

(2018) 03 JH CK 0074
In the Jharkhand High Court
Case No : W.P. (C) No. 1029 of 2006

AMITAV KUMAR AND OTHER

APPELLANT

Vs

STATE OF JHARKHAND

RESPONDENT

Date of Decision : 21-03-2018

Acts Referred:

Santhal Pargana Tenancy (Supplementary Provisions) Act 1949 — Section 2(xxii), 4, 4(xxi), 12, 16(a), 27, 28, 59, 60

Citation : (2018) 03 JH CK 0074

Hon'ble Judges : ANUBHA RAWAT CHOUDHARY, J

Bench : Single Bench

Advocate : Rajeeva Sharma, Nitu Singh, Ashish Kr. Thakur

Final Decision : Dismissed

Judgement

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1. Heard Mr. Rajeeva Sharma, learned senior counsel appearing for the petitioners assisted by Mrs. Nitu Singh, Advocate.",

2. Heard Mr. Ashish Kr. Thakur, A.C. to S.C. (L&C) appearing for the respondents-state.",

3. This writ petition has been filed for quashing the order dated 12.05.2004, passed by the Commissioner, Santhal Pargana, Division, Dumka, in RMA",

Case No. 132/1993-94, whereby the order dated 17.05.1993, passed by the Deputy Commissioner, Sahibganj in RMP Case No. 37/84-85 has been",

upheld and the three settlements made in favour of Khemanand Pandit @ Hemanand Pandit(original writ petitioner since deceased and substituted by,

his legal heirs) has been cancelled.,

4. Counsel for the petitioners submits as under:-,

(a) Following three settlements in Mouza-Barachandbasi in Sahebganj District were made in favour of the original writ petitioner:-,

i. 3 bighas of plot no. 223 by order dated 31.01.1956, passed by Sub Divisional Officer, Sahibganj in Settlement Case No. 170 of 1955-56.",

ii. 2 bighas , 16 Khatas and 17 dhurs of plot no. 331 and 4 bighas of plot no. 323 by order dated 03.11.1959 passed by the Sub Divisional Officer,"

Sahibganj, in Settlement Case No. 54/1959-60.",

iii.10 bighas of plot no. 323 by order dated 25.01.1969 passed by the Additional Deputy Commissioner, Santhal Pargana, Dumka in Revenue Misc.",

Appeal No. 143/1968-69 arising out of settlement case no 111 of 1964-65.,

(b) Counsel for the petitioners submits that the original writ petitioner was resident of village Telo, which is adjoining to village Barachandbasi in the",

District of Sahibganj.,

(c) Vide order dated 31.01.1956, the Pradhan of village Barachandbasi had made an application before the Sub Divisional Officer proposing",

settlement of land in favour of 8 persons including original writ petitioner , which was duly granted to the petitioner vide order being Settlement Case",

No. 170 of 1955-56.,

(d) Thereafter another petition was filed being Settlement Case No. 54/59-60 by the Pradhan of village Barachandbasi for settlement of further,

property in favour of the original writ petitioner mentioning therein that he is a very poor Jamabandi Raiyat of village Telo and village Barachand Basi,

is quite adjacent to village Telo. It was also mentioned that the settlement of the property involved in Settlement Case No. 54/1959-60 was settled in,

his favour around 5 years ago. An application was filed before the Sub Divisional Officer for approval of the settlement. Thereafter the Sub Divisional,

Officer, Sahibganj is said to have issued notice to the 16 anna jamabandi raiyat to file their objection and ultimately the raiyats raised no objection and",

therefore the land was settled in favour of the original writ petitioner vide order dated 03.11.1959. (e) So far as 3rd settlement is concerned, this is also",

related to the property in the village Barachandbasi and the settlement case was numbered as 111/1964-65 and vide order dated 10.08.1968, the Sub",

Divisional Officer, Rajmahal at Sahibganj had refused to settle the property in favour of the petitioner on the ground that the petitioner is an outsider.",

Against this, the original writ petitioner filed appeal before the Appellate

Authority which was numbered as Revision Misc. Appeal No. 143/1968-69", and was disposed of in favour of the original writ petitioner vide order dated 25.01.1969. (f) Learned counsel further submits that these orders were, brought to the notice of the learned Commissioner, Bhagalpur Division, and one Santhal Pargana Revision Misc. Reference Case No. 38/82-83 was", started in which order dated 17.02.1983 was passed which reads as follows:-,

