
(2017) 02 JH CK 0159
In the Jharkhand High Court
Case No : 5633 of 2003

Gopal Chandra Singh

APPELLANT

Vs

The State of Jharkhand

RESPONDENT

Date of Decision : 14-02-2017

Acts Referred:

[Santhal Pargana Tenancy \(Supplementary Provision\) Act, 1949](#),
Section 27, Section 28

Citation : (2017) 02 JH CK 0159

Hon'ble Judges : Aparesh Kumar Singh

Bench : SINGLE BENCH

Advocate : Durga Charan Mishra

Judgement

1. Heard counsel for the petitioner and the State.
2. Settlement of land on Plot No.815 area 7 Katha 17 Dhurs in Mauza Gadi Koraiya part of Khata no.47 in favour of the petitioner was recommended by the Circle Officer, Dumka on 14th September, 1985 vide Annexure-1 in S.R. Case No.212/1985-86. The Sub-Divisional Officer, Dumka, however, rejected the prayer of petitioner for settlement in S.R. Case No. 212/1985-86 vide order dated 30th March 1987. Petitioner lost in Revenue Misc. Appeal No.101/1987-88 vide order dated 1st February 1995 passed by the Deputy Commissioner, Dumka. The Revenue Misc. Revision No.28/1996-97 preferred by him before the learned Commissioner, Santhal Pargana Division, Dumka was also dismissed vide order dated 11th August, 2003. All these orders have been impugned by the writ petitioner.
3. Petitioner has sought to base his claim relying upon the report of the Circle Officer, Dumka (Annexure-1) as also settlement of a piece of land of Plot No.811 under the same Khata No.47 in favour of one Sanatan Soren stating that the said land is also recorded as Bari Doyam as per the extract of Khesra of Gantzer Settlement of Mouza Gadi Koraiya no.15, Sardari Circle Dhoria, Sub-Division Dumka.

4. It was brought to the notice of the Court during pendency of the writ petition that after rejection of the application of the petitioner for settlement the land in the same plot no.815 was settled in favour of one Sarju Soren against which the petitioner had preferred Revenue Misc. Appeal No.05/2006-07 before the learned Deputy Commissioner, Dumka. In view of the order passed on 5th May, 2016 during pendency of the writ petition, the Revenue Misc. Appeal No.05/2006-07 has been decided by the Deputy Commissioner, Dumka on 27th July 2016, brought on record as Annexure-10 to the supplementary affidavit dated 9th January 2017 filed by the petitioner. On the same grounds the settlement of land in favour of Sarju Soren has been set aside by the Deputy Commissioner, Dumka.

5. Learned counsel for the petitioner submits that there is no prescription in law that Bari Doyam land cannot be settled in favour of raiyat if conditions prescribed under Sections 27 and 28 of the Santhal Pargana Tenancy (Supplementary Provision) Act, 1949 are satisfied. It is also submitted that if lands adjacent to the same land has been settled in favour of one Sanatan Soren the same can also be settled in like manner. The impugned orders are therefore not proper in the eye of law as well as on facts.

6. Learned counsel for the respondents-State submits that the settlement of waste land and vacant holding can be made under Sections 27 and 28 of the Act of 1949. The land described as Bari Doyam, however, cannot be settled in favour of the petitioner. Plot No.811 of Mauza Gari Koraiya has been settled with Sanatan Soren, a person of Scheduled Tribe treating Plot no.811 as vacant holding. The inferior authorities have considered the application of the petitioner in the light of the provisions of law and not found the land in the nature of Bari Doyam fit for settlement. Therefore, there is no infirmity in the order.

7. I have considered the submissions of the parties in the light of the material facts pleaded.

8. The provisions of Sections 27 and 28 of the Act of 1949 which are relevant for consideration of the issue involved herein are quoted hereunder :-

"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 mulraiayat, as the case may be.

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 jamabandi land of the raiyat;

(d) provision for landless labourers who are bona fide permanent residents of the village and are recorded for a dwelling house in the village."

9. It appears from perusal of the provisions of Section 28 that the settlement of waste land and vacant holding can be made on satisfaction of the condition enumerated thereunder in addition to the principles recorded in the record of rights. Petitioner in the instant case has, however, not been able to show whether the instant land of Plot No.811 falls in the category of such waste land or vacant holding where settlement would have been made upon fulfillment of the conditions enumerated under Section 28 thereof.

10. It further appears that the settlement in favour of one Sarju Soren on being challenged by the petitioner has been annulled by the Deputy Commissioner, Dumka observing that Plot No.815 area 7 Katha 17 Dhurs is recorded as Bari Doyam in the survey khatian under Khata No.47 in the name of Mr. G.H. Grant European. He has also observed that 13 decimals of the said land is also recorded as Bakast Jot in the survey khatian. Petitioner has not been able to dislodge these findings relating to the special nature of the land. However, it appears that a piece of land on Plot No.811 of the same Khata has been settled in favour of one Sanatan Soren by the respondents which according to the petitioner also falls in the same category as Bari Doyam. The respondents in their counter affidavit have stated that the settlement of land in favour of Sanatan Soren has been made as it is a vacant holding and that he belongs to a scheduled tribe community. Provisions of Section 28 of the Act of 1949 however, do not make any distinction between the member of scheduled tribe or a member of any other caste in the matter of settlement of waste land and vacant holding provided conditions enumerated therein as also principles recorded in the record of rights are satisfied. This Court in the state of pleadings on record is not satisfied that any infirmity has been shown in the impugned order by the petitioner warranting interference therein. However, petitioner is allowed liberty to raise this issue before the competent authority by way of a fresh application which may be considered in accordance with law. Writ petition is accordingly disposed of.