SUPREME COURT OF INDIA

Jai Mangal Oraon

Vs.

Mira Nayak

C.A.No.12493 of 1996

(M. B. Shah and Doraiswamy Raju, JJ.)

05.05.2000

JUDGEMENT

RAJU, J.:-

1. Delay condoned and leave granted in SLP (C) Nos. 1463-64/98.

2. These matters are dealt with together since they involve common and identical issues and submissions have also been made by the counsel in common. To properly appreciate the issues raised, the skeleton of facts, which led to the filing of the above appeals, would be necessary.

Civil Appeal No. 12493 of 1996

3. The lands in question forming part of a larger extent originally stood recorded in the name of late Nanda Oraon, a member of the Scheduled Tribe. On 15-1-1942, Nanda Oraon was said to have executed a registered deed of surrender in favour of the landlord since he failed to and could not

raise any crop on the land. The landlord, who thus came into possession of the land subsequently by a registered deed dated 16-2-1942 along with his co-sharers, settled the land permanently in favour of one Satish Chandra Baul. Part of the land settled in favour of Satish Chandra Baul was said to have been acquired under the provisions of the Land Acquisition Act and compensation was also claimed and paid to the said person. The remaining extent was said to have been sold by the descendants of Satish Chandra Baul to various persons at different points of time during the year 1971-72. The first respondent claimed to have purchased under a registered sale deed dated 12-8-1971, 5 kathas of land being a portion of plot No. 1217 which was also shown as sub plot No. 1217/16. She got her name mutated in the office of the Circle Officer, Ranchi, by an order dated 13-3-1973 and after obtaining the necessary sanction, raised construction, thereon.

4. Subsequently, also for putting up additional construction, revised building plan was got sanctioned and when such construction was going on, the appellant filed an application on 12-12-1985 alleging that the first respondent had forcibly with the help of her muscle men started occupying the land belonging to him and despite complaint made before the concerned Police Station, it evoked no response necessitating the appellant to approach the Deputy Commissioner, Ranchi. The Deputy Commissioner, Ranchi, seems to have endorsed the application to the Special Officer, Scheduled Area Regulation, Ranchi, and he, in turn, directed the first respondent to stop construction and also directed her to appear in his Court on 15-5-1985 in connection with S.A.R. Case No. 114/84-85 under Section 71-A of the Chotanagpur Tenancy Act, 1908 (in short 'CNT Act'). It may be noticed at this stage that the appellant's claim was on the basis that after the death of Nanda Oraon his son Sukhi Oraon succeeded to his interest and the appellant was adopted by Sukhi Oraon under a registered Adoption Deed dated 20-2-1974. As the adopted son of late Sukhi Oraon, he succeeded to the interest of his predecessor in interest in the property.

5. Aggrieved against the notice/direction issued by the Special Officer, the first respondent filed CWJ Case No. 118 of 1986 (R) challenging the jurisdiction and authority as also the legality of the proceedings initiated under Section 71-A of the CNT Act. The case of the first respondent before the High Court was that Section 71-A is not attracted unless it is alleged that there had been some transfer of raiyati interest by a member of Scheduled Tribe in favour of another person; that there is no provision in the CNT Act which empowers either the Special Officer or the Police to stop construction of a building over the plot of land in question, that the plot of land having been surrendered before the year 1947, no previous permission of the Deputy Commissioner was required to be obtained and that in any event the land being Chhaparbandi land, the provisions of Section 71-A has no application. The Writ Petition was opposed by the appellant by contending that the registered surrender deed dated 15-1-1942 was nothing but a fraudulent method applied by the ex-landlord to get the raiyati interest in agricultural lands of recorded tenants. The claim of adoption and rights as the adopted son of Sukhi Oraon were also advanced. Since there was no stay of further proceedings on the file of the Special Officer, he proceeded with the inquiry and directed the parties to file their respective documents because no oral evidence was adduced before him. Ultimately, the Special Officer passed an order dated 21-11-1986 directing the first respondent to restore possession of the property to the appellant and remove the construction, since, in his view, the matter required a decision under the first proviso to Section 71-A. The first respondent was permitted to amend the Writ Petition to enable her to question the final order as well as the consequential orders passed on 26-5-1987, in the very Writ Petition.

