

भूमि सुधार उप समाहर्ता का न्यायालय, धालभूम जमशेदपुर।

भूमि वापसी वाद संख्या :- 15/2023-2024

ईश्वर सिंह

—वनाम—

- 1) दिलीप सोरेन
- 2) गुरुपद सोरेन
- 3) सुचाँद सोरेन
- 4) दुर्जन सोरेन

दिनांक

आदेश

की गई कार्रवाई

23/12/2023

आवेदक ईश्वर सिंह, पिता- स्व० युगल सिंह, सा०-आमझोर, थाना-बोड़ाम, जिला- पूर्वी सिंहभूम से अनुसूचित क्षेत्र विनियम 1969 के अंतर्गत भूमि वापसी के लिए प्राप्त आवेदन पर छोटानागपुर काश्तकारी अधिनियम की धारा 71; 1969 के अधीन इस वाद की कार्यवाई प्रारंभ की गई। इस वाद में 1) दिलीप सोरेन 2) गुरुपद सोरेन, 3) सुचाँद सोरेन तीनों के पिता-सुर्जन सोरेन, 4) दुर्जन सोरेन, पिता-सिताराम सोरेन, सभी सा०-ग्राम- आमझोर, थाना-बोड़ाम, जिला- पूर्वी सिंहभूम को विपक्षी बनाया गया है। इस वाद की प्रश्नगत भूमि का विवरण निम्नवत है-

जमीन का विवरण

मौजा	थाना नं०	खाता सं०	प्लॉट नं०	रकबा
आमझोर	08	33	132	19 डी०

उपरोक्त भूमि पर जवाबदावा प्रस्तुत करने हेतु उभय पक्षों को नोटिस निर्गत किया गया, जो अभिलेख में संलग्न है। वादग्रस्त भूमि का जाँच प्रतिवेदन अभिलेख में मूल रूप में संलग्न है। अंचल अधिकारी, बोड़ाम के द्वारा अपने प्रतिवेदन में वाद की कार्यवाई प्रारंभ करने की अनुशंसा की गई है। अंचल अधिकारी के प्रतिवेदन में यह उल्लेख है कि हाल सर्वे के अनुसार मौजा- आमझोर, थाना नं०-08, खाता सं०-33, प्लॉट नं०-132, रकबा-19 डी० खतियानी रैयत युगल सिंह, प्रहलाद सिंह पिता-कार्तिक सिंह के नाम से दर्ज है, जो आदिवासी खाते की भूमि है। विपक्षी 1) दिलीप सोरेन 2) गुरुपद सोरेन, 3) सुचाँद सोरेन तीनों के पिता-सुर्जन सोरेन, 4) दुर्जन सोरेन, पिता-सिताराम सोरेन, सभी सा०-ग्राम- आमझोर, थाना-बोड़ाम, जिला- पूर्वी सिंहभूम भूमि पर अवैध कब्जा में है। उक्त भूमि को विपक्षी के द्वारा लगभग 10 वर्षों से दखल कब्जा किया गया है। आवेदक अनुसूचित जनजाति के सदस्य है।

विपक्षी क्रमसंख्या 1 एवं 4 के विद्वान अधिवक्ता के द्वारा दिनांक-17.11.2023 को अपना कारण पृच्छा दाखिल किया गया है जो मूल रूप से अभिलेख में संलग्न है। विपक्षी के द्वारा दायर कारण पृच्छा में उल्लेख है कि -

1. That the present case for restoration of possession of the land in preceding under section 71-A C.N.T. Act is not maintainable bothe in law as well as on facts.
2. That the present proceeding is hopelessly barred by limitation. The applicant is not in possession of the land in question for more than 30 years.
3. That the present proceeding has been wrongly proceeded against the opp. Party members, which will be evident from the fact that the father of the opp. Party no.:1 to 3 namely, Surjan Soren alive and he is in possession of the land since the year 1985 after purchasing it from the co-sharer of the applicant and khatiyani raiyat, Prahallad singh(Now dead) after partition from his co-sharer i.e. the father of the present applicant. So the present applicant has no claim over the land.
4. That the Opp. Party members are o tin possession of the land whereas as mentioned above Surjan Soren is in possession of the land since the year 1985 and in this regard and Agreement was also executed between said Prahallad singh and Surjan Soren on 13.09.2014 stating the entire fact, so in absence of Surjan Soren and without giving an opportunity to be heard the entire case is vexatious.
5. That Surjan Soren is alive and is in possession of the land by constructing houses thereon, later on also constructed houses from government fund and residing with his

family members. The opp. Parties are unnecessarily made parties in this case. Furthermore the report Anchal Office is without any on the spot verification or else they must have reported that the land with house is in possession of Surjan Soren for more that 30 years.

