

Ramesh Kumar Rahi Vs The State of Jharkhand and Others

Court: Jharkhand High Court

Date of Decision: Oct. 19, 2013

Acts Referred: Chotanagpur Tenancy Act, 1908 " Section 46

Citation: (2014) 1 AJR 639 : (2013) 4 JLJR 681

Hon'ble Judges: Dhirubhai Naranbhai Patel, Acting C.J.; S. Chandrashekhar, J

Bench: Division Bench

Advocate: Rajeshwar Pandey, for the Appellant; Ajit Kumar, A.A.G., for the Respondent

Final Decision: Disposed Off

Judgement

Dhirubhai Naranbhai Patel, Actg. C.J.

1. The present Public Interest Litigation has been preferred for the following prayers:

1. That the present P.I.L. petition is being preferred before this Hon'ble Court in the nature of Public interest Litigation for the issuance of a

direction in the nature of mandamus or any other appropriate writ for lodging a criminal case against the respondent Nos. 10 & 11 and other

accused persons who are involved in the illegal land transfer of Tribals of Chotanagpur of different districts, violating the Section 46 provisions of

Chotanagpur Tenancy Act (hereinafter referred to as the Act) and also for a direction to hand over the enquiry and investigation to an independent

Agency such as Central bureau of Investigation and also for a direction to restore the possession of the lands of such Tribals who has become

landless by means of illegal transfer by the respondents and any other such relief or reliefs to which the petitioner is entitled.

Counsel appearing for the petitioner submitted that the petitioner is a social worker and he is raising an issue of illegal transfer of several lands in

favour of the respondent Nos. 10 & 11. The lands in question are referred in the Annexure-1 series. These lands have been transferred by the

Raiyats"" (as per Section 6 of Chotanagpur Tenancy Act, 1908) in favour of the respondent Nos. 10 & 11 in gross violation of Section 46 of the

Act, 1908 and thus, transfer of land from the seller to the purchaser which is by registered sale deed may be enquired into the matter by the

Central Bureau of Investigation under some Act, which the counsel for the petitioner is unable to point out. It is also vehemently submitted by the

counsel for the petitioner that there is gross illegality in the transfer of property and therefore, the matter should be investigated. He has further

submitted that a high level enquiry should be conducted by the Central Bureau of Investigation. Thus, the counsel appearing for the petitioner is

seeking prompt enquiry by the Central Bureau of Investigation. The counsel appearing for the petitioner has also relied upon several annexures

which are annexed with the supplementary affidavit filed by the petitioner, especially Annexure-1, which reveals the address of the respondent

Nos. 10 & 11, which are nomination forms filled up by the respondent Nos. 10 & 11 for election of the Legislative Assembly of the State of

Jharkhand and it is submitted by the counsel for the petitioner that respondent Nos. 10 & 11 have purchased property, though they are not

belonging to the same police station area, as required u/s 46 of the Act, 1908. Thus, the major argument canvassed by the counsel for the

petitioner is that for the land sold and purchased by the respondent Nos. 10 & 11, there is a gross violation of Section 46 of the Act, 1908 and

therefore, an enquiry should be conducted by the Central Bureau of Investigation promptly.

2. We have heard the counsel appearing for the State - Additional Advocate General, who submitted that this is not a public interest litigation at all.

Nothing is mentioned about the credentials of the petitioner, that is, who is this petitioner and how he is getting his livelihood and such other

requirements for filing of the public interest litigation about the petitioner and the bona-fide of the petitioner. It is also submitted by the counsel for

the State that nothing is mentioned in the petition or the affidavit about how it is a violation of Section 46 of the Act, because there are qualifications

about the word ""Raiyat"" as per Section 6 of the Act, 1908 and also about the purchaser. Moreover, counsel for the State has submitted that in fact

this is not a Public Interest Litigation at all, it is purely a Private Interest Litigation and Black-mailing type litigation. If any person is aggrieved, who

is a seller, can always approach the Court if there is any illegality or violation of any of the provisions of the Act or the Rules made therein.

