

(2000) 01 PAT CK 0034
In the Patna High Court
Case No : C.W.J.C. No. 597 of 1991

Banshidhar Pal and Another

APPELLANT

Vs

State of Bihar and Others

RESPONDENT

Date of Decision : 19-01-2000

Acts Referred:

Santhal Pargana Tenancy (Supplementary Provisions) Act, 1949 — Section 20(1), 20(2), 42

Citation : (2000) 2 BLJR 1295 : (2000) 1 PLJR 994

Hon'ble Judges : Narayan Roy, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Narayan Roy, J.—Heard learned Counsel for the petitioners, learned Counsel for respondent Nos. 4 to 6 and also learned J.C. to S.C III for respondent Nos. 1 to 3.

2. this writ application is directed against the order dated 16.7.1990 as contained in Annexure-8 passed by respondent No. 1 in Revision Misc. Appeal No. 88 of 1983-84, whereby and where under the order passed by the appellate authority dated 28.11.1983 has been set aside and the order passed by the Sub-Divisional Officer u/s 42 of the Santhal Pargana Tenancy (Supp) Provision Act, 1949 (hereinafter referred to as "the Act") has been restored.

3. It appears that a proceeding u/s 42 of the Act was initiated at the behest of respondent Nos. 4 to 6 for ejectment of the petitioners as they were in an unauthorised possession of the land in question. The Sub-Divisional Officer, after hearing the parties and considering the documents produced before it, held that the petitioners were in an authorised possession of the land in question and therefore, directed for their ejectment. The petitioners challenged the order of the Sub-Divisional Officer before the Additional Deputy Commissioner and the appeal was allowed after hearing the parties and the passed by the Sub-Divisional Officer u/s 42 of the Act was set aside. Ultimately, the order as such was challenged before the Commissioner giving rise to the impugned order.

4. Learned Counsel for the petitioners submits that the petitioners were in possession of the land in question prior to 12 years from the date of coming into force of the Act. It is further submitted on behalf of the petitioners that the petitioners were deemed to be in possession as a title Suit No. 8 of 1936 was filed by the contesting respondents against the petitioners. It is further submitted that against a Title Suit No. 4 of 1963 was filed and the same was compromised on 22.6.1983 and therefore, it must be presumed that the petitioners were in possession of the land in question for 12 years prior to 1949, the Act in question, came into force.

5. Learned Counsel for the contesting respondents, on the other hand, submitted that the petitioners must prove their possession over the land; for 12 years prior to 1949 and he cannot inferred from the compromise decree that they were in possession for more than 12 years as compromise decree must be held to be a collusive one under Sub-section (1) of Section 20 of the Act, In support of his contention, learned Counsel has relied upon a decision in the case of Ram Narain Sah v. The State, reported in 1976 BBCJ 433. Learned Counsel for the contesting respondents further submitted that the petitioners status Was of a trespassers and therefore, they were liable to be ejected under the provisions of Section 42 of the Act, Learned Counsel for the petitioners, in support of his contention, placed reliance on a decision in the case of Deo Narayan Singh and Ors. v. The Commissioner of Bhagalpur Division and Ors., reported in 1985 BBCJ 12 showing that since they were in possession of the land in question from 12 years prior to 1949, their ejectment is wholly without jurisdiction. Lastly, it is also submitted by the learned Counsel for the petitioners that the petitioners were also mutated in the revisional records which would be evident from Annexure-4.

6. I have perused the order impugned and also the orders passed by the Sub-Divisional Officer and the Additional Deputy Commissioner in appeal. Learned Commissioner, in his order, has held that the title suit since was dismissed for default, there was no adjudication at all and there from, it has no relevance in the facts and circumstances of the case. It further held that the compromise decree alleged to have been passed in Title Suit No. 4 of 1983, equally does not come to rescue of the petitioners as the same must be held to be collusive one under Sub-section (5) of Section 20 of the Act and accordingly, it was held that since the petitioners failed to prove their possession over the land in question prior to 1949, they were liable to be ejected under the provisions of Section 42 of the Act.

7. It has been held in the case of Ram Narain Sah v. The State, (supra) that if a land belonging to Schedule Tribe is transferred in contravention of Sub-sections (1) and (2) of Section 20 of the Act by any fraudulent method, the expression "any fraudulent method" will include a collusive compromise decree. In the instant case, the petitioners also derived their right or possession by virtue* of the compromise decree as referred to above and for the purposes of Section 42 of the Act, the same must be held to be collusive one as it was in contravention

of Sub-section (5) of Section 20 of the Act.

8. It is not the case of the petitioners that they had got settlement of the land in question under the provisions of Section 20 of the Act and they have proved before the authorities concerned that they are in possession for more than 12 years prior to coming into force of the Act, 1949. The status of the petitioners", in that view of the matter, must be held to be of a trespassers.

9. This Court, in the case of Deo Narayan Singh and Ors. v. The Commissioner of Bhagalpur 1985 BBCJ 12, has held that if 12 years possession has expired before coming into force of 1949 Act, no eviction can be ordered. For the reasons stated aforementioned to the extent that the petitioners have not proved their possession over the land in question for 12 years prior to coming into force of 1949 Act, the decision aforesaid, has no application in the facts and circumstances of the case.

10. For the reasons aforementioned and in view of the legal proposition as noticed above, I do not find any merit in this writ application. It is, thus, dismissed but without costs.