
(2019) 11 JH CK 0093

In the Jharkhand High Court

Case No : Writ Petition (C) No. 4852 Of 2007

Bisho Sah And Ors

APPELLANT

Vs

State Of Jharkhand And Ors

RESPONDENT

Date of Decision : 05-11-2019

Acts Referred:

Citation : (2019) 11 JH CK 0093

Hon'ble Judges : Rajesh Shankar, J

Bench : Single Bench

Advocate : Rajeeva Sharma

Final Decision : Dismissed

Judgement

1. The present writ petition has been filed for quashing the order dated 30th April, 2007 passed by the Commissioner, Santhal Pargana Division,

Dumka-respondent no.2 in Revision Misc. Appeal No.07 of 1987-88, whereby the order dated 6th January, 1986 passed by the Deputy Commissioner,

Dumka-respondent no.3 in Revision Misc. Appeal No.312 of 1981-82 as well as the order dated 29th August, 1981 passed by the Sub Divisional

officer, Dumka in P.D. Case No.61 of 1980-81 have been set aside.

2. The factual matrix of the case, as stated in the writ petition, is that one Haldar Sah was appointed as Village Pradhan of Mouja Chorajore in the

year 1955. The petitioners filed a petition against the said Pradhan before the Sub Divisional Officer, Dumka-respondent no.4, registered as P.D. Case

No.61 of 1980-81, contending that they were the Jamabandi raiyats of village Chorajore and the Pradhan was liable to be dismissed from his office on

the ground of misuse of his power as Pradhan, as he failed to guard the common property of the village and was using the same for his own benefit.

The respondent no.4 directed the Circle Officer, Saraiyahat to enquire into the matter and to submit a report. Accordingly, the Circle officer submitted his report on 25th June, 1981 stating that all the allegations against the said Pradhan were found true. It was also recommended in the said report that the Pradhan should be dismissed from the post. The respondent no.4 having found that the Pradhan did not fulfil the conditions attached to the said post as he was not protecting the common property of the village and was using the same for his own benefits, thereby agitated the poor villagers, recommended for dismissal of Village Pradhan vide order dated 29th August, 1981 passed in P.D. Case No.61 of 1980-81.

3. Aggrieved by the said order, the Pradhan preferred an appeal before the respondent no.3, who, though dismissed the said appeal, yet provided one more chance to the Pradhan to rectify his mistake observing that if he rectifies his act of misconduct within 30 days, he would be absolved from the said allegation, otherwise he would be ordered to be dismissed from the post of Pradhan without any further hearing. However, the Pradhan thereafter did not remove the encroachment from Plot nos.369 and 370 within 30 days, as would be evident from the enquiry report of the Circle Officer, Saraiyahat submitted to the respondent no.4 vide letter no.336 dated 24th April, 1986. The said report also suggests that the encroachment was not removed and the Pradhan did not rectify his misconduct and, thus, the respondent no.4 again recommended for dismissal of the Pradhan from the said post vide order dated 19.12.1986 and the record was ordered to be sent to the respondent no.3. Since the order dated 6th January, 1986 passed by the respondent no.3 was not complied by the Pradhan as reported by the Circle Officer vide report dated 24th April, 1986, he was dismissed forthwith by the respondent no.3 from the post of Pradhan vide order dated 16th January, 1987.

4. Thereafter, the wife and sons of the Pradhan (since deceased) being aggrieved by the order dated 16th January, 1987 passed by the respondent no.3 in P.D. Case no.61 of 1980-81 preferred Revision Misc. Appeal No.7 of 1987-88 before the respondent no.2, which was allowed vide impugned order dated 30th April, 2007 by setting aside the orders passed by the courts below.

5. Learned counsel for the petitioners submits that the respondent no.2 has not disturbed the finding of fact regarding encroachment which would itself

suggest that the Pradhan failed to discharge his duty. It is further submitted that the respondent no.2 did not give finding with regard to the report of

the Circle Officer, Saraiyahat and, thus, the impugned order dated 30th April, 2007 goes contrary to the contents of the said report. The respondent

no.2 committed a serious error in setting aside the order dated 6th January, 1986 and 16th January, 1987 passed by the respondent no.3, as the reason

assigned by the respondent no.3 therein has not been dealt with. The report and recommendation of the concerned authority i.e. the respondent no.4

based upon the report of the Circle Officer has also not been properly considered by the respondent no.2 in the impugned order dated 30th April, 2007

and as such the same is liable to be set aside.