Moreover, it is also submitted by the counsel for the State that, the public interest litigation cannot be filed by this petitioner because, all tribals are

not illiterate. They may not be degree holders or diploma holders, but they know how to protect their rights especially the rights, which are vested

in the law. Thus, merely because they have no degree or diploma, that doesn't mean that they are not aware about their rights. They have also

entered into registered sale deed and the documents are also much older in the point of time. Thus, this Public Interest litigation may not be

entertained by this Court.

3. Having heard the counsel for both the sides and looking to the facts and circumstances of the case, we see no reason to entertain this Public

interest Litigation, mainly for the following facts and reasons:

(i) Looking to the memo of the writ petition as well as supplementary affidavit-filed by the petitioner, nothing is stated about the credentials of the

petitioner that how the petitioner is getting his livelihood nor there is narration about the petitioner's work nor the petitioner has mentioned anything

about the work done by him in the past. There is also a violation of the guidelines issued by this Court for filing of the Public Interest Litigation and

the relevant portion, which reads as under:

4. The petitioner in a Public Interest Litigation shall state in clear terms the relief prayed for in paragraph-1 of the petition and grounds in

paragraph-2 thereof. In paragraph-3, the petitioner shall give his/her full and complete details so as to reveal his/her interest, credentials and

qualifications relevant for the Public Interest Litigation, along with a declaration that he/she has no personal interest, direct or indirect, in the subject

matter of Public Interest Litigation. In addition, the petitioner shall set out all relevant facts along with available supporting data, report etc.

4-A. If a Public Interest Litigation is filed by a person on behalf of a Body of Individuals, by whatever name called, whether registered or

unregistered and whether incorporated or not, the petition must give full details and history of such Body, and must also clearly specify the authority

of that person to represent such Body in that Litigation so as to make the decision therein binding on all individuals of such Body.

4-B. Every Public Interest Litigation will chronologically mention in detail all such other and earlier efforts with their result, which are within the

petitioner's knowledge, and which have been made by the petitioner or others for obtaining the relief sought by the Public Interest Litigation.

(ii) It also appears that how there is violation of Section 46 of the Chotanagpur Tenancy Act, 1908, is also not pointed out in the memo of the

petition nor in the supplementary affidavit filed by the petitioner Section 46 of the Act reads as under:

46. Restrictions on transfer of their right by raiyat - (1) No transfer by a Raiyat of his right in his holding or any portion thereof-

(a) by mortgage or lease for any period expressed or implied which exceeds or might in any possible event exceed five years, or

(b) by sale, gift or any other contract or agreement, shall be valid to any extent:

Provided that a raiyat may enter into a "bhugut bundha" mortgage of his holding or any portion thereof for any period not exceeding seven years or

if the mortgagee be a society registered or deemed to be registered under the Bihar and Orissa Co-operative Societies Act, 1935 (B. & O. Act

VI of 1935) for any period not exceeding fifteen years:

Provided further that-

(a) an occupancy-Raiyat who is [a member of the Scheduled tribes] may transfer with the previous sanction of the Deputy Commissioner his right

in his holding or a portion of his holding by sale, exchange, gift or will to [another person who is a member of the Scheduled tribes and] who is a

resident within the local limits of the area of the police-station within which the holding is situate;

(b) an occupancy-Raiyat who is a member of the [Scheduled Castes or backward classes] may transfer with the previous sanction of the Deputy

Commissioner his right in his holding or a portion of his holding by sale, exchange, gift, will or lease to another person who is a member of the

[Scheduled Castes or, as the case may be backward classes] and who is a resident within the local limits of the district within which the holding is

situate;

(c) any occupancy-Raiyat may, transfer his right in his holding or any portion thereof to a society or bank registered or deemed to be registered

under the Bihar and Orissa Cooperative Societies Act, 1935 (Bihar and Orissa Act VI of 1935) or to the State Bank of India or a bank specified

in column 2 of the First Schedule to the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1970 (5 of 1970) or to a company

or a corporation owned by, or in which less than fifty-one per cent of the share capital is held by the State Government or the Central Government

or partly by the State Government, and partly by the Central Government, and which has been set up with a view to provide agricultural credit to

cultivators; and

(d) any occupancy-Raiyat who is not a member of the Scheduled Tribes, Scheduled Castes or backward classes, may, transfer his right in his

holding or any portion thereof by sale, exchange, gift, will, mortgage or otherwise to any other person.

