

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

S.A.R. Appeal No.- 85/2011-12

Applicant -

Jagannath Yadav

- Vrs.-

Respondent/O.P.

Ravi Bhumij and Gora Bhumij

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आदेश	
1.	<p>यह S.A.R. Appeal आवेदन अनुमण्डल दण्डाधिकारी का न्यायालय, घाटशिला द्वारा R.P. Case No.-12/8/2000-01 में दिनांक 29.11.2011 को पारित आदेश के विरुद्ध आवेदक Jagannath Yadav द्वारा दाखिल किया गया है। आवेदक Jagannath Yadav द्वारा अपील आवेदन में जिक्र किया गया है, कि "That on the basis of a report of the Circle Officer, Musabani a proceeding under section 71A of the C.N.T. Act, was started against Banaras Prasad and 27 others in respect to total land measuring 2.45 acres of plot nos.-177 and 178/223 under khata no.-34 of village-Tentuldanga, within p.s.-Jadugora and said case was originally registered as R.P. Case no.-12 of 2000-01. That subsequently said R.P. Case no.-12/2000-01 was split upon 23 R.P. cases by providing by number and the case registered against the wife of the appellant Smt. Powdari Devi which was registered as R.P. Case no.-12/08/2000-01 in respect to 0.06¼ acres of land in plot no.-178/223. That being noticed by the learned court below the wife of the appellant duly appeared and filed her show cause and she died during the pendency of the proceeding. That the opposite party against whom the R.P. Case no.-12/08/2000-01 was initiated is not alive and the present appellant have been possession of the land in question and thus impugned order and entire proceeding are notest and nulity. That all the 23 R.P. Case were pending for a long time after hearing the parties and subsequently by a common order dated 29.11.2011 the learned court below disposed off all the 23 cases including the Appellant's wife R.P. Case no.-12/08/2000-01 in respect to 0.06¼ acres of land, directing the circle officer, musabani to restore the possession of the proceeding land to the respondents and by making necessary rectification in the register-II and report of the matter to the Court."</p>
2.	<p>S.A.R. Appeal आवेदन के GROUNDS में जिक्र किया गया है, कि "For that the learned court below no where discussed the defence and claims of the appellant in the impugned order. For that the learned court below should not have passed the order of restoration infavour of respondents merely on the basis of survey record of 1964 as admittedly in 1937 survey land in question was recorded as Anabad</p>

malik. For that taking the advantage of wrong entry in 1964 khatiyani the respondents filed the R.P. case which has been wrongly allowed by the learned court below with erroneous observation that it is beyond the jurisdiction of this Court to consider the record of right of 1937 and further no limitation applies in case u/s-71A of C.N.T. Act. For that the learned court below failed to consider that sec. 71A of C.N.T. Act does not apply in chappar bandi land as admitted all the 23 persons including this appellant, are residing in their respective land and also running commercial activities by erecting construction of permanent nature and the area is known as market complex. For that the Appellant has been residing and running patholab in the proceeding land having separate electricity connection and individual boaring which has been settled to the wife of the appellant by the circle officer, musabani in case no.-14/94-95 and has also been mutated in her name and accordingly rent for the same has been realised on the appellant. For That after the death of appellant's wife the appellant inherited the house property constructed by the appellant over the proceeding land and has been in peaceful possession of the land having separate electric connection and boaring but the enquiry report of karmachari shows the possession of the appellant wife in the enquiry on the basis of said perfunctory report restoration order is passed by the learned court below and thus order passed against a dead person is nullity and can not be sustained, however in the 1st page of the impugned order the name of the Appellant (vide sl no.-20) has been shown amongst 28 persons. For that the learned court below ought to have turned down the claim of the respondent holding that the respondent never possessed the land in question within last 30 years and further section 71A of C.N.T. Act does not apply in chappar bandi land."

3. निम्न अदालत अभिलेख R.P. Case No.-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 दोन-II एवं मोटी आर के रूप में दर्ज है। इस संबंध में माननीय उच्च न्यायालय, झारखण्ड, राँची ने भी वाद संख्या-WP(C) No.-3342/2003, मो0 मुस्तफा अली बनाम झारखण्ड सरकार एवं अन्य के आदेश की कंडिका-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 tribale 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 tribale can not claim title over property of tribale 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 tribale 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-84(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.-12/8/2000-01 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



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