
(2013) 07 JH CK 0175

In the Jharkhand High Court

Case No : Writ Petition (C) No. 3551 of 2004

Md. Salamat Ansari

APPELLANT

Vs

State of Jharkhand and Others

RESPONDENT

Date of Decision : 15-07-2013

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2013) 07 JH CK 0175

Hon'ble Judges : P.P. Bhatt, J

Bench : Single Bench

Advocate : V. Shivnath and Mr. A.K. Choudhary, for the Appellant; A. Aditya, Shashank Shekhar for the Respondent No. 4 and Mr. Ashish Verma, J.C. to SC (L and C) for the State, for the Respondent

Final Decision : Dismissed

Judgement

P.P. Bhatt, J

1. The petitioner by way of filing this writ petition under Article 226 of the Constitution of India has prayed for quashing the order dated 23.1.2004 passed by the Commissioner, Santhal Pargana Division, Dumka in R.M. (Settlement) Appeal No. 27/2002-2003. Heard the learned counsel for the petitioner as well the respondent-State Government and respondent no. 4.

2. It appears that respondent no. 4 filed a Misc. petition bearing no. 195 of 1998 in the court of Settlement Officer, Dumka for getting his name entered in the Parcha of the present survey settlement. Charge Officer-Cum-Settlement Officer, Dumka rejected the petition filed on behalf of the respondent no. 4 (Rajo Mian) and confirmed the entry of 1.30 acres of land with regard to plot no. 188 in favour of the petitioner and other formal respondents. Being aggrieved and dissatisfied with the said order, respondent no. 4 filed Revenue Misc. Appeal no. 27/2002-03 before the Commissioner, Santhal Pargana Division, Dumka and the said appeal has been allowed by the impugned order dated 23.1.2004 and

thereby the learned Commissioner allowed the application made by the respondent for getting his name in the Parcha of the present survey settlement with respect to 60 decimal of land and rest 77 decimals in favour of the petitioner and formal respondents.

3. The learned senior counsel for the petitioner submitted that the learned Commissioner has failed to appreciate the facts as well as the position of law while considering the appeal filed by the respondent no 4. It is submitted that the learned Commissioner has virtually decided the partition and the said order is not permissible under the law while deciding the application made by the respondent no. 4. The learned counsel for the petitioner further submitted that respondent no. 4 Rajo Mian could not produce any document including Bhugatbandha deed executed by him with regard to the land in question before the Charge Officer-cum-Settlement Officer, Dumka at any point of time in the said proceedings and subsequent thereto in any proceedings. These facts are not denied by the respondent no. 4 which would be evident in paragraph-18 of 12/15.7.2013. the writ petition. The learned counsel for the petitioner by referring the impugned order vide annexure-4 submitted that the learned Commissioner has taken note of the order passed by the Charge Officer-cum-Settlement Officer, Dumka wherein there was a discussion about the possession of the present petitioner over the land of 0.07 decimals which was found from the inspection report submitted before the Charge officer and therefore, the finding recorded by the learned Commissioner is also contrary to the factual position. The learned Sr. Counsel has also referred to and relied upon a decision in the case of Mahabir Mahto and Others Vs. The State of Jharkhand and Others, and submitted that the Commissioner has no authority and power to decide such claim. It can be decided by a competent court of civil jurisdiction.

4. As against that, the learned counsel for the State-Respondents, while justifying the order passed by the learned Commissioner, Dumka submitted that the learned Commissioner has exercised this power being a statutory authority in accordance with law and therefore, there is no need to intervene in the impugned order passed by the learned Commissioner.

5. The learned counsel appearing for the respondent no. 4, while justifying the order passed by the learned Commissioner, submitted that the learned Commissioner has not believed the claim put forward by the petitioner which is based on the settlement proceedings as the Charge Officer as well as the present petitioner raised doubts about the genuineness of the said settlement proceedings. However, at the same point of time, irrespective of above facts the learned Commissioner has taken into consideration the Bhugatbandha registered deed, executed by the respondent no. 4, as also the long standing possession over the land in question, which is evident from the report submitted in the court of Sub divisional Officer in Misc. Petition No. 624 of 1997.

6. The learned counsel for the respondent no. 4 by referring the application made by him before the Settlement Officer at Dumka pointed out that application

was filed by him in respect of a piece of land measuring 0.60 decimals within plot no. 188 at Mouza Mahhilatikar No. 245 and the prayer made in the application was specific and limited for the purpose of entering the name of the petitioner in the record of present survey settlement. The learned counsel for the respondent no. 4 has also placed reliance on the provision contained in section 28 of the Santhal Paraganas Tenancy (Supplementary Provisions) Act 1949, and submitted that the learned Commissioner has decided the application keeping in mind the provision of sub-clause C and D of section 28 of the said Act.