Â This is a reference made by the learned Deputy Commissioner, Santhal Parganas vide his order dated 21.04.1982 in R.M.P. Case No. 5/81-82", for according permission under Section 60 of the Santhal Parganas Tenancy Act, 1949 to review the orders of the Additional Deputy Commissioner,"

Santhal Parganas and the S.D.O. Sahebganj whereby the lands in question were settled with Khemanand Pandit in violation of the provisions of law. I, have heard the learned lawyer for Khemanand Pandit. There is no substance in his contention that it was not a fit case to be reopened. If he has a, case he can place it before the learned Deputy Commissioner,

Â The permission is accorded to learned Deputy Commissioner, Santhal Parganas to review the orders of Additional Deputy Commissioner, Santhal", Parganas and S.D.O. Sahebganj under Section 60 of the Santhal Parganas Tenancy Act. It is presumed that while reviewing he would give an, opportunity to Khemanand Pandit to place his case before him.Â??,

(g) Thereafter a proceeding for review was initiated by the Deputy Commissioner and the case was numbered as Revision Misc. Petition Case No., 37/1984-85 and the orders of settlements made in favour of the original writ petitioner were set aside by the Deputy Commissioner, Sahibganj vide", order dated 17.05.1993 inter alia on the ground that the original writ petitioner was outsider and the land could not be settled in their favour. It was, held that the original writ petitioner was neither an aboriginal nor a jamabandi raiyat.,

(h) Thereafter against this order, appeal being RMA Case No. 132/93-94 was filed before the commissioner , Santhal Pargana, Division, Dumka which", was dismissed vide order dated 12.05.2004.,

(i) Counsel for the petitioners submits that the impugned order dated 17.05.1993 which was passed by the Deputy Commissioner, Sahibganj, was", passed pursuant to the order dated 17.02.1983, passed in Santhal Pargana Revision Reference Case No. 38/82-83, whereby permission was accorded",

to the learned Deputy Commissioner, Santhal Pargana to review the order of the Additional Deputy Commissioner, Santhal Pargana, and Sub",

Divisional Officer, Sahibganj, under Section 60 of the Santhal Pargana Tenancy (Supplementary Provisions) Act 1949. He submits that orders of",

settlements were originally passed by the Sub Divisional Officer in the matter of 1st and 2nd settlement and so far as 3rd settlement is concerned",

initially the Sub Divisional Officer had refused to settle the land in favour of the original writ petitioner, but subsequently the order of the Sub Divisional",

Officer was set aside by the appellate authority namely Additional Deputy Commissioner of Santhal Pargana Division, Dumka. He submits that the",

Deputy Commissioner could not have exercised the power under Section 60 of the Santhal Pargana Tenancy (Supplementary Provisions) Act 1949 to,

annul the settlements made in favour of the original writ petitioner, as the power of review could be exercised by the same Authority who had passed",

the order or by his successor in office. He submits that the impugned order dated 17.05.1993 passed in Revenue Misc. Petition No. 37/84-85 is wholly,

without jurisdiction and accordingly is fit to be set aside. He submits that this aspect of the matter has not been taken into consideration by the,

Commissioner, Santhal Pargana, Division, Dumka while passing the impugned order dated 12.05.2004, passed in R.M.A. Case No. 132/93-94 wherein",

the order dated 17.05.1993 was under challenge.,

(j) Counsel for the petitioners on the merits of the matter has relied upon the judgment passed by this Court reported in 1997(1) PLJR 716 to submit,

that it has been held by this Court that the waste land can be settled even in favour of "non jamabandi raiyat" and accordingly he submits that in,

view of this judgment, the impugned orders are fit to be set aside.",

(k) Counsel for the petitioners has also referred to the provisions of the record of rights as mentioned in Santhal Pargana Manual 1911 particularly,

Section 16 (a) thereof which has been referred in the judgment reported in 1997(1) PLJR 716.,

5. The counsel for the respondents submits as under:-,

i. Counsel for the respondents on the other hand submits that the impugned order which has been passed by the Deputy Commissioner, Sahibganj",

12. Rights of the headman

Note (1) Jamabandi raiyat in

this section and 16 includes the children and heirs of jamabandi raiyat. It does not include a raiyat who has acquired land in the village by purchase and has been recorded as Jamabandi khariddar.

