

In The Court of Deputy Commissioner, Ramgarh

Restoration Appeal No. 47/10

Dharmnath Bedia Versus Abdul Hussain & others

Order

In the present appeal, the petitioner has prayed for quashing of an order dated 26.02.2010 passed by the S.D.O., Ramgarh in case no. 21/08-09 whereby he had rejected the restoration petition of Dharamnath Bedia on the ground that the case was time barred and that more than 12 years had elapsed since the respondents resumed possession of land.

By reasons of the said order, the respondents had remained in possession of 28 decimals of Plot No. 279 under Khata no. 2 of village Piri. The lower court has merely observed that transfer of land took place more than 12 years ago and as such matter could not be considered under Section 46 (4).

There was only two main issues which need to be decided by the present court:

- i) Whether the Bedias are Schedul Tribes.
- ii) What was the instrument of transfer and whether the same was legal?

It is true that the Bedias were not S.T. list in the notification no. 126-IIT-40/38R dated 7th October 1938 but they were added later in 1950.

The respondent had acquired the land through Hukumnama which is a raiyati settlement made by the landlord in favour of raiyat. But an unregistered Hukumnama is inadmissible. The TP Act clearly mentions that any land valued more than Rs. 100 must be transferred by Deed of Registration. Considering the area 28 decimals of land, it may be concluded that transfer should have been by a registered deed and not by a sada document.

A perusal of the present record shows that one Sheikh Wazid Mian S/o Sheikh Sohrai had transferred 56 decimals of land in Plot no. 280 and 279 under village Piri to Bibi Maniulan W/o Sheikh Wazid Mian in 1966. Subsequently land was mutated vide case no. 106/73-74 and demand was also created in the name of vendee.

The respondents or their father never raised that matter between 1966-2008 that they had been dispossessed. In terms of the provision appended to Section 46(4A) of the C.N.T. Act., the Deputy Commissioner is precluded from entertaining any application after a period of 12 years from the date of transfer.

In the result the Appeal is disallowed.

Written and Corrected by

Deputy Commissioner,
Ramgarh.

Deputy Commissioner,
Ramgarh.