

report of the Circle Officer, Khunti through SAR Case no. 44/01-02. The land in question was ordered to be restored in favour of the appellant vide order dated 12.10.2001. Delivery of possession was also ordered to be issued but the same could not be complied and another SAR Case No 42/02-03 was initiated which was disposed of on 13.05.05 with an observation that delivery of possession has already been issued in SAR Case No. 44/ 01-02, and thus the C.O. Khunti should enquire and report within three days. Thereafter C.O. Khunti made an enquiry and found that no D.P. was given in SAR case no. 44/01-02. Accordingly C.O. delivered possession to the appellants excluding 10 decimils of land in plot no 54 where the house of the appellants is existing. The respondents filed SAR appeal no 157/01-02 before Deputy Commissioner, Ranchi in which the matter was remanded to the lower court for hearing a fresh. Accordingly the lower court rejected restoration petition without considering the merits of the case and by ignoring the provisions of the CNT Act.

Heard learned counsel for both the parties. The learned counsel of the appellant submitted that resjudicata will not be applicable in this matter because the earlier case was initiated suo moto by the authorities. In the earlier case, land was ordered to be restored but D.P. was not given. It is stated that in SAR Case No. 42/02-03, Lower Court found that enquiry was necessary and the C.O. Khunti was directed to enquire. After enquiry, the C.O. gave delivery of possession. In Lower Court order, several SAR case were mentioned but khata and plots

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were different. The learned counsel pleaded that the limitation plea of the respondents is wrong because they claimed to have acquired the land in 1943 but they did not prove the registered deed. The Contention was hit by section 67 of Evidence Act. It is narrated that continuity of possession is not proved. The learned counsel referred section 265 of CNT Act with section 144 of C.P.C.

The learned counsel for the respondent argued that order of SAR case no 44/01-02 passed against dead persons. Notice service indicated that the respondents refused to receive the same. The order was passed ex-parte and against that SAR Appeal no. 157/01-02 was preferred in the D.C. Court. Appellate court set aside the lower court order on 14.12.04 and the matter remanded to the lower court. It is stated that several SAR Cases nos. 45/01-02, 44/01-02 were filed through C.O. Khunti against dead persons. In SAR case no 90/02-03 Sohrai Pahan Vrs. Kashi Natha Sahu (dead), DCLR directed the C.O. Khunti to examine the matter and report to the court. The C.O. reported on 25.07.05 that D.P. was given on 08.06.05. The learned counsel pleaded that D.P. was given by dispossessing dead persons on the basis of order which was already set aside by appellate court, hence the D.P. was fictitious in the eyes of law. The learned counsel stated that recorded tenant sold the land to Golga Munda in 1943. It is claimed that permission was not required in that period. Golga Munda Surrendered the land to ex landlord. The respondents acquired the land from ex-landlord through registered settlement.

The judgement reported in 1989 BLJ (Rep) 375, 1989 BLJ (Rep) 482, 1991 (2) BLJR 1084, 1988 BLT (Rep) 520, AIR 1968 Patna 302 (FB) Air 2000 SC, 2276, AIR 1990 (NE) 37 (Calcutta), 2001 (2) JLJR 446 (HC), 2005 (4) JLJR 62 (HC) AIR 1994 SC 853, 2004(4) JLJR 109 (SC), 2004 (4) JLJR 146(HC) has been filed on behalf of the respondents.

The appellant has also filed written argument in which the same points are repeated as stated in memo of appeal and oral submission. It is added that it has been submitted by the respondent that the D.C. Ranchi had set aside the order passed in SAR 44/01-02 and remanded back to the lower court . The contention is not tenable in view of the facts that D.P. was not given in compliance of order dated 12.10.01 rather appellants were put in possession in terms of order dated 13.05.05 passed in SAR 90/02-03 which was neither challenged not set aside by any higher court.

At the outset, it will be relevant to mention different SAR cases and order passed in them in order to avoid confusion. The details are :

S. N.	Case no.	Petitioner	Concerned Khata No	Decision
1	42/2003-04	Mahadeo munda vs Kashinath Sahu	32. 57, 59	Dismissed
2	44/2001-02	Sohrai Pahan vs. Kashi N.	59	Allowed on 12.10.01 but

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		Sahu		Dismissed on 23.11.05 on remand
3	45/2001-02	Koche Munda vs. Kashi Nath Sahu	32	Dismissed
4	64/2001-02	Soma Pahan v. Kashi Sahu	57	Dismissed
5	157/2001- 02 (DC)	Triloki Sahu v. Sohrai Pahan (Appeal Case)	59	Allowed and remanded to SAR court.

A perusal of the above orders indicate that the current appeal has originated out of the order dated 23.11.2005 passed by the DCLR, Khunti in SAR case No. 44/2001-02 and 42/2003-04. Earlier No. 44/2001-02 filed by Sohrai Pahan had been allowed by the lower court but the order was quashed by the then Deputy Commissioner, Ranchi who remanded it back to the lower court.

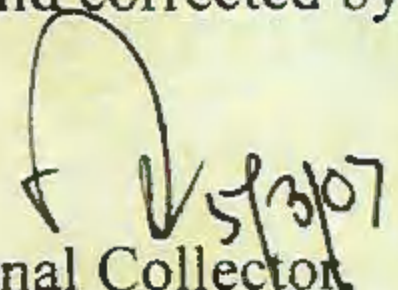
Now the only point left to be considered is the ground on which claim of Sohrai Pahan has been rejected in SAR Case No. 44/2001-02 and 42/2003-04. It is an admitted fact that the recorded tenants sold most of the above mentioned khata through various sale deeds in 1943. Later Gilka Munda surrendered khata numbers 57 and 59 to ex-landlord Bhuram Gogihu. The lower court records contain the documents of sale deeds and surrender deeds.

But subsequent story of settlement by the ex-landlord to the predecessors of the present respondents is not proved. The learned lower court has observed that jamabandi exists in the name of Kashi Nath Gonjhu in respect of Khata Nos. 32, 57, 59. It is not clear whether Kashi Nath Sahu and Kashi Nath Ganjhu is the same person. The lower court has not revealed the mode of transfer of the respondents. The surrender deed mentions a consideration amount of Rs. 400 which also needs to be considered in the light of decisions of Hon'ble High Court.

In the result, the Appeal succeeds and the same is allowed. The matter is remanded again to the lower court for specific consideration of the above stated points.

Dictated and corrected by,

Dated: - 05-03-2007


Additional Collector
Ranchi.