
(2018) 04 JH CK 0083
In the Jharkhand High Court
Case No : W.P. (C) No. 4003 of 2006

LILU HEMBROM

APPELLANT

Vs

STATE OF JHARKHAND AND OTHER

RESPONDENT

Date of Decision : 11-04-2018

Acts Referred:

Santhal Pargana Tenancy (Supplementary Provisions) Act, 1949 — Section 27, 33

Citation : (2018) 04 JH CK 0083

Hon'ble Judges : Anubha Rawat Choudhary, J

Bench : Single Bench

Advocate : Durga Charan Mishra, Ashish Kumar Thakur

Final Decision : Allowed

Judgement

1. Heard Mr. Durga Charan Mishra, counsel appearing on behalf of the petitioner.
2. Heard Mr. Ashish Kumar Thakur, A.C. to S.C. (L&C) appearing on behalf of the respondent state.
3. This writ petition has been filed for the following reliefs:-
 - (i) For issuance of direction upon the respondent no. 2 not to make construction for government use or need if any on the plot of land measuring 2 acres within Khata No. 54 being part of Dag No. 369 Mouza Katanki, District-Jamatara which was duly settled in favour of the petitioner's father namely Late Panchu Hembrom in accordance with law.
 - (ii) Further prayer has been made for quashing of the order dated 13.03.2003 passed in R.M. Case No. 3 of 2002-03 by the respondent no. 3 whereby and whereunder the aforesaid settlement has been cancelled after 33 years of settlement even without proper appreciation of relevant provision of law as laid down under Section 33 of the Santhal Pargana Tenancy (Supplementary

Provisions) Act 1949 which is the only provision for setting aside the settlement of waste land if not cultivated within 5 years.

(iii) For issuance of direction upon the concerned respondent to reconsider their decision to use the land in question for construction of government offices etc. in view of the fact that the petitioner was dependent upon the plot of land in question for his livelihood.

(iv) For issuance of direction upon the concerned respondent to compensate the petitioner either by allotting a suitable alternate plot of land or making payment of some monetary compensation.

4. Counsel for the petitioner submits that the settlement of two acres of land in plot no. 369 out of total area of 15.20 acres was made in favour of the petitioner by the Pradhan of the village Katanki District Jamtara under Section 27 of the Santhal Pargana Tenancy (Supplementary Provisions) Act

1949 vide Patta dated 05.03.1972 as contained in Annexure-1 to the writ petition. He submits that by the impugned order dated 23.02.2003 passed in

R.M. Case No. 3/2002-2003, final order was passed cancelling the settlement made in favour of the petitioner under Section 33 of the aforesaid Act.

The petitioner had made specific statement in paragraph no. 19 of the writ petition which reads as under:-

“The petitioner states that moreover before passing the impugned order no proper verification/inspection has been made by any expert or

agriculturist to find out whether the land in question has been brought under cultivation or not.”

5. Pursuant to this statement, the order dated 16.01.2018 was passed by this Court asking the respondents to produce the record of R.M. Case No.

3/2002-03 from the learned Sub Divisional Officer, Jamtara and also file inspection report by way of supplementary affidavit. Accordingly, a

supplementary affidavit has been filed by the respondents wherein the copy of the inspection report of Circle Officer, Jamtara has been filed along

with a copy of the inspection report of Halka Karmchari.

6. Counsel for the petitioner submits that from perusal of the inspection report it appears that the property which was allotted to the petitioner was

utilized by the petitioner by converting it into a “Bari”. He also submits that from the inspection report of Halka Karmchari, it appears that the

petitioner was found to be in the possession of the property. Counsel for the

petitioner submits that the condition precedent for applicability of Section 33 of the Santhal Pargana Tenancy (Supplementary Provisions) Act is that the same can be cancelled only if it is not brought under the cultivation within a period of 5 years from the date of settlement. He submits that as admittedly the "Bari" was found in the property involved in this case which means that the property has been brought under cultivation, therefore there was no occasion for the respondents to cancel the settlement in exercise of power under Section 33 of the Santhal Pargana Tenancy (Supplementary Provisions) Act 1949.

7. Counsel for the respondents on the other hand submits that the settlement patta which has been issued to the petitioner as contained in Annexure-1

to the writ petition has not been issued following the provisions of Santhal Pargana Tenancy (Supplementary Provisions) Act 1949 and accordingly the

same has no value in the eyes of law. He submits that the power has been rightly exercised by the authority under Section 33 of the Santhal Pargana

Tenancy (Supplementary Provisions) Act 1949 to cancel the settlement. However, during the course of arguments and from the impugned order,

counsel for the respondents could not substantiate that the reason for passing the impugned order was that the settlement itself was invalid in the eyes

of law. Counsel for the respondents through counter affidavit has submitted that the settlement document which is annexed as Annexure-1 to the writ

petition was issued without following the procedure under Section 27 of the Santhal Pargana Tenancy (Supplementary Provisions) Act, 1949.

Accordingly he submits that the said settlement is invalid. However the fact that the property in question is in possession of the petitioner and the same

has been converted into a "bari" by cultivating it could not be disputed by the counsel appearing for the respondents.

