

Jai Singh Vs. S.D.O. and ors.

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Court : Orissa

Decided On : Jan-12-1971

Reported in : 37(1971)CLT261

Judge : G.K. Misra, C.J. and ;A. Misra, J.

Acts : Orissa Scheduled Areas Transfer of Immovable Property (by Scheduled Tribes) Regulation, 1956 - Regulations 2 and 3(2)

Appeal No. : O.J.C. No. 330 of 1968

Appellant : Jai Singh

Respondent : S.D.O. and ors.

Advocate for Def. : Govt. Adv.

Advocate for Pet/Ap. : R. Das and ;P.K. Das, Advs.

Disposition : Petition dismissed

Judgement :

G.K. Misra, C.J.

1. An application was filed by opposite party Nos. 4 to 6 under Clause 3(2) of the Orissa Scheduled Areas Transfer of Immovable Property (by Scheduled Tribes) Regulation, 1956 (Orissa Regulation No. 2 of 1956) (hereinafter to be referred to

as the Regulation) for eviction of the petitioner from the disputed land. Their case was that they were co-sharers in respect of this land with Chammar and Sana (not parties to the writ application) and to their knowledge no transfer was effected of this land in favour of the petitioner. An objection was filed by the petitioner to the effect that he had taken a licence of the land from Chamar who is a co-sharer of Saha and opposite party Nos. 4 to 6. The S. D. O. who is the competent authority passed an order of eviction. The petitioner went in appeal, but the same was dismissed. Against the appellate order, this writ has been filed under Articles 226 and 227 of the Constitution.

2. Mr. Das for the petitioner raises the following contentions: (1) The Opposite Party Nos. 4 to C not having made out a case that there was a transfer in favour of the petitioner within the meaning of that expression in Clause 2(f) of the Regulation, the entertainment of the application for eviction by the competent authority was without jurisdiction: (2) the licence taken by the petitioner does not come within the meaning of the expression 'transfer' under Clause 2 (f): and (3) even if possession is restored under Clause 3(2), it must be restored to the transferor or his heirs as prescribed therein.

3. The question of absence of jurisdiction is without substance. The petitioner in his objection made out a case that he took this land as a licensee from Chamar on condition that he would make payment of a monthly fee of Rs. 30/- for the use and occupation thereof as a house-site by putting temporary shed. It was open to the competent authority to examine which version was true. The competent authority came to the conclusion that it was a licence, and on such a finding he had jurisdiction to determine whether there was a transfer or not.

4. The second contention is that a licence does not come within the ambit of the expression 'transfer' in Clause 2 (f) which runs thus:

'2(f). 'Transfer of immovable property' means mortgage with or without possession, lease, sale, gift, exchange or any other dealings with such property not being a testamentary disposition and includes a charge or contract relating to such property'.

It is contended by Mr. Das that the licence does not constitute dealing with such property as the word 'dealing' is to be construed ejusdem generis with the expressions occurring earlier, such as. 'mortgage', lease', 'sale', 'gift' or 'exchange'. The contention has no substance. The word 'dealings' is of a wide connotation. The Regulation has been passed for the benefit of members of the Scheduled Tribes and there is no reason why a restrictive construction would be given to the expression. That apart, licence would also come within the meaning of contract relating to such property. There was an agreement between the parties that petitioner would occupy the land for house-site on payment of Rs. 30/- per month. In either view of the matter, the so-called licence is a transfer within the meaning of Clause 2(f). The second contention fails.

5. The third contention is based on the wordings of Clause 3(2) which says that ejectment would be ordered against any person in possession of the property claiming under a transfer and the restoration of possession of such property shall be caused to the transferor or his heirs. Mr. Das contended that the transferor in this case was Chamar and as such, restoration of possession would be in favour of Chamar. There cannot be any dispute that vacant possession of the disputed land would be given by dismantling the building to Chamar who was the transferor. The question, however, is whether such possession of Chamar would constitute possession of Saha and Opposite Party Nos. 4 to 6. As admittedly they are co-sharers, possession of Chamar is the possession of all the co-sharers. In that way, all the co-sharers would get possession of the land.

6. In the result, the writ application has no merit and is accordingly dismissed, but in the circumstances, there will be no order as to costs.

A. Misra, J.

7. I agree.