

(2012) 02 JH CK 0164

In the Jharkhand High Court

Case No : Writ Petition (C) No. 2866 of 2010

Mahipal Mishra

APPELLANT

Vs

The State of Jharkhand and Others

RESPONDENT

Date of Decision : 22-02-2012

Acts Referred:

Santhal Pargana Tenancy (Supplementary Provisions) Act, 1949 — Section 5, 5, 6, 6

Citation : (2012) 02 JH CK 0164

Hon'ble Judges : Poonam Srivastav, J

Bench : Single Bench

Judgement

Hon"ble Mrs. Justice Poonam Srivastav

1. The instant writ petition is preferred challenging the order dated 6th May, 2010 (Annexure 14 to the writ petition) in R.M.A. No. 25 or 2005-06. The dispute relates to the appointment of Headman of village Kurma, Police Station Godda (Mufasil) within the district of Godda. The last Pradhan, namely, Nageshwar Mishra died in the year 1981 and on his death, the village became Khas and thereafter entire dispute started in respect of the appointment of the Headman. The eldest daughter of the last Pradhan, namely, Swarnlata Devi, Nephew of Late Nageshwar Mishra i.e. petitioner and the grand son were contesting for the said post. After the death of Swarnlata Devi, only two contenders are claimant for the said post of Headman. Several rounds of litigation continued upto the High Court, thereafter the matter was remitted to the Deputy Commissioner/Sub Divisional Officer, Godda.

2. Learned counsel appearing on behalf of the petitioner has placed a number of orders to demonstrate that direction of the High Court was not followed. However, at present, impugned order, Annexure 14 to the writ petition, narrates the entire controversy, and finally, after the death of Swarnlata Devi, who was appointed/acting as Pradhan, an inquiry was conducted and appointment process commenced denovo. The Deputy Commissioner, Godda has concluded that reconsideration of all the past proceedings are of no consequence since the

entire appointment process has to be undertaken again. The finding is that appointment of Pradhan has to be made in accordance with the Santhal Parganas Tenancy (Supplementary) Rules, 1950 and also in compliance of the previous directions of the High Court in its various decisions.

3. Learned counsel has cited a Division Bench decision of this Court in *Sogen Murmu vs. State of Jharkhand and others* [2012 (1) JLJ (JHC) 36].

4. Counsel appearing on behalf of the respective parties agree that the appointment of Headman should be made in accordance with law which prescribes due notice to the villagers and after taking into consideration the Santhal Parganas Tenancy (Supplementary Provisions) Act, 1949 and the Rules made thereunder. Similar view was expressed In the aforesaid decision of the Division Bench stating therein that the Deputy Commissioner, Godda is liable to follow the Rules prescribed in Schedule V of the Rules aforesaid. The appointment of the village Pradhan is to be made according to the village custom and for ready perusal, paragraphs 15 and 16 of the said decision is quoted hereinbelow:

15. We have considered the submissions of the learned counsel for the parties and perused the facts of the case. So far as the provisions made in Santhal Parganas Tenancy (Supplementary Provisions) Act. 1949 are concerned, Section-5 thereof governs appointment of a village Headman of a khas village whereas Section 5 provides for appointment of headman for the village which are not khas village for which the vacancy may occurs due to the death of the Headman. Section-5 clearly provides that in the khas village, the headman can be appointed on an application of the raiyat or landlord of the said village and such appointment can be made with the consent of at least two-thirds of the jamabandi raiyats of the village, which is required to be ascertained by the Deputy Commissioner, Such consent is required to be obtained, as provided under Rule 3 of the Rules of 1951 and it requires issuance of notice to the jamabandi raiyats of the village and to the landlord in Form A, prescribed in the Rules of 1951 itself and the consent for appointment on the post of Headman. u/s 5, consent is required to be obtained by the Deputy Commissioner himself and it is to be by show of hands and not by secret ballot voting. Though separate provision has been made under Rule 3 for appointment of the village Headman when vacancy occurs for a village which is not the khas village due to the death of the Headman, Sub rule (5) of Rule 3 of Rules 1951 provided that in making the appointments of headman under Sections 5 and 6 i.e., in both the cases, the Deputy Commissioner shall follow the rules prescribed in Schedule V except where these rules, expressly or by necessary implication, provide otherwise. This is nobody's case that the application of Schedule V has been excluded by expressly or by necessary implication. Clause (1) of Schedule V provides appointment of headman in accordance with village customs and it is made very specifically clear that before confirming any appointment, the Deputy Commissioner shall satisfy himself that the candidate is generally acceptable to