8. After hearing counsel for the parties and after considering the facts and materials available on record, this court is inclined to allow the writ petition

by quashing the impugned order to the extent it relates to the petitioner on account of following facts and reasons:-

i. From the perusal of the impugned proceedings it appears that the notice to the petitioner was issued pursuant to order dated 23.02.2003 wherein it

has been recorded that a proposal has been received for cancellation of settlement under section 33 of Santhal Pargana Tenancy (Supplementary

Provisions) Act 1949 and it further appears from this order that it has been recorded that settlement of waste land has been made ,inter alia, to the petitioner long time back but it was alleged that the nature of land has not been changed from that of waste land.

ii. From the perusal of order dated 23.02.2003 it appears that the legality and validity of settlement made in favour of the petitioner was not in dispute

but the proceeding was for cancellation of settlement under section 33 of Santhal Pargana Tenancy (Supplementary Provisions) Act 1949.

iii. Section 27 of Santhal Pargana Tenancy (Supplementary Provisions) Act 1949 which deals with settlement of wasteland reads as follows:-

â??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.â??

iv. Section 33 of Santhal Pargana Tenancy (Supplementary Provisions) Act 1949 which deals with cancellation of settlement reads as follows:-

â??33. Settlement of waste land to be set aside if not cultivated within five years- In the event of any land settled or aforesaid not being brought under

cultivation within a period of five years from the date of settlement, it shall be open to the Deputy Commissioner or an application made by a

jamabandi raiyat, the village headman, mulraiayat or the landlord, as the case may be, to set aside the settlement and to make such resettlement as is

permissible under this Act or any law or anything having the force of law in the Santhal Parganas.â??

v. There can be no doubt that under section 33 of Santhal Pargana Tenancy (Supplementary Provisions) Act 1949, the settlement can be cancelled

only if the ingredients of section 33 of the said Act is satisfied.

vi. Pursuant to the aforesaid show cause issued to the petitioner pursuant to the order dated 23.02.2003, the petitioner filed his reply and denied the

allegation levelled against the petitioner and submitted that the land is being used for cultivation including that of â??Makaiâ??.

vii. Thereafter the impugned order of cancellation of settlement was passed.

viii. From perusal of the impugned order it appears that the settlement made in favour of the petitioner was sought to be cancelled in exercise of

power under Section 33 of the Santhal Pargana Tenancy (Supplementary Provisions) Act, 1949 by mentioning that the petitioner could not satisfy the

authority that the necessary permission for settlement was obtained from the court of Sub Divisional Officer although no such allegation is levelled in

order dated 23.02.2003 pursuant to which notice under section 33 of the said Act was issued to the petitioner.

ix. From perusal of the inspection report it appears that the property which was allotted to the petitioner was utilized by the petitioner by converting it

into a 'Bari'. Further from the inspection report of Halka Karmchari, it appears that the petitioner was found to be in the possession of the

property. The condition precedent for applicability of Section 33 of the Santhal Pargana Tenancy (Supplementary Provisions) Act is that the

settlement can be cancelled only if it is not brought under the cultivation within a period of 5 years from the date of settlement of waste land.

Admittedly 'Bari' was found in the property involved in this case which means that the property has been brought under cultivation. Therefore

there was no occasion for the respondents to cancel the settlement in exercise of power under Section 33 of the Santhal Pargana Tenancy

(Supplementary Provisions) Act 1949 that too on the allegation that the necessary permission for settlement was not obtained from the court of Sub

Divisional Officer. From the perusal of the order dated 23.02.2003 it appears that no such allegation was levelled upon the petitioner.

x. Further the finding recorded in the impugned order that the cultivation on the property was done only a few days back does not find its support from

the inspection report which has been filed by the respondents along with the supplementary counter affidavit. Rather there is specific finding is the

inspection report that the property which was settled with the petitioner was changed into 'Bari' by the petitioner but no date is mentioned on

which date the same converted into a 'Bari'.

xi. In view of the aforesaid facts, the impugned order dated 13.03.2003 passed in R.M. Case No. 3 of 2002-03 is perverse. The findings in the

impugned order is contrary to the inspection report and that the impugned order has been passed questioning the very settlement made in favour of the

petitioner for which there is no mention in the order dated 23.02.2003 pursuant to which the notice initiating the proceedings was issued to the

petitioner. Apparently the proceedings was initiated for cancellation of settlement under section 33 of Santhal Pargana Tenancy (Supplementary

Provisions) Act 1949 which provides for the cancellation of settlement of land only for the grounds mentioned therein. This court finds that the

grounds for cancellation of settlement of land for which notice was issued to the petitioner under section 33 of Santhal Pargana Tenancy

(Supplementary Provisions) Act 1949 was not found to be true even as per the inspection report and the said inspection report was not properly

considered by the authority while passing the impugned order.

9. Considering the aforesaid facts and circumstances of the case, the writ petition is allowed and the impugned order dated 13.03.2003 passed in R.M.

Case No. 3 of 2002-2003 by The Sub Divisional Officer, Jamtara only to the extent it relates to the petitioner, is hereby set aside.