

In the Court of Additional Collector, Ranchi

S.A.R. Appeal 74 R-15/06-07

Akhilesh Kr. Sinha	Appellant
Vrs.	
C. O. Town	Respondent

SAR Appeal 77 R-15/ 06-07

Anandi Devi	Appellant
Vrs.	
State	Respondent

SAR Appeal 78 R-15/ 06-07

Alka Kumari & Others	Appellant
Vrs.	
Budhwa Oraon	Respondent

ORDER

19
08-08-2007

These three appeals has been filed against the order dated 11.07.1996 passed by Sri Rakesh Kumar, Special SAR Officer, Ranchi in SAR case no. 70/92-93 TR 496/94, 21/93-94 TR221/94, 29/92-93 TR48/92. The lower court decided to restore the following land in favour of the respondent.

<u>Village</u>	<u>Khata</u>	<u>Plot</u>	<u>Area</u>
Argora	66	2077 2078 2080	31.5 Katha

The case of appellant of the case no 74R-15/06-07 states that the lower court case no 29/92-93 was started on the basis of a report submitted by Circle Officer, Town vide letter no 1239 dated 14.05.1992. The appellant is one of the members of Rupam Sahkari Grih Nirman Samiti Ltd, (hereinafter called RSGNSL) which has purchased 2 katha 4 chhatak 5 sq. ft. land in R.S. Plot no 2078/B-4 of plot no 2078 through registered deed dated 22.06.1989. The appellant got his name mutated vide case no 1074R-27/89-90 and paying rent regularly. A residential house was also constructed over the land and the name of appellant was also mutated in Ranchi Municipal Corporation through case no 808/91/305. The RSGNSL is a co-operative society, registered under Bihar and Orissa Co-operative society Act. The Samiti purchased the land through registered deed no 10203 dated 12.10.1983 from Budhuwa Oraon son of Mahadeo Oraon. Budhuwa Oraon had acquired the land through permanent settlement with transferable and *chhaparbandi* right on 27.05.1943 from ex-landlord Maharaja Pratap Uday Nath Sahdeo. The name of the settlee was entered in the Jamabandi as *Chhaparbandi* settlee on the basis of return filed by the ex-landlord in compensation case no 2/1955-56. In the lower court, final order was passed. Against that order CWJC no 2949/1992-93 was preferred. The Hon'ble High Court set aside the order of lower court on 07.01.1993 and directed lower court to issue notice to the parties and pass order in accordance with law. The lower court received record on 17.10.1994 and next date was fixed on 21.11.1994 but notice was never served upon the parties

and both parties were absent. The lower court without ascertaining the service report kept the case for order on 16.10.1995. There is no description in the order sheet as to whether the order was passed or not. Recently the appellant came to know that the case of SAR 29/92-93 was amalgamated with SAR 70/92-93 and 21/93-94 and analogous order was passed on 11.07.1996. It is stated that some of the parties whose case stand on similar nature had also preferred CWJC no 3485/92, 3486/92, 3487/92, 3488/92, 3489/92 and 3490/92 in which the lower court order was set aside on 17.02.2000.

The appellant of case no 77R-15/06-07 narrated that RS plot no 2080 is *chhaparbandi* land which was purchased by RSGNSL through registered deed no 7131 of the year 1989 with other plots. The samiti sold 3 katha land in sub plot no 2080/c/6 to Kamaljeet Singh Rajpal through registered sale deed no 7131 dated 26.08.1989. The purchaser constructed residential house over the land and got his name mutated in Circle Officer as well as Ranchi Municipal Corporation. The purchaser Kamaljeet Singh Rajpal died in December, 1995 unmarried and his father Sardar Balbir Singh became owner of the house who sold the same to the present appellant vide registered deed no 5416 of 2001. The appellant got her name mutated in Ranchi Municipal Corporation. SAR case no 70/92 was initiated against Kamaljeet Singh Rajpal and other. SAR case no 21/93-94 and 29/93-94 were also drawn against other persons and *ex parte* order of restoration was passed. Some of the parties had filed

CWJC no 3484/92 to 3490/92 and Hon'ble High Court quashed the lower court order and remanded the matter to the lower court. The vendor of the appellant did not file writ petition and he had no knowledge about SAR 70/92, order of restoration and order of remand. He was not served notice. Sardar Kamaljeet Singh Rajpal died on 22.12.1995 but his father Sardar BALBIR SINGH Rajpal was not substituted. All the cases of lower court was amalgamated and order was passed on 11.07.2006 against dead persons

The cases of appellants of case no 78R-/06-07 is same as case no 74R-15/06-07. It is described that the RSGNSL had purchased RS plot no 2078 vide registered deed no 10203 dated 12.10.1983 from Budhwa Oraon. It is a deled that plot no 2077 and 2079 was purchased from other Co sharer Somra Oraon though registered deed dated 12.10.1988 Plot no 2080 was sold by Butru Oraon to the Samiti vide registered deed on 24.04.1989. It is specified that the appellants are members of the Samiti and that Samiti transferred the land to the appellants through different deeds. It is averred that names of all appellants were mutated in circle Office as well as Ranchi Municipal Corporation and they are paying rent and taxes regularly.