6. Learned single Judge by an order dated 5-3-1990 allowed the Writ Petition filed by the first respondent holding:

(i) That the claim of forcible dispossession of the appellant will not amount to a transfer within the meaning of Section 71-A of the CNT Act.

(ii) That the lands were really Chhaparabandi lands as disclosed from the documentary evidence produced in the proceedings and even proceeding on the basis that the lands were raiyati in character inasmuch as the surrender was long before the year 1947 of the raiyati interest in favour of the landholder, the same was permissible in law and nothing in the CNT Act prohibited such a surrender.

(iii) Since the CNT (Amendment Act) 1947 amending Sections 46 and 72 was prospective in operation, there was no obligation or necessity to obtain previous sanction of the Deputy Commissioner for effecting surrender in 1942, as per the earlier rulings of the said High Court and, therefore, the surrender could not be held to be bad for want of any proper previous permission of the Deputy Commissioner or contravention of any prohibition in law; and

(iv) That the surrender was made in the month of January, 1942, during the middle of the agricultural year was not an invalidating or vitiating factor, such stipulation being one devised for the benefit of the landlord and not for the benefit of the tenant. Consequently, the learned single Judge held that Section 71-A had no application to the case on hand and if at all in such a case where a grievance of forcible dispossession is made the appellant must seek only his ordinary legal remedy and quash the orders passed by the Special Officer, challenged in the Writ Petition. Since the first respondent was dispossessed from the land during the pendency of the Writ Petition restoration of possession forthwith to the first respondent was ordered. It is against this order Civil Appeal No. 12493 of 1996 has been filed in this Court. It appears that subsequently L.P.A. No. 28 of 90 (R), filed against the decision of the learned single Judge by the appellant, was also summarily dismissed and he has filed an application seeking to amend the memorandum of appeal in this Court so as to include in the relief portion a challenge to the order passed in the LPA 28 of 90 also. Application for condonation of delay in filing a belated amendment and for exemption from filing certified copies of the said order have also been filed.

Civil Appeal Nos..... of 2000

(Arising out of S.L.P. No. 1463-64 of 1998)

7. The appellant in the above appeals is the same person, who has filed Civil Appeal No. 12493 of 1996 and the land involved in these appeals is also a fragment of the extent acquired initially by Satish Chandra Baul. The legal heirs of Satish Chandra Baul were said to have sold an area of 4 kathas on 1-2-1972 to one Sarbeshwar Kundu who, in turn was said to have sold the same under a registered sale deed dated 8-12-1980 in favour of the first respondent Rita Sinha. After her purchase, she got her name mutated in the official records and claimed to have paid thereafter the Chhaparbandi rents and taxes. After her purchase, she constructed a pukka house over the land strictly in accordance with the Building Rules and Regulations, in force in the locality.

