

In the Court of Additional Collector, Ranchi.

SAR Appeal 29 R15/07-08

Upendranath Sinha & others

Appellant

Versus

Dugai Munda & others

Respondent

ORDER

10/13.08.2008

This appeal is directed against the order dated 17.07.2007 passed by Sri Devnish Kiro, Special Officer, Ranchi in SAR Case No. 2/02-03 by which it is decided to restore the following land to the respondent.

<u>Village</u>	<u>Khata</u>	<u>Plot</u>	<u>Area</u>
Hesal	77	484	1.37 Acres

The appellants has filed this appeal for the area described in details herein below :-

<u>Sl. No.</u>	<u>Namane of appellant</u>	<u>Area</u>
1.	Upendra Nath Sinha	5 katha 1 chhatak 27 sq.ft.
2.	Vijay Kumar Singh	5 katha 1 chhatak
3.	Manish Kumar Sinha	4 katha
4.	Smt. Malti Devi	5 katha 36 sq.ft.
5.	Bhola Ram	2 katha 11 chhatak 3 sq.ft
6.	Shyam Nand Pathak	1 katha 2 chhatak
7.	Smt. Laskhmi Devi	3 katha 8 chhatak
8.	Manjura Karmakar	2 katha 12 chhatak 36 sq.ft.
9.	Anil Kumar Tiwary	4 katha
10.	Harish Chandra Lala	1 katha 12 chhatak
11.	Smt. Nutan Jha	5 katha 1 chhatak 27 sq.ft.
12.	Thakur Harendranath Sinha	1 Katha 12 chhatak
13.	Sanjiv Kumar Mishra	6 katha 2 chhatak 11 sq.ft.

The case of appellant states that the land in dispute is recorded in the name of one Duga Munda who voluntarily surrendered the entire land to the then landlord by virtue of deed of surrender dated 30.05.1938 and landlord came into possession of the same. The landlord made chhaperbandi settlement of entire 1.37 acres of land in favour of Talanga Munda, Fateh Munda and Bucha Munda sons of Rusu Munda on 3.4.1942. They came into possession and paid chhaperbandi rent to the landlord. After vesting they were recognized as tenants by the state government records. It is further described that the names of Telanga Munda and others was mentioned in the return filed by the then landlord at the time of vesting. A amicable partition was held between Telanga, Fateh and Bucha Munda in which the entire area of Plot No. 484 was allotted to Fateh Munda who came into separate exclusive possession. Fateh Munda died in 1969 and his son Ramchandra Munda inherited the property. He sold the entire 1.37 acres of land to Jagdishwar Dayal Singh through registered sale deed dated 4.2.1974. Jagdishwar Dayal sold the land to the appellants partially through different registered sale deeds on different dates. The appellants came into possession and constructed houses over their respective portions of the land. Before construction, the appellants got map sanctioned by the competent authority and also got their name mutated in Ranchi Municipal Corporation. It is claimed that no case under section 71 A can be initiated in respect of chhaperbandi land. The land is not been used for agriculture purpose. It is pleaded that the case is barred by law of limitation. It is alleged that the lower court did not consider the materials and facts. The lower court did not consider that no permission of Deputy Commissioner is required for transfer of chhaperbandi land.

Heard learned counsel for both the parties. The learned counsel of the appellants repeated the story as stated in memo of appeal. The learned counsel for the respondent pleaded the said sada transfer is not reliable. Land was transferred after 1946 when permission was necessary. It is asserted that the appellants clearly violated the provisions of section 46 of the CNT Act.

In brief, the appellants assert that lands of Khata No. 77 including Plot No. 484 area 1.37 acres situated at Village Hesal were surrendered by Duga Munda (recorded tenant) to the ex-landlord on 30.5.1938. The latter took over the possession of land and converted the same in Bakast land. Subsequently the entire area was settled to Telanga Munda, Fateh Munda and Bucha Munda on 3.4.1942 fixing the chhaperbandi rent of Rs 11 per annum. The settlement was shown in the return filed by the ex-landlord at the time of vesting of zamindari.

There was an amicable partition between Telanga Munda, Fateh Munda and Bucha Munda. The entire area (1.37 acres) fell exclusively in the share of Fateh Munda who died in 1969. His son Ram Chandra Munda inherited the property and transferred the same to Jagdishwar Dayal Singh by virtue of registered deed dated 4.2.1974. Jagdishwer Dayal in his turn transferred the land to the present appellants.

The appellants have filed a copy of the return filed by Late Jagdishwar Dayal Singh in Compensation Case No. 276 of 1955-56. The names of Telanga Munda, Dhate Munda and Ucha Munda are recorded in the said return along with chhaperbandi rent of Rs 11.

Coming to the issue of surrender, it was made in 1938. At that time the permission of the Deputy Commissioner was not required. The requirement of permission was inserted in section 72 by the Amending Act 24 of 1947 which came into force on 5.1.1948.

As regards the need of registration of surrender deed, it has been held in a decision reported in AIR 1941 Patna 142 that a deed of surrender need not be registered.

The above mentioned facts show that there was no violation of section 72 in the surrender of land. Section 72(4) provides that the ex-landlord had every right to settle land which were surrendered by the recorded tenant to the former. In the present case, chhaperbandi settlement was made by the ex-landlord in favour of Telanga Munda and others.

More importantly, the land has been shown as chhaperbandi in the registered deed of sale executed by the Ram Chandra Munda (son of the settlee) in favour of Jagdishwar Dayal Singh on 4.10.1974. All the subsequent deeds executed by Jagdishwar Dayal also contain the word chhaperbandi.

Learned counsel for the appellants drew attention of the court to decisions reported in 1987 BLT 305, 1987 BLT 332, 1989 BLT 404, 1989 BLT 407 and 2003 (3) JLJR 626. The submission underlined a settled principle of law that if the land are chhaperbandi, no permission of the Deputy Commissioner for sale by a tribal to a non-tribal is required.

It is settled by a Bench decision of the Ho'ble High Court in CWJC 713 of 1980(R) reported in 1987 BLT 305 that section 71 A of the CNT Act does not apply to chhaperbandi land, that is, non-agriculture land. In all documents of sale there is recited that the land is chhaperbandi. In the return of 1955-56 the rent of Rs 11 is mentioned.

Be that as it may, the nature of land has always been treated as chhaperbandi since 1942 and further confirmed in the zamindari return of 1955-56. It is supported by the Mutation Case No. 119 R27 of 1973-74

which allowed the mutation of Jagdishwar Dayal Singh with an annual rent of Rs 11.

For the aforesaid reasons, the appeal application is allowed and the order of restoration passed by the SAR Officer, Ranchi is set aside.

Dated :- 13.08.2008

Dictated & Corrected by

Sd./-
Additional Collector,
Ranchi.