

(1997) 08 PAT CK 0003
In the Patna High Court
Case No : C.W.J.C. No. 8612 of 1989

Babu Lal Hembrum

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 30-08-1997

Acts Referred:

Santhal Praganas Tenancy (Supplementary Provisions) Act, 1949 — Section 5, 6, 7
Santhal Praganas Tenancy (Supplementary Provisions) Rules — Rule 1, 2, 3, 4

Citation : (1998) 1 PLJR 43

Hon'ble Judges : Aftab Alam, J

Bench : Single Bench

Advocate : Jay Prakash Jha, for the Appellant; Ram Sagar Singh, for State and Rajeev Ranjan Mishra, for the Respondent

Final Decision : Allowed

Judgement

Aftab Alam, J.—Whether a person who being in Government service is unable to live in the village can be appointed as the village headman (Pradhan) of that village under the provisions of the Santhal Praganas Tenancy (Supplementary Provisions) Act, 1949? This is the question that arises for consideration in this case.

2. The facts of the case are all admitted and are very brief. These can be stated thus. A certain Lumba Pawaria, the father of Respondent No. 5 was the village headman of Mauza Jam Juri under Masalia police station in the district of Dumka. Following the death of Lumba Pawaria, his son Simon Pawaria, Respondent No. 5 made an application for being appointed as the village headman in place of his deceased father. His application was based on his hereditary right recognised under the provisions of the Santhal Parganas (Supplementary Provisions) Act ("the Act, hereinafter).

3. A similar claim was raised by the Petitioner. According to the Petitioner's case, it was his grand father, namely, Churu Hembram who was the village headman earlier. He died while his son, the father of the Petitioner was still a minor. His

widow was unable to take appropriate steps for her son being appointed the village headman under suitable Sarbrakhar and accordingly the village became Khas. It was only later on that the father of Respondent No. 5 was appointed to the office of the village headman.

4. Another application was filed by a certain Rasik Pawaria opposing the claim of Respondent No. 5 for his appointment as village headman. In this writ petition, however, the aforesaid Rasik Pawaria is not before this Court and we are, therefore, not concerned with the objections raised by him.

5. The Subdivisions Officer, Dumka by order dated 18.6.1984 passed in P.A. Case No. 30/1983 allowed the claim of Respondent No. 5 and directed for his appointment as the village headman, of Mauza Jam Juri in place of his deceased father. An appeal against this order was summarily rejected by the Deputy Commissioner, Dumka by order dated 4.9.1984 passed in R.M.A. No. 78/1984-85. The Petitioner took the matter in revision before the Commissioner, Santhal Parganas Division at Dumka who, by his order, dated 7.3.1989 passed in Revenue Misc. Revision No. 468 of 1985, affirmed the appointment of Respondent No. 5 to the post of village headman and rejected the claim of the Petitioner.

6. It is to be noted here that one of the grounds on which the appointment of Respondent No. 5 as the village headman of Mauza Jam Juri was being assailed was that he was a Government Servant and was working as Karmchari in Kundahit block of Jamtara Subdivision. The place of his posting was far away from the village in question and being in Government service, he did not regularly reside in Mauza Jam Juri. In the reply affidavit (filed on behalf of the Petitioner to the counter affidavit filed on behalf of the Respondent No. 5 it is stated that during the pendency of this writ petition, Respondent No. 5 has been transferred and is presently posted at Nala block which is approx. at a distance of 40 KMs. from village jam Juri). The revenue courts below disregarded this objection and upheld the claim of Respondent No. 5.

7. It would also be apposite to note here that in respect of the Petitioner it was found that though his grand father was in fact the headman of the village earlier, he did not die holding that office but was dismissed from the post during his life time. The Petitioner, therefore, could not claim any hereditary right to the post in terms of the provisions contained in schedule 5 of the Act.

8. Mr. Jai Prakash Jha, learned Counsel appearing on behalf of the Petitioner assailed the order appointing Respondent No. 5 on the ground that notwithstanding his hereditary claim, Respondent No. 5 was unfit for being appointed as headman because he did not regularly reside in the village and was, therefore, unable to discharge the normal duties and functions of headman.

9. Mr. Rajeev Ranjan Mishra, learned Counsel appearing on behalf of Respondent No. 5, on the other hand, submitted that the hereditary claim was paramount and all that the provisions of the Act required was that the headman should be

permanent resident of the village. According to him, there was no provision in the Act creating any bar against the appointment of a person as the village headman who though a permanent resident of the village was forced to live outside because of his Government postings.

10. Section 5 of the Act provides for the appointment of a village headman of a Khas village; Section 6 requires the landlord to report the death of village headman to the Deputy Commissioner and Section 7 provides that on his appointment the village headman should be granted a Patta and may be required to execute a Kabuliyat in the prescribed form.

11. Schedule 5 of the Act lays down the rules which are to be followed in appointing a headman. The opening sentence of the schedule is as follows:

The headman must be a resident of the village or his permanent home must be within one mile of the village.

Rule 1 provides that the appointment of the headman should be made in accordance with the village customs and Rule 2 lays down that any Subdivision of the office of headman can be allowed only under certain specified circumstances. Rules 3 and 4 dealing with hereditary rights are as follows:

3. The office of headman being hereditary, the next heir, who is fitted, should be headman. If the heir be a minor, he may be appointed headman with a Sarbrakhar to manage for him until he attains his majority.

If no suitable Sarbrakhar can be found, the right of the minor lapses.

4. A person may be refused succession on the death of his father/ mother if, for reasons to be recorded, he/she be considered unfit for the post.

From the above quoted provisions, it is evident that the office should normally go to the next heir of the deceased headman but it has been also provided that a person may be refused succession in case he was found unfit for the post. The rest of the schedule deals with dismissal of headman with which we are not concerned in this case.

