

(2000) 03 PAT CK 0005
In the Patna High Court
Case No : C.W.J.C. No. 13007 of 1993

Gadahar Mandal

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 16-03-2000

Acts Referred:

Santhal Pargana Tenancy (Supplementary Provisions) Act, 1949 — Section 27, 29, 32

Citation : (2000) 3 PLJR 756

Hon'ble Judges : Narayan Roy, J

Bench : Single Bench

Advocate : Abdul Hakim, Arun Kumar and Shailendra Kr. Shukla, for the Appellant; None, for the Respondent

Final Decision : Allowed

Judgement

Narayan Roy, J.—Heard learned Counsel for the Petitioner. However no one appears on behalf of the Respondents despite their appearance in this Court through their counsel.

2. By this writ application, the Petitioner has prayed for quashing the order as contained in Annexure-3 dated 3.8.1993 passed by Respondent No. 2, the Commissioner, Santal Pargana in Revenue Misc. Revision No. 67 of 1991-92 whereby and whereunder the learned Divisional Commissioner has set aside the orders passed by the Subdivisional Officer and the Additional Deputy Commissioner as contained in Annexures-1 and 2 approving grant of Patta by the village Pradhan in favour of the Petitioner.

3. Learned Counsel for the Petitioner submitted that pursuant to an application filed by the Petitioner, the village Pradhan in exercise of his power u/s 27 of the Santal Parganas Tenancy (Supplementary Provisions) Act, 1949 (hereinafter referred to as "the Act") prepared a Patta for a piece of land measuring 7 kathas of Dag No. 170 of village Choukisal, P.S. Pakuria, District Pakur now and he forwarded the same to the Subdivisional Officer for approval in consonance with

the provisions of Section 32 of the Act and thereafter the Subdivisional Officer vide order as contained in Annexure-1 approved the same overruling the objection filed by Respondent No. 5, Gurupada Pal. Learned Counsel further submitted that approval granted by the Sub-divisional Officer vide order as contained in Annexure-1 was affirmed by the Additional Deputy Commissioner, Sahebganj vide order as contained in Annexure-2 upon the appeal filed by Respondent No. 5 and the orders as contained in Annexures-1 and 2, however, have been set aside by the Divisional Commissioner on wrong construction of provisions of Section 29 of the Act. Learned Counsel also submitted that the Petitioner in no way was the village Pradhan, mulraiyat or comulraiyat and, therefore, any settlement of the waste land made with him in consonance with Section 27 of the Act cannot be said to be in violation of Section 29 of the Act.

4. It appears from Annexures-1 and 2 that Patta prepared by the village headman for settlement of waste land as claimed by the Petitioner was duly approved by the Subdivisional Officer and also by the Additional Deputy Commissioner considering the objection filed by Respondent No. 5. Thus, it appears that settlement of waste land by way of Patta in a prescribed form was made by the village Pradhan in favour of the Petitioner. From Annexure-3, the order passed by the Divisional Commissioner, it would appear that the Divisional Commissioner held that the Petitioner was Bhagina (sister's son) of village Pradhan and, therefore, the waste land could not have been settled with the relative of the village Pradhan without prior permission of the Subdivisional Officer or of the Deputy Commissioner, as required u/s 29 of the Act. From the very beginning, it was objected by Respondent No. 5 that the Petitioner was Bhagina (sister's son) of village Pradhan who recommended for settlement of the waste land to the authority under the Act.

5. Section 29 of the Act contemplates that a mulraiyat, Pradhan or village headman shall not settle any waste land or vacant holding with himself or any comulraiyat without the previous sanction in writing of the Deputy Commissioner. There was no evidence or material before the Divisional Commissioner to hold that since the Petitioner was Bhagina (sister's son) of village Pradhan, he was in the category of co-mulraiyat. The word "mulraiyat" is synonymous with the word "village Pradhan or "village headman" and only difference is that mulraiyats are entitled to retain their raiyati lands. There was no material before the Divisional Commissioner to hold that the Petitioner was in any way retaining any raiyati land in the capacity of mulraiyat or in capacity of co-mulraiyat of the village and merely because the Petitioner happened to be Bhagina (sister's son) of the village Pradhan, he could not have been categorized a co-mulraiyat attracting the provisions of Section 29 of the Act.

6. For the reasons aforementioned, the findings arrived at by the Divisional Commissioner must be held to be without jurisdiction. Since the land has been settled with the Petitioner with due sanction of the authority under the Act, the settlement made in his favour must be held to be valid. For the reasons and

discussions aforesaid, therefore, the impugned order as contained in Annexure-3 is not sustainable in law.

7. In the result, this application is allowed and the order as contained in Annexure-3 is quashed but no order as to costs.