

In the Court of Additional Collector, Ranchi.

SAR Appeal 23 R15/08-09

Bindeshwari Jha & others

Appellant

Versus

Ramesh Oraon & others

Respondent

ORDER

5/16.07.2008

This appeal is directed against the order dated 6.05.2008 passed by Sri Devnish Kiro, Special Officer, Ranchi in SAR Case No. 127/07-08 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>
Kathalgonda	15	516,517	11 Decimal

The case of appellant states that the recorded tenant surrendered the land to the then landlord on 29.12.1945. The landlord settled the land to the ancestors of the appellant as chaparbandi settlement on 17.10.1946. Since then the ancestors of the appellant came into possession and erected boundary wall over the land in question. In the year 1955, rent has been fixed in favour of appellant no.1 vide Rent Fixation Case No. 352 R6 of 1955-56 and in favour of the father of appellant no.2 vide Rent Fixation Case No. 367 R6 of 1955-56 u/s 5, 6, 7 of the BLR Act 1950 under rule 7(i) which has been entered in register II. It is claimed that there is residential houses of the appellants over the land and the respondent dispossessed since 1945, hence the case is barred by law of limitation. It is pleaded that permission u/s 46 CNT Act was not mandatory in the year 1945.

Heard the learned counsel for both the parties. The learned counsel of the appellant narrated the same points as stated in memo of appeal. It is pleaded that section 71 A is not applicable in this case.

The learned counsel for the respondents admitted existence of houses of appellants over the land in question and prayed to decide the case in terms of second proviso of section 71 A of the CNT Act.

Perusing the lower court record, it had been stated by the appellants in the lower court that the recorded tenant Etwa Oraon surrendered 40 decimals of R S Plot No. 516 and 517 under Khata No. 15 by virtue of unregistered Deed of surrender dated 29.12.1945. Following surrender, the ex-landlord settled the land on 17.10.1946 when permission of the Deputy Commissioner was not required. The appellants have further claimed that the ex-landlord mentioned about settlement of the land in their return submitted in Compensation Case No. 352 R 6 of 1955-56. The land in question has a pucca structure constructed by the appellants.

The lower court needs to record a finding whether the land in question is agricultural land or a homestead land. It also needs to be determined whether the appellants have constructed house before 1969. The determining factors should be (i) creation of holding in municipal records (ii) assessment in municipal record (iii) date of electricity connection (iv) date of water connection (v) the sanction of house map by competent authority and so on.

In the result, appeal is allowed and the case is remanded back to the lower court to reconsider afresh and decide all the points involved in the case in the light of observations mentioned above.

Dated :-16.07.2008

Dictated & Corrected by

Sd./-

Additional Collector,
Ranchi.