7. The learned counsel for the respondent no. 4 in support of his submission has referred to and relied on the decision given in the case of Sheikh Allauddin and Others Vs. State of Bihar and Others, and another decision given in the case of Baldeo Mandal Vs. The State of Bihar and Others, .

8. Now considering the aforesaid rival submissions, it appears that the learned Commissioner, while sitting in appeal, discharging the statutory obligation cast upon him, has decided the appeal in favour of respondent no. 4. It appears that respondent no. 4 made application vide annexure-2 for recording his name in respect of a piece of land measuring 0.60 decimals within plot no. 188. The Charge officer, after considering the facts of the case and the report submitted before him, rejected the claim put forward by the respondent no. 4, however, observed that 0.07 decimal land is in possession of respondent no. 4. Being aggrieved and dissatisfied with the said order, respondent no. 4 approached the appellate authority by way of filing Appeal No. 27/2002-03. The learned Commissioner, while taking note of each and every facts, as also the discussion made by the Charge Officer in its order, observed that irrespective of fact that there doubt has been expressed about the genuineness of the settlement proceeding. It is found that the respondent no. 4 is having long standing possession and there was a registered deed of Bhugatbandha since 1967. The learned Commissioner has decided the case in favour of the respondent no. 4. The finding recorded by the learned Commissioner is based on the factual position which is emerged from the record. The petitioner has seriously disputed that there was no such document ever produced in the record but from the finding of fact recorded by the learned Commissioner and the averments made in paragraph 5 of the application (Annexure-2), clearly demonstrates that there is a specific averments made by the respondent no. 4 that respondent no. 4 executed a registered deed of Bhugatbandha in respect of the said land vide Registered deed No. 2061 dated 19.3.1967. It is also specifically mentioned in the application that in the present survey settlement operation the Settlement Authorities duly found actual possession of the petitioner over the said land. The learned Commissioner has also taken note of long standing possession as reflected in the order passed in Misc. Petition No. 624 of 1997 wherein there was a report submitted by the Officer Incharge of the concerned police station which clearly indicated about long standing possession of the respondent no. 4.

9. Two decisions (i) Sheikh Allauddin and Others Vs. State of Bihar and Others,

and (ii) Baldeo Mandal Vs. The State of Bihar and Others, cited by the learned counsel for the respondent no. 4 appear to be relevant for the purpose of deciding the present case. The learned counsel for the respondent no. 4 has relied upon the judgment of Sheikh Allauddin and Others Vs. State of Bihar and Others, specifically in para-3 which is reproduced hereinbelow:-

It appears that the petitioners applied for settlement of wasteland under the provisions of section 28 of the Santhal Parganas Tenancy (Supplementary Provisions) Act, 1949 (hereinafter referred to as "the Act"). The Sub-Divisional Officer after making inquiry from the Circle Inspector settled the land in question with the petitioners one acre each in exercise of its power u/s 28 of the Act. The Order passed by the Sub-Divisional Officer was challenged before the Deputy Commissioner, Dumka saying that the petitioners were not the Jamabandi raiyats of the village in question and therefore, they were not entitled for settlement of the wasteland in their favour u/s 28 of the Act. The matter was heard in presence of the parties by the Deputy Commissioner and the Deputy Commissioner being satisfied that the petitioners were not Jamabandi raiyats of the village held that the prerequisite for settlement of wasteland in favour of the petitioners was not fulfilled as they were not Jamabandi raiyats of the village in question and consequently there of, set aside the order passed by the Sub-Divisional Officer. The petitioners thereafter went in revision before the Divisional Commissioner and the Divisional Commissioner after hearing the parties dismissed the revision application reiterating the same view as expressed by the Deputy Commissioner, Dumka

10. The learned counsel for the petitioner has also referred to and relied on paragraphs 20 and 29 of the judgment reported in Mahabir Mahto and Others Vs. The State of Jharkhand and Others, and submitted that the observation made by the Division Bench is directly applicable to the facts of the present case and the learned Commissioner has no authority and power to decide the appeal in such a manner. The arguments advanced by the learned counsel for the petitioner in this regard cannot be accepted for simple reasons that this judgment was in respect of Bihar Tenants Holdings (Maintenance of Records) Act, 1973 and the factual aspect was also different than the present case and therefore the said judgment is not applicable to the facts of the present case. Moreover, the learned Commissioner, while deciding the appeal, has discharged his statutory duty and function by considering the scope of section 28 of the Santhal Paraganas Tenancy (Supplementary Provisions) Act 1949 and has taken into consideration the facts which is emerged from the record and has taken decision in consonance with the provision of law in favour of the respondent no. 4 and, therefore, this court is of the view that the finding recorded by the learned Commissioner in the impugned order is not required to be disturbed as the same are based on facts as well as position of law and also in conformity with the ratio laid down in the above referred two decisions cited by the learned counsel for the respondent no. 4. Accordingly the writ petition stands dismissed.