Note (2)

The

word", "(a) To enjoy the official holding, where such exists on payment of rent,

(b) To receive one anna per rupee on the rent collected from raiyats, in addition to the rent due from them.

(c) To receive a deduction of one anna per rupee on the rent payable to the proprietor, if paid in due time.

(d) When a raiyat abandons his land or without heirs, the headman shall settle the entire holding with one or other of the following, giving preference in the order mentioned:-

16. village common rights

,"(a)The village community has joint rights over the waste land of the village. Jamabandi raiyats have a preferential rights to the settlement of it for reclamation. No waste land may be settled with a non-jamabandi raiyat without the consent of the sub divisional officer and the proprietor. The

proprietor or raiyats, if aggrieved by the action of the headman in settling waste land, may object before the subdivisional officer, who after due enquiry may set aside or modify the settlement. No Sal or other reserved tree may be cut down in order to reclaim waste land, without the permission of the proprietor. The proprietor shall not unreasonably refuse such permission. No land recorded as village grazing land, may be brought under cultivation.Â

,"(b) -----

(c) -----

d)-----

Â (e)-----

(f)----- (g)-

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9. â??raiyatâ?? has been defined under Section 4 of the Santhal Pargana Tenancy (Supplementary Provisions) Act 1949.,

Â 4(xiii) â??raiyatâ? means a person not being a landlord, 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; and includes the successor in interest of a person who has acquired such a right; ,

Explanation â?"A village headman shall be deemed to be raiyat in respect of his private holding if any.,

â??Villageâ?? has also been defined in Section 4(xxi) which reads as under:-,

Â 4(xxi) Village means,- Â the area defined, surveyed and recorded as a distinct and separate village in the map and record-of-rights prepared under",

any law for the time being in force, and where a survey has not been made and a record-of-rights has not been prepared under any such law, such",

area as the Deputy Commissioner may, with the sanction of the Commissioner, by general or special order, declare to constitute a village :",

4(xxii) "village community" means the body of all the Jamabandi raiyats of a village, their co-sharers, children and heirs",

10. Classes of "Raiyats" have been mentioned in section 12 of Santhal Pargana Tenancy (supplementary provisions) Act, 1949 which reads as",

follows:-,

"12. Classes of raiyats- There shall be for the purposes of this Act the following classes of raiyats, namely:-",

(a) resident Jamabandi raiyats, that is to say, persons recorded as Jamabandi raiyats who reside or have their family residence in the village in which",

they are recorded;,,

(b) non-resident Jamabandi raiyats, that is to say persons recorded as Jamabandi raiyats who do not reside or have their family residence in the village",

in which they are recorded;,,

(c) new raiyats, that is to say, persons recorded as naya raiyats or notun raiyats."

11. Section 27 and 28 of Santhal Pargana Tenancy (supplementary provisions) Act, 1949 read as under:-",

27. Settlement of waste land to be made by patta in prescribed form- Settlement of waste land shall be made by a patta or amalnama in the prescribed,

form. The patta or amalnama shall be prepared in quadruplicate, one copy shall be given to the raiyat concerned, one copy shall be sent to the Deputy",

Commissioner, one copy shall be sent to the landlord and the fourth shall be retained by the village headman or mulraiayat, as the case may be.",

28. Principles to be followed in settling waste land or vacant holdings- In making settlement of waste land or vacant holdings regard shall be had to the,

following considerations in addition to the principles recorded in the record-of-rights,- (a) fair and equitable distribution of land according to the",

requirements of each raiyat and his capacity to reclaim and cultivate;,,

(b) any special claim for services rendered to the village community, society or State;,,

(c) contiguity or proximity of the waste land to jamabandi land of the raiyat;,,

(d) provision for landless labourers who are bona fide permanent residents of the village and are recorded for a dwelling house in the village.,

