

In the Court of Additional Collector, Ranchi

SAR Appeal 62 R 15/07-08

Gourishankar Choudhary	Appellant
Versus	
Bhouwa Munda & others	Respondent
Versus	
Bandhana Tirkey & others	Intervener

ORDER

14/05.05.2008 This appeal has been filed against the order dated 26.11.2007 passed by Sri Deonish Kiro, Special Officer, Ranchi in SAR Case no 163/80-81 TR 104/05-06 by which 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>
Hesal	40	1156	20 Decimal

The case of appellant states that SAR Case No. 163/ 80-81 was initiated by Murla Oraon and Mahadeo Oraon against Motilal Sahu for 25 decimal of land. In that case, Motilal claimed only 20 decimal of land. The said case was disposed off on 12.09.1986. Against that order, the descendent of Murla and Mahadeo Oraon preferred an appeal before the Additional Collector, Ranchi being SAR Appeal No. 162 R15/1986-87. The Appeal was disallowed by order dated 28.11.1991. It further stated that the lower court illegally and erroneously registered the restoration application of Aju Munda (father of the present respondent) in disposed off file of the SAR Appeal case no. 162 R15/1986-87 and illegally assigned the case as SAR Case No. 163/80-81 corresponding to TR No. 104/05-06. It is expressed that the appellant appeared in lower court and filed show cause. Later Aju Munda died on 8.8.2008 but without any substitution the case was heard. It is asserted that the restoration

application was not maintainable because the nature of land is chhaparbandi with house, building and shed since last several decades. The restoration application of Aju Munda is barred by limitation as the same was filed after expiry of more than 54 years. It is described that in the year 1950, Baga Mahto sold the disputed land to Bhola Choudhary by virtue of registered sale deed after getting the land converted into chhaparbandi. Bhola Choudhary continued in possession and sold the land to Munakia Devi vide registered sale deed in the year 1966. The purchaser made construction over the land. The name of Munakia Devi was mutated in the Circle Office and Ranchi Municipal Corporation. After her death, the appellant being her son inherited the property and came into possession. He got his name mutated in Circle Office and Ranchi Municipal Corporation. It is alleged that the lower court did not consider the documents of the appellant and illegally passed restoration order.

In the course of hearing the case, Bandhana Tirkey, Devia Tirkey, Tunnu Tirkey and Mahendra Tirkey sons of late Murla Oraon filed an application to make themselves as intervener which was allowed vide order dated 22.02.2008.

Heard the learned counsel for all the three parties. The learned counsel for the appellant submitted the same points as stated in memo of appeal. It is added that M/S A. P. Automobiles was tenant in disputed land and the appellant filed eviction suit against him which was decreed in favour of the appellant. There was hot contest upto Supreme Court but appellant succeeded. It is narrated that the lower court wrongly recorded that the land is vacant.

The learned counsel of the respondent argued that in SAR Appeal 162 R15/86-87, the lower court case was attached by order of AC dated 28.11.1991. The counsel pleaded that originally case was filed for 25 decimal of land but order was passed on 20 decimal.

Bhaga Munda purchased the land from recorded tenant on 18.2.1947 by registered deed. It was added that On 5.10.1950, Laxmi Dayal Singh Converted the land into chhaparbandi and that the landlord Jaleshwar Dayal had five sons but only one son Laxmi Dayal converted the land into chhaparbandi. On 5.10.1950, Baga Mahto sold the land to Bhola Choudhary. It was same transaction on same day. Bhola sold the land to Muakia Devi on 23.8.1966. Lastly the counsel emphasized that there is no Municipal Tax receipts before 1969 and the transaction is wrong in the eyes of law.

The learned counsel for the intervener said that Murla and Devia Oraon filed SAR Case No. 162/86-87. Bandhana Tirkey filed SAR Case No. 163/80-81 against Gourishankar Choudhary in which 20 decimal of land was restored and 5 decimal land was restored in another case. The learned counsel also asserted that Additional Collector remanded the case for 20 decimal and that on 9.06.2005 one Aju Munda filed a petition stating that he was son of Baga Munda. The intervener's counsel debated on the decision of the lower court which admitted the petition of Aju Munda without complying the order of the Additional Collector.

Recalling facts of the case, Murla and Mahadeo Oraon filed restoration case No. 163/1980-81 against Moti Choudhary for restoration of 25 decimal of land in village Hesal under Khata 40 Plot no. 1156 on the ground that the land belonged to their ancestors. The lower court ordered on 12.09.1986 for restoration of 5 decimals of land and kept the decision pending for the rest 20 decimal of land. In the second stage, an Appeal Case No. 162 R15 of 1986-87 was filed in the court of Additional Collector, Ranchi. The latter finally decided the case on 28.11.1991 and upheld the order of the SAR Court with an observation that the lower court should try to find the

whereabouts of Baga Mahto (Munda) from the Circle Officer and pass necessary orders.

The SAR Court revived the case suddenly on 9.06.2005 on the application of Aju Munda who claimed to be descendent of Baga Mahto (Munda). Notice was issued to Gouri Shankar Choudhary. After hearing both the parties the SAR Court passed order on 26.11.2007 restoring 20 decimal land to the new petitioner.

However, the lower court has not complied with the direction of the Additional Collector dated 28.11.1991 in Appeal Case No. 162 R15/1986-87 that a report should be obtained from the concerned Circle Officer on Baga Mahto (Munda). Further more, the learned lower court has not heard the appellants of the above said Appeal Case who are the present interveners.

The lower court ought to have ascertained the authenticity of Aju Munda by adducing oral and documentary evidences. But that has not been done and the order of restoration has been passed.

Needless to say that the lower should also examine why only Laxmi Dayal Singh permitted conversion of chapparbandi of the disputed land in spite of the fact that he had four other brothers and his father (ex landlord) Jaleshwar Dayal Singh was still alive.

For the reasons mentioned above, the appeal is allowed with a direction to the lower court that previous order dated 28.11.1991 of the Appellate Court should be complied with and opportunity should be given to the present intervener also. The order should be passed within sixty days of this order.

Dated :- 05.05.2008

Dictated & Corrected by

Sd./-

Additional Collector,
Ranchi.