
(2003) 10 JH CK 0009
In the Jharkhand High Court
Case No : C.W.J.C. No. 4232 of 1995 (P)

Gokul Harijan and Others

APPELLANT

Vs

State of Bihar and Others

RESPONDENT

Date of Decision : 13-10-2003

Acts Referred:

Constitution of India, 1950 — Article 226

Santhal Pargana Tenancy (Supplementary Provisions) Act, 1949 — Section 29, 72

Citation : (2003) 51 BLJR 2283 : (2004) 1 JCR 125

Hon'ble Judges : M.Y. Eqbal, J

Bench : Single Bench

Advocate : Jay Prakash Jha, for the Appellant; I. Sen Choudhary, GP-III, for the Respondent

Final Decision : Allowed

Judgement

M.Y. Eqbal, J.—The petitioners have prayed for quashing the orders passed by the Sub-Divisional Officer and the Deputy Commissioner, Godda and also the Commissioner, Santhal Pargana Division, Dumka whereby in purported exercise of power under the Santhal Pargana Tenancy Act, 1949 cancelled the mutation in respect of the land which was done in favour of the petitioners as far back as in 1972 vide mutation case No. 62/1971-72.

2. The petitioners case is that the land comprised within Jamabandi No. 16 of Mauza Billari measuring an area of 6 Bigha 14 Katha and 2 Dhurs was originally recorded in the name of Mostt. Champa wife of Bhukhan Chamar in the last survey settlement record. Mostt. Champa died is-sueless in the year 1937 and as such the then Pradhan of the village settled the land with Bhelu Harijan and Rohin Harijan who were of the same community of the same village. The said Pradhan also fixed the rent for the aforesaid land and started realizing rent from the settlee. After the death of Bhelu Harijan his son Raju Harijan and Rohit Harijan filed an application before the Circle Officer, Godda for mutating the land and opening of Khata in their names. The Circle Officer after holding an inquiry

mutated the land in favour of Raju Harijan son of Bhelu Harijan vide mutation case No. 62/1971-72. The petitioners further case is that they being the heirs and successors came in possession of the land and exercised all acts of possession without any objection from any person, All of a sudden in the year 1990 on the basis of report submitted by the Circle Officer the Sub-Divisional Officer initiated a proceeding for cancellation of the order of mutation which was done as far back as in the year 1972. Consequently the impugned orders were passed by the Sub-Divisional Officer and the same was affirmed in appeal and revision by the Deputy Commissioner and Commissioner, Santhal Pargana Division and appeal and revision respectively filed by the petitioners.

3. A counter affidavit has been filed by the respondents wherein it is stated that although in the year 1971-72 the name of Rohit Harijan and Rohan Harijan was mutated in mutation case No. 62/1971-72 but in 1990 on inquiry it was found by the Circle Officer that settlement made by the Pradhan was irregular. Accordingly the Circle Officer recommended for cancellation of order of settlement. According to the respondent the Pradhan had no jurisdiction to issue receipts with regard of Fauti land in as much as the land could not have been settled with the predecessor in interest of the petitioner without obtaining prior permission of the Deputy Commissioner.

4. I have heard Mr. Jha, learned counsel for the petitioner and the counsel appearing for the State.

5. Before deciding the legality and of the impugned orders it would be, useful to find out as to whether the land was infact settled with the petitioners by the then Pradhan in the year 1937 followed by the order of mutation passed by the Circle Officer in the year 1972 in the mutation case referred to hereinabove. Annexure 4 is the copy of the report submitted by the Circle Officer in the year 1990 with recommendation for cancellation of mutation. The Circle Officer in his report has very fairly stated that during inquiry he interrogated the Pradhan of the village who confirmed that the land in question was settled in favour of the predecessor-in-interest and their name was entered in the Jamabandi record maintained in the office of the Pradhan. The Pradhan also admitted about the issuance of rent receipts. However, the Circle Officer questioned the power of the Pradhan to make settlement of the Fauti land in favour of the Jamindari Raiyats.

6. Similarly Annexure 3 is the order passed by the Sub- Divisional Officer. In his order he has also found the settlement made by the then Pradhan in favour of the predecessor in interest of the petitioners in the year 1937 and order of mutation passed by the Circle Officer in the year 19721.

7. The only stand taken in the counter affidavit is that the Pradhan cannot settle the land without prior permission of the Deputy Commissioner in view of Section 29 of the said Act.

8. In view of the finding of the fact recorded by the authorities that the land in question was settled with the predecessor in interest of the petitioners in 1937

followed by order of mutation passed in the year 1972 whether the authorities were justified in cancelling the order of mutation and consequently the settlement which took place as far back as in the year 1937 and 1972. The Deputy Commissioner in his orders also expressed his doubt with regard to the application of 1949 Act in the matter of cancellation of settlement which took place prior to the enforcement of the said Act which is supplemental in nature. "The relevant portion of the order of the Deputy Commissioner is quoted hereinbelow :

"Pradhan dwara yah fauti zameen badobast patta ke mandhyam se kiya jata hai aur uske liye Santhal Pargana Tenancy Act mein parpatra nirdharit hai parantu 1949 ke purv patta nirdhait tha ya nahin is bindu per kisi bhi paksha ke adhiwaktha kuch bhi prakash nahi dal paye"

9. The Deputy Commissioner therefore, proceeded on the basis that in absence of conclusive proof of settlement in the year 1937 the order of mutation can be cancelled under the provisions of 1949 Act.

10. The Santhal Pargana Tenancy Act was enacted to amend and supplement certain laws relating to landlord and tenant in the Santhal Pargana. Section 72 of the said Act very clearly and categorically provides that by the enforcement of the Act the other laws applicable to the Santhal Pargana has not been expressly or by necessary implication recorded, meaning thereby that all the law, rules and regulation governing the field in Santhal Pargana continued to be valid and enforceable in my opinion therefore it the mutation of the land was done in the year 1972 on the basis of settlement which was made by the Pradhan in the year 1937 could not have been cancelled by invoking the provisions of Section 29 of the said Act. In any view of the matter the settlement which was made as far back as in 1937 cannot and shall not be cancelled or declared irregular by invoking the provisions of Santhal Pargana Tenancy Act, 1949.

11. Be that as it may. Admittedly mutation was allowed in the year 1971-72 after holding an inquiry by the Circle Officer. As noticed above the Circle Officer in his report has recorded that on inquiry it was found that the Jamabandi was created in the record of the Pradhan on the basis of settlement made in the year 1937. Such order of creation of Jamabandi and the mutation continued for about more than two decades, in that view of the matter the impugned orders cancelling the mutation ought not to have been passed by initiating a summary proceeding. In the connection reference may be made to the decision of the Patna High Court in the case of Jamaluddin Ahmad v. S.D.O. Khaguria and Ors. 1979 BBCJ 605 and Kalu Chaudhary v. The State of Bihar and others 1980 BBCJ 1373.

12. For the aforesaid reasons this application is allowed and the impugned orders passed by the respondents authorities are quashed.