

उपायुक्त - सह - जिला दण्डाधिकारी का न्यायालय, पूर्वी
सिंहभूम, जमशेदपुर।

S.A.R. Appeal No.- 79/2011-12

Applicant -

Mina Kumari Devi

- Vrs.-

Respondent/O.P. (1) Ravi Bhumij (2) Gora Bhumij

आदेश

1. यह S.A.R. Appeal आवेदन अनुमण्डल दण्डाधिकारी का न्यायालय, घाटशिला द्वारा R.P. Case No.-12/12/2000-01 में दिनांक 29.11.2011 को पारित आदेश के विरुद्ध आवेदक Mina Kumari Devi द्वारा दाखिल किया गया है। आवेदक Mina Kumari Devi द्वारा अपील आवेदन में जिक्र किया गया है, कि "That Saraswati Bhumij, wife of Ladam Bhumij alongwith her two sons Rabi Bhumij and Gora Bhumij filed a application in the court of learned S.D.O., Court of Ghatsila under section 71(A), C.N.T. Act for restoration of property situated at Tetuldanga, within P.S.-Jadugora, vide R.P. Case No.-12/12/2000-01 the certified copy of Judgement/Order & application is filed herewith. That during the pendency of the above notes R.P. Case the applicant- Saraswati Bhumij died leaving behind her two sons namely Rabi Bhumij and Gora Bhumij. That land in question including other land under Khata No.-34 was originally recorded in the name of Anabad in the survey settlement operation 1937. But the said Khata No.-34 has been wrongly recorded in the name of deceased Ledam Bhumij in the survey settlement operation 1964 the father of the present respondent, Ledam Bhumij having no valid document in his favour confirming his possession over the said land. That the appellant has purchased the said portion of land from its previous owner Rohit Kumar Paul, by virtue of registered sale deed no.-6042, dated 12.10.1984 and constructed a pucca residential building over the said land measuring an area 22½'ft.X 20' ft. i.e. 0.01 acre and started residing therein without any interruption, impediment, obstacle from any corner adversely and openly with the full knowledge of respondent and other people of the locality. That the ingrediants of the 71(A) C.N.T. Act is not applicable in this case because the appellant has all along been in the physical possession over the said land for more then 27 years."

2. S.A.R. Appeal आवेदन के GROUNDS में जिक्र किया गया है, कि "For that the regard had to the facts and circumstances of the case, the court below should have held that the present case does not come under the provision of section 71(A) C.N.T. Act. For that the court should have held that there is no question of transfer of any

land by the respondent in favour of the appellant as the land in question has all along been recorded in the name of Bihar Sarkar in survey settlement operation 1937, and the said Rohit Poul purchased the same land in 1972 from its previous owner. For that the land in question was formerly a barren land and the appellant converted such barren land in to a Chaparbandi land by putting hard labour to change the nature of the land. For that the appellant had constructed a residential pucca house over the same land measuring an area 22½'ft.X20'ft. recorded in the Khata No.-34, within Mouza – Tetuldanga, Thana No.-93, P.S.-Jadugora, portion of Plot No.-177 by spending more then Rs. 3.50 Lacs, but unfortunately, the learned C.O. Musabani had under valued the structure constructed over the said land in his enquiry report. For that the appellant alongwith her family members has been residing over the said land by constructing house thereon more then 27 years, being a bonafied purchaser of the land mentioned above. For that the lower court has no jurisdiction to try this case as the land in question has been recorded in the name of anabad malik in the survey settlement operation 1937. For that the appellant has not violated any act or provision of the C.N.T. Act or any other Act. For that the present appellant has been in the possession of the aforesaid land in question for more then 27 years, which he had purchased from its previous owner Rohit Poul, by virtue of Registered Sale Deed , so queation of transfer of any Tribal Land in favour of the appellant by the respondent does not arise here at all, as transfer of any Tribal land had taken place at any point of time the ingrediants of 71(A) C.N.T. Act is not attracted in this case.”

3. निम्न अदालत अभिलेख R.P.Case No.-12/12/2000-01 में दिनांक 29.11.2011 में पारित प्रश्नगत आदेश में उल्लेखित है, कि “विवादित भूमि हाल सर्वे खतियान में लेदाम भूमिज, पिता—दुबराज भूमिज के नाम से दर्ज है और विवादित भूमि का वर्ष 1976 के आसपास छोटानागपुर कास्तकारी अधिनियम के प्रावधानों के विपरीत विभिन्न व्यक्तियों के बीच हस्तांतरण हुआ है। जहाँ तक विवादित भूमि छप्परबन्दी का प्रश्न है हाल सर्वे खतियान में यह भूमि किस्म दोन-II एवं मोटी आर के रूप में दर्ज है। इस संबंध में माननीय उच्च न्यायालय, झारखण्ड, राँची ने भी वाद संख्या-W.P.(C) No.-3342/2003, मो0 मुस्तफा अली बनाम झारखण्ड सरकार एवं अन्य के आदेश की कांडिका-5 (V) में कहा है, कि “matter can be decided on the point of fact that whether the land in question is a chapparbandi land or is a raiyat land as on date of transfer or as on date of alleged valid sale”. वर्ष 1937 सर्वे में यदि विवादित भूमि अनाबाद मालिक के नाम पर दर्ज था तो इसकी विवेचना करना इस न्यायालय के क्षेत्राधिकार में नहीं है बल्कि हाल सर्वे खतियान के आधार पर आदिवासी खाते की भूमि का अवैध हस्तांतरण को लेकर छोटानागपुर कास्तकारी अधिनियम की धारा-71ए के तहत भूमि वापसी