(2) A transfer by a Raiyat of his right in his holding or any portion thereof under subsection (1) shall be binding on the landlords.

(3) No transfer in contravention of sub-section (1) shall be registered or shall be in any way recognised as valid by any Court, whatever in exercise

of civil, criminal or revenue jurisdiction.

[(3-A) Notwithstanding anything contained in any other law for the time being in force, the Deputy Commissioner shall be a necessary party in all

suits of a civil nature relating to any holding or portion thereof in which one of the parties to the suits is a member of the Scheduled Tribes and the

other party is not a member of the Scheduled Tribes.]

(4) At any time within three years after the expiration of the period for which a Raiyat has under clause (a) of subsection (1) transferred his right in

his holding or any portion thereof, the Deputy Commissioner shall on the application of the Raiyat put the Raiyat into possession of such holding or

portion in the prescribed manner.

[(4-A) (a) The Deputy Commissioner may, of his own motion or on an application filed before him by occupancy-Raiyat, who is a member of the

Scheduled Tribe, for annulling the transfer on the ground that the transfer was made in contravention of clause (a) of the second proviso to sub-

section (1), hold an inquiry in the prescribed manner to determine if the transfer has been made in contravention of clause (a) of the second proviso

to subsection (1):

Provided that no such application be entertained by the Deputy Commissioner unless it is filed by the occupancy-tenant within a period of twelve

years from the date of transfer of his holding or any portion thereof:

Provided further that before passing any order under clause (b) or clause (c) of this subsection, the Deputy Commissioner shall give the parties

concerned a reasonable opportunity to be heard in the matter.

(b) If after holding the inquiry referred to in clause (a) of this sub-section, the Deputy Commissioner finds that there was no contravention of clause

(a) of the second proviso to sub-section (1) in making such transfer, he shall reject the application and may award such costs to the transferee to

be paid by the transferor as he may, in the circumstances of the case, deem fit.

(c) If after holding the inquiry referred to in clause (a) of this sub-section, the Deputy Commissioner finds that such transfer was made in

contravention of clause (a) of the second proviso to sub-section (1), he shall annul the transfer and eject the transferee from such holding or portion

thereof, as the case may be, and put the transferor in possession thereof:

Provided that if the transferee has constructed any building or structure, such holding or portion thereof, the Deputy Commissioner shall, if the

transferor is not willing to pay the value of the same, order, the transferee to remove the same within a period of six months from the date of the

order, or within such extended time not exceeding two years from the date of the order as the Deputy Commissioner may allow failing which the

Deputy Commissioner may get such building or structure removed:

Provided further that where the Deputy Commissioner is satisfied that the transferee has constructed a substantial structure or building on such

holding or portion thereof before the commencement of the Chotanagpur Tenancy (Amendment) Act 1969 (President's Act 4 of 1969) he may,

notwithstanding any other provisions of this Act, validate such a transfer made in contravention of clause (a) of the second proviso to sub-section

(1), if the transferee either makes available to the transferor an alternative holding or portion of a holding, as the case may be of the equivalent

value, in the vicinity or pays adequate compensation to be determined by the Deputy Commissioner for rehabilitation of the transferor.

Explanation.- In this section "substantial structure or building" means the structure or building of the value exceeding five thousand rupees on the

date of holding enquiry, but it does not include such structure or building of any value the materials of which cannot be removed without incurring

substantial depreciation in its value.]

