
(2008) 04 JH CK 0100
In the Jharkhand High Court

Asha Devi

APPELLANT

Vs

State of Bihar (Now Jharkhand) and Others

RESPONDENT

Date of Decision : 11-04-2008

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 144

Citation : (2008) 2 JCR 726

Hon'ble Judges : Dabbiru Ganeshrao Patnaik, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

D.G.R. Patnaik, J.—The petitioner in this writ application, has prayed for issuance of a writ of certiorari for quashing the order dated 24.6.1989 (Annexure-3), passed by the respondent No. 4 Sub-Divisional Officer, Godda in Settlement Case No. 105 of 1988-89, whereby the settlement of the land made in favour of the petitioner was not confirmed and also for quashing the order dated 13.7.1990 (Annexure-2), passed by the respondent No. 2 Deputy Commissioner, Godda affirming the order of the respondent No. 4 and cancelling the settlement of land made to the petitioner and also the order dated 28.4.1992 (Annexure-1), passed by the respondent No. 2 Commissioner Santhal Parganas Division Dumka, affirming the order of the respondent No. 3.

2. The case of the petitioner is that the petitioner is a permanent resident of mauza-gunghasa within the district of Godda. The said mauza was declared as a pradhani mauza and the land measuring about 20 Bighas 16 Kathas within Plot No. 164 of the said mauza was recorded as "parti kadim" (waste lands) under Anabadi Khaia No. 55 in the last survey settlement. The petitioner's father was a jamabandi ralyat of the said mauza owning a small piece of land within plot Nos. 1044 and 1219 within the said mauza. The father of the petitioner had no male issue and, therefore, the petitioner's marriage was done in a gharjamai form and her husband lives with her in the said mauza. On the claim that she is a poor person belonging to a backward community and being a permanent resident of

mauza gunghasa and having no separate jamabandi in her name and also on the ground that her husband who has also permanently settled with her in the said village, has been rendering services to the village community as a Dresser, working in the Primary Health Centre, Poriahath, the petitioner had applied before the pradhan for settlement of a portion of the waste lands in Plot No. 1064, which was contiguous to the plot No. 1044 held by the petitioner's father.

3. On 10.5.1983, the Village pradhan had settled 6 Bighas 8 Kathas of land within the plot No. 1064 with the petitioner. Similar settlements of land measuring different areas within the same plot were made by the pradhan to 7 other persons of the village. The settlement of the land to the petitioner and to the other settlees were made after observing the procedure of law by giving notice to the 16 annas raiyats of the village and on being satisfied that the petitioner had qualified for allotment of the waste land in her name. In affirmation of the settlement, a patta in the prescribed form was issued in the name of the petitioner.

4. After obtaining the land by way of settlement, the petitioner reclaimed 3 Bighas of the land by converting the same into dhani land and has been growing paddy thereon while the remaining portion is being used by her as a bari land over which maize and other crops are being grown by her. Eversince after the settlement of the land made in her favour, the petitioner has been paying rent to the village pradhan, After making settlement of the land in favour of the petitioner, the village pradhan had also sent his written intimation to the Sub-divisional Officer, Godda through Registered Post for confirmation of the settlement. The petitioner also filed a petition before the Sub-divisional Officer, Godda for confirmation of the above settlement of the lands in question annexing therewith the Report of inspection made by the Circle Officer and the karamchhari. A Settlement Case No. 105 of 1988-89 was initiated in the Court of the Sub-divisional Officer, Godda who in course of the proceedings, by his order dated 26.3.1989, called for a Report from the Circle Officer and also issued notice to the village pradhan and the 16 annas raiyats of the village. The Circle Officer as well as the village pradhan by their respective reports recommended the confirmation of the settlement of the land in favour of the petitioner. Though notices were issued to the 16 annas raiyats of the mauza but no objection was filed by any of the raiyats against the settlement. Despite this, the Sub-divisional Officer, Godda vide his impugned order dated 24.6.1989 (Annexure-3), had refused to confirm the settlement of the land in favour of the petitioner on the ground that the land falls within urban area of Poriahath and the Mercy Hospital is situated by the side of the land.