8. While so, when the Special Officer at the instance of the appellant issued notice/directions in SAR case No. 61 of 1987 on 17-10-1984, the first respondent filed CWJ Case No. 2996 of 1994 (R) to quash the said proceedings. In the said Writ Petition, issues similar to those raised in the previous Writ Petition filed by Smt. Mira Nayak were raised placing reliance upon the earlier decision and the learned single Judge by his order dated 13-3-1996 applying and following the earlier judgment dated 5-3-1990 in CWJ Case No. 118 of 1986 (R), upheld the contentions of the first respondent. The learned single Judge also observed that in view of the decision reported in Smt. Muni Devi v. Special Officer Scheduled Area Regulation, Ranchi, 1990 Pat LJR 641 even at the stage of issue of notice initiating proceedings under Section 71-A of the CNT Act, a challenge could be made by means of a writ petition since it involved a question of jurisdiction of the Special Officer and the very applicability of Section 71-A to a case of pre-1947 surrender. When the writ petition filed by the first respondent was allowed as above, the appellant filed a Review Petition in Civil Review No. 36 of 1995 (R) contending that the earlier judgment was sub judice before this Court by grant of leave to appeal and that an earlier decision of the Full Bench, which was relied upon in the earlier case also, came to be set aside by this Court. The Review Petition came to be dismissed holding that, as on date, the earlier decisions held the field and there was no justification to countenance a claim for review. Challenging the above orders in the writ petition and Review Petition, the above two appeals came to be filed by the appellant.

9. The first respondent in the above appeals have not only asserted that the appellant is not the adopted son of Sukhi Oraon but that he has manipulated and fabricated a false document by impersonation also to unlawfully make a claim to usurp the land and that several adjudicating authorities, in the course of dealing with statutory proceedings recorded such findings. The appellant has been found to be avoiding criminal proceedings instituted before the Chief Judicial Magistrate at Ranchi under Sections 420, 466, 467, 468, 471 and 120-B, I.P.C. by the daughter of Sukhi Oraon claiming that her father died as early as on 18-8-1973 and the appellant has fabricated documents long after his death by impersonation and that on account of his evading tactics, despite the warrants issued for his arrest, the police has moved the Chief Judicial Magistrate, Ranchi, and obtained orders of proclamation under Section 82 of the Cr. P.C. against the appellant. By producing a copy of the order dated 21-12-1998 in Ranchi Revenue Revision No. 483/93 passed by the Commisioner (South) Chotanagpur Division it is sought to be proved that the revision filed by the appellant, claimed to be pending by the appellant in the rejoinder filed in Civil Appeal No. 12493 of 1996, was already dismissed on account of continuous absence and non-appearance of the appellant before the Revisional Authority.

10. The contentions on behalf of the appellant, in all these appeals, by the learned counsel appearing, are based upon Section 71-A introduced by way of amendment in the year 1969 and Section 46 and Section 72 as they stood amended by the Amendment Act in 1947 with effect from 5-1-1948 and the decisions of this Court reported in Pandey Oraon v. Ram Chandra Sahu, 1992 Suppl, (2) SCC 77 : (1991 AIR SCW 2909 : AIR 1992 SC 195) and Brisa Munde v. Chando Kumari, (1996) 9 SCC 545 : (1995 AIR SCW 4726 : AIR 1996 SC 704) by way of challenge to the orders of the High Court. As for the claim of the appellant based on his alleged adoption, it is stated that the first respondents in the above appeals have not pursued the matter before the Appellate and Revisional Forums properly and in the absence of any adjudication by the High Court also of this issue the same cannot be urged against the appellant in these proceedings. Finally, it is pointed out that in any event the lands in question are liable to be allotted by the Deputy Commissioner to a tribal only and the first respondents in the appeals who are non-tribals could not be allowed to hold or retain the lands in question, any longer.