(5) Nothing in this section shall affect the validity of any transfer (not otherwise invalid) of a Raiyats right in his holding or any portion thereof made

bonafide before the first day of January 1903 in the Chota Nagpur Division except the district of Manbhum, or before the first day of January,

1909, in the district of Manbhum.

[(6) In this section [and in section 471]-

(a) "'Scheduled Castes'" means such castes, races or tribes as are specified in Part II of the Scheduled to the Constitution (Scheduled Castes)

Order, 1950;

(b) "'Scheduled Tribes'" means such tribes or tribals communities or parts of or groups within such tribes or tribal communities as are specified in

Part II of the Scheduled to the Constitution (Scheduled Tribes) Order, 1950; and

(c) "'backward classes'" means such tribes, classes of citizens as may be declared by the State Government, by notification in the Official Gazette,

to be socially and educationally backward.

4. Thus, prima facie to prove the violation of Section 46 of the Act, the seller must be a "'Raiyat'". When we asked the question to the counsel for

the petitioner that whether, seller is a Raiyat or not and whether anything is mentioned about the seller's qualifications in the memo of the petition or

not, he is not aware about the Section, where the meaning of the word "'Raiyat'" is given. Nor there is anything mentioned about the word "'Raiyat'"

in the memo of the petition nor there is anything mentioned in the supplementary affidavit filed by the petitioner about the word "'Raiyat'". It appears

that Section 46 is to be read with Section 6 of the Act, 1908 and for the ready reference Section 6 reads as under:

6. Meaning of "'raiya'" - (1) "'Raiyat'" means primarily a person who has acquired a right to hold land for the purpose of cultivating it by himself, or

by members of his family, or by hired servants, or with the aid of partners; and includes the successors-in-interest of persons who have acquired

such a right, but does not include a Mundari-Khunt-Kattidar.

Explanation.- Where a tenant of land has the right to bring it under cultivation, he shall be deemed to have acquired a right to hold it for the

purpose of cultivation, notwithstanding that he uses it for the purpose of gathering the produce of it or of grazing cattle on it.

(2) A person shall not be deemed to be a Raiyat unless he holds land either immediately under a proprietor or immediately under a tenure-holder

or immediately under a Mundari-Khunt-kattidar.

(3) In determining whether a tenant is a tenure holder or a Raiyat, the Court shall have regard to-

(a) local custom, and

(b) the purpose for which the right of tenancy was originally acquired.

5. For the alleged breach of Section 46 of the Act, 1908, the person who is a seller must fall within the four-corner of the Section 6 of the Act,

1908. But, nothing is mentioned in the memo of the petition nor in the supplementary affidavit. Absolutely vague is the writ petition.

6. The counsel for the petitioner has insisted that there is a gross violation of Section 46 of the Act, 1908 and therefore, an enquiry should be

conducted by the Central Bureau of Investigation. This is not permissible in the eye of law.

7. It also appears from the facts of the case that the petitioner is insisting enquiry about the sale and purchase of the property by the registered sale

deed between the two parties. The purchasers are joined as party-respondent Nos. 10 & 11. As admitted by the counsel of the petitioner, the

sellers have never approached any Court. Sellers are always permitted to approach the concerned Court as per the provisions of law. If there is

any breach of law or Rules or regulations or any of their rights, it is rightly submitted by the Additional Advocate General for the State that they can

approach the Court and there is no breach of provision of the Act, 1908 for remedy, the ubi jus ibi remedium (Where there is a wrong, there is a

remedy). Thus, the persons, who have sold the land, they can always approach, u/s 71-A of the Act, before the concerned authority for

restoration of their lands. It is contended by the counsel for the petitioner that as the land has been transferred by the illiterate persons and tribals,

this Public Interest Litigation has been preferred and they are unaware about the Rules, and therefore, this petitioner has taken initiative on their

behalf. This contention is not accepted by this Court, mainly for the reasons that this is absolutely a private interest litigation. There is a sale of

property by registered sale deed. The person who is a seller may not be degree holder or diploma holder from the University, but they are fully

aware about the holding of their lands and when they are entering into the sale deed, they can equally approach Section 71-A of the Act, 1908

before the concerned authority. Such matters are being filed before the appropriate concerned authority under the Act, 1908, especially u/s 71-A

of the Act. This petitioner is not the power of attorney holders of those of the sellers. This is a contract between the parties and when it is entered

into by the registered sale deed, this Court would presume free consent between the parties to the transaction as required under the Contract Act.

