

(2009) 11 JH CK 0119
In the Jharkhand High Court

Basanti Devi and Gopal Maharana

APPELLANT

Vs

The State of Jharkhand and Others

RESPONDENT

Date of Decision : 06-11-2009

Acts Referred:

Citation : (2009) 11 JH CK 0119

Hon'ble Judges : Dabbiru Ganeshrao Patnaik, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

D.G.R. Patnaik, J.—Challenge in this writ application is to the order dated 29.01.2004 (Annexure-4) passed by the Commissioner, Dumka in R.M.A. No 151 of 1985-86, whereby the appeal filed by the petitioners against the order of Ssttlement Officer, Dumka dated 8.4.1985, was dismissed. The petitioner has also challenged the order of Settlement Officer dated 8.4.2005 (Annexure-3) whereby, the Settlement Officer, while accepting the report of the Assistant Settlement Officer, Dumka, had refused to declare the disputed lands as "Fouti" and had proceeded to settle the "lands in favour of the private respondents 4 to 6.

2. Heard learned Counsel for the petitioners and the learned Counsel for the respondents.

3. The grounds of challenge, as advanced by the counsel for the petitioners, is that the concerned authorities of the respondents while passing the impugned orders, have failed to perform the statutory duty, as required under the law in as much as, without conducting any inquiry and without construing the evidences on record in proper perspective, have declared the lands in question as not available for settlement on the ground that it is not "Fouti".

4. Learned Counsel for the petitioners would argue that the findings recorded by the Settlement Officer are contrary to the materials available on record. Learned Counsel elaborates that though, the Settlement Officer has taken note of the petitioners' contention that the originally recorded raiyat having died issueless,

the land was liable to be declared "Fauti" and settled in favour of the petitioners and the further contention is that the genealogical table furnished by the private respondents in support of their claim of being the descendants of the originally "recorded raiyat, is wrong, but has rejected the petitioners" contention on the purported ground that except the oral statements, the petitioners have not produced any document in support of their contentions. This, according to the learned Counsel, is contrary to the record in view of the fact that the relevant documents namely, Khatiyani and other papers on which "the petitioners had relied upon in support of their claim and in support of their pleadings for disputing the claim of the private respondents as incorrect, have not been adverted to or even considered.

Learned Counsel argues that the findings recorded by the Settlement Officer are therefore perverse since such findings have been arrived at without looking into the documents and other evidences brought on, record and the Appellate Authority has merely endorsed the findings of the Settlement Officer without application of mind to the facts of the case and to the evidences on record "

5. Counter-affidavit has been filed on behalf of the respondent State, though not on behalf of the private respondents.

6. Counsel for the respondent State, on the other hand, would argue that the grounds advanced by the petitioners, are totally misconceived and misleading and as a matter of fact, the petitioners have not come up before this Court with clean hands. Rather, the petitioners have suppressed the material facts. Learned Counsel submits that the petitioners cannot advance any claim for settlement of the lands in their favour in view of the fact that the lands under reference, was never declared as "Fauti". Learned Counsel explains further that in the last Cadastral Survey Record, commonly known as "Gantzer's Survey Settlement", lands of Jamabandi No. 1 of Mouza Amarapur Thana No. 32, Anchal- Ramgarh, was recorded in the name of Kandhi Manjhian wife of Chigu Manjhi who has died issueless. Thereafter, a proceeding was initiated by the Assistant Settlement Officer to consider as to whether the land should be declared as "Fouti" vide Fouti Case No. 1 of 1985. Notices were issued to the 16 anna raiyats of the village and all concerned. In course of inquiry, the private respondents had appeared and had staked their claim on the ground that according to the Hindu Succession Act, Daro Manjhi, father of the private respondents was the close relative of the recorded tenant and the petitioners are in possession of the land in question and have been paying the rents. On the basis of the material collected in course of inquiry, the Assistant Settlement Officer came to a finding that the lands could not be declared as "Fouti" and all the plots of last settlement Jamabandi No. 8 of Mouza Amarapur, should be opened in the name of Daro Manjhi. It was the recommendation of the Assistant Settlement Officer in the aforesaid context, that was accepted and approved by the Settlement Officer vide his impugned order dated 8.4.1985 (Annexure-3) and the same facts have also been considered and appreciated by the Appellate Authority while passing

the impugned order dated 29.1.2004 (Annexure-4). Learned Counsel adds further that in the light of the disputed question of facts, which have been settled by the competent officers, the findings of the Settlement Officer and that of the Appellate Authority cannot be interfered with by this Court in exercise of its writ jurisdiction since, there is no perversity in any of the impugned orders.

7. Facts, as it appears from the rival submissions, is that admittedly, the land had stood recorded in the name of the originally recorded tenant namely, Kandhi Manjhian, wife of Chigu Manjhi who had died issueless. Taking advantage of such situation, both the petitioners and the private respondents; had occupied portions of the lands. In the proceedings initiated by the Assistant Settlement Officer, to assess as to whether the lands could be declared "Fouti", while the petitioners have wanted to advance their claim that there being no legal heir and successor of the originally recorded tenant, and the petitioners being the local residents of the village and also being in possession of the lands in question, are entitled for settlement of the lands in their favour, the private respondents appear to have advanced their claim on the lands on the basis of the genealogical table and on the claim that Daro Manjhi, who was the father of the private respondents, was the close relative of the recorded tenant. At the inquiry, petitioners appear to have relied upon the originally prepared Khatian, pertaining to the disputed lands while the private respondents have offered certain documents in support of their claim as advanced by them.

8. Upon weighing the evidences adduced, the Assistant Settlement Officer had come to a finding on the disputed facts in favour of the private Respondents. The Settlement Officer while recording his impugned order (Annexure-3), has also considered the relevant issues and has relied upon the documents placed by the private respondents and concurred with the findings of the Assistant Settlement Officer. It is on the basis of such findings that a declaration has been made, vide the impugned order of the Settlement Officer, that the land cannot be declared as "fouti", in view of the findings that the private respondents are the rightful claimants.

9. The suggestion by the learned Counsel for the petitioners that had the Settlement Officer and the Appellate Authority referred to and taken into consideration the Khatian filed by the petitioners, their findings would have been otherwise, does not appear to be correct. As it appears, Khatian pertaining to the land recorded in the name of the original tenant, in itself, would not settle the dispute raised by the petitioners that the documents produced by the private respondents on the basis of which they had advanced their claim are incorrect, are not reliable. The Settlement Officer has recorded in his order impugned that except the oral statement, the petitioners have not placed any reliable document to controvert and disapprove the documents adduced by the private respondents.

10. As has been observed above, the findings of the Settlement Officer and that of the Appellate Authority, as recorded in the impugned orders, are findings on facts and in absence of any perversity therein, this Court in exercise of its writ

jurisdiction, cannot reappreciate the evidences and to record its own findings as a court of appeal.

11. I do not find any merit in this application. Accordingly, this writ application is dismissed. However, in the facts and circumstances, there shall be no order as to costs.