

Pandey Oraon

Vs

Ram Chander Sahu and Others

Civil Appeal No. 955 of 1991

(M. H. Kania, Kuldip Singh JJ)

18.07.1991

ORDER

1. The appellant is a member of one of the Scheduled Tribes. Appellant's ancestor was admittedly a raiyat of certain lands of which the transferor of respondent 1 was the landlord. On the plea that the land had been surrendered and thus resumed the transferor of respondent 1 alienated the same in favour of the respondent. To the provisions of Chotanagpur Tenancy Act by amendment Section 71-A was added in the year 1969 which authorises possession to be recovered in three eventualities :

"If at any time it comes to notice of the Deputy Commissioner that transfer of land belonging to a raiyat who is a member of the Scheduled Tribes has taken place in contravention of Section 46 or any other provision of this Act or by any fraudulent method (including decrees obtained in suit by fraud and collusion) he may, after giving reasonable opportunity to the transferee who is proposed to be evicted, to show cause and after making necessary enquiry in the matter, evict the transferee from such land without payment of compensation...."

2. A proceeding for evicting the respondent was taken by the authorities under the Act and on being satisfied that respondent 1 exposed himself to the liability of eviction an order was made. That gave rise to a proceeding before the High Court and ultimately the matter came before the Full Bench of the Patna High Court which held that the Act did not apply to a case of this type. There is no dispute that respondent 1 has failed to establish resumption of the property by his transferor. The plea that the respondent had perfected title by long possession has also not been made out.

3. The only question for consideration is as to whether a transfer of the type involved in this case comes within the ambit of Section 71-A of the Chotanagpur Tenancy Act. As we have already pointed out three eventualities are provided in Section 71-A of the Act, where the provision can be called into action. They are :

(1) Where the transfer has taken place in contravention of Section 46;

(2) Where transfer has taken place in contravention of any other provisions of the Act; or

(3) Transfer has been by any fraudulent method including decrees obtained in suit by fraud and collusion.

4. In this case the question for examination is whether the facts can be brought under the third

category, namely, the transfer is by some fraudulent method.

5. 'Transfer' has not been defined in the Act. The term has a definition in Section 5 of the Transfer of Property Act which states :

"5. 'Transfer of Property' means an act by which a living person conveys property, in present or in future, to one or more other living persons, or to himself and one or more other living persons and 'to transfer property' is to perform such act."

6. In Section 71-A in the absence of a definition of transfer and considering the situation in which exercise of jurisdiction is contemplated, it would not be proper to confine the meaning of transfer to transfer under the Transfer of Property Act or a situation where transfer has a statutory definition. What exactly is contemplated in the provision is where possession has passed from one to another and as a physical fact the member of the Scheduled Tribe who is entitled to hold possession has lost it and a non-member has come into possession would be covered by transfer and a situation of that type would be amenable to exercise of jurisdiction within the ambit of Section 71-A of the Act.

7. The provision is beneficial and the legislative intention is to extend protection to a class of citizens who are not in a position to keep their property to themselves in the absence of protection. Therefore when the legislature is extending special protection to the named category, the court has to give a liberal construction to the protective mechanism which would work out the protection and enable the sphere of protection to be effective than limit by (sic) the scope. In fact, that exactly is what has been said by a three Judge bench of this Court in almost a similar situation in *Manchegowda v. State of Karnataka* [(1984) 3 SCR 502] and what was said by a three Judge bench followed by a later decision of this Court in *Lingappa Pochanna Appelwar v. State of Maharashtra* [(1985) 2 SCR 224]. To the same effect is the observation of this Court in *Gamini Krishnayya v. Guraza Seshachalam* [AIR 1965 SC 639]. The House of Lords in *D (a minor) v. Beshire Country Council* [(1987) 1 All ER 20 (HL)] said that broad and liberal construction should be given to give full effect to the legislative purpose. We would, therefore, in the facts and circumstances appearing in this case, hold that the authorities under the Act were justified in extending the provision of Section 71-A of the Chotanagpur Tenancy Act to the situation which emerged and the High Court took a wrong view in limiting the concept of transfer to the statutory definition in the T.P. Act and holding that Section 71-A was not applicable in a case of this type. On this basis, it must follow that the action of the statutory authority was justified and the conclusion of the Full Bench must not be sustained. We accordingly allow the appeal and reverse the decision of the High Court.

8. There is no dispute that there has been improvement of the property by respondent 1. We are aware of case where transferee to overreach the law and taking recourse to fraudulent methods, takes property and makes improvement. In a case of that type it may be that no compensation would be payable. In this case, perhaps, it may be appropriate to direct that respondent 1 should be compensated for the improvement. We, therefore, require the Deputy Commission of Gumla to get the improvement appropriately valued and fix the quantum of compensation payable to the respondent and require the appellant to pay the sum within such reasonable period which he may fix in his discretion. Dispossession may not be made a condition precedent to the deposit of the money but care should be taken to ensure payment. There will be no order as to costs.

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