

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

S.A.R. Appeal No.- 88/2012-13

(i) यह अपीलवाद अनुमण्डल दण्डाधिकारी, घाटशिला के द्वारा आर० पी० केस नं०-01/2012-13 में दिनांक 29.11.2011 को पारित आदेश के खिलाफ है।

(ii) अपीलार्थी – श्रीमती माती मुर्मू, पति-स्व० रविन्द्र नाथ मुर्मू, ग्राम-अमादुबी, थाना-धालभूमगढ़, जिला-पूर्वी सिंहभूम एवं

(iii) प्रतिवादी – श्रीमती टुसू हेम्ब्रम, पति-स्व० रूपाई हेम्ब्रम, ग्राम-बेहरा, थाना – धालभूमगढ़, जिला-पूर्वी सिंहभूम है।

(iv) भू-वापसी हेतु भूमि का विवरण निम्नप्रकार है :-
प्लॉट नं०-37, रकवा-01.00ए० एवं प्लॉट नं०-39, रकवा-01.00ए०, कुल रकवा-02.00ए०, खाता नं०-24, मौजा-बेहरा, थाना नं०-130, थाना- धालभूमगढ़, जिला-पूर्वी सिंहभूम है।

आदेश

1. यह S.A.R. Appeal आवेदन अनुमण्डल दण्डाधिकारी का न्यायालय, घाटशिला द्वारा R.P. Case No.-01/2012-13 में दिनांक 29.11.2011 को पारित आदेश के विरुद्ध अपीलार्थी Smt. Mati Murmu द्वारा दाखिल किया गया है। अपीलार्थी Smt. Mati Murmu द्वारा अपील आवेदन में जिक्र किया गया है, कि "That the appellant as the applicant filed aforesaid R.P.Case No.-01/2012-13 for restoration of land measuring 2.00 (Two) Acres comprising of plot No.-37 area 1.00 Acre (One Acre) and plot No.-39 area 1.00 Acre (One Acre) apertaining to Khata No.-24 of Mouza-Behra, Thana No.-130, P.S. Dhalbhumgarh, Dist. East Singhbhum. Her case in short is that the purchased tha said land by registered sale deed No.-1922, dated 23.09.2008 from Bhago Hembram @ Bhago Majhian W/O Late Chandan Majhi and Rupai Henbram @ Rupai Majhi S/O Late Chandan Majhi on payment of valuable consideration of Rs. 1,40,000/- (Rupees One lac forty thousand). The said transfer was effected in pursuance of permission, u/s 46 C.N.T.Act granted by Hon'ble A.D.C. Jamshedpur in Misc. Case No.-73/2008-09. The applicant got possession of the purchased land from her sellers. Her name was mutated in respect of the said land vide mutation case no.- 230/2008-09 and she has been paying rent to the state. She has been illegally dispossessed by the respondent in January 2012 and hence she prayed for restoration of the land. That after registering the case the Ld. Court below called for the report from 'Anchal' and notice the respondent/Opp. party to file show cause. The

report of the 'Anchal' was submitted giving details whereby the applicant got the land it is also reported that the Opp. Party is in possession of the land which is cultivable land. That in the show cause the Opp. Party inter-alia stated that one Chandan Majhi (now dead) was the recorded tenant of the said Khata No.-24 of mouza-Behra. After his death his widow Bhago Hembram @ Bhago Majhian and his son Rupai Hembram @ Rupai Majhi though executed a Sale deed in favour of applicant it is not known to the Opp. Party whether the consideration amount is paid. The O.P. has been in possession she raised objection against the mutation in favour of applicant in mutation case no.-230/2008-09 by filing an appeal being Mutation appeal no.-10/2010-11 which was dismissed by Ld. L.R.D.C. There after the O.P. filed Mutation Appeal (Revision) No.-59/2011-12 before the Dy. Commissioner, East Singhbhum."

2. S.A.R. Appeal आवेदन के GROUNDS में अंकित कंडिका (iii), (iv), (v), (vi), (vii), (viii), (ix), (x), (xi), (xii), (xiii) एवं (xiv) में जिक्र किया गया है कि:-

(iii) For that the Ld. Court below passed the impugned order in such fashion as if he is inclined to get rid of the Case.

(iv) For that the order of the court below, if not set aside, is bound to encourage wrongful dispossession of rightful cultivator of schedule tribe.