6. That the land is a "Chapparbandi" land since more than 30 years, furthermore said Surjan Singh is also a tribal person.
7. That no land belonging to the applicant of this case is in occupation of the answering Opp. Party it has been since long partition as mentioned above the same is in possession of Surjan singh.
8. That if at all after measurement of the land in proceeding the rooms in occupation of the answering defendant are found to be with in the proceeding land, then also the landlord of the answering Opp. Party namely said Surjan Singh becomes a necessary party in this case and without hearing him no effective order can be passed to dispose of this case.
9. That evidently the land in occupation of the answering Opp. Party is homestead land with structures standing thereon since more than 30 years.
Therefore, the present proceeding is barred by limitation.
10. That the report of the circle Officer submitted in this case is wrong and incomplete. It does not disclose the material facts mentioned above. No Boundary of the same is given. On assumption only the possession of the Opp. Party is shown to be since last 10 years by mere assumption.
11. That under the facts and premises set-forth above the present proceeding against the answering Opp. Parties is fit to be dropped.

आवेदक के विद्वान अधिवक्ता के द्वारा दिनांक-01.12.2023 को अपना Rejoinder दाखिल किया गया है जो मूल रूप से अभिलेख में संलग्न है। आवेदक के द्वारा दायर Rejoinder में उल्लेख है कि -

1. That the show cause on behalf of opposite parties no. 1 and 4 has been filed with all sorts of false statement with a view to falsify the case of the applicant.
2. That the father of the applicant namely Jugal Singh as well as Prahallad Singh both are sons of Kartik Singh, are recorded raiyats in respect of the proceeding land and till plot are being realized by the Government of Jharkhand and online rent receipt have been obtained for the year 2023-2024 in the names of the recorded raiyats Jugal Singh and Prahllad Singh.
3. That the spot enquiry report has been submitted by the Area karamchhari as well as by Circle Officer, Boram and the same are correct and it has reported that 19 decimals of raiyati land of Jugal Singh, the father of the applicant, recorded under Khata NO. 33, plot no. 132, mouza Amjhor within PS Boram has been encroached forcibly by the answering opposite parties before 10 years and the answering opposite parties with a view to save themselves by forging an agreement dated 13.09.2014 purported to had been executed by Prahallad Singh, but no document has been filled in support of this claim made by the answering opposite party. Moreover alleged agreement manufacturing document in view of the facts that Prahllad Singh died much earlier than the alleged date of agreement dated 13.09.2014 and the aforesaid document will falsify the period of possession of the answering opposite party since more than 30 years as the alleged agreement is executed only before 9 years and so, question of possession of the land since the year 1985 of the answering opposite parties is baseless and concocted.
4. That the proceeding land is not a chhapparbandi land as per the entry made in the khatian finally published in the year 1964 the nature of the land has been shown as Gora-III and the answering opposite parties have illegally and forcibly constructed the house over the proceeding land after encroacheing the land of 19 decimals and the report of the circle officer, Boram clearly shows that opposite parties have forcibly and illegally constructed house over 10 decimals and 9 decimals land are lying parti, and the aforesaid fact will clearly falsify the claim of answering opposite parties as per the report submitted by the Karmachari and circle officer, Boram and demarcation of proceeding land has been made and the stone pillar has been fixed.
5. That the claim of the answering opposite parties are baseless, imaginary and motivated in view of the own admission of the answering opposite parties.
6. That in view of the aforesaid submission, it is necessary that necessary order for restoration of possession of the proceeding land u/s 71-A should be passed in favour

of the applicant.

It is therefore prayed that necessary order may kindly be passed in favour of the applicant.