12. Section 59 and 60 of Santhal Pargana Tenancy (supplementary provisions) Act, 1949 read as under:-",

59. Revision-(1) The Commissioner or the Deputy Commissioner may on his own motion or otherwise, call for the record of a case decided by a",

Court under his control in which an appeal does not lie or in which for cause shown to his satisfaction an appeal has not been preferred within the time,

limit therefor, and may pass such order in the case as he thinks fit:",

Provided that the Commissioner shall not pass such order on an application by a party until the Deputy Commissioner or the Additional Deputy,

Commissioner, as the case may be, has heard the matter in revision or appeal and passed an order.",

(2) The Deputy Commissioner may, by order in writing, empower any Sub-divisional Officer under his control to exercise the powers conferred on the",

Deputy Commissioner by sub-section (1) with respect to the decisions of all or any of the Courts of Deputy Collectors not in charge of a sub-division,",

under the Control of the Deputy Commissioner.,

60. Review- (1) The Commissioner may, for sufficient reasons to be recorded in writing, review any order which has been passed by himself or a",

predecessor in exercise of any power conferred by this Act.,

Â (2) An officer subordinate to the Commissioner shall not review any order made by him or by a predecessor, except for the purpose of correcting a",

clerical error or other error or, manifestly the result of an oversight, without previously obtaining:-",

Â (a) in the case of a Deputy Collector or a Sub-divisional Officer, the permission of the Deputy Commissioner; and (b) in the case of the Deputy",

Commissioner or the Additional Deputy Commissioner, the permission of the Commissioner.",

13. The aforesaid points which have been mentioned above are decided in the following manner.,

14. Point no A,

Whether the impugned order suffers from any jurisdictional error?,

A. From perusal of the records of the case, it appears that the permission was accorded under Section 60 of the Santhal Pargana Tenancy ("

supplementary provisions) Act, 1949 to the Deputy Commissioner, Santhal Pargana to review the orders of settlements(i.e settlements made in favour",

of original writ petitioner) passed by the Additional Deputy Commissioner, Santhal Pargana and Sub Divisional Officer, Sahibganj vide order dated",

17.02.83 in Santhal Pargana Revision Misc. Reference Case No. 38/82-83 by the Commissioner, Bhagalpur Division.",

B. However, apparently, as per provisions of review contained in Section 60 of the Santhal Pargana Tenancy (Supplementary Provisions) Act, 1949,"

the power to review can be exercised only by the authority who passed the order or by the successor in office of the same authority.,

C. Accordingly this court is of the considered view that power of review could not have been exercised by the Deputy Commissioner in connection,

with the two orders of settlement passed by the Sub Divisional Officer and/or in connection with the third settlement pursuant the appellate order,

passed by Additional Deputy Commissioner.,

D. However, from perusal of impugned order dated 17.05.1993 passed by the Deputy Commissioner, Sahibganj in R.M.P. Case No. 37/84-85, it",

appears that the same has not been passed pursuant to the aforesaid order dated 17.02.1983 empowering him to exercise power of review, but the",

same has been passed by exercising suo motu revisional power under Section 59 of the Santhal Pargana Tenancy (Supplementary Provisions) Act,"

1949 and this aspect of the matter has been taken care of by the Commissioner, Santhal Pargana, Divisiona, Dumka while passing the impugned order",

dated 12.05.2004 and he has clearly recorded that the Deputy Commissioner had exercised his power under Section 59 of the Santhal Pargana,

Tenancy (Supplementary Provisions) Act, 1949 and for which Deputy Commissioner was duly competent.",

E. Accordingly, the contention of the petitioner that the power of review under Section 60 could not have been exercised by the Deputy Commissioner",

to review the order passed by the Sub Divisional Officer and Additional Deputy Commissioner is correct, but ,inspite of this legal position the",

impugned order cannot be set-aside as the impugned order passed by the Deputy Commissioner dated 17.05.1993 is not an order of review, but the",

order has been passed by exercising power under Section 59 of the Santhal Pargana Tenancy,

(Supplementary Provisions) Act, 1949. Thus this court does not find any jurisdictional error in the impugned order.",