6. Heard learned counsel for the petitioner and learned A.C. to S.C. (Mines)-I appearing on behalf of the respondent-State of Jharkhand as well as

perused the materials available on record. The petitioners have claimed to be the Jamabandi raiyats of village Chorajore. It was alleged by them that

the village Pradhan not only misused his power to guard the common property but also used the common property for his personal benefit. The

respondent no.4, on the basis of the report of the Circle Officer, Saraiyahat dated 25th June, 1981, recommended for dismissal of the Pradhan vide

order dated 29th August, 1981. However, on filing an appeal by the Pradhan before the respondent no.3, the said authority observed that though the

allegation against the Pradhan is regarding encroachment and misuse of power, yet an opportunity should be given to the Pradhan to remove all the

encroachment within 30 days and a direction was issued for cancellation of settlement of Plot nos.369 and 370 as well as for eviction of Pradhan and

his nephew from the said plot. It was also held by the respondent no.3 that if the Pradhan rectifies the said irregularities within 30 days he would be

exempted after giving admonition. The petitioners thereafter agitated the matter before the respondent no.4, who, on the basis of the report of the

Circle Officer, Saraiyahat submitted vide letter no.336 dated 24th April, 1986, observed that the Pradhan did not remove the encroachment as per the

direction of the respondent no.3 and as such he made recommendation before the respondent no.3 for dismissal of the Pradhan vide order dated 19th

December, 1986. The respondent no.3 on the basis of the said recommendation of the respondent no.4 dismissed the Pradhan from his post. In the

meantime, the Pradhan died and an appeal was preferred by his wife and sons before the respondent no.2 being R.M.A. No.7 of 1987-88. The

respondent no.2, while considering the said appeal, observed that as per the order of the respondent no.3, the Pradhan was required to remove the

encroachment, however, he repeatedly wrote to the respondent no.4 that he had not encroached any land and also informed the said authority that the

persons who had encroached the land were not vacating the same. The Pradhan also requested the D.C.L.R. for making an enquiry regarding actual

encroachers of the land. The respondent no.4, however, did not take any step in this regard. Under the said circumstance, it was also held by the

respondent no.2 that the way the respondent no.3 dismissed the Pradhan from his post was not justified.

7. On careful perusal of the impugned order dated 30th April, 2007 passed by the respondent no.2, I do not find any infirmity in the same. The

respondent no.3, while dismissing the Pradhan, passed a cryptic order merely on the basis of the recommendation made by the respondent no.4.

Moreover, no opportunity of hearing was provided to the Pradhan either by the respondent no.3 or by the respondent no.4 so as to enable him to meet

the allegations levelled by the petitioners. It has been observed by the respondent no.2 in the impugned order dated 30th April, 2007 that the Pradhan

vide his letters dated 4th February, 1986, 28th April, 1986, 17th June, 1986 and 2nd June, 1987 had informed the Sub Divisional Officer that he had not

encroached the public land as alleged and had also requested the said authority that the actual encroachers were not removing the encroachment.

However, despite the said communication made by the Pradhan, the respondent no.4 did not take any step towards the same. The Pradhan had also

requested the D.C.L.R. for making spot enquiry, however, the said request was also not considered either by the D.C.L.R. or by the respondent no.4.

8. Thus, failure on the part of the respondent no.4 in responding to the request of the Pradhan, the responsibility for removal of the encroachment as

per the order of the respondent no.3 could not have been saddled on the shoulders of the Pradhan only. The said aspects have properly been

considered by the respondent no.2 in the impugned order dated 30th April, 2007 passed in Revenue Misc. Appeal No.7 of 1987-88 and hence I see no

reason to interfere with the same.

9. The writ petition is, accordingly, dismissed.