विपक्षी क्रम संख्या-1 एवं 4 के विद्वान अधिवक्ता के द्वारा दिनांक-13.12.2023 को अपना Rejoinder दाखिल किया गया है जो मूल रूप से अभिलेख में संलग्न है। आवेदक के द्वारा दायर Rejoinder में उल्लेख है कि -

1. That after filing of show-cause the applicant filed his rejoinder to the show cause filed by the Opp. Party No. 1 to 4.
2. That admittedly now here they whispered to make father of the opp. Party no.: 1 to 3 namely, surjan Soren, who is very much alive as party in the proceeding, without making him party the entire proceeding is vexatious.
3. That the opp. Party categorically state in their show-cause that said Surjan Soren is necessary party in this proceeding but the applicant knowing full well that said Surjan Soren is alive he has not been made party so if any order in his absence is not binding upon Surjan Soren who is in actual possession of the land for more than 30 years by constructing houses thereon.
4. That furthermore the contention of the applicant is that the land is of "chapparbandi Land", whereas it has been specifically mentioned in the "Karamchhari Report" in the Sl. No.: 6 that "Do Sarkari Awas" tatha Tali ka Chawni Mitti ka diwal". Which categorically proves that the land is chapparbandi land and the government has sanction him fund to construct house after enquiry and seeing the possession.
5. That further contention of the applicant that the opp. Parties are not in possession for more than 30 years. Whereas the fact is Surjan Soren Alive and he is in possession of the land since the year 1985 after purchasing it from the co-sharer of the applicant and khatiyani raiyat, Prahallad singh(now dead) after partition from his co-sharer i.e. the father of the present applicant. So the present applicant has no claim over the land. The Opp. Party members are not in possession of the land whereas as mentioned above Surjan Soren is in possession of the land since the year 1985 and in this regard and Agreement was also executed between said prahallad singh and surjan soren on 13.09.2014 stating the entire fact.
6. That on amongst other points to be urged at the time of hearing, the present proceeding against the answering opp. Parties is fit to be dropped.

प्रथम पक्ष के विद्वान अधिवक्ता को सुनने एवं विपक्षी द्वारा प्रस्तुत कागजातों सहित कारण-पृच्छा तथा अंचल अधिकारी, बोड़ाम के जाँच प्रतिवेदन के अवलोकन से स्पष्ट होता है कि प्रश्नगत भूमि आदिवासी रैयत की भूमि है। छो0का0अधि0 के तहत आदिवासी खाते की भूमि को हस्तांतरण के पूर्व उपायुक्त से अनुमति लेना आवश्यक है। पूर्व अनुमति से संबंधित उपायुक्त का आदेश विपक्षी के द्वारा प्रस्तुत नहीं किया गया है अर्थात् विपक्षी के द्वारा जबरन जिस भूमि को कब्जा किया गया है, वह बगैर उपायुक्त के अनुमति के प्राप्त किया गया है। इससे छो0 का0 अधि0 का धारा 46 का उल्लंघन है। आदिवासी और आदिवासी के बीच हस्तांतरण में भी उपायुक्त से पूर्व अनुमति लेना आवश्यक है।

अतः उपर्युक्त तथ्यों के आधार पर मेरा यह अभिमत है कि इस वाद में छो0का0अधि0 की धारा 71(a) का प्रावधान लागू होता है। अतः उक्त धारा के तहत आदेश पारित किया जाता है कि प्रश्नगत भूमि सह स्थायी संरचना पर से विपक्षी को हटाकर उसका दखल खतियानी रैयत के जीवित उत्तराधिकारी को वापस दिलाया जाय। तदनुसार अंचल अधिकारी, बोड़ाम को दखल दिहानी परवाना निर्गत करें।

उभय पक्ष को आदेश से अवगत करायें। अंचल अधिकारी, बोड़ाम को आदेश का अनुपालन सुनिश्चित करने हेतु आदेश की प्रति उपलब्ध करावें।

अभिलेख की कार्यवाही समाप्त की जाती है।

लेखापित एवं संशोधित

उपायुक्त

(अधिनियम के अंतर्गत)

लेखापित

उपायुक्त

(अधिनियम के अंतर्गत)