the raiyats. Sections 5 and 6 as a whole as such nowhere provide that post of Gram Pradhan shall be hereditary, nor so has been provided in clause (1) of Schedule V. However, Clause (3) of Schedule V, mentioned that "the office of Headman being hereditary, the next heir, who is fitted, should be headman". Here, in the Rules, for the first time, it has been mentioned that office of headman is hereditary. Therefore, from the conjoint reading of Sections 5 and 6 with sub rule (3) and (5) of Rule 3 read with clause (1) and (3) of Schedule V, it comes out that the procedure for appointment of the Headman for both the villages i.e. khas village and the village which is not the khas village is the same. It is required to be appointed in the case of khas village, specifically with the consent of at least two -thirds of the jamabandi raiayats of the village and so far headman for the villages, which are not khas village, then in that case on the death of headman, as per sub-rule (5) of Rules 3 of 1951, in accordance with the Schedule V and clause (1) of Schedule V the appointment of headman shall be made in accordance with the village customs and it also says that the candidate must be generally acceptable to the raiyats. Therefore, the dispute cropped up in this case whether a person, who is heir, can be appointed on the post of headman of the village by virtue of his being heir or is required to be acceptable to

16. For this, in the case of Jagdish Misra Vrs.. Chamaklal Misra reported in 1965 B.L.J.R. 674, it has been held by the Division Bench of the Patna High Court that the Pradhan is a representative of the raiyats and his appointment has to be made by the Deputy Commissioner according to the wishes of the raiyats as to the acceptability of a particular man being appointed as a Pradhan. The Division Bench has also observed that, therefore, the most important thing for the Deputy Commissioner before appointing a Pradhan is to satisfy himself whether the man who is going to be appointed as a Pradhan is acceptable in the jamabandi raiyats or not as the appointment has to be made by the Deputy Commissioner in conformity with the opinion of the Jamabandi raiyats.

The language of Section 5 and Section 6 read with sub rule (5) of Rule-3 clearly indicate that the paramount consideration is the satisfaction of the Deputy Commissioner in conformity with the opinion of the Jamabandi raiyats. The hereditary right is only a preferential right and not an absolute right and this right makes one eligible in preference to others for consideration for the post of Headman and not decisive factor in any manner. Thus becoming eligible is one thing but further more required is he should be acceptable to the villagers as per the Rules. In Jagdish Mishra's case (supra), the claim of the better heir was rejected on the ground of not acceptable to the villagers. Not only this, that claim of even a son can be rejected, when he is not regularly residing in the village or within one mile area of the village, as has been held by the Single Bench of the Patna High Court in Babu Lal Hembrum Vrs. State of Bihar and ors., reported in 1997(2) Bihar Law Judgment, 840.

In view of the aforesaid decision as well as the Rules provided under the Act, I

am of the view that the previous controversies which have been decided on a number of occasions, from the stage of Sub Divisional Officer, Godda upto the stage of revisional jurisdiction has continued endlessly. I am of a considered opinion that the entire procedure has to start all over again. No doubt the procedure is quite lengthy and a long period has lapsed, yet there is no other options. The controversy has to come at rest and it can only be done when the authority starts the procedure including enquiry and thorough investigation. No doubt a very long period has lapsed since the death of erstwhile Pradhan and, therefore, I am of the view that the appointment shall be made expeditiously as early as possible preferably within a period of six weeks from the date the certified copy is placed before the Sub Divisional Officer along with an application to start the proceeding. With these observations, this writ petition is disposed of.