(v) For that there is no impediment of law in restoring the purchased land of a tribe if dispossessed by anyone including a tribe in contravention of sec. 46 C.N.T. Act or by any fraudulent method.

(vi) For that the court below wrongly assumed that O.P. Could inherit the property which her husband and mother-in-law sold after obtaining permission u/s 46 C.N.T. Act.

(vii) For that the Ld. court below should and ought to have hold that once the property has been sold by the husband and mother-in-law of the Opp. Party after obtaining permission from Hon'ble A.D.C., the O.P. is estopped from challenging the same after death of her husband.

(viii) For that Ld. court below failed to appreciate that the sale deed executed in favour of the applicant is and was legal and binding and it was acted upon.

(ix) For that the sellers of the appellant delivered possession in pursuance of valid transfer and on such basis after due enquiry and following due procedure of law the name of the applicant is mutated.

(x) For that neither the husband nor the mother-in-law of the O.P./respondent ever challenged the validity and correctness of the said transfer and mutation in favour of appellant.

(xi) For that in view of above facts and also in view of the fact that the opp. party herself admits that several persons are supporting her, the Ld. Court below should have held that at the instigation of some land

grabbers by taking law in her own hand by fraudulent method disposes the applicant and hence the applicant/appellant is entitled for restoration of possession of the land in question.

(xii) For that admittedly the applicant/appellant has been paying rent and the opp. party/respondent is challenging mutation allowed in favour of the applicant/appellant.

(xiii) For that the Ld. Court below should have allowed the restoration case directing the opp. party/respondent to seek her remedy in Civil Court if at all only.

(xiv) For that the ld. court below should not have ignored scope of sec. 46 C.N.T. Act and Sec. 71A C.N.T. Act in passing a run away order.

3. निम्न अदालत अभिलेख R.P. Case No.-01/2012-13 में दिनांक 23.11.2012 में पारित प्रश्नगत आदेश में उल्लेखित है, कि “आवेदिका एवं विपक्षी दोनों एक ही वंश के सदस्य हैं। अतः यह मामला हक-हैकियत का है, जिसका निपटारा इस न्यायालय के अधीन नहीं है। उभय पक्ष चाहे तो सक्षम न्यायालय में वाद दायर कर सकते हैं।”

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

(i) विवादित भूमि मौजा-बेहरा, थाना नं0-130, थाना-धालभूमगढ़, खाता नं0-24, प्लॉट नं0-37, रकवा-1.00 एकड़ एवं प्लॉट नं0-39, रकवा-1.00 एकड़ कुल रकवा-2.00 एकड़ को आवेदिका/अपीलार्थी माती मुर्मू द्वारा खतियानी रैयत स्व0 चन्दन मांझी की पत्नी-भागो हेम्ब्रम उर्फ भागो मांझीयान एवं खतियानी रैयत स्व0 चन्दन मांझी के पुत्र स्व0 रूपाई हेम्ब्रम उर्फ रूपाई मांझी से कय किया गया।

(ii) अपीलार्थी श्रीमती माती मुर्मू, पति-रविन्द्र नाथ मुर्मू विवादित भूमि के खतियानी रैयत स्व0 चन्दन मांझी की पुत्री है।

(iii) प्रतिवादी टुसू हेम्ब्रम विवादित भूमि के खतियानी रैयत स्व0 चन्दन मांझी का पुत्र स्व0 रूपाई हेम्ब्रम उर्फ रूपाई मांझी की पत्नी है।

(iv) दोनों पक्ष के सदस्य एक ही वंश के हैं।

(v) यह मामला धारा-46 का उल्लंघन तथा छोटानागपुर काश्तकारी अधिनियम की धारा-71A अन्तर्गत भूमि वापसी का नहीं बनता है।

अतः उपरोक्त तथ्यों के आलोक में निम्न न्यायालय द्वारा R.P. Case No.-01/2012-13 में दिनांक 23.11.2012 को पारित प्रश्नगत आदेश को यथावत रखते हुए अपील आवेदन खारिज किया जाता है।

विधि-व्यवस्था एवं अन्य आवश्यक कार्यों में व्यस्तता के कारण आदेश आज दिनांक 25.02.2016 को पारित किया जा रहा है।

लेखापित एवं संशोधित

25/2/16

उपायुक्त

पूर्वी सिंहभूम, जमशेदपुर।

25/2/16

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