

(2012) 05 JH CK 0068

In the Jharkhand High Court

Case No : Writ Petition (C) No. 5554 of 2007

Debiswar Soren and Others

APPELLANT

Vs

State of Jharkhand and Others

RESPONDENT

Date of Decision : 19-05-2012

Acts Referred:

Constitution of India, 1950 — Article 226, 227

Santhal Pargana Tenancy (Supplementary Provisions) Act, 1949 — Section 27, 28, 33, 38(2), 69

Citation : (2012) 3 JCR 498

Hon'ble Judges : P.P. Bhatt, J

Bench : Single Bench

Advocate : Kaushik Sarkhel and Indrajit Sinha, for the Appellant; V.K. Prasad, S.C. (L and C), Rajnikant, J.C. to S.C. (L and C), Md. Mokhtar Khan and Shiv Prasad, for the Respondent

Final Decision : Dismissed

Judgement

P.P. Bhatt

1. Present writ petition has been filed under Articles 226 & 227 of the Constitution of India for issuance of an appropriate writ/order/direction for quashing and setting aside the office order dated 7.2.06 issued under memo No. 66 sent by Circle Officer, Nala addressing to S.D.O. Jamtara in response to the S.D.O.'s letter No. 39/Go. dated 13.1.06 transferring the land under Mouza-Tambajore, Thana No. 18, Khata No. 58, Khesra No. 1111, recorded as Puratan Patit, transferring 17.65 acres of land to the Navodaya Vidyalaya Samittee for the establishment of Navodaya Vidyalaya, Jamtara. It is further prayed that appropriate order may be issued to the concerned respondents as to how and under what authority, the concerned respondent has transferred/settled the land in the name of Navodaya Vidyalaya, who is not a raiyat as defined in the Santhal Pargana Tenancy Act. It is further prayed that appropriate order may be passed declaring the land has been transferred /settled by office order dated 7.2.06

issued under memo No. 66, in the name of Navodaya Vidyalaya, as null and void as the said transfer is in contravention of Section 28 of the Santhal Pargana Tenancy Act. Brief facts, which have given rise to the present writ petition, are as under:

Petitioners are the recorded jamabandi tribal raiyats of village Tambajore and the said village Tambajore is predominantly a tribal village and agriculture is the only source of income of the villagers of mouza-Tambajore.

According to the petitioners, when some of the raiyats came to know about the said transfer/settlement in the name of Navodaya Vidyalaya, Jamtara, some of the raiyats showed their relevant papers before the S.D.O. Jamtara, but the S.D.O. Jamtara did not consider the said papers of the raiyats and on the other hand, illegally cancelled the pattas of some raiyat, who got valid settlement from the village pradhan for which one R.M.A. Case being R.M.A. Case No. 256/05-6 and R.M.A. Case No. 258/05-06, 259/05-06 was registered. According to the petitioners, they were able to procure the certified copy of the office order dated 7.2.06, issued by Circle Officer, Nala, wherein the Circle Officer, Nala in compliance of the order of the S.D.O. Jamtara has settled the said 17.65 acres of waste land (patit land) of Mouza-Tambajor in the name of Navodaya Vidyalaya Samittee for establishment of Navodaya Vidyalaya, Jamtara.

2. Learned counsel for the petitioners submitted that under the Santhal Pargana Division, waste land (patit land) must be settled to a jambandi raiyat or to a permanent raiyat or to a permanent resident of the village, whose name is there in the record of rights and the said waste land (patit land) in Santhal Pargana Division are village community property of the village committee have joint right over the waste land (patit land) of village vide record of rights. Learned counsel for the petitioners further submitted that under Santhal Pargana Division, there are patit lands, gochar lands, raasta, samsan ghats (burning ghats) and burial grounds and all these are included in "anabadi khata" and all the lands which are recorded in the anabadi khata are non-transferable in nature and the present land i.e. 17.65 acres of land of village Tambajore, which has been transferred to Navodaya Vidyalaya Samittee and the waste land (patit land), as such, are the part of the anabadi khata and hence, these lands are non-transferable, according to Santhal Pargana Tenancy Act. It is further submitted that procedure of settling waste land or vacant holdings has been enumerated u/s 28 of the Santhal Pargana Tenancy (Supplementary Provisions) Act, 1949, wherein it has been enumerated that the power has been given to village headman or Murliyat to settle waste land (patit land) or vacant holding with the deserving raiyats and the village headman or Murliyat while making settlement, shall bear in mind the requirement of each raiyat, who has to make distribution fair and equitable and accumulation of village lands in few hands in the very antithesis of the community like Santhals or the village headman or Murliyat has to see that the means of production are not concentrated in few hands and the capacity of the raiyat to reclaim and cultivate the waste land is another mitigating factor, which