Moreover, looking to the memo of the petition, several documents are annexed, which are never addressed to the petitioner how these documents

have been obtained and how these documents came in possession of the petitioner is also not mentioned in the whole memo of the petition nor in

the supplementary affidavit. They are the private documents in the file of the Government or with the various departments or with the State

Government or the Central Government like Election Commissioner, etc. How, these documents came in possession of the petitioner is not

revealed. Thus, the source of possession of these documents is a secret, even when the petitioner is arguing this case.

8. It has been held by the Hon"ble Supreme Court in Ashok Kumar Pandey Vs. The State of West Bengal and Others, in paragraph Nos. 4, 12,

14 & 16 as under:

4. When there is material to show that a petition styled as a public interest litigation is nothing but a camouflage to foster personal disputes, said

petition is to be thrown out. Before we grapple with the issue involved in the present case, we feel it necessary to consider the issue regarding

public interest aspect. Public Interest Litigation which has now come to occupy an important filed in the administration of law should not be

publicity interest litigation"" or ""private interest litigation"" or ""politics interest litigation"" or the latest trend ""paise income litigation"". If not properly

regulated and abuse averted it becomes also a tool in unscrupulous hands to release vendetta and wreck vengeance, as well. There must be real

and genuine public interest Involved in the litigation and not merely an adventure of kinght errant or poke ones into for a probe. It cannot also be

invoked by a person or a body of persons to further his or their personal causes or satisfy his or their personal grudge and enmity. Courts of justice

should not be allowed to be polluted by unscrupulous litigants by resorting to the extra-ordinary jurisdiction. A person acting bona fide and having

sufficient interest in the proceeding of public interest litigation will alone have a locus standi and can approach the Court to wipe out violation of

fundamental rights and genuine infraction of statutory provisions, but not for personal gain or private profit or political motive or any oblique

consideration. These aspects were highlighted by this Court in Kazi Lhendup Dorji Vs. Central Bureau of Investigation and Others, A writ

petitioner who comes to the Court for relief in public interest must come not only with clean hands like any other writ petitioner but also with a

clean heart, clean mind and clean objective. See *The Ramjas Foundation and Others Vs. Union of India and Others*, and *K.R. Srinivas Vs. R.M.*

Premchand and Others,

12. Public interest litigation is a weapon which has to be used with great care and circumspection and the judiciary has to be extremely careful to

see that behind the beautiful veil of public interest an ugly private malice, vested interest and/or publicity seeking is not lurking. It is to be used as an

effective weapon in the armory of law for delivering social justice to the citizens. The attractive brand name of public interest litigation should not be

used for suspicious products of mischief. It should be aimed at redressal of genuine public wrong or public injury and not publicity oriented or

founded on personal vendetta. As indicated above, Court must be careful to see that a body of persons or member of public, who approaches the

Court is acting bona fide and not for personal gain or private motive or political motivation or other oblique consideration. The Court must not

allow its process to be abused for oblique considerations. Some persons with vested interest indulge in the pastime of meddling with judicial

process either by force of habit or from improper motives. Often they are actuated by a desire to win notoriety or cheap popularity. The petitions

of such busy bodies deserve to be thrown out by rejection at the threshold, and in appropriate cases with exemplary costs.

