
(2006) 07 JH CK 0038

In the Jharkhand High Court

Case No : Civil Writ Jurisdiction Case No. 4460 of 1990

Baldeo Mandal

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 11-07-2006

Acts Referred:

Santhal Pargana Tenancy (Supplementary Provisions) Act, 1949 — Section 28

Citation : (2007) 1 BLJR 174 : (2006) 4 JCR 390

Hon'ble Judges : Amareshwar Sahay, J

Bench : Single Bench

Advocate : D.K. Prasad and S.K. Mahto, for the Appellant; None, for the Respondent

Final Decision : Dismissed

Judgement

Amareshwar Sahay, J.—In this application the prayer has been made by the petitioner to quash the order dated 17/04/1989 passed by the Commissioner, Santhal Parganas Division, Dumka in Revenue Misc. Revision No. 246/1987-88, whereby the learned Commissioner set aside the order of settlement of Plot No. 51 area 2 Bighas 4 Kathas and 19 dhurs of mouza Korikatinia P.S.- Jama in the District of Dumka made in favour of the writ petitioner and up held the settlement of the said land made in favour of the private Respondents.

2. From perusal of the impugned order, i.e. Annexure-1, passed by the Commissioner, it appears that he has held that the settlement made in favour of the writ petitioner was against the provisions of Section 28 of the Santhal Parganas Tenancy Act, 1949. Section 28 of Santhal Parganas Tenancy Act, 1949 reads as under:

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 bonafide permanent residents of the village and are recorded for a dwelling house in the village.

From bare perusal of the above quoted provisions of the Santhal Parganas Tenancy Act, 1949 it appears that pre condition for settlement of waste land or vacant holding in favour of a person is that the settlee has to be firstly, a recorded tenant and, thereafter, he has to fulfill the other conditions mentioned in Sub-section (a) to (d).

3. In the present case admittedly, the petitioner was neither a recorded tenant/Jamabahdi Raiyat nor he is a permanent resident of the said village, where the land in question is situated. It appears that the land in question was settled with the petitioner initially only on the ground that he was an Ex-Army personnel and, therefore, he had special claim for the services rendered to the State as provided u/s 28 (b) of the Santhal Parganas Tenancy Act, 1949.

4. In the case of Sheikh Allauddin and Others Vs. State of Bihar and Others, , the Patna High Court while dealing with the provisions of Section 28 of the Santhal Parganas Tenancy Act, 1949 has held that prerequisite for settling waste land and vacant holding is that the settlee must be a Jamabandi Raiyat or must be a permanent Raiyat or must be a permanent resident of village.

5. In the present case admittedly as noticed above the petitioner who applied for settlement of the land in question was neither a jamabandi raiyat nor a permanent raiyat nor a permanent resident of village, where the land in question was situated and, therefore, in my view, the petitioner was not entitled to get settlement of the land in question and, as such, the learned Commissioner rightly cancelled the settlement made in favour of the writ petitioner as the same was totally against the provisions of Section 28 of Santhal Parganas Tenancy Act, 1949.

6. In view of my discussions and findings above, I do not find any infirmity in the impugned order of the learned Commissioner and, accordingly, having found no merit in this writ application, the same is dismissed.