
(2003) 06 JH CK 0086

In the Jharkhand High Court

Case No : Writ Petition (C) No. 3771 of 2002

Dhena Hansda and Others

APPELLANT

Vs

State of Jharkhand and Others

RESPONDENT

Date of Decision : 18-06-2003

Acts Referred:

Constitution of India, 1950 — Article 226
Government of India Act, 1935 — Section 297(2)
Santhal Pargana Rent Regulation Act, 1886 — Section 25A
Santhal Pargana Tenancy (Supplementary Provisions) Act, 1949 — Section 20, 53

Citation : (2003) 2 BLJR 1605 : (2003) 3 JCR 230

Hon'ble Judges : S.J. Mukhopadhaya, J

Bench : Single Bench

Advocate : Rajeev Sharma, R.A. Choubey, Sunil Kumar Dubey and M.M. Prasad, for the Appellant; P. Modi, GP-I and S. Kumar, J.C. to G.P.I. and J.P. Jha and S.S. Choudhary, for the Respondent

Final Decision : Dismissed

Judgement

S.J. Mukhopadhaya, J.—The writ petition has been preferred by the petitioners against the appellate order dated 23rd May, 2002 passed by the Divisional Commissioner, Santhal Parganas Division, Dumka, in R.M. Appeal No. 142 of 1997/ 98, whereby and whereunder, the order dated 20th June. 1997 passed by Settlement Officer, Dumka in R.E. Case No. 1 of 1997-98/MP Case No. 53 of 1990 has been set aside.

2. The case of the petitioner is that the lands, in question, were recorded in the last survey settlement in the names of their ancestors, who are Scheduled Tribes. The lands are non-transferable, Jamabandi lands of Scheduled Tribes (Santhals). Its acquisition was made in favour of non-tribal ex-landlord, which was illegal,

3. It appears that out of 8 Bighas, 16 Kathas and 12 Dhurs of lands of Mouza Sarasdangal disputed 6 Bighas, 13 Kathas and 1 Dhur of Raiyati agricultural

lands were acquired by the S.D.O., Dumka in L.A. Case No. 5 of 36-37 in favour of the landlord Noni Gopal Banerjee u/s 25 (A) of Regulation II of 1886 (The Santhal Parganas Rent Regulation, 1886) after following the prescribed procedure and on payment of compensation to the jamabandi raiyat. Therefore, possession of the acquired land was delivered to ex-landlord, Noni Gopal Banerjee through the machinery of the Court.

The aforesaid 6 Bighas, 13 Kathas and 1 Dhur of lands was subsequently transferred by the ex-landlord in favour of one Basudeo Bhagat and Ramdeo Bhagat, ancestors of the private respondents by a registered deed dated 25th February, 1938.

4. According to the Respondents, further 2 Bighas, 3 Katha and 11 Dhurs of lands of Plot No. 437 within J.B. No. 103 was also settled with Basudeo Bhagat and Ramdeo Bhagat by the then landlord by a separate registered Patta Deed No. 255 of 1938. In this way, total 8 Bighas 16 Kathas and 12 Dhurs of land of Mouza Sarasdangal were transferred/settled in favour of Basudeo Bhagat and Ramdeo Bhagat, ancestors of the private respondents for Basuri purpose i.e. for holding a hat over the lands.

5. Further case of the private respondents is that Basudeo Bhagat and Ramdeo Bhagat came in possession over the aforesaid lands and started paying rent. Thereafter, they also constructed residential buildings and Pucca Well over the aforesaid lands; some portions of the lands were also used as Orchard and to hold hat.

Their further case is that at the time of vesting of the estate in the State of Bihar. the ex-landlord has shown the ancestors of private respondents as raiyats in the return submitted by them on the basis of which the names of the ancestors of the private respondents were entered in Register II maintained in the Circle Office.

In the year 1976-77, a petition u/s 20 of the Santhal Parganas Tenancy Act, 1949 (SPTAct, 1949 for short) was filed by the Circle Officer, Shikaripara in the Court of S.D.O., Dumka for eviction of the private respondents from the land in question. It was registered as R.M. Case No. 207 of 1976-77. Said application was rejected by the S.D.O., Dumka, vide in his order dated 5th June, 1979 but the appeal preferred against the same, being Revenue Misc. Case No. 665 of 1979-80 in the Court of the Deputy Commissioner, Dumka was allowed vide order dated 21st June, 1982.

