

In The Court of Deputy Commissioner, Ramgarh

Restoration Appeal No. 26/11

Mohan Mahto Versus Sarju Munda and State

Order

The Appeal was filed against order dated 27.06.2011 passed by the lower court of the SDO, Ramgarh in Restoration Case No. 11/2008-09. The land under dispute is related to village-Serengatu, Khata No.- 49, Plot No.- 1340, Area- 0.21 acre.

The lower court had allowed the restoration petition in favour of Sarju Munda and ordered the Circle Officer, Gola for delivery of possession.

The appellant has stated in the petition that he was not provided with reasonable opportunity by the lower court. The C.O. issued letter no. 839 dated 09.09.2011 to the appellant with a direction the remain present on 21.09.2011 for restoration. The appellant has claimed that the said land was surrendered by the recorded tenant through Registered Deed No. 3204 dated 16.08.1946 before the ex-landlord. Subsequently the ex-landlord settled the land in favour of the ancestor of the Appellant who came in peaceful possession of the same. The settlee paid rent to the ex-landlord till the vesting of Zamindari and the same of the settlee was recognised of the State. It is also added that the successor of the recorded tenant namely Jiwa Munda filed a restoration petition in the court of LRDC, Hazaribagh having No. 76/1986 but the claim was outrightly rejected by the learned lower court. As such the present case suffers from Res-Judicata.

The respondent did not file any written submission but his learned pleader made oral submission in course of arguments. The learned council submitted that surrender was without the consent of the Deputy Commissioner which was violative of the statutory requirements of the law. Moreover it was also underlined that the so called Surrender Deed was now here traceable in the Office of the Registrar. It was claimed the Circle Officer's report stated that no demand was running in the name of the First Party. The learned advocate pleaded that Delivery of Possession was already given on 29.09.2011.

The learned advocate for the Appellant argued that the land was no longer tribal land because of the surrender by the recorded tenants through registered deed in 1946. Another lower court case no. 76/86 was cited to prove that the present appeal was not maintainable, It was further submitted that the settlee of the ex-landlord had been paying rent before the vesting of Zamindari and continued to do so even when the state stepped into the shoes.

Perused the record of the lower court which shows that Mohan Mahto never contested the case. The lower court has clearly mentioned in the order that the Second Party (Mohan Mahto) refused to take the notice of the lower court. But actually the Notice was never properly served on the respondents of the Restoration Case No. 11/2008-09. The signature of the peon is conspicuously absent and the process server did not bother to record the signatures of two independent witnesses. Nor was it mentioned that Notice was pasted on the Entrance Door of the Respondents. It may be concluded that service of notice was not done properly.

The copy of the Case No. 76/1986 of The LRDC, Hazaribagh has been examined and formed that the case was contested between Jiwa Munda and Mansu Mahto. Mansu Mahto was the father of the present Appellant and the case was decided in his favour.

In view of the facts, documents and arguments, it is concluded that the Appellant did not get opportunity in the lower court to present his case properly as the notice was served in accordance with law. The case was not even declared ex-part and order was passed in favour of the petitioner. Such an order is against the principles of national justice. As such the same is quashed and case is remanded back to lower court for fresh hearing.

Dictated and Corrected.

Deputy Commissioner,
Ramgarh.

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