

(1993) 07 PAT CK 0041
In the Patna High Court
Case No : C.W.J.C. No. 6200 of 1991

Karan Murmu and Others

APPELLANT

Vs

State of Bihar and Others

RESPONDENT

Date of Decision : 22-07-1993

Acts Referred:

Constitution of India, 1950 — Article 226, 227

Santhal Pargana Tenancy (Supplementary Provisions) Act, 1949 — Section 59

Citation : AIR 1995 Patna 62 : (1994) 42 BLJR 993 : (1994) 2 PLJR 684

Hon'ble Judges : S.B. Sinha, J;R.N. Prasad, J

Bench : Division Bench

Advocate : Rajiv Ranjan Mishra, for the Appellant; P.N. Jha, Govt. Pleader, for the Respondent

Judgement

S.B. Sinha, J.—This application is directed against an order dated 10-12-1990 as contained in Annexure 5 to the writ application passed by the Commissioner, Santhal Pargana Division, Dumka, (respondent No. 2) in Revision Misc. Appeal No. 403 of 1987-88 whereby and whereunder the order dated 23-12-1978 passed by the Settlement Officer, Dumka (respondent No. 3) in Suo Motu Case No. 148 of 1978 as contained in Annexure 4 to the writ application was set aside, in terms whereof respondent No. 4 Darbari Tudu was directed to be evicted from new plots Nos. 788, 789 and 790 (new) corresponding to old plot No. 677 of Jama-bandi 26 (new), Jamabandi 57 (old).

2. Jamabandi No. 57 was recorded in the name of Ludha Murmu and Karan Murmu in Gantzer's settlement report which is contained in Annexure-1 to the writ application.

3. Allegedly, Ludha Murmu left the village giving the land in question in Jimma-nama to Pradhan Karan Murmu for a period of five years. Petitioners Nos. 1 to 6 and 10-11 are said to be agnates of the recorded tenants.

4. Ludha Murmu allegedly died in the year 1936.

5. Jetha Murmu, son of the previous Pradhan filed an application, on 27-8-1948 before the Sub-Division Officer, Dumka being Settlement Fouti Case No. 50/48-49 for granting settlement of plot No. 677 and the learned S.D.O. allowed the said application in respect of plot No, 677 by an order dated 12-8-1950.

6. Respondent No. 4 thereafter, filed an objection to the effect that the said land had already been settled by the Pradhan with his father who has been in cultivating possession thereof.

7. By an order dated 9-9-1949 the afore-mentioned order was questioned in revision before the Deputy Collector, Dumka, being Revenue Misc. Case No. 79/49-50.

8. By an order dated 14-10-1950 the same was allowed whereby it was held that the land in question was settled with Malta Tudu Thirty years back. A copy of the said order is contained in Annexure 3 to the writ application.

9. Sixteen annas raiyats, however, were not noticed in the said proceeding nor the heirs of the co-tenants have been informed thereof. The petitioners, therefore, contend that they had no knowledge about the said order.

10. During the current survey settlement operation, a suo motu case bearing No. 148/78-79 was initiated by the respondent No. 3 on the basis of an application made by the State of Bihar wherein by an order dated 23-12-1978 the claim of respondent No. 4 was rejected and he was directed to be evicted. However, the respondent No. 3 allowed exchange of plot No. 268 (old) with plot No. 760 but evicted him from plots Nos. 788, 789 and 790.

11. Against the said order, the respondent No. 4 preferred an appeal before respondent No. 2 who by reason of the impugned order dated 10-12-1990 allowed the same.

12. The petitioner moved this Court in C.W.J.C. No. 689 of 1990 on the ground that after the death of Karan Murmu his heirs have not been made parties in the said proceeding and this Court accepting the said plea remanded the matter back to respondent No. 2.

13. Thereafter, the impugned order dated 10-12-1990 was passed by respondent No, 2.

14. In this case, a counter-affidavit has been filed on behalf of respondent No. 4. In the said counter-affidavit it has been contended that in the last survey settlement operation Karan Murmu, Pradhan of the village was made Jimmadar for five years. It is also contended that the Pradhan Karan Murmu was not related to Buta Murmu. It is stated that Bula Manjhi was not the recorded tenant in respect of abstract Khata Jama-bandi No. 57 of Wood's settlement.