the settling authority will have to consider and it has also been enumerated that the situation to the waste land or vacant holdings and it is contiguity and proximity that the land of Jamabandi raiyats will be the main factor for taking into consideration and a raiyat, whose lands falls in the proximity of the waste land, shall have a preferential claim over the other persons and the present petitioners' land falls in proximity of the land that has been settled by the concerned respondent to the Navoday Vidyalaya and as such, they are aggrieved by the decision of the respondents regarding settlement of land in favour of the Navoday Vidyalaya. Learned counsel for the petitioners further submitted that in view of the provisions as contained in Section 69 of the Santhal Pargana Tenancy Act, there is a bar against the acquisition of rights over certain types of land and u/s 69 (d) of the Act, it has been enumerated that vacant holding laid down by a village headman/Murliyat or the member of the family and their landlords cannot be acquired and therefore, 17.65 acres of land, which has been transferred and settled to the Navodaya Vidyalaya by the concerned respondents, are vacant holdings, waste land (patit land) and hence, cannot be acquired and has got no right of acquisition. It is further submitted that when the petitioners came to know about the aforesaid settlement, they submitted representation to the S.D.O. Jamtara as well as Deputy Commissioner, Jamtara, wherein the petitioners have clearly stated that they are the original raiyats of the said village and without the consent of the village community (16 anna raiyat) said settlement has been made. It is further submitted that concerned villagers of Mouza-Tambajore had also protested against this illegal action of the concerned respondents and for which the junior engineer has given a letter to the S.D.O. Jamtara regarding the said protest of the villagers, which is evident from letter dated 12.1.06 (Annexure-3). It is submitted that neither the Deputy Commissioner, Jamtara nor the S.D.O Jamtara had paid any attention to the representation of the petitioners and hence, the petitioners have no other alternative efficacious remedy but to approach this Court by way of filing the present writ petition. It is further submitted that the petitioners are the Jamabandi raiyats of Mouza-Tambajore, are aggrieved by the said settlement as there is a provision under the Santhal Pargana Tenancy Act that the waste land can at any time be settled in the name of Jamabandi raiyats and Jamabandi raiyats have preferential right to the settlement of it for reclamation.

3. As against that, the learned counsel for the respondents-State, while referring counter-affidavit filed by the respondent Nos. 1 to 6, submitted that petitioners are not eligible and entitled to get the relief, as prayed for. It is submitted that patit lands measuring an area of 17.65 acres of Mouza-Tambajore is transferred vide Land Transfer Record No. 01/2002-03 for establishment of Navodaya Vidyalaya, Jamtara at Tambajore for establishment of a pioneer institution for imparting education of the tribes and general students of this backward zone, which was accepted by the Government vide letter No. 5114 dated 9.11.2004. The institution shall not only uplift the educational standard of this District, but the raiyats of Mouza-Tambajore and its neighboring villages will be improved. It

is further submitted that the present petition has been filed on behalf of some of the mischief mongers, who have raised voice against the establishment of Navodaya Vidyalaya. Some of the writ petitioners have shown some antedated and fake patta from village Pradhan by which part of the land is transferred to the Navodaya Vidyalaya Committee and it is found that those pattas were issued/granted by ignoring the provision of Sections 27 & 28 of the Santhal Parganas Tenancy Act. It is further submitted that the provision of Section 27 of the Santhal Parganas Tenancy Act provides that the waste land shall be settled by patta in quadruplicate, one copy shall be given to the raiyat concerned, one copy shall be sent to the Deputy Commissioner, one shall be sent to the landlord and the fourth shall be retained by the village headman or mul-raiyat as the case may be. But no copy of the alleged pattas was sent either to the Deputy Commissioner or Anchal Adhikari, Nala. It is further submitted that Section 33 of the Santhal Parganas Tenancy Act provides that any settlement of waste land/patit land is liable to be set aside/cancelled, if not, cultivated within five years from the date of settlement. The lands claimed by the writ petitioners were found fellow and never brought in cultivation by them. Hence, the learned Sub-Divisional Officer, Jamtara has cancelled those pattas. It is further submitted that provisions of Section 69 of the Santhal Parganas Tenancy Act has no relevancy in the present case, because the lands are transferred to the Navodaya Vidyalaya for establishment of a pioneer Government institution. It is further submitted that the lands were transferred by the Government by observing all the norms and procedure before making transfer in favour of Navodaya Vidyalaya, Jamtara at Tambajore. It is further submitted that so far land in question is concerned, it was never mutated in the names of petitioners and no entries were ever recorded in the Demand Registrar-II of Halka Karamchhari of the said Halka and no rent was ever paid by the petitioners for the above mentioned lands. It is submitted that building of Navodaya Vidyalaya is almost complete and only finishing work is left. Classes can be commenced in new school building upon vacating the stay by this Court.