The respondent has filed counter reply cum written argument in which it is stated that the land of village Argora, Khata no 66 plot no 2077, 2078, 2079, 2080, 2081, 2082 Area respectively 29dec, 38dec, 21dec, 21dec, 16dec, 13dec Total 1.38 Acres is the ancestral property of Mangal Oraon and Somra

Oraon. It is declared that the land is recorded under khewat no 1 in the name of Maharaja Pratap Uday Nath Sahdeo and Charo Oraon S/o Mena Oraon, Etwa Oraon and Birsa Oraon S/o Poka Oraon, Manga Oraon S/o Somra Oraon has been mentioned as a raiyat. The respondent also maintains that land is recorded as Don in nature and that the lower court restored the land in favour of the respondent on 18.03.1992 as case no 70/92-93 and is also declared that the said transferors were not heirs of recorded tenants hence the order itself was void. It is also asserted that the land is not *chhaparbandi* but it is kaymi agricultural lands and that all the transfers are illegal.

Heard learned counsel for all the parties who have argued and made their submissions separately.

The learned counsel for the appellants of case no 74R-15/06-07 and 77R-15/06-07 Pandey R.N. Roy submitted that SAR case no 29/92 was started *Suo Motto* on the report of C.O. Town in respect of khata no 66 plot no 2078. The learned counsel said that entire area of the plot was sold to Vishal Grih Nirman Samiti (herein after stated as VGNS). The learned advocate pleaded that Akhilesh Prasad purchased 2 katha 5 chhatak land from VGNS. The Samiti later transferred through different deeds. Plot nos 2077, 2078, 2079, 2080 were sold to RSGNSL & VGNS on 12.10.1983, 12.10.1988 and 20.04.1989 by Budhua Oraon, Somra and Butru Oraon. It was argued that in Ceiling Case no 22/1988, C.O. Town reported that land was *chhaparbandi* and that was why permission for transfer was

given. The counsel emphasised that seven writs were in Hon'ble High Court were heard together and on 17.02.2000 the writs were allowed. It was also submitted that one person could not file writ and orders were passed against them by SAR court. The learned counsel was emphatic on the point that recital of *chhaparbandi* had been accepted by Hon'ble High Court and that applications of others were on similar footing.

The learned counsel for the appellants of case no 77R-15/06-07 of Mr. I.K. Jha submitted that plot no 2080 has been sold by Butru Oraon to RSGNSL by registered deed on 24.04.1989 in which the nature of land has been shown as *chhaparbandi*. It was added that permission u/s 26 of ULC Act had been obtained vide case no 41/1989. The Samiti sold 3 katha land to Kamaljeet singh vide registered deed no7131 of 1989. The learned counsel said that purchaser Kamaljeet died on 22.12.1995 and restoration order was passed on 11.07.1996 against dead person Kamaljeet Rajpal.

The learned counsel for the respondents, Mr. P.K. Gupta, answered that the appellants depended on that farzi *hukumnama* said to be excuted by Ratu Maharaja without date, year, and without signature. He also replied that in the said *hukumnama*, land description was *Tanr* whereas land was *Don*. He expressed that it was violation of sections 28, 29, 36 of the CNT Act. The learned counsel narrated that in case no 74/06-07, RSGNSL acquired land from Budhua Oraon who was not related to recorded tenant. In case no 77/06-07, RSGNSL acquired plot no

2080 from Butru Oraon who was sharer. In case no 78/06-07 of rupam acquired land vide registered deed from Budhua and Butru Oraon. The learned counsel refuted the claim that the disputed land was *chhaparbandi* and hence beyond the purview of section 71 A of the C.N.T. Act.

The main point of contest in present cases is whether the disputed land is *chhaparbandi*. While the lower court has clearly stated in Para 8 that the land under consideration is not *chhaparbandi* because neither the landlord nor raiyat signed any paper.

But the above view of the SAR officer contradicted by the order sheet of ULC case no 21 of 88 of the Additional Collector (Ceiling). The order sheet dated 18.08.1988 reads as under:

" अंचल निरीक्षक के प्रतिवेदन से स्पष्ट होता है कि आवेदित भूमि को भूतपूर्व जमीन्दार द्वारा छपरबंदी में परिणत किया गया है जिसकी पुष्टि जमीन्दारी रिटर्न से होता है। पंजी-II में भी आवेदित भूमि छपरबंदी दर्ज है।...."