15. Bula Manjhi had a son Raghunath Manjhi and Ludha Manjhi was the son of Raghunath Manjhi.

16. The geneological table as contained in Annexure 2 has been disputed to the above extent.

17. It is stated that the petitioners Nos. 7 and 8 are not connected with the Pradhan of the village whereas petitioners Nos. 1 to 6 and 9 to 11 are descendants of Pradhan Karan Murmu, son of Durga Murmu.

18. It is, therefore, contended that the petitioners/their ancestors did not derive any interest in the properties of the recorded tenant so far as the lands in Jamabandi No. 57 are concerned.

19. It is further stated that none of the persons are agnates of Karan Murmu. According to the respondents, recorded tenants died issueless. The Jamabandi became fauti (vacant) and, thus, Karan Murmu and his heirs and legal representatives did not succeed his interest.

20. It has further been contended that on 25th Jeth, 1326 corresponding to the year 1919, the Pradhan settled the land with Maltu Tudu, father of respondent No. 4 and after a period of 29 years Jetha Murmu filed a petition for settlement of plot No. 677 before the S.D.O. Dumka.

21. It may also be noted that the statements made in the counter-affidavit have been controverted by the petitioners filing a reply or rejoinder thereto.

22. It is also stated that the learned S.D.O. passed an order dated 9-9-1949 whereby and whereunder he reviewed his earlier order dated 12-8-1949. Against the said order, the petitioners preferred an appeal before the Deputy Collector, Dumka, who dismissed the said appeal by an order dated 14-10-1950 and the same was not allowed as has been wrongly stated in the writ application,

23. It has further been stated that in the proceedings, sixteen annas raiyats were also noticed and the then Pradhan Kara Murmu son of Karan Murmu who was vendor of the petitioners Nos. 3, 4, 5, 9 and 10 and uncle of petitioners Nos. 1, 2, 6 and 11 was made party in the case but he did not put forward any claim either claiming co-tenancy with Ludha Murmu or devolution of interest or succession on his death.

24. It has further been contended that suo motu case No. 148 of 1978-79 was initiated under misconception of law and facts. It has also been contended that the learned Commissioner (respondent No. 2) after the case was remanded back by this court by an order passed in CWJC No. 689 of 1990 started Revenue Case No. 403 of 1967-68 and set aside the order dated 23-12-1978 passed by the Settlement Officer.

25. Mr. Rajiv Ranjan Mishra, learned counsel appearing for the petitioners has submitted that the order dated 23-12-1978 passed by the Settlement Officer was an interim order, no appeal lay before the respondent No. 2 against the same.

26. It has been further contended that as survey operation is still going on, respondent No. 2 could not have passed the impugned order.

27. It appears that the name of Pradhan was recorded as Zimmadar meaning thereby "custodian" of the recorded tenant for a period of five years.

28. Section 13 of the Statutory rules, Notification and orders occurring at page 299 of the Santhal Parganas Tenancy Manual inter alia casts a duty over the raiyat to make over holding in trust to another in case of absence, sickness, or the like exigency, but is not to sub-let the same.

29. Section 22(2) of the said Act provides that if the raiyat does not resume cultivation himself in a case where raiyat makes over his holding as temporary trustee for cultivation, the holding shall be presumed to be abandoned after the expiry of a period of ten years.

30. In this case the lands in question were settled with the respondent No. 4. It is clear from the proceedings of the year 1949 that in the said proceedings the right of respondent No. 4 had been recognised.

31. Santhal Parganas Tenancy (Supplementary Provisions) Act, 1949, came into force from 1-11-1949 but as indicated hereinbefore the S.D.O. recalled his earlier order dated 12-8-1949 by his order dated 9-9-1949, i.e. prior to coming into force the said Act.

32. By reason of the said order dated 9-9-1949 the S.D.O. merely rectified his mistake as an order was obtained from him by suppressing the fact and without giving notice to respondent No. 4.

33. It is now well known that all the Tribunals have got the right of procedural review. By reason of the said order dated 14-10-1950 passed by the Deputy Commissioner the appeal preferred by the petitioner was dismissed.

34. It is only in the year 1978, a survey proceeding started and the respondent No. 4 was evicted from the plot No. 667.

35. It is clear that in view of the fact that the S.D.O. has passed an order prior to coming into force of the said Act, the said order must be held to be valid and legal in as much as the said Act has no retrospective operation.

36. Notification No. 12774-S-218-R, dated Patna, the 5th December, 1925, was issued framing rules for the conduct of settlement proceedings in the Santhal Parganas which is contained at page 210 of the Santhal Parganas Manual.