5. Being aggrieved by the order of the Sub-divisional Officer, Godda, the petitioner filed an appeal before the Deputy Commissioner, Godda which was registered as Revenue Miscellaneous Appeal No. 8 of 1989-90. By order dated 5.7.1990, the Deputy Commissioner, issued notices to the village pradhan and the 16 annas raiyats of the village. However, by his order dated 3.7.1990

(Annexure-2), the Deputy Commissioner dismissed the appeal on the ground that the land falls within urban area of Porihat located by the side of the Mercy Hospital and that a village road passes through the land which connects the Gunghasa school and on the further ground that the petitioner's husband being an employee of the Health Department had connived with the Pradhan of the village for obtaining settlement of the land in the name of his wife and that no rent receipts have been filed by the petitioner and she has also not been found in cultivating possession of the land.

6. The petitioner thereafter filed a Revenue Miscellaneous Revision before the Commissioner, Dumka against the order of the Deputy Commissioner, which was registered as Revenue Miscellaneous Revision No. 86 of 1990-91. The Commissioner, Dumka in his turn issued fresh notices to the 16 annas raiyats and to the pradhan of village and despite receiving the report of recommendation from the pradhan and also from the 16 annas raiyats of mauza Gunghasa in favour of the petitioner, the Commissioner vide his impugned order dated 28.4.1992 (Annexure-1), has rejected the Revision application filed by the petitioner on the same grounds as indicated in the order of the Deputy Commissioner, Godda.

7. It is against the aforesaid orders of the Sub-divisional Officer, the Deputy Commissioner and also of the Commissioner that the instant writ application has been filed.

8. Assailing the impugned orders, learned Counsel for the petitioner submits that admittedly the lands under reference in this case were recorded as parti kadim (waste lands) held by the Government and the lands were declared as pradhani lands. The petitioner had submitted her application for settlement of the lands on the ground that she was a poor person belonging to the backward community and that she had no lands of her own, except about 4 Bighas of land which was inherited by her from her father and also on the ground that her husband, who has been living with her since after his marriage as Gharjamai, has been rendering service to the village community as a Dresser in the Primary Health Centre and on the further ground that the land, which was originally recorded in the name of the her father and inherited by her over which she is in occupation, is situated contiguous to the settled waste lands.

9. Learned Counsel explains that the petitioner had qualified for the settlement of the waste lands in her favour in accordance with the principles laid down u/s 28 of the Santhal Parganas Tenancy Act, 1949. These facts were assessed by the village pradhan who also called for objections, if any from the 16 annas raiyats of the village and on being satisfied that the petitioner qualified for the settlement of the land, had made the settlement of 6 Bighas and 16 Kathas of land in favour of the petitioner on the 10.5.1983. Learned Counsel explains further that since the village pradhan was competent to make the settlement of the land in favour of the petitioner, there was no requirement under the law for seeking order of confirmation of the settlement of land from the Sub-divisional Officer. The

settlement stood confirmed by grant of a patta in favour of the petitioner. After obtaining the settlement of the land, the petitioner had reclaimed more than 3 Bighas of land and converted the same into cultivable lands by growing paddy and over the remaining portions, she used to grow maize and other crops using the same a bari lands and this fact has been confirmed by the Inspection Report of the karamchari and the Circle Officer as also by the report of the village pradhan, submitted before the Sub-divisional Officer and later, before the Deputy Commissioner and also before the Commissioner. Under such circumstances, there could be no legal and valid reason for cancellation of the settlement, on the misleading plea that the lands fell within urban area and the plea that the petitioner was not qualified for the settlement of the lands in her favour.