15. Point no B,

Whether the lands could have been settled in favour of original writ petitioner who admittedly was not a resident of village Barachandbasi and was a, resident of adjoining village Telo?,

a. Admittedly the property settled by the three settlements are in the village Barachandbasi and the original writ petitioner belonged to the village Telo.,

b. Admittedly the original writ petitioner was never a raiyat of village Barachandbasi, much less, a Jamabandi Raiyat or non Jamabandi Raiyat.",

c. The provisions of Santhal Pargana Tenancy (supplementary provisions) Act, 1949 are only supplementary provisions and the same has to be read",

along with the provisions relating to record of rights which were existing prior to 1949. This includes Clause 12 and 16 of record of rights as mentioned,

in Santhal Pargana Manual ,1911 whose provisions which are relevant for the purposes of this case has been quoted above.",

d. Clause 12 of record of rights as mentioned in Santhal Pargana Manual, 1911 vide its note (1) clearly provides that the Jamabandi Raiyat includes",

the children of Jamabandi Raiyats. It further provides that it does not include a raiyat who has acquired the land in the village by purchase and has,

been recorded as â??Jamabandi Khariddarâ??.,

e. This provision has to be read with clause 16 which deals with common right of villagers and provides that the waste lands belongs to the village,

community and preference is to given to Jamabandi Raiyat in the matter of settlement and no wasteland can be settled to a non jamabandi Raiyat,

without consent of subdivisional officer and the proprietor.,

f. This court is of the considered view that upon conjoint reading of clause 12 and 16, one of the categories of non jamabandi raiyat would be those",

raiylats who have acquired the land in the village by purchase and by virtue of clause 12, such persons have been specifically excluded from the",

category of â??Jamabandi raiyatâ??.,

g. Section 12 of Santhal Pargana Tenancy (supplementary provisions) Act, 1949 provides the classes of raiylats as",

Â â??resident Jamabandi Raiylatsâ?? who resides or their family residence in the village.,

Â â??non resident Jamabandi Raiylatsâ?? who do not resides or their family residence in the village.,

new Raiyats who are recorded as new raiyats .,

h. From the definition of raiyat as defined under section 4(xiii) of Santhal Pargana Tenancy (supplementary provisions) Act, 1949 it appears that the",
village head man has been given the status of a raiyat by virtue of the explanation.,

This definition indicates that the term raiyat is referable to a village as the village headman can be a raiyat only in respect of his village,
and not in respect of all the villages.,

i. Moreover the definition of the term village as defined in section 2((xxi) of Santhal Pargana Tenancy (supplementary provisions) Act, 1949,"
clearly indicates that every village is a properly marked area having its map and its record of rights. Thus village is an unit in itself.,

j. The definition of the term village community as defined under section 2(xxii) clearly indicates that the same consists of all the jamabandi,
raiya of the village with their co-sharers, children and heirs.",

k. Thus from the conjoint reading of the provisions it appears that the waste land belongs to the village community which consists of jamabandi,
raiya of the village and they have preferential right of settlement of waste lands of the village. At the time of settlement the raiyats of the village,
are to be heard who have a right to object.,

l. The settlements can also be made to non jamabandi raiyats but the term non jamabandi raiyats cannot be extended to those who do not belong to the,
village in view of the fact that there are other raiyats in the village who are non jamabandi raiyats and the status of jamabandi raiyat cannot be,
acquired even by a person who purchases a property in such village but does not belong to the village concerned.,

m. From perusal of the classes of tenants as mentioned in section 12 of Santhal Pargana Tenancy (supplementary provisions) Act, 1949, it appears",
that the term Jamabandi Raiyat is linked to a village and there are two terms one is resident Jamabandi Raiyat and other is non- resident,
Jamabandi Raiyat but the term non jamabandi raiyat has not been used in this section.,

n. This court is of the considered view that non jamabandi raiyats are those raiyats of the village who do not have the status of jamabandi raiyat . One,
such example of non jamabandi raiyats is a per clause 12 of record of rights as

mentioned in Santhal Pargana Manual ,1911 , i.e a raiyat who acquires",
land in the village by purchase.,

o. Thus this court is of the considered view that even a non jamabandi raiyat has to be a resident of the village so as to entitle himself for settlement of,
wasteland of the village.,

p. In the instant case, admittedly the original writ petitioner was never a raiyat of village Barachandbasi, much less, a Jamabandi Raiyat or a non",
Jamabandi Raiyat of the said village. He was resident of another village namely Telo.,