4. In support of above submissions, learned counsel for the respondents-State has referred to the documents annexed with the counter-affidavit vide Annexure-A to Annexure-E.

5. Learned counsel appearing for the respondent Nos. 7 & 9, while referring counter-affidavit submitted that Navodaya Vidyalaya Samittee under Ministry of Human Resources Development, Department of Secondary Education and Literacy was set up in the year 1986 under New Education Policy. Jawahar Navodaya Vidyalaya has been established and they are governed by the Navodaya Vidyalaya Samittee, its Headquarters is at New Delhi. Jawahar Navodaya Vidyalaya are established in each district. The lands for establishment of the Vidyalaya are provided by the State Government. It is submitted that the Navodaya School is established for laudable object but at the instance of some mischief mongers, who have no locus for filing such petition, entire village community and area of Jamtara District are deprived of using the school building

which is ready for use. It is also submitted that at present the school is running in a temporary place i.e. in a community hall and the students are suffering and are being deprived of modern educational facilities like computer education., playground, library, hostels etc. School was established for imparting education of the tribes and general students of this backward zone for their upliftment and improvement and the land was allotted after following all the requisite formalities and therefore, it is submitted that the interim order passed in the matter be vacated and the petition be rejected so that the school can start functioning in the new building.

6. Considering the aforesaid rival submissions and on perusal of the materials on record, it appears that the petitioners have filed this petition being aggrieved and dissatisfied with the order regarding transfer/settlement of patit lands, measuring an area of 17.65 acres of Mouza-Tambajore, vide Land Transfer Record No. 01/2002-03 for establishment of Navodaya Vidyalaya, Jamtara at Tambajore. Petitioners are claiming themselves as raiyats and according to the petitioners, the land in question cannot be transferred to non-raiyats. For the purpose of deciding this case, it is very much necessary to refer and consider the provisions of Sections 27, 28 and 33 of the Santhal Pargana Tenancy Act.

Chapter IV of the said Act lays down a provision of the settlement of waste lands and vacant lands. Section 27 reads as follows:-

Section 27:- Settlement of waste land to be made by patta in prescribed form.- Settlement of waste land shall be made by a patta or amalnama in the prescribed form. The patta or amalnama shall be prepared in quadruplicate: one copy shall be given to the raiyat concerned, one copy shall be sent to the Deputy Commissioner one copy shall be sent to the landlord and the fourth shall be retained by the village headman or mulraiyat, as the case may be.

Section 28 of the said Act lays down the principles to be followed in the settlement of waste land which reads as under:

Section 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 the jamabandia land of the raiyat;

Section 33 of the Act reads as follows:

Settlement of waste land liable to be set aside if not cultivated within five years.- In the event of any land settled as aforesaid not being brought under cultivation

within a period of five years from the date of settlement, it shall be open to the Deputy Commissioner on an application made by a jamabandi raiyat, the village headman, mulraiyat or the landlord, as the case may be, to set aside the settlement and to make such resettlement as is permissible under this Act or any law or anything having the force of law in the Santal Parganas.

