

PETITIONER:
BRISA MUNDA

Vs.

RESPONDENT:
CHANOO KUMARI @ MOST DUMARI AND ORS.

DATE OF JUDGMENT 16/11/1995

BENCH:
G.N. RAY, G.T. NANAVALI

ACT:

HEADNOTE:

JUDGMENT:

O R D E R

Leave granted.

Heard learned counsel for the parties. In this appeal the appellant who is admittedly a tribal residing in Chhotanagpur Division made an application under Section 46 (4)(a) under Chhotangpur Tenancy Act for getting back possession of the disputed land which according to the appellant was surrendered by the father of the appellant and on such surrender the said land was settled to the respondent Chando Kumari @ Most Dumari and Ors. Such application was made on 12th January, 1976 before the Deputy Commissioner, Land Reforms. The application was rejected by the Deputy Commissioner. The appellant thereafter preferred an appeal before the Additional Collector and the case was remanded back to the Deputy Commissioner, Land Reforms but the matter was again dismissed by the said Deputy Commissioner by order dated 29th January, 1994. The appellant again preferred an appeal before the Additional Collector land Reforms. But Additional Collector again passed an order of remand before the Deputy Commissioner. Such order of remand was challenged by the appellant in revision. By an order dated 8th October, 1986, the Commissioner allowed the revision application. The Commissioner inter alia came to the finding that the appellant was in possession within a period of 12 years from the date of making the said application under Section 46(4)(a) and as such there was no occasion to remand the matter for decision by the Deputy Collector.

It appears that in coming to said finding about the possession of the appellant within 12 years from the date of making the application under Section 46 reliance was made to the entry in the Bhujarat Record of Rights of 1960 where the possession of the appellant was noted. The Commissioner also took into consideration the fact that the opposite parties had produced rent receipts only from 1961 onwards.

Against the said decision of the Commissioner in favour of the appellant, the opposite parties preferred a W.P. before the Ranchi Bench of Patna High Court and by an order dated 23rd April, 1991, the single Judge of the Patna High Court allowed the said W.P. relying on a Full Bench decision

of the Patna High Court in the case of Sam Chandra Sahu versus State of Bihar. It was held in the said decision that forcible possession did not amount to transfer.

The appellant thereafter preferred an appeal before the Division Bench of the High Court but such appeal was also dismissed. Thereafter a special leave petition was filed before this Court out of which this appeal arises.

It may be stated here that the decision of the Full Bench of Patna High Court in Ram Chander Sahu and Ors. Versus State of Bihar has been set aside by this Court on an appeal filed by one of the respondents in the said case namely, Pandey Oraon and the decision of this Court is reported in 1992 (2) Suppl. SCC 77 (Pandey Oraon Versus Ram Chander Sahu and Ors.). It has been held by this Court that the expression transfer appearing in Section 71 (a) of the Chhotanagpur Tenancy Act must be interpreted liberally in the context of the beneficial legislation for protection of a member of the Scheduled Tribe and it has been held that the transfer as understood in Transfer of Property Act should not be applied for the purpose of deciding the case of transfer under the Chhotanagpur Tenancy Act. It has been held that surrender by a tenant will also amount to transfer for getting relief under the said Act.

Mr. Raju Ramchandran, learned counsel appearing for the appellant has contended that in the instant case the finding of the revisional authority namely the Commissioner that the application under Section 46(4)(a) was made within 12 years from the date of dispossession has been made very objectively by placing reliance on the Bhujarat Record of Rights of 1960 and such finding should be accepted by this Court to be correct. He has submitted that although the decision of this Court in Pandey Oraon's case was made relating to a case under Section 71-A of Chhotanagpur Tenancy Act but this Court has clearly indicated in the said decision that transfer for the purpose of this Act should be liberally construed and a similar case of surrender has been held to be a transfer within the meaning of the said Act. He has therefore submitted that the impugned judgment must be set aside and the application made by the appellant under Section 46 of the Chhotanagpur Tenancy Act should be allowed.

Mr. Jha. learned counsel appearing for the respondent has however disputed the said contention of Mr. Ramchandran and it has been contended by Mr. Jha that Section 71-A was inserted by amendment of Chhotanagpur Tenancy Act and said section has been made applicable donly in respect of area specified in the Schedule. The disputed land is situated outside the area under the said Schedule. Hence, Section 71-A of the Chhotanagpur Tenancy Act has no manner of application in respect of land in question. He has also submitted that although the Commissioner had come to a finding that the applicant had made an application within 12 years from the date of dispossession but such finding has not been accepted by the High Court. The High Court has come to the finding that the respondents had been in possession of the property for a long time and as such the application for annulling by transfer was parred by limitation.

After taking into consideration the facts and circumstances of the case and the contentions made by the learned counsel for the parties, it appears to us that the Commissioner in disposing of the revisional application had placed reliance on Bhujarat Record of Rights made in 1960 where the name of the applicant was recorded as in possession of the land in question. The presumption arising from the said record of right, therefore, clearly stood in

favour of the appellant. We are of the view that the finding of the Commissioner that the appellant had made the said application under Section 46 within 12 years from the date of dispossession need not be disturbed and we accept such finding to be correct. 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.

It appears to us that Mr. Ramchandran is justified in his contention that the decision rendered in Pandey Oraon's case by this Court clearly indicates that the expression transfer appearing in Chhotanagpur Tenancy Act must be liberally construed and the surrender made by a tribal should be construed as a transfer under the said Tenancy Act. Accordingly, the said application under Section 46(4)(a) under the Chhotanagpur Tenancy Act of the appellant was within time and in the facts of the case, the application should be allowed. We order accordingly by setting aside the impugned judgment.

It however appears that the respondents have come out with a case that substantial structure had been constructed by them on the said land. What is the nature of the said structure and what should be the value of such structure requires to be decided in accordance with the proviso to Sub-section 4 A(c) of Section 46 of Chhotanagpur Tenancy Act by the Deputy Commissioner Land Reforms. We, therefore, direct the Deputy Commissioner to decide the claim of the respondents for relief under the proviso to Sub-Section 4A(c) of Section 46 of Chhotanagpur Tenancy Act. Since the matter is pending for a long time, the Deputy Commissioner is circuted to dispose of such claim within a period of six months from the date of the communication of this order. The appeal is accordingly disposed of without any order as to cost.