

In the Court of Additional Collector, Ranchi.

SAR Appeal 69 R15/07-08

Bajnath Tiwary & others

Appellants

Versus

Riba Oraon

Respondent

ORDER

14/25.6.2008

This appeal has been filed against the order dated 17.8.2007 passed by Sri Deonish Kiro, Special Officer, Ranchi in SAR Case No. 249/06-07 whereby 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>
Hehal	28	96	40 Katha

The case of appellant states that recorded tenant Sanicharwa Oraon obtained permission u/s 49 of the CNT Act on 11.1.1963 in Misc. Case No. 17 R8 II/1962-63 and sold the disputed plot no. 96 area 1.37 acres to Lt. Colonel A N Palit through deed no. 651 dated 28.1.1963. The purchaser transferred 10.5 katha land out of 1.37 acres to Tripti Majumdar vide registered sale deed dated 14.8.1963. Later the land was transferred to Renu Bose on 24.1.1969 and she sold the same to Kanhaiya Lal Jalan through registered sale deed dated 7.8.1974. Kanhaiya Lal sold the land to Phooljhari Devi vide deed no. 8095 dated 11.11.1978. The present appellant is son of Phooljhari Devi who inherited the property with valid right and title. The appellant got his name mutated through Case No. 438 R27/91-92, 440 R27/91-92 and 2241/03-04 and he is regularly paying rent to the State. The name of appellant is also entered in Ranchi Municipal Corporation under holding no. 1883/T9 ward no. 8 and taxes are being paid. It is claimed that house and building over the land

was constructed more than 40 years ago and the land is being used for residential purpose. It is further stated that Colonel A N Palit transferred his rest of land in disputed plot through registered deed no. 5561 dated 14.8.1963 and deed no. 4586, 5406, 5407 and 6717 to different persons. The purchasers also sold the land to several others persons out of which on Ashok Kumar purchased 5 katha 36 sq. ft. land and transferred the same to the present appellant vide registered deed no. 8022 dated 27.7.1989. One Bidya Prakash purchased 10.5 katha land in plot no. 96 through registered deed no. 4019 /1973 and sold 5 katha 8 chhatak to Bijay Bharti Prasad vide registered deed no. 448 dated 31.1.1978. Bijay Bharti Prasad sold 5 katha 7 chhatak 9 sq. ft. land to the present appellant through registered deed no. 7667 dated 28.7.2003. Appellant got his name mutated in respect of sale deed no. 8022 and 7667. It is claimed that appellant has constructed a building over the land and was being used for commercial and residential purpose. It is also alleged that notice was not served by the lower court to the appellant after resumption of case on fresh notification by Central Government. The lower court has mentioned SAR Case No. 755/06-07, 756/06-07 and 757/06-07 which were dismissed by the same court.

Heard learned counsel for the appellant who repeated the same facts as stated in memo of appeal. The learned counsel of the respondent did not argue the case. An opportunity was given him to file written argument by 18.6.2008 which was complied. It is stated in written argument that the land in question is ancestral land of the respondent. The respondents had acquired possession of the land by playing fraud upon the respondent who is illiterate person. The appellants managed to obtain permission by violating the provisions of section 49 of the CNT Act. The land is never used in any public purpose and written

consent of Deputy Commissioner was not obtained. the land was 'parti' till 1975-76 and there was no any construction. It is not described in memo of appeal that for which purpose the permission u/s 49 CNT Act was given. It is pleaded that according to the decision dated 12.5.2003 of Jharkhand High Court in C W J C No. 398 of 1992, the land transferred after permission u/s 49 CNT Act cannot be used for any other purpose for which it is given.

It is admitted fact that recorded tenant Sanicharwa Oraon obtained permission under section 49 of the CNT Act through Case No. 17 of 1962-63. The Deputy Commissioner accorded permission on 11.1.1963 and transfer was made through Deed No. 651 dated 28.1.1963.

Section 71 A provides that if at any time it comes to the notice of the Deputy Commissioner that transfer of land belonging to a raiyat who is a member of the Scheduled Tribe has taken place in contravention of section 46 or any other provision of the Act or by fraudulent method including the decree obtained in suit by fraud and collusion he may, after giving reasonable opportunity to the transferee who is proposed to be evicted to show cause and after making enquiry in the matter, pass order for restoration of land.

In the present case section 49(1) and 49(3) has been complied and as such there has not been any contravention. The only alternative open to the respondent was to file a case for annulment of transfer under section 49(5) of the CNT Act within 12 years. But it is almost 44 years since the land was transferred.

In case of Mahto Munda vs. State of Bihar & 30 others reported in 2003(4) JLJR 354, it has been held that there is a specific period of limitation presented under such section (5) of the CNT Act to annul any transfer. In case of any illegality committed in the matter of transfer of land. The application having not been preferred within 12 years, the period of limitation cannot be

extended by allowing a party to prefer application under section 71 A of the CNT Act.

For all the facts and reasons stated above, it is concluded that the order of the lower court is irrational and arbitrary. It is accordingly quashed.

In the result, appeal is allowed. Convey the order to all concerned.

Dated:- 25.06.2008

Dictated & Corrected by

Sd/-

Additional Collector,
Ranchi.