q. Accordingly, this court is of the considered view that the land of village Barachandbasi could not have been settled in favour of the original writ",
petitioner.,

r. So far as the judgment reported in 1997(1) PLJR 716 which has been relied upon by the petitioners is concerned, the same has no applicability to the",
facts and circumstances of the case, as in the said judgment, it has been held that the Act does not debar the authority to make settlement of waste",
land with non jamabandi raiyat.,

s. The said judgment does not decide the point as to whether the settlement could have been made in favour of a person who is not a resident of the,
village.,

t. This court is of the considered view as held above that in a village there are â?? non jamabandi raiyatsâ?? and even a â??non jamabandi raiyatâ?? has,
to be a resident of the village so as to entitle himself for settlement of wasteland of the village.,

u. Moreover in the said judgment reported in 1997(1) PLJR 716 the issue argued and decided was that the settlement can be made even in favour of,
non jamabandi raiyat and there is no such bar under the Santhal Pargana Tenancy Laws.,

v. But the issue involved in this case is whether the settlement of waste land can be made in favour of â??non jamabandi raiyatâ? who is not a,
resident of the village and as already held above , this court is of the considered view that settlement of wasteland cannot be made to a â??non",
jamabandi raiyatâ?? who is not a resident of the village.,

w. This Court further finds that this Court in judgement reported in 2006(4) JCR

390 (Jhr) has taken a view following the judgement passed by, Honâ??ble Patna High Court reported in 2000(2) BLJR 1084 wherein while dealing with the provisions of section 28 of Santhal Pargana Tenancy (, supplementary provisions) Act, 1949 it has been held that pre-requisite for settling wasteland and vacant holding is that the settlee must be a", â??jamabandi raiyatâ?? or must be a â??permanent raiyatâ?? or must be a â??permanent residentâ?? of the village.,

x. Thus this court is of the considered view that the Deputy Commissioner has rightly taken a view that the land of village Barachandbasi could not, have been settled in favour of the original writ petitioner who was admittedly not a resident of village Barachandbasi.,

16. Point no C,

Whether, otherwise also, the three settlements made in favour of the original writ petitioner has been rightly set-aside on account of non-compliance of", mandatory provisions of Santhal Pargana Tenancy (supplementary provisions) Act, 1949?",

In connection with the 1st settlement made in the year 1955-56 dated 31.01.1956, there is nothing on record to suggest that any notice was issued to", the 16 anna raiyat prior to passing of the order dated 31.01.1956, although it has been simply recorded that there is no objection . A specific finding of",

fact has been recorded by the Deputy Commissioner in the impugned order that legal procedure in connection with the settlement was not followed.,

This court is of the definite view that the procedures in connection with settlement of wasteland in Santhal Pargana including the procedure regarding,

issuance of 16 anna raiyat is not a mere formality in view of the provision of clause 16(a) record of rights as mentioned in Santhal Pargana Manual,

,1911 which provides that village community has joint right over the wastelands of the village . Accordingly , this court is of the considered view that",

this settlement has been rightly cancelled by the deputy commissioner and this order has been rightly confirmed by the commissioner in the impugned,

order in which this court does not find any illegality or perversity.,

The 2nd settlement was made in favour of the original writ petitioner in settlement case no 54/1959-60 which accordingly to the deputy commissioner,

was made without application of mind and the objection of 16 anna raiyat was rejected in a summery manner. The deputy commissioner has held that,

this settlement was also made in total disregards to the mandate of law and the procedure and this order has been rightly confirmed by the,

commissioner in the impugned order in which this court does not find any illegality or perversity.,

The 3rd settlement was made in favour of the original writ petitioner pursuant to order of the appellate authority in Revenue Misc. Appeal no,

143/1968-69 which itself was passed on the basis of the fact that there was already a settlement made in favour of the original writ petitioner. This,

court finds that as the earlier settlement was not in accordance with law, therefore the third settlement based on earlier settlement cannot be sustained",

in the eyes of law. Accordingly this court does not find any illegality or perversity in the impugned order.,

17. Considering the aforesaid facts and circumstances of the case and the findings arrived and recorded above, this writ petition is dismissed.",

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