10. The respondents have filed their counter-affidavit, controverting the claim of the petitioner and the grounds advanced by her. Learned Counsel for the respondents would argue that it was petitioner, who after five years of settlement of land, had filed her application for confirmation of the settlement of the land before the Sub-divisional Officer made in her favour. In the settlement proceedings, it was detected that the land settled in favour of the petitioner, fell within the urban area and was situated by the side of the local Mercy Hospital and a road leading to the school exists through the land. On these grounds and on the belief that the petitioner's husband being a Class IV Government servant had influenced the pradhan of the village to make the settlement of the land in favour of the petitioner, the Sub-divisional Officer did not confirm the settlement. Learned Counsel argues further that the Deputy Commissioner had also drawn the same inference, filed before the Circle Officer that the lands settled in favour of the petitioner was within urban area and not a waste land within the pradhani mauza. Learned Counsel adds further that even though the settlement of the land was made in favour of the petitioner in the year 1993 and no appeal was filed against the order of settlement but under the provisions of Section 32 of the Santhal Parganas Tenancy Act, 1949 and also under the provisions of Section 59 of the aforesaid Act, in exercise of his powers of revision, the Deputy Commissioner has cancelled the settlement of the land which was made in favour of the petitioner on the ground specified in his order and, therefore, there is no infirmity in the impugned orders of the Deputy Commissioner and also that of the Commissioner.

11. During the pendency of this case, an intervener petition was filed by the respondent Nos. 7 and 8, claiming that the land within the same plot in the same village was settled with them in the years 1985 and 1986 respectively and they have been in peaceful cultivating possession over the same and the petitioner in this case, has been attempting to dispossess them by making false claims over their lands and causing initiation of proceedings u/s 144, CrPC against them. Learned Counsel representing the interveners would clarify that the lands settled in their favour though within the same plot, are totally distinct and separate from the lands settled in favour of the petitioner and they have no concern whatsoever with the lands of the petitioner.

12. From the rival arguments of the petitioner and the respondents, the following questions arise for consideration:

(a) Whether the settlement of the land made by the village pradhan in favour of the petitioner needed any confirmation by the Sub-divisional Officer under the law?

(b) Whether in the facts and circumstances of the case, the Deputy Commissioner could exercise any power u/s 32 of the Santhal Parganas Tenancy Act, 1949 for cancelling the settlement of the land for the petitioner? and

(c) Whether the cancellation of the settlement of the land, made by the Deputy Commissioner and the Commissioner even in exercise of their powers u/s 59 of the aforesaid Act was legal and valid?

13. As regards the first question, it is not disputed that the mauza Gunghasa was a pradhani mauza and the village pradhan was competent under the law to make the settlement of the waste lands in favour of the persons who qualify for settlement as per the principles laid down u/s 28 of the Santhal Parganas Tenancy Act, 1949. Admittedly, the village pradhan had made the settlement of the land in favour of the petitioner and had also granted patta of settlement to her. The settlement of the land was made by the pradhan after inviting objections from the 16 annas raiyats of the village and when no objection was received from any corner against the proposed settlement, he settled the land in favour of the petitioner. Learned Counsel for the respondents has not shown any provision of law under the Santhal Parganas Tenancy Act to indicate that the settlement made by the village pradhan needed to be confirmed by the Sub-divisional Officer. Though Section 29 of the Act, provides that the previous sanction in writing of the Deputy Commissioner would be necessary in cases whether the village pradhan makes settlement of the waste lands either with himself or with any co-mul-raiyat but it is not the case of the respondents that the petitioner was a co-mul-raiyat.

14. As to the second question, the powers u/s 32 of the Act can be exercised by the Deputy Commissioner only when objections, if any, is received from any aggrieved person by any act of the village headman or the mul-raiyat or the landlord, as the case may be, in settling or refusing to settle the waste land or a vacant holding. In the instant case, admittedly, even though 16 annas raiyats were served with notices, but not objection was raised by any of them. Under such circumstances, the Deputy Commissioner could not have invoked powers u/s 32 of the Santhal Parganas Tenancy Act, 1949.

