

(2004) 01 JH CK 0012
In the Jharkhand High Court
Case No : CWJC No. 4292 of 1996 (R)

Jharkhand State Housing Board and Another	APPELLANT
Vs	
State of Jharkhand and Others	RESPONDENT

Date of Decision : 06-01-2004

Acts Referred:

Chotanagpur Tenancy Act, 1908 — Section 83, 84, 90

Citation : (2004) 1 BLJR 710 : (2004) 1 JCR 429

Hon'ble Judges : Amareshwar Sahay, J

Bench : Single Bench

Advocate : G.C. Jha, for the Appellant; Pradeep Modi, G.P.I. and Sarmendra Kumar, J.C. to G.P.I., for the Respondent

Final Decision : Allowed

Judgement

Amareshwar Sahay, J.—The petitioners-Board have challenged the order dated 23.1.1996, passed by the Charge Officer, Singhbhum Settlement, Jamshedpur, whereby in purported exercise of power u/s 90 of the Chotanagpur Tenancy Act (Hereinafter referred to be as the "Act" for the sake of convenience) allowed the application filed on 17.8.1988, by the respondent No. 4 and directed to revise the Khata and to prepare the same in the name of Respondent No. 4 in place of the Petitioner. 2. The case of the petitioner in short is that Plot Nos. 1735 and 1736 corresponding to R.S. Plot No. 1831 under R.S. Khata No. 228 stood recorded in the name of Partu Mahato of village Dindli. The said lands of R.S. Plot No. 1831 under R.S. Khata No. 228 were acquired and settled with the Housing Board on 22.5.1965. Since the said Khata was wrongly prepared in the name of the respondent No. 4 an objection u/s 83 of the Chotanagpur Tenancy Act was filed by the petitioner in the year 1978 which was registered as Objection case No. 247 of 1978 and consequently the name of the respondent No. 4 was ordered to be dropped and accordingly the name of the respondent No. 4 was also removed from the said Khata and it was given to the Housing Board. It is asserted that no revision as provided u/s 89 of the Act or any suit u/s 87 of the

Act, challenging the final publication on record of right was filed by any body and as such it became final. However, on 17.8.1988, after a lapse of about 11 years from the date of the order passed u/s 83 of the Act the respondent No. 4 filed an objection u/s 90 of the Act, with a prayer to revise the Khata of the Housing Board and to prepare the same in his name which was rejected by the Charge Officer, Singh-bhum Settlement, Jamshedpur in case No. 1988-89 vide, order dated 23.9.1993.

It is stated that another Charge Officer by order dated 23.1.1996, without even any notice to the Board or a chance of being heard wrongly and illegally without having any jurisdiction in the matter passed an order allowing the prayer of the respondent No. 4 and directed to prepare the Khata in the name of the respondent No. 4 in place of the Housing Board.

2. Two separate counter affidavit have been filed. One on behalf of the State and another on behalf of the respondent No. 4.

3. In the counter affidavit filed by the respondent No. 1, State of Bihar it has been admitted that the order under challenge in this writ application was passed by the Charge Officer having no power to revise the order passed by his predecessor which had become final. In this regard some of the paragraphs of the counter affidavit are relevant to be quoted here.

(3) That before giving parawise reply to the writ petition the answering respondents crave leave to submit the following facts which are necessary to be stated for just and proper decision in this case.

(4) That the answering respondents could know about the illegality committed by Sri. T.N. Sharma, who continued to be the I/C of Charge Officer of Singhbhum Settlement even after his transfer vide, notification No. 7298 dated 22.8.1995, Department of Personnel and Administrative Reforms, Government of Bihar and this fact has been stated in counter affidavit filed on behalf of respondent No. I in C.W.J.C. No. 2789 of 1996 (R) disposed of on 24.2.1997, by this Court.

(5) That it was illegal and patent wrong on the part of Sri. T.N. Sharma to review a concluded order dated 23.3.1993, passed u/s 90 of the C.N.T. Act in the case No. 93 of 1988-89 by Sri. M. Sahabuddin, the then Charge Officer of Singhbhum Settlement.

(6) That Section 90 does not empower any revenue officer to correct the record of right where the mistake has not been found to be a mistake by the predecessor in office by application of reason and the order dated 23.9.1993, in an order which reads that the land in question is Government land and the applicants (present respondent No. 4) claim over the land cannot be accepted. This shows application of mind and then taking judgment by the then Charge Officer of Singhbhum Settlement and it was fully beyond jurisdiction on the part of Sri. T.N. Sharma, to re-initiate the proceeding vide order dated 22.12.1995, after lapse of two years three months he could choose to entertain a review

petition and conclude on 2.3.1996. It is also submitted that disputed question of title could not be decided by a Revenue Officer u/s 90 of the C.N.T. Act. Moreover, Sri. T.N. Sharma ceased to be a Revenue Officer, specially empowered by the State Government from the date of his transfer dated 22.8.1995.

(10) That the statements made in para-14 of the writ petition is a matter of record and from Section 90 of the C.N.T. Act it is evident that It is only the State Government which can sit in revision of finally published records of right and none else and the Housing Board has rightly filed the writ petition before this Court against the illegal erroneous order exceeding jurisdiction."

4. From the averments in the counter affidavit quoted above it is clear that the respondent-State has also supported the case of the petitioner.

5. Nobody has appeared on behalf of the private respondent No. 4. 7. Section 83 of the Chotanagpur Tenancy Act provides for preliminary publication, amendment and final publication of record of right, whereas Section 84 of the said Act envisages regarding presumption of correctness of record of right published finally. u/s 90 of the said Act there is a provision for correction of record of right regarding bonafide, or malafide of error in the record of right within five years from the date of its final publication.

6. In the present case from the facts stated above it is clear that In the year 1993, itself the Charge Officer had finally rejected the objection filed by the respondent No. 4 and the said order has become final, therefore, again in the year 1996 another Charge Officer could not have reviewed the order passed by his predecessor in the year 1993 as he had no jurisdiction at all to upset the final order passed by his predecessor rejecting the objection filed by the respondent No. 4.

7. In that view of the matter, the order dated 23.1.1996, passed by the Charge Officer, Singhbhum Settlement, Jamshedpur allowing the application filed by the respondent No. 4 for preparation/ correction of the record of right in the name of the respondent No. 4 in place of the Petitioner-Housing Board is absolutely illegal and without jurisdiction and cannot be sustained in law.

8. In the result this application is allowed and order dated 23.1.1996 as contained in Annexure-2 to the writ application is hereby quashed.

9. However, in the facts and circumstances of the case, there shall be no order as to costs.