Against the order of the Deputy Commissioner, Dumka, the private respondents moved before the Divisional Commissioner, Bhagalpur in S.P. Rev. Misc. Case No. 60 of 1982-83. In the said case, the father of two of the petitioners who was also brother of one of the petitioners intervened and was impleaded as party to that case. After hearing the parties, the Divisional Commissioner, Bhagalpur allowed S.P. Rev. Misc. Case No. 60 of 1982-83 against which no further appeal/revision or writ petition was preferred by the ancestors of petitioners or the petitioners.

The order of Divisional Commissioner, Bhagalpur become final and conclusive.

During the present survey settlement operation, at Tasdik stage, Khata of the lands, in question, was opened in the name of the private respondents. Thereafter, a petition was filed on behalf of the petitioners before the Settlement Officer, Dumka, registered as Misc. Petition No. 53 of 1990, in which the private respondents also appeared, but it was kept pending.

Another petition was filed by the petitioners before the Settlement Officer, Dumka which was registered as R.E. Case No. 1 of 1997. The Settlement Officer vide his order dated 20th June, 1997 allowed the said application and directed to enter the name of the petitioners in the current Survey Settlement Parcha.

6. Counsel for the private respondents submitted that the provision u/s 53 for acquisition of non-transferable J.B. lands for Basauri purpose, as was provided under the S.P.T. (Supplementary Provision) Act, 1949, was declared ultra vires by the Patna High Court in Budhinath Mishra v. State of Bihar, reported in AIR 1970 Pat 538 : 1969 PLJR 373.

7. It was also submitted that the provision of Section 25(A) of Regulation II of 1886 is ultra vires, no provision having been made therein relating to payment of compensation. But such submission cannot be accepted, the provision of Section 25(A) of Regulation II of 1886 having not challenged by the petitioners nor any pleading in this respect having made.

In any case, even if the provision of Section 25(A) of Regulation II of 1886 is declared ultra vires, such finding will be prospective, and cannot affect the action already taken u/s 25(A), including the acquisition of land, in question, as was made more than 65 years back.

8. The counsel for the private respondents brought to the notice of the Court that the petition for their eviction was preferred by petitioners after about 60 years of acquisition of land and after about 59 years of transfer of land in favour of the ancestors of private respondents.

9. In this respect, the reply of the counsel for the petitioners is that there is no limitation prescribed to file such application for eviction under S.P.T. Act.

Reliance was place on a Full Bench decision of Patna High Court in Deonarayan Singh v. Commissioner of Bhagalpur 1985 PLJR 1 but it cannot be relied upon, having overruled by the Supreme Court in the case of S. Vanathan Muthuraja Vs. Ramalingam alias Krishnamurthy Gurukkal and Others, .

10. The submission that the Section 25 (A) of Regulation II of 1886 impliedly stood repealed after promulgation of Section 297 of Government of India Act. 1935, cannot be accepted as Sub-section (2) of Section 297 of 1935 Act is prospective, in nature, and had not affected the existing laws.

11. Admittedly, in this case, the land acquisition took place more than 60 years prior or filing of application for eviction. Acquisition was made in the year 1937 in

favour of ex-landlord and subsequent transfer in favour of ancestors of private respondents took place in the year 1938; the nature of land also changed as Basauri land.

In this background, there was no occasion for the Settlement Officer to declare acquisition of land in favour of ex-landlord as illegal merely on the ground that a similar provision i.e. Section 53 of S.P.T. Act, 1949 has been declared unconstitutional. The appellate authority rightly held that the constitutionality of Section 25(A) of Regulation II of 1886 having not doubted by any competent court of law, the acquisition of land in question in favour of ex-landlord made in the year 1937-38 is valid.

Further, the application for eviction of private respondents having earlier dismissed by the Divisional Commissioner, Bhagalpur in Revision Case No. 16 of 1982-83, the father of some of the petitioners i.e. brother of another petitioner being party to the said case, decision of the Divisional Commissioner, Bhagalpur reached finality. Subsequently, it was not open for the Settlement Officer to reopen the issue and to pass an order which amounts to review of the order passed by the Divisional Commissioner, Bhagalpur.

12. It is not in dispute that once the nature of land has changed from agricultural to Basauri land, thereby, it become transferable and such transfer do not fall within the mischief of Section 20 of S.P.T. Tenancy Act, 1949.

13. In view of the aforesaid facts and circumstances, if the application of petitioners for eviction of private respondents was rejected, I find no ground to interfere with the impugned order.

14. There being no merit, the writ petition is dismissed. There shall, however, be no order, as to costs.