को लेकर है। जहाँ तक Limitation का प्रश्न है माननीय उच्च न्यायालय, झारखण्ड द्वारा W.P.(C) No.-2740/06 में माननीय उच्च न्यायालय द्वारा 09.01.2009 को पारित आदेश में छोटानागपुर कास्तकारी अधिनियम की धारा-71ए के बारे में वर्णन किया गया है, कि “[CNT Act 1908 Sec. 71(a)] In the matter of restoration of tribble land under the provisions of sec 71 (a) of the Act no period of limitation is prescribed.” विपक्षीगण का यह तर्क देना कि विवादित भूमि का उन्होंने भिन्न-भिन्न व्यक्तियों से अथवा खतियानी रैयत के वैध उत्तराधिकारियों से क्रय किया है इस संबंध में माननीय सर्वोच्च न्यायालय द्वारा सिविल अपील नं०-868-874/1998 में दिनांक 31.05.2004 को पारित आदेश का उद्धरण निम्न प्रकार है:-“7D Transfer of immovable property by a member of tribe to any one not belonging to a scheduled tribed absolutely null and void except where it is with previous conscent of the competent authority----- non tribble can not claim title over property of tribble by way of adverse possession.” इस वाद में अंचल अधिकारी, मुसाबनी के प्रतिवेदन से यह भी स्पष्ट होता है, कि कई विपक्षीगण अंचल अधिकारी, मुसाबनी से वासगित पर्चा प्राप्त कर अपना नाम जमाबंदी पंजी-2 में दर्ज करा लिये हैं और लगान रसिद भी प्राप्त कर रहे हैं। जबकि CNT Act 1908 के 71ए में स्पष्ट है कि “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 Tribes has taken place in contravention of section 46 or any other provision of this Act or by any fraudulent method [including decrees 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 necessary enquiry in the matter, evict the transferee from such land without payment of compensation and restore it to the transferor or his heir, or in case the transferor or his heir is not available or is not willing to agree to such restoration, re-settle it with another belonging to the scheduled tribble accoding to the village custom for the disposal of an abandoned holding.” अतः छोटानागपुर कास्तकारी अधिनियम की धारा-71ए के तहत प्रदत्त शक्तियों का प्रयोग करते हुए मैं आदेश देता हूँ कि उपरोक्त वर्णित भूमि को 15 दिनों के अन्दर आवेदकगण को सौंप दें।

4. एस0ए0आर0 अपील आवेदन, निम्न न्यायालय द्वारा पारित प्रश्नगत आदेश, निम्न न्यायालय का अभिलेख एवं उसमें अंचल अधिकारी, मुसाबनी का जाँच प्रतिवेदन, सम्पूर्ण अभिलेख, उपलब्ध कागजातों संबंधित नियमों एवं प्रावधानों का अवलोकन किया, जिससे स्पष्ट है :-

- (i) हाल सर्वे खतियान में विवादित भूमि आदिवासी भूमि है।
- (ii) हाल सर्वे खतियान में विवादित भूमि किस्म दोन-II मोटी आड़ के रूप में दर्ज है। इससे स्पष्ट है कि यह छप्पर बंदी भूमि नहीं है।
- (iii) Record of Right के लिए छोटानागपुर कास्तकारी अधिनियम की

धारा-8 (1), (2) एवं (3) में यह प्रावधानित है, कि (1) "In any suit or other proceedings in which a record-of-rights prepared and published under this Chapter or a duly certified copy thereof or extract therefrom is produced, such record-of-rights shall be presumed to have been finally published unless such publication is expressly denied and a certificate, signed by the Revenue Officer, or by the deputy commissioner of any district in which its local area, estate or tenure or part thereof to which the record-of-rights relates is wholly or partly situate, stating that the record-of-rights has been finally published, under this Chapter shall be conclusive evidence of such publication. (2) The [State] Government may, by notification, declare with regard to any specified area, that a record-of-rights has been finally published for every village included in that area; and such notification shall be conclusive evidence of such publication. (3) Every entry in a record-of-rights so published shall be evidence of the matter referred to in such entry and shall be presumed to be correct until it is proved, by evidence, to be incorrect."

उपरोक्त तथ्यों आलोक में निम्न न्यायालय द्वारा R.P. Case No.-12/12/2000-01 में दिनांक 29.11.2011 को पारित आदेश को यथावत रखते हुए अपील आवेदन खारिज किया जाता है।

विधि-व्यवस्था एवं अन्य आवश्यक कार्यों में व्यस्तता के कारण आदेश आज दिनांक 07.01.2016 को पारित किया जा रहा है।

लेखापित एवं संशोधित



उपायुक्त

पूर्वी सिंहभूम, जमशेदपुर।



उपायुक्त

पूर्वी सिंहभूम, जमशेदपुर।