37. Clause XV of the Santhal Parganas Manual reads thus:

"It shall be the duty of the Settlement Officer and Assistant Settlement Officer to enquire into the title of persons, found in actual possession of land, which they have not acquired as Jamabandi raiyats of the village or by right of inheritance, and to enforce the orders which may be sanctioned by Government for the treatment of such occupants as may be found to be in illegal possession. Subject to the provision of Section 253, Regulation II of 1936, persons found in actual occupation, whose claim is not admitted shall be dispossessed and the land re-

settled according to village rights. The Settlement Officer may, for the purposes of this rule, be vested with powers of the Deputy Commissioner u/s 25, Regulation II of 1986."

38. The power of eviction in the Settlement Officer is contained in Section 42 of the Act which also vests power of eviction in the Deputy Commissioner.

39. Section 57 of the Act provides for an appeal and Section 59 of the Act provides for a power of revision. Section 59 of the Act reads as follows :

"The Commissioner or the Deputy Commissioner may on his own motion or otherwise, call for the record of a case decided by a Court order under his control in which an appeal does not lie or in which for cause shown to his satisfaction an appeal has not been preferred within the time limited therefor, and may pass such order in the case as he thinks fit.

Provided that the Commissioner shall not pass such order on an application by a party until the Deputy Commissioner or the Additional Deputy Commissioner, as the case may be, has heard the matter in revision or appeal and passed an order.

(2) The Deputy Commissioner may, by order in writing empower any Sub-Divisional Officer under his control to exercise the power conferred on the Deputy Commissioner by Sub-section (1) with respect to the decisions of all or any of the Courts of Deputy Collectors not in charge of a Sub-Division, under the control of the Deputy Commissioner."

40. From a bare perusal of the said Act it would appear that the revisional power of the Commissioner is a wide one. It is, therefore, not a case where the Commissioner had exercised an appellate jurisdiction. The Commissioner also could exercise his suo motu revisional jurisdiction.

41. Thus, Mr. Mishra, learned counsel for the petitioner is not correct in saying that the Commissioner had exercised his appellate jurisdiction which is not maintainable as the order passed by the Assistant Settlement Officer was an interim order.

42. The learned Commissioner in his impugned order has held as follows :

"From the documents filed on behalf of the appellants it appears that the Sub-Divisional Officer and the Deputy Commissioner, Dumka, have accepted the settlement made with the ancestor of the appellant and no appeal or revision has been filed before the higher authority against the order dated 14-10-1950 passed by the Deputy Commissioner, Dumka, in R.M.P. No. 79/49-50 and the appellant is in possession of land in question since fifty years on payment of rent. The learned Settlement Officer by his order dated 23-12-78 passed in suo motu case No. 148/78 has evicted the appellant from plot No. 677 saying that he found in illegal possession. But according to the above documents, the appellant cannot be said in illegal possession."

43. From a perusal of the impugned order it appears that the learned

Commissioner has considered all aspects of the matter and gone through all documents filed by the parties and had arrived at a finding upon taking into consideration the materials placed before him.

44. Further, Section 29 of the said Act inter alia puts an embargo upon the Pradhan of the village from making any settlement of any land or vacant holding with himself or co-mulraiyyat without the previous sanction in writing of the Deputy Commissioner.

45. It is now well known that this Court in its jurisdiction under Article 227 of the Constitution of India cannot sit in appeal in respect of an order passed by a statutory tribunal. The jurisdiction of Article 227 of the Constitution of India is limited.

46. Further, survey settlement operation are still continuing and, thus, the rights of the parties can still be gone into by the authorities concerned.

47. In this case it appears that a substantial justice has been done to the parties in as much as the respondent has been evicted by the Settlement Officer, although, his claim has been recognised in respect of one plot as far back as in the year 1949 by a competent authority.

48. So far the other plot is concerned, the respondent No. 4 has claimed settlement in respect thereof from the then landlord.

49. In view of the fact that the substantial justice has been granted to the parties, in our opinion, this Court should not exercise its discretionary jurisdiction under Article 227 of the Constitution of India.

50. It is now well settled that issuance of a writ of certiorari is discretionary and this Court will not quash any order only because it is lawful to do so. Reference in this connection may be made in *Sk. Ibrahim v. The State of Bihar*, reported in (1993) 1 BLJR 255 and *Vinay Kumar v. The State of Bihar*, reported in (1993) 1 BLJR 99.

51. For the reasons aforementioned, this writ application is dismissed.

52. In the facts and circumstances of the case, there will be no order as to costs.

R.N. Prasad, J.

53. I agree.