In view of the aforesaid provisions, the order passed by the respondent-authorities is required to be analyzed. On perusal of Annexure-1, it appears that the requisite procedure has been followed by the respondent-authorities while settling the waste land in question. On perusal of para-9 of the counter-affidavit filed by the respondent-State, it appears that the petitioners have shown some antedated and fake patta from village Pradhan by which part of the land is transferred to the Navodaya Vidyalaya Committee and it is found that those pattas were issued/granted by ignoring the provisions of Sections 27 & 28 of the Santhal Parganas Tenancy Act. It appears that no copy of the alleged pattas were sent either to the Deputy Commissioner or Anchal Adhikari, Nala as required u/s 27 of the Santhal Parganas Tenancy Act and therefore, it appears that Sub-Divisional Officer, Jamtara has cancelled those pattas u/s 33 of the Santhal Parganas Tenancy Act, which provides that any settlement of waste land is liable to be set aside/cancelled if not cultivated within five years from the date of settlement. On perusal of para-9 of the counter-affidavit filed by the State, it appears that the lands claimed by the writ petitioners were found fallow and never brought in cultivation by them and that is why the learned Sub-Divisional Officer, Jamtara has cancelled those pattas. On perusal of Annexure-1 i.e. the office order dated 7.2.06 issued by the Circle Officer, Nala in compliance of the order of S.D.O Jamtara has settled the said 17.65 acres of waste land (patit land) to the Navodaya Vidyalaya Samittee for the establishment of Navodaya Vidyalaya, Jamtara. It appears that the raiyats have not raised any objection between 22.11.02 and 19.1.05 in respect of waste land (patit land) in question. Petitioners have produced the copy of the representation submitted by the raiyats vide Annexure-2. On perusal of the said representation, it appears that the said representation was filed on 27.8.07 i.e. much after the land was settled in the year 2006. Therefore, the contention raised by the learned counsel for the petitioners with regard to non-consideration of the representation submitted by the petitioners cannot be accepted; moreover, in view of the averments made in para-9 of the counter-affidavit filed by the respondent-State, which has not been controverted specifically by the petitioners. It appears that the pattas were ordered to be cancelled as the patit land in question was not cultivated for the period of five years in view of Section 33 of the Santhal Parganas Tenancy Act. It appears that the respondent-State has decided to settle the waste land (patit land) in question for very laudable object so as to provide educational facilities for the tribes and general students of this backward zone. From perusal of the counter-affidavit filed by the respondent Nos. 7 & 9, it appears that the school building is almost complete and awaiting for shifting but on account of interim stay granted by this Court, they are unable to move and start functioning in the

new school building and thereby, the students and public at large of that area are being deprived of good infrastructural facility, which is essential for imparting quality education in such tribal and backward area. It appears that at present the school is running in a community hall by way of temporary arrangement and is facing a lot of congestion. Facilities of computer lab, playground and hostel are not available in the existing premises where the school is functioning. Though the school building is ready for use with all requisite infrastructural facilities but the same cannot be put to use on account of some elements who are claiming themselves as raiyats and also claiming exclusive right to use those lands.

7. Learned counsel for the respondents-State has referred to and relied upon the judgment in the case of State of Jharkhand and Others Vs. Pakur Jagran Manch and Others, . On perusal of the said judgment, it appears that it was in respect of gochar land, whereas the present case relates to settlement of waste land (patit land) and as observed in para-23 to 25 of the said judgment that any requirement of land for any public purpose should be met from available waste or unutilized land in the village and not gochar, therefore, this Court is of the view that the case of the respondents-State is on the better footing than the case before the Hon"ble Apex Court. Para-23 to 25 of the said judgment are reproduced hereinbelow: 23. We should however note that such dereservation of any government land reserved as gochar, should only be in exceptional circumstances and for valid reasons, having regard to the importance of gochar in very village. Any attempt by either the villagers or others to encroach upon or illegally convert the gochar to house plots or other non-grazing use should be resisted and firmly dealt with. Any requirement of land for any public purpose should be met from available waste or unutilized land in the village and not gochar.

24. Whenever it becomes inevitable or necessary to dereserve any gochar for any public purpose (which is stated above should be as a last resort), the following procedure contemplated in Regulations 24 and 25 and Section 38(2) should be strictly followed:

(a) The jurisdictional Deputy Commissioner shall prepare a note/report giving the reasons why the gochar had been identified for any non-grazing public purpose and record the non-availability of other suitable land for such public purpose. The Deputy Commissioner shall send the said proposal for dereservation to the State Government for its previous sanction.

(b) The State Government should consider the request for sanction keeping in view the object of gochar and the need for maintaining a minimum of five per cent of village area as gochar, and call for suggestions/objections from the villagers before granting sanction.

