(2010) 05 JH CK 0045

Jharkhand High Court

Case No: None

Paika Murmu, Mangal Murmu and Chand Muni Debi		APPELLANT
	Vs	
The State of Jharkhand, Commissioner, Additional Collector and Rajiv Kumar Tulsyan alias Rajiv Tulsyan		RESPONDENT

Date of Decision: May 11, 2010

Acts Referred:

- Chotanagpur Tenancy Act, 1908 - Section 49

Hon'ble Judges: M.Y. Eqbal, Acting C.J.; Rakesh Ranjan Prasad, J

Bench: Division Bench

Final Decision: Dismissed

Judgement

1. This appeal is directed against the judgment dated 18th March, 2009 passed in W.P. (C) No. 6266 of 2007 whereby the learned Single Judge allowed the writ petition and set aside the order of restoration passed by the authorities.

2. It appears that the appellants, who were Members of Scheduled Tribes, transferred the land in question in favour of the respondent after obtaining permission of the Deputy Commissioner as required u/s 49 of the Chotanagpur Tenancy Act (in short "CNT Act"). The permission was accorded by the Deputy Commissioner on 30.12.1984. After the aforesaid transfer, the respondent got its name mutated and came in possession of the land. After about 22 years, the appellants filed an application before the Additional Collector, Dhanbad for restoration of land on the ground that the respondent failed to comply the terms

and conditions fixed by the Deputy Commissioner while granting permission. The Addl. Collector vide order dated 27.7.2006 directed for restoration of land in favour of the appellants on the ground that the respondent after purchase of the land in the year 1985 did not use the same. The respondent preferred appeal before the Commissioner, North Chotanagpur Division against the order of restoration which was dismissed. Respondent then filed W.P.(C) No. 6266 of 2007 challenging the order of restoration passed by the Addl. Collector and the Commissioner, Hazaribagh. Learned Single Judge found that undisputedly the restoration application was filed after 22 years for restoration of land and that no ground was available to the appellants to get an order of restoration. Hence, the learned Single Judge allowed the writ petition and set aside the order of restoration.

3. The most interesting and important facts of the case which have been brought on record by respondent No. 4 are that the appellants during pendency of the writ petition executed 8 sale deeds and transferred the entire land in dispute in favour of one Hemant Soren and the respondent was forcibly dispossessed from the land in question. The appellants by their rejoinder dated 25.1.2010 have admitted the facts that they have sold the land to one Hemant Soren.

4. The Scheduled Area Regulation Act, 1969 was promulgated for the purpose of safeguarding the interest of members of Scheduled Tribes from their exploitation and also to see that those raiyats, who are the member of Scheduled Tribes, may not be forcibly dispossessed from their lands by any fraudulent method.

5. In the instant case, what we found that the appellants were in fact set up by some interested persons to file restoration application and after obtaining the order of restoration, the appellants sold the land not only on the basis of order of restoration but in disobedience of the interim order passed in the writ petition. The respondent was forcibly dispossessed from the disputed land. In our opinion, therefore, the protection provided under the Regulation cannot be extended to such raiyats who by their fraudulent act try to dispossess a bonafide purchaser who got transfer of the land after obtaining permission of the Deputy Commissioner.

6. In the aforesaid facts and circumstances, the learned Single Judge rightly allowed the writ petition and set aside the order of restoration passed by the authorities. We are also of the view that in the facts and circumstances of the case, the Deputy Commissioner should be directed to restore possession of the disputed land to the respondent in whose favour, land was transferred by the appellants in the year 1985 but he was dispossessed illegally by the concerned authorities.

7. For the reasons aforesaid, this appeal is dismissed with the aforesaid directions.