14. The Court has to be satisfied about (a) the credentials of the applicant; (b) the prima facie correctness or nature of information given by him;

(c) the Information being not vague and indefinite. The information should show gravity and seriousness involved. Court has to strike balance

between two conflicting interests; (i) nobody should be allowed to indulge in wild and reckless allegations besmirching the character of others; and

(ii) avoidance of public mischief and to avoid mischievous petitions seeking to assail, for oblique motive, justifiable executive actions. In such case,

however, the Court cannot afford to be liberal. It has to be extremely careful to see that under the guise of redressing a public grievance, it does

not encroach upon the sphere reserved by the Constitution to the executive and the Legislature. The Court has to act ruthlessly while dealing with

imposters and busy bodies or meddlesome interlopers impersonating as public-spirited holy men. They masquerade as crusaders of justice. They

pretend to act in the name of Pro Bono Publico, though they have no interest of the public or even of their own to protect.

15. As noted supra, a time has come to weed out the petitions, which though titled as public interest litigations are in essence something else. It is

shocking to note that Courts are flooded with large number of so called public interest litigations where even a minuscule percentage can

legitimately be called as public interest litigations. Though the parameters of public interest litigation have been indicated by this Court in large

number of cases, yet unmindful of the real intentions and objectives, Courts are entertaining such petitions and wasting valuable judicial time which,

as noted above, could be otherwise utilized for disposal of genuine cases. Though in Dr. Duryodhan Sahu and Others Etc. Etc. Vs. Jitendra Kumar

Mishra and Others Etc. Etc., this Court held that in service matters PILs should not be entertained, the inflow of so-called PILs involving service

matters continues unabated in the Courts and strangely are entertained. The least the High Courts could do is to throw them out on the basis of the

said decision. The other interesting aspect is that in the PILs, official documents are being annexed without even indicating as to, how the petitioner

came to possess them. In one case, it was noticed that an interesting answer was given as to its possession. It was stated that a packet was lying

on the road and when out of curiosity the petitioner opened it, he found copies of the official documents. Whenever such frivolous pleas are taken

to explain possession, the Court should do well not only to dismiss the petitioners but also to impose exemplary costs. It would be desirable for the

Courts to filter out the frivolous petitions and dismiss them with costs as aforestated so that the message goes in the right direction that petitions

filed with oblique motive do not have the approval of the Courts.

Emphasis supplied

9. In view of the aforesaid decision also, we see no reason to entertain this petition, because the documents which are annexed with the

supplementary affidavit, how came in the possession of the petitioner, is also not mentioned.

10. Counsel for the petitioner has submitted that the credential of the petitioner has been mentioned in Annexure-1 and there is an order passed by

this Court that respondent No. 10 should file an affidavit and as the affidavit is not filed, adverse inference should be drawn. We are not accepting

this contention, as because we are not going to draw any adverse inference against any of the parties. Prima facie, the petitioner has to satisfy how

there is a violation of Section 46 of the Act and even if it is so as stated hereinabove, the persons who are selling the property in question by

registered sale deed can approach the concerned authority u/s 71-A of the Chotanagpur Tenancy Act, 1908. Thus, this is not a Public Interest

Litigation at all. This is absolutely, on a contrary, a private interest litigation.

11. In view of the aforesaid facts and reasons and judicial pronouncement, we see no reason to entertain this Public Interest Litigation, hence, the

same is hereby dismissed with a cost of Rs. 50,000/- (fifty thousand). The said amount will be deposited within a period of four weeks by the

petitioner before the Jharkhand State Legal Services Authority, Nyay Sadan, Doranda, Ranchi.

12. At this stage, after the aforesaid dictation and order by this Court, the counsel appearing for the petitioner submits that the petitioner may be

given six weeks" time to deposit the cost of Rs. 50,000/- (fifty thousand) before the Jharkhand State Legal Services Authority, Nyay Sadan,

Doranda, Ranchi. This Court accept the extension of time. Thus, the petitioner shall deposit the cost of Rs. 50,000/- (fifty thousand) within a

period of six weeks from today before the aforesaid authority.

13. Accordingly, this Public Interest Litigation is disposed of. Registry is directed to supply a copy of this order to the Member Secretary,

Jharkhand Legal Services Authority, Ranchi.