

In the Court of Additional Collector, Ranchi

SAR Appeal 55 R 15/07-08

Shyam Sundar Lal Jaiswal Appellant

Versus

Kandru Oraon Respondent

SAR Appeal 64 R15/07-08

Bishnudeo Singh & others Appellants

Versus

Kandru Oraon Respondent

ORDER

13/30.05.2008 This appeal has been filed against the order dated 15.10.2007 passed by Sri Deonish Kiro, Special Officer, Ranchi in SAR Case no 989/05-06 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>
Kokar	174	614	96 Decimal

The case of appellant of case no 55 R15/07-08 states that the appellant is owner of only 4 katha of land in disputed plot which was purchased by him vide registered sale deed dated 21.1.1999 from Smt. Krishna Kumari Shall w/o Late Baldeo Raj Bhalla, Ravikant Bhalla S/O Late Baldeoraj Bhalla, Prakashwati Marwah W/O Late Sukhdeoraj Bhalla, Mahendrapal Marwah, Rajendrapal Marwah, Balwant Marwah Son's of Late Sukhdeoraj Marwah through their power of attorney holder Chandrakant Bhalla. The vendors had obtained permission under Urban Land Ceiling act vide case no 1954/9A dated 21.11.1998. The appellant got his name mutated in Ranchi Municipal Corporation and paying taxes

regularly. It is further described that originally the land in question is recorded in the name of Ram Oraon, Sohrai Oraon, Becha Oraon and Riwa Oraon s/o late Soma Oraon who jointly sold the same to Sardar Swarn Singh, Sardar Mahal Singh, Tara Singh and Rajendra Singh in the year 1948. The said purchasers continuing in possession. Later they filed a title suit no. 395/1962 against the sellers which was decreed in favour of the purchasers and as such they remained in continuous possession over the disputed land. After sometime they sold the land to various persons. The present Appellant purchased the land with house. It is further stated that earlier respondents father Ram Oraon had filed a SAR Case No. 138/98-99 which was disposed off on 8.5.2001 by the then SAR Officer in which it was hold that restoration application is not maintainable in view of Indian Limitation Act. It is claimed that the present lower court has no jurisdiction to set aside the order of earlier SAR court as appellate court. The respondent has not filed any appeal against the order of SAR Case No. 138/98-99 and as such the same became absolute and final.

The case of appellants of case no. 64 R15/07-08 stated that the appellant no.1 relates to only three kathas of land in disputed plot which was purchased by him from Mahendra Pd. Marwah, Balwant Marwah s/o Raj Marwah, Smt. Krishna Kumari Bhalla w/o late Baldeo Raj Bhalla, Rvikant Bhalla s/o Baldeo Raj Bhalla, Prakashwati Bhalla w/o late Sukhdeo Raj Bhalla and Rajendra Pal Marwah s/o Sukhdeo Raj Marwah through their power of attorney holder Chandrakant Bhalla vide registered sale deed dated 8.9.2000. The appellant no. 2 also purchased 2 katha of land from the same vendors vide sale deed no. 505 dated 23.8.1999. The mother of appellant no. 3 Kunti Devi had purchased 2 katha of land in disputed plot from Tara Singh Basal s/o Sardar Sadhu Singh vide deed no. 8909 dated 10.12.1966 and 3.1/3 katha from Ex-Major Sardar Swarn Singh vide sale deed no. 6831 dated 27.10.1964 and there is another portion of land

measuring more than 13 kathas after getting permission under Urban Land Ceiling act. It is claimed that the appellants had purchased the land with pucca house. The appellants got their name mutated and tax is also being paid to the concerned department. It is stated that the appellants renewed the houses after purchasing.

Heard learned counsel for all the parties. The learned counsel of the appellant of appeal no 55R15/07-08 argued the same points as stated in memo of appeal. The learned counsel asserted that the present case is hit by res-judicata because earlier a SAR Case No. 138/98-99 was filed by the father of the respondent. The learned counsel of appellants of appeal no. 64 R15/07-08 also argued on the same line. The learned counsel has also filed written argument which contains the same points as stated in memo of appeal and oral submission.

The learned counsel of the respondent stated that the respondent is grand son of recorded tenant Soma Oraon. It is claimed that the respondent is dispossessed about 10 years back. It is narrated that respondents father Ram Oraon died in 1999.

Considering the main facts of the case, there are three main issues for consideration (i) Whether the first transfer from tribal to non Tribal had the sanction of D.C. (ii) Whether the subsequent transfer to the appellants amount to violation of the CNT Act, (iii) Whether the case of the lower court was hit by Res Judicata.

Originally land belonged to Ram Oraon, Sohrai Oraon, Becha Oraon and Riwa Oraon s/o Late Soma Oraon. The appellant has pleaded that they transferred the land in 1948 in the names of Sardar Swarn Singh and others. But the embargo of such transfer had already come into force by the amendment of 1947. As a result the original transfer itself was wrong and illegal.

The appellant of case no. 55 R15/07-08 had purchased the land in the year 1999 from Krishna Kumari Bhalla and others who were so called Power of Attorney holders. In the same way Appellant No. 1 of case no. 64 R15/07-08 had purchased the land from Mahendra Prasad in 2000; Appellant No. 2 from Ganesh Singh in 1999 and Appellant No. 3 from Tara Singh & others in 1964 and 1966. It is concluded that all these transactions were irregular and illegal in the eyes of law.

Going in the matter of 'Res Judicata', Ram Oraon had filed SAR Case No. 138 Of 98-99 against (1) K.K.Sharma (2) Kaushal Sharma (3) Ramji Sharma (4) J.K.P. Sinha (5) Kamla Singh (6) M.K.Dubey (7) Ram Chandra Sharma and (8) S.S.Jaiswal. The lower court had rejected the restoration petition mainly on the ground of period of limitation which he had counted since 1962 when there was a compromise between tribal and others. But the learned lower court has not considered the case of Shyam Sundar Lal Jaiswal and others (present appellants). Without consideration of their particulars, the order of SAR Case No. 138 of 98-99 would not come within Res Judicata.

In the result, the Appeal Case No. 55 R15 and 64 R15 of 2007-08 are disallowed. C.O. Town is to be informed to ensure restoration of land within a fortnight.

Dated :- 30.05.2008

Dictated & Corrected by

Sd./-

Additional Collector,
Ranchi.