clearly provides that no transfer of land by a member of Scheduled Tribe in favour of non-tribal shall be registered and even if such transfer is made in contravention of Section 46(1). of the Act then the same shall not be recognized as valid by any Court of law exercising civil, criminal or revenue, jurisdiction.

19. Recently in the case of Amrendra Pratap Singh v. Tej Bahadur Prajapati, 2004 AIR SCW 403, the Supreme Court was considering the question whether a non-tribal can claim right by adverse possession in respect of tribal land which was governed by the Orissa Scheduled Areas Transfer of immovable Property by Scheduled Tribe (Regulation). 1956. Their lordships held that the right in the property ought to be one, which is alienable and is capable of being acquired by the competitor. The right stands alienated by operation of law, for, it was capable of being alienated voluntarily and is sought to be recognized by the doctrine of adverse possession as having been alienated voluntarily by default and inaction

on the part of the rightful claimant. It was further held that acquisition of title in favour of any tribal by invoking the doctrine of adverse possession over immovable property belonging to tribals is prohibited by law and cannot be countenanced by Courts.

20. Similarly in the case of *Lincai Gamango v. Dayanidhi Jena* (supra) their lordships held that when transfer of land of a tribal in favour of non-tribal is prohibited in law then possession of non-tribal on the basis of illegal transfer cannot be recognized .

21. Coming back to the instant case, as noticed above, mutation was refused by the Circle Officer on the ground that the petitioner purchased the land from a member of Scheduled Tribe in violation of the provisions of Section 46 of the C.N.T. Act. If that is so, transfer of land by a member of Scheduled Tribe in favour of the petitioner in violation of the provisions of the Act is itself illegal, null and void and the purchaser has not acquired right, title and interest over the said land. In such circumstances even if the purchaser came in possession of the tribal land by virtue of transfer by a member of Scheduled Tribes in contravention of the provisions of C.N.T. Act, possession of such transferee cannot be recognized by any Court of law. The Circle Officer can, therefore, refuse to enter the name of the purchaser by deleting the name of the tribal from the revenue records or from register-II maintained by the office of the Circle Officer.

22. Taking into consideration the entire facts of the case, we have not hesitation in holding that the learned Single Judge is not correct in law in holding that even if the petitioner claims mutation on the basis of transfer made by a member of Scheduled Tribe in contravention of the provisions of the Act, the Circle Officer has not authority to see the right or title of the parties,

23. This appeal is, therefore, allowed and the impugned judgment passed by the learned Single Judge is set aside. Before parting with the Judgment, it is clarified that this judgment is confined only to those cases where first hand transfer is made by tribal to a member of non-tribal in contravention of the provisions of Section 46 of the C.N.T. Act and the purchaser claims mutation of his name in the revenue records on the basis of such transfer.

H.S. Prasad, J.

I agree.

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