(c) If the State Government grants the sanction, the Deputy Commissioner should proceed to make an order dereserving, the gochar by making appropriate entries in the record-of-rights and reclassifying the same for the purpose for

which it was dereserved.

(d) Whenever the gochar in a village is dereserved and diverted to non-grazing use, simultaneously or at least immediately thereafter the State should make available alternative land as gochar, in a manner and to an extent that the gochar continues to be not less than 5% of the total extent of the village as provided u/s 38(2) of the Tenancy Act.

25. When the gochar is not government land, but is village common land vesting in the villagers and not the Government, the consent of village headman and the jamabandi riyats/villagers in whom the land vests shall have to be obtained before dereservation and diversion of use of gochar.

Learned counsel for the respondents has also referred to and relied upon another judgment in the case of Mihir Kumar Jha Vs. State of Bihar and Others, . The said judgment is also applicable to the facts and circumstances of the present case. Para-12 and 13 of the said judgment are relevant for the purpose of deciding this case and the same are reproduced hereinbelow: 12. However, learned Commissioner affirmed the order of the Deputy Commissioner holding that although the decision of the Sub-divisional Officer cannot be faulted on technical and procedural grounds, it fails to safeguard the interest of the village community in settling land to an outsider. As quoted above the word "landlord" means a person other than the village headman or mulraiyyat entitled to receive rent and includes a proprietor, a tenure holder, a ghatwal and the Government. From the order passed in revision it was not disputed that Sub-divisional Officer of the concerned area was authorized to discharge the function of the Deputy Commissioner, From Annexure 6 to the supplementary counter affidavit it appears that after initiation of settlement proceeding by the Sub-divisional Officer the matter was referred to D.C.L.R. who after enquiry submitted a report. After submission of report notices were issued to the 16 anna raiyats of mouza Khijuria. The Sub-divisional Officer also made local enquiry and inspection. The Sub-divisional Officer also considered the relevant provision of Rule 16(A) of the Records of Rights, according to which waste land can be settled with non-jamabandi raiyat. The Sub-divisional Officer, accordingly, after complying all necessary requirements passed a final order for settlement. Learned counsel appearing on behalf of the State argued that there is no provision under the said Act which authorizes the Sub-divisional Officer to settle the land with non-adivasis. However, learned counsel failed to show any of the provisions under the Act which restrict settlement of waste land to non-jamabandi raiyats. The Commissioner in revision appreciated the fact that the Deputy Commissioner started a proceeding in a routine manner and acted hastily by canceling the settlement without giving reasonable opportunity to the petitioner. Learned Commissioner further differed with the finding of the Deputy Commissioner that Sub-divisional Officer was not authorised to initiate proceeding for settlement. It did not safeguard the interest of villagers. In such circumstances learned Commissioner ought not to have affirmed the order of the Deputy Commissioner

merely on the ground that settlement made by the Sub-divisional Officer amounts to failure on the part of the Sub-divisional Officer to safeguard the interest of village community.

13. For the reasons aforesaid the order of the Deputy Commissioner canceling the settlement of waste land with petitioner as also the order passed by the Commissioner cannot be sustained in law. In my opinion, the settlement made by the Sub-divisional Officer is not against any of the mandatory provisions of the said Act. In other words, the said Act does not in express term debar the authorities to make settlement of waste land with non-jamabandi raiyats. In the result, this writ application is allowed and the impugned orders dated 22.3.1985 and 20.5.1985 passed by the Deputy Commissioner and the Commissioner of Santhal Parganas as contained in Annexures 1 and 2 respectively are quashed.

In view of the aforesaid judgment, the settlement made by the Sub-divisional Officer is not against any of the mandatory provisions of the said Act. In other words, the said Act does not in express term debar the authorities to make settlement of waste land with non-jamabandi raiyats. In the present case also, the respondent-authorities have settled the waste land in favour of Navodaya Vidyalaya after following requisite procedure as laid down under the Santhal Pargana Tenancy Act and no irregularity or illegality has been committed by the respondent-authorities while settling the land in favour of Navodaya Vidyalaya. Under the circumstances, this Court is of the view that petition filed by the present petitioners having no merit, deserves to be dismissed and the interim relief granted earlier is required to be vacated forthwith so that the Navodaya Vidyalaya can start its function in the new school building. Hence, this writ petition is ordered to be dismissed. Interim relief granted earlier stands vacated with no order as to costs.