11. The learned counsel for the first respondents while trying to justify the orders of the High Court vehemently contended that the surrender by the tenant in this case having taken place on 15-1-1942, there was no need for obtaining any previous sanction from the Deputy Commissioner under pre-amended Section 72 and statutory provisions as were in force on tht date only applied to the case. Likewise, according to the respondents, Section 71-A newly introduced in 1969, had no application whatsoever to the case and that too at such belated point of time. The two decisions of this Court relied upon for the appellant are said to be distinguishable and not relevant for the case on hand. The character of the land was also stated to be only Chhaparbandi and that the surrender was not of any raiyati interest of a tenant to attract the provisions of CNT Act. Adverting to some of the subsequent developments and vital facts coming into existence such as (a) the decision rendered on 1-8-1990 in SAR case No. 23/84-85 instituted by Sukhi Oraon's daughter where the Special Officer held that the appellant is not the adopted son of Sukhi Oraon which came to be confirmed by the Appellate Court on 20-9-1995 and revision filed thereon also rejected on 21-12-1998 (b) the declaration by the competent Civil Court on 7-10-1994 that the adoption deed under which the status of adopted son has been claimed was a forged and fraudulent document fabricated by the appellant in title suit Nos. 80/84 and No. 19/87 filed by one Sardar Amrik Singh against identical proceedings instituted by the appellant invoking Section 71-A and (c) the criminal complaint filed by the daughters of Sukhi Oraon before the Chief Judicial Magistrate, Ranchi (Case No. 8/99 pursuant to PS No. 37/99 registered under Sections 420, 466-468 and Section 120B, I.P.C.) against the appellant and his father in which the appellant is shown to have been not only rejected bail but thereafter found to be evading arrest and absconding resulting in an order for a proclamation under Section 82, Cr. P.C. by the CJM, Ranchi, it is forcefully contended for the contesting respondents that the appellant has no locus standi whatsoever to agitate this matter and have no rights to claim or be vindicated and the appeals are liable to be dismissed on this ground also.

12. We have carefully considered the submissions of the learned counsel appearing on either side. The details relating to some of the subsequent developments brought on record in the shape of the relevant orders passed by the competent authorities disclose a disturbing picture bordering on gross misuse and abuse of process of Court involving serious criminal offences too. It is rather surprising

that at a place where he had to face a factual inquiry the appellant seems to have gone underground to avoid the arms of law taking its course but continue to fight in absentia in this Court. We do not propose to indict the appellant for all such misdeeds ourselves since, law in due course will take care of the situation, as it deserved. Such vital facts now coming to light, which are not only grave and serious but also go to the root of the matter, undermining the very basis of his claims and even locus standi or right to agitate before Courts in relation to the property in question, cannot be totally ignored to permit perpetuation of grave injustice and abuse of process of Court. Those facts themselves constitute in our view, sufficient ground to dismiss these appeals. It is by now well settled that even subsequent developments or facts and turn of events coming into existence but found really relevant, genuine and vitally important in effectively deciding the issues raised and necessary to do real, effective and substantial justice or prevent miscarriage of justice not only can but ought to be taken into consideration by courts even at the appellate stage. Apparently, developing cold feet on this account only an alternate submission has been made that in any event the first respondents being non-tribals cannot be allowed to hold or retain the property and it has necessarily to be allotted to any other tribal only by the Deputy Commissioner. Though we propose to deal with the other issue raised, having regard to the important nature of the issues raised, these appeals, in our view, have to fail even on the basis of the subsequent developments noticed, which dis-entitle the appellant to claim or assert any rights in the lands in question. Even though this is an additional ground taken at this stage as it is serious one which dis-entitles the appellant to seek any relief on the ground that he is adopted son of Sukhi Oraon, (Sukhi Oraon was son of deceased-tenant Nanda Oraon), we have considered the same. The said contention is based upon judicial orders passed by the competent Courts ordinary as well as special constituted by the statute with powers to adjudicate disputed question of fact and no effective reply denying the existence of those orders was filed by the appellant all these years.

13. We are concerned in these appeals only with an admitted case and class of transfer by way of surrender envisaged under Section 72 and not even any other category or class of transfer envisaged under Section 46 as it stood prior to the amendment Act of 1947. This Court was also not at all concerned in the earlier decisions reported in 1992 Suppl. (2) SCC 77 : (1991 AIR SCW 2909 : AIR 1992 SC 195) (supra) and (1996) 9 SCC 545 : (1995 AIR SCW 4726 : AIR 1996 SC 704 (supra) specifically with any issue relating to the law applicable to a case of surrender effected prior to 1943 but on the other hand mainly dealt with the scope of Section 71-A and thereby the purport and content of the word 'transfer' used therein. Even in the subsequent decision the purport and meaning of the word 'transfer' occurring in Section 46(4)(a) and that too in the context of dealing with a case of surrender effected in 1976 was the subject of consideration and not the applicability of Section 71-A.