15. As to the third question, no doubt, Section 59 of the Act, vests powers of revision with the Commissioner or the Deputy Commissioner, who on his own motion or otherwise call for the records, decided by the Court under his control and may pass such orders as he thinks fit but any such orders shall have to be made judiciously on principles of equity and natural justice.

16. The grounds on which the settlement of land was cancelled are;

(a) That the land settled in favour of the petitioner fell within urban area.

(b) That the village Hospital exists by the side of the land.

(c) That a Road exists over the lands in the said plot leading to the village school.

(d) That the petitioner has not filed any rent receipts to confirm that he has been in cultivating possession of the lands, and

(e) That since the petitioner's husband is a Government employee, there was a possibility of his conniving with the village pradhan for obtaining the settlement of the land in favour of the petitioner.

17. None of these grounds are tenable on the admitted facts of the case. Undisputedly, the lands in Plot No. 1064 within the mauza Gunghasa was recorded in the survey settlement records as waste lands situated within the mauza Gunghasa declared as pradhani mauza. No evidence has been adduced in the proceedings before the Deputy Commissioner to confirm that the lands settled with the petitioner was part of urban area. Merely because the urban areas has, in course of time, stretched up to the limits of the mauza Gunghasa, it cannot be said that the lands settled with the petitioner fell within urban area.

18. Next, the mere fact that the petitioner did not file any rent receipts before the Deputy Commissioner does not in itself indicate that she was not in possession of the settled lands. The report of inspection submitted by the Circle Officer in response to the notices of the Deputy Commissioner, did confirm that the petitioner was in possession of the lands, which was settled with her out of which she was reclaimed three Bighas of land by converting it to cultivable paddy lands and has been using the remaining portions as ban lands by growing vegetables and other crops, therein.

19. Next, as regards the ground that the petitioner's husband being a Government employee, had connived with the village pradhan for obtaining the settlement of land, this impression appears to be based on mere suspicion without any cogent and reliable evidence or basis.

20. From the undisputed facts, it transpires that the petitioner is a permanent resident of village Gunghasa and belongs to the backward community. Her father was a jamabandi raiyat and died without any male issue leaving behind, a small portion of a jamabandi land to the petitioner, who is in occupation of the same. The petitioner's husband lives with the petitioner in the same house in the same village as a gharjamai and he is rendering village community services as a Dresser employed in the Primary Health Centre within the village. The pradhan of the village has acknowledged in his report submitted before the Sub-divisional Officer as also before the Deputy Commissioner that the petitioner did qualify for the settlement of the waste lands in her favour. Under such circumstances, the settlement of the land made in favour of the petitioner could not be cancelled

without any valid and reasonable ground.

21. Learned Counsel for the respondents would refer to the provisions of Section 33, which enables the Deputy Commissioner to cancel the settlement, if the settlee has failed to bring the land under cultivation within a period of five years from the date of settlement. The provisions of Section 33 of the Act cannot be applied to the facts and circumstances of the present case for the reasons that no application was received by the Deputy Commissioner either from any jamabandi raiyat or the village Headman or the mul-raiyat or the landlord to set aside the settlement on the ground that the petitioner had not brought the land under cultivation within a period of five years from the date of settlement. On the contrary, the report submitted by the Circle Officer in response to the notice issued by the Deputy Commissioner did confirm that the petitioner was in cultivating possession of the lands by growing paddy crops in part of the lands and by growing vegetables in the remaining parts.

22. In absence of any reasonable ground, the cancellation of the settlement on the speculation that the land may be put to use for any public purpose in future is also totally misconceived and is not tenable.

23. Furthermore, when within the same plot of land, settlement of different areas of land could be validly made in favour of several other settlees including the interveners (respondent Nos. 7 and 8), then there could be no reasonable ground of differentiate and discriminate the petitioner from the others.

24. For the reasons discussed above, I find merit in this application. Accordingly, this application is allowed. The impugned orders dated 13.7.1990 (Annexure-2) and the order dated 28.4.1992 (Annexure-1) are hereby quashed.