12. The next thing to note is the rights and duties of the village headman as enumerated in the record of rights and duties prepared for that part of the Santhal Praganas where the village in question is situate. The relevant passage is to be found in Santhal Parganas Tenancy Manual, 1911, pages 291 to 299 (at pages 297 and 299). The record of rights and duties enumerates the right of the headman as follows:

Rights of the headman: During the currency of his lease, the headman is entitled -

(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 the raiyats, in addition to the rent due to them.

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

(d) on a raiyat's absconding or dying without heirs, to settle his holding with one or other of the following, giving preference in the order mentioned below:

(1) With a resident Jamabandi raiyat of the same community.

(2) With himself, if resident or with a resident Jamabandi raiyat of a different community.

(3) With himself, if non-resident, or with a non-resident Jamabandi raiyat.

(4) With a non-jamabandi raiyat.

Whenever he settles other than a resident Jamabandi raiyat of the same community, he will report the settlement to the Subdivisional Officer who after hearing the objection of the proprietor and raiyat, will confirm or modify the settlement provided that no non-jamabandi raiyat takes settlement without the consent of the proprietor.

(Jamabandi raiyat in this section and throughout the record, includes the children and heirs of Jamabandi raiyats. It does not include a raiyat who has acquired land in the village by purchase since the last settlement, and has been recorded a "Jamabandi Kharid". The word "Community" is intended to draw a distinction between dikkus and non-dikkus. A "dikku" is a person who does not belong to an aboriginal or semi- aboriginal tribe or caste.)

(e) During the term of the settlement, to enjoy rent free, such of the village waste as he reclaims himself, and to recover rent at half the settlement rates for so much of the waste as raiyats reclaim.

(f) To give order to the village Chaukidar in the performance of his police duties.

13. From the above, it is evident that in addition to receive a certain commission on the collection of rent from the raiyats and a further commission on payment of rent to the proprietor, the village headman also has the right to enjoy the official holding.

14. Coming now to the duties of the headman, the same are enumerated as follows:

Duties of the headman: During the currency of his lease, it is the duty of the headman-

(a) To collect and punctually pay the rent to the proprietor.

(b) To perform the prescribed police duties.

(c) With the assistance of the raiyats to repair dykes, dams, and tanks belonging to the village, other than those which are within the meaning of Section 6 and also village pathas and boundary marks, and preserve the camping and grazing

grounds.

Danrs, bands, tanks, etc. which are required for irrigation, and the repair of which under this section is the duty of the raiyats, may not be converted, to other purposes without the consent of the raiyats who use the same, nor may any charge be levied by the proprietor for the use of water from the said tanks, etc.

(d) To observe all such orders as Government have passed or may hereafter pass prohibiting the transfer in any view of the office of headman, and the transfer or sub-division of raiyat holdings.

(e) To guard the respective rights of Government, of the proprietor, and of the raiyat.

(f) To preserve intact for cultivation the head-man's private holding, and the official holding, if any.

(g) To realise from the raiyats and to pay to the parganait, chaukidar, and other such officials, however, styled, their customary or other legal dues.

(h) To assist the proprietor in procuring sarkari rasad.

(i) To realise from the raiyats and to pay over to the proprietor road and public works cess, as ordered by the Government.

15. From a perusal of the headman's duties as extracted above, it is self evident that for any meaningful discharge of those duties, it would be essential for the headman to permanently and regularly reside in the village in question and it would not be possible to discharge those duties satisfactorily in case he lived outside the village on Government postings and came to the village only intermittently in holidays and for short periods.

16. Mr. Mishra, learned Counsel for Respondent No. 5 submitted that the main function of the headman was the collection of rent which was done once in a year and Respondent No. 5 could effectively discharge this duty by coming to the village even once in a year. I am unable to accept that the only duty of the headman is the collection of rent. The headman has, in fact, a long list of duties which can be duly discharged only by a person living in the concerned village. It is not denied that Respondent No. 5 is in government service and is posted at places far away from the village in question and, therefore, he is not in a position to regularly reside in the village. On the admitted facts, therefore, it is clear that Respondent No. 5 could not be in a position to truly discharge his duties as the headman of the village. Thus, the result of his appointment would be that he would be enjoying the social status and prestige and he and his family members would be deriving the many benefits attached to that office but he would not be discharging most of the duties of the headman.

17. In the light of the above discussion, I am of the considered view that only a person regularly residing in the village can be considered to be a suitable

candidate for the office of the headman and Respondent No. 5, notwithstanding his hereditary claim, is unfit for the office of headman for the simple reason that he is not living there regularly. In my opinion, therefore, the authorities acted erroneously in allowing his claim simply on the basis of hereditary right and directing for his appointment as headman.

18. Mr. Mishra submitted that there was no complaint against Respondent No. 5 that he was not discharging his duties and therefore there was no reason for his removal from the office. I am unable to accept the submission. It has been found that he was not fit for the office and therefore his appointment as headman was bad and illegal. There is no question, therefore, of his removal from office.

19. For the reasons stated above, I find that this application is fit to be allowed. I accordingly quash the orders contained in Annexures 1, 2 and 3.

20. Before concluding it is to be observed that it has been found that the Petitioner too has no hereditary claim to the office because his grand father was dismissed from the office of headman. I accordingly direct the Deputy Commissioner, Dumka to initiate proceeding for appointment of village headman for the village in question as provided under chapter 2 read with Schedule 5 of the Act. In case 2/3rd of the Jamabandi raiyats do not give their consent for appointment of a headman, the village may be converted into a Khas village.

21. In the result, this application is allowed with the aforesaid observation and directions.