14. A perusal of the decision reported in 1992 Suppl (2) SCC 77 : (1991 AIR SCW 2909 : AIR 1992 SC 195) (supra) would show that it did not deal with a case of surrender prior to 1947, as in this case and during the relevant point of time when surrender was made in this case there was no statutory provision in the CNT Act which envisaged the obtaining of prior permision of the Deputy Commissioner before surrender of the tenancy rights. Though no factul details are available in the judgment this is obvious from the fact that what was considered therein was only the scope of Section 71-A added by the Amendment in the year 1969. So far as the decision reported in (1996) 9 SCC 545 : (1995 AIR SCW 4726 : AIR 1996 SC 704) (supra) is concerned also the date of

surrender in that case is not stated specifically. Even otherwise, in para 9 of the judgment it is stated, thus "In this case an application under Section 46(4)(a) has been made. It is, therefore, not at all necessary whether Section 71-A incorporated by amendment is applicable in respect of the land in question." Section 46(4)(a) considered in this decision which envisaged a prior sanction of the Deputy Commissioner before effecting transfer in any of the modes stated therein was introduced only in the year 1947 with effect from 5-1-1948 and no such provison existed during the relevant point of time of surrender made in this case on 15-1-1942. For all these reasons, we are of the view that the two decisions relied upon for the appellant do not either apply to the present cases or support the contentions raised before us.

15. No doubt, the understanding of the High Court about the scope of Section 71-A as interpreted by the earlier decisions of that Court noticed therein may not be good or correct in view of the later declaration of law by this Court but, the High Court did not proceed to rest its conclusion to uphold the claims of the contesting respondents who were writ petitioners before the High Court, only on that ground. The High Court has considered, at length the further question as to whether Section 71-A, introduced in 1969, was attracted to this case of surrender effected by a registered deed, on 15-1-1942, in the light of the then existing statutory provisions contained in Sections 46 and 72 of the CNT Act. The nature of consideration and the other reasons assigned in support of the order made in CWJC No. 118 of 1986 (R) makes it clear that the statutory provisions as they stood in force on 15-1-1942 neither envisaged the obtaining of a prior sanction of the Deputy Commissioner before a surrender by a tenant could be made of his interest in favour. of the landlord nor could such surrender be held bad merely because it was not at the end of the Agricultural Year but immediately before. Those issues seem to have been considered and decided, even dehors the controversy raised with reference to the character of the land, proceeding on an assumption on the basis that it involved, a surrender of raiyati interest. We find nothing illegal or wrong in the said reasoning and the conclusions arrived at by the learned Judges in the High Court appear to be well merited and quite in accordance with the statutory provisions of force, at the relevant point. Therefore, in our view, no interference is called for with the orders of the High Court, in this regard.

16. The submission that, in any event the contesting respondents cannot be allowed to hold the land they being non tribals and the Deputy Commissioner is obliged to allot the same to some other tribal only does not merit our acceptance. Apart from the grounds on which we have rejected the claim of the appellant, we find that the High Court left open the question about the disputed character of the lands and the nature of interest surrendered which if had been properly considered and decided likely to have an impact on the question of the very applicability of the statutory provisions of the case on hand. Merely because Section 71-A commences with the words "if at any time ....." it cannot be taken to mean that those powers could be exercised without any point of time limit, as in this case after nearly about forty years unmindful of the rights of parties acquired in the meantime under the ordinary law and the Law of Limitation. We consider it, therefore, inappropriate to countenance any such contentions in these proceedings.

17. These appeals, therefore, are hereby dismissed but with no order as to costs.

Appeals dismissed.