A recital of the details given in the sale deed executed by Somra Oraon to RSGNSL in 1988 shows that the land under dispute was given in permanent settlement with transferable and in heritable *chhaparbandi* rights under a regular *hukumnama* dated 27.05.1943 by erstwhile landlord Maharaja Pratap Uday Nath Sahdeo of Chotanagpur Raj.

It appears the learned SAR officer has failed to take into

consideration the description of the deed and the finding of the revenue authorities in ULC case no 521 of 1988 which was available in the lower court record. The transferor/ vendor, Somra Oraon, himself stated in the registered deed of 1988 that the land who converted into *chhaparbandi* land by obtaining permission of the ex. landlord.

More important is the recital of the **Correction Slip** (available in lower court record) issued by the Circle Officer, Ranchi in Mutation Case No. 1244/1988-89 which states as under :

" रुपम सहकारी गृह निर्माण समिति लि०, अशोकनगर, सचिव वसन्त प्रसाद वल्द कुंजनाथ साह के नाम से आवेदित भूमि मौजा – अरगोड़ा, के खाता संख्या 66 के प्लॉट नं० 2079, 2077 रकबा 32 डी० भूमि जिसका वार्षिक लगान **छपरबन्दी** 10 रु० है, दाखिल खारिज की स्वीकृति दी जाती है।"

In view of the above observation of the then Circle Officer, Ranchi Town in Correction slip of Mutation case No. 1244/88-89, it appears that the Anchal office accepted the states of disputed land as *chhaparbandi*. The learned SAR officer has committed error in ignoring all has the aforementioned facts.

The lower court record also contains Rent Receipt No. 373506 of 1988 (issued by revenue Karamchari) which shows the land passed by Rupam Sahkari Grih Nirman Samiti Ltd. as "*chhaparbandi*". This has also been overlooked by the lower

court while passing the order dated 11.07.1996.

It appears from available documents that the land in question has always been treated as "*chhaparbandi*" since 1943 *chhaparbandi* rent and taxes has been paid not only by the vendor but also by the registered cooperative society. This fact is supported by the *chhaparbandi* receipts granted by the ex landlord (1945, 1951) as also the state of Bihar (1988). The land has been used for residential purposes by the appellants and most of them are also paying municipal taxes. It cannot therefore be concluded by the learned SAR officer that the land is not *chhaparbandi* especially in absence of any evidence.

The above finding derives strength from the observation of the Hon'ble Jharkhand High Court in "*Anupama Roy vs. State of Bihar*" [*CWJC No. 2765 of 1994 (R)*] given in 2003 (3) *JCR* 548. The Hon'ble court said documents available on record were ignored and that finding of court below was based on no evidence. It was concluded that finding was unsustainable and hence the same was quashed.

The lower court should record a clear finding whether the land sought to be restored is agricultural land. It must bear in view that some of the land within the compound of a house being cultivated for gardening will not make the land raiyati. The land sought to be restored should be agricultural land and not a residential land.

The following ingredients are required for the

applicability of section 71 A of the C.N.T. Act: (i) the transferor must be a raiyat (ii) the land must be raiyati (iii) Such a raiyat should be a member of the Schedule Tribe and (iv) the transfer must be in violation of provision of section 46 of C.N.T Act. The court below should record a finding on each of the above said ingredients.

It is clearly established by now that if a land is *chhaparbandi* no proceeding under section 71 A can be initiated for restoration of that land. Instead it will be governed by the Transfer of Property Act and provisions of the Chotanagpur Tenancy Act will not apply.

As noticed above the transfer has himself stated in the Deed of Transfer that the land was converted into *chhaparbandi* by the permission of the ex landlord as early as 1943. The vendor of the cooperative society had been using the land as *chhaparbandi* and paying the *chhaparbandi* rent to the ex- landlord. After transfer to the cooperative, the latter transferred small parcels of the land to the appellants who got it mutated as *chhaparbandi*.

The lower court has hardly taken any oral evidence to substantiate that the land is raiyati. In none of the cases, witnesses ever deposed and the order of the court was just based on documents of opposite parties. In this regard the case needs to be considered afresh. It is also open to the lower court, to examine consider and decide the cases in terms of 2nd proviso of

71A of the CNT Act in accordance with the fixed provisions of the statute.

In the result the combined order dated 11.07.1996 passed by the learned S.A.R. officer is quashed and the appeal is allowed. The case is remanded back to the Schedule Area Regulation Officer to reconsider afresh and decide all the points a new.

Dictated and corrected by,

Sd/-

Additional Collector,
Ranchi

Dated: - 08-08-2007