
(1996) 09 PAT CK 0030
In the Patna High Court
Case No : C.W.J.C. No. 2659 of 1985

Mihir Kumar Jha

APPELLANT

Vs

State of Bihar and Others

RESPONDENT

Date of Decision : 23-09-1996

Acts Referred:

Santhal Pargana Tenancy (Supplementary Provisions) Act, 1949 — Section 27, 28, 59

Citation : (1997) 1 BLJR 172 : (1997) 1 PLJR 716

Hon'ble Judges : M.Y. Eqbal, J

Bench : Single Bench

Judgement

M.Y. Eqbal, J.—In this writ application the petitioner has challenged the order dated 22.3.1984 passed by Deputy Commissioner" Deoghar in Misc. Revision-No. 79 of 1983-84 and also the order of the Commissioner of Santhal Pargans dated 20.5.1985 passed in Revenue Misc Appeal No. 105 of 1984-85. By the said order dated 22.3.1984 the Deputy Commissioner retrospectively cancelled the settlement of about 3 acres of land in plot No. 63 which was settled with the petitioner by the order of the Sub-divisional Officer, Deoghar. The said order of the Deputy Commissioner was confirmed by the Commissioner of the Santhal Paragana by the impugned order dated 20.5.1985.

2. The brief facts of the case are as follows:-

The petitioner made an application to the Sub-divisional Officer, Deoghar for settlement of 10 acres of waste land in plot No. 63 of village Khijuria, P.S. Mahanpur, District-Santhal Paragana for horticultural purposes. The said application was sent by the Sub-divisional Officer, Deoghar to the Deputy Commissioner. The Deputy Commissioner of Santhal Pargans referred the matter to Government through the Divisional Commissioner of Bhagalpur. The State Government issued instructions that the local authorities, were competent to make the proposed settlement with the petitioner. On receipt of this direction form the Government the Sub-Divisional Officer, Deoghar started proceeding for settlement of waste land as stated above. The petitioner"s further case was that

before the settlement the Sub-divisional Officer had called for a report from the Anchal Adhikari through the Deputy Collector, Land Reforms, Deoghar who after enquiries submitted a report on 26.6.1981 making a recommendation for settlement of 3 acres of land within plot No. 63 with the petitioner. Accordingly, Sub-divisional officer issued notice to the 16 anna raiyats inviting objections if any. It was alleged that Lakan Das Sahdeo Das and Dhaneshwar Das of Mauja Khiljuria filed objections but after filing objection the objectors never appeared. The Sub-divisional Officer said to have made necessary local enquiry and inspection on 22.5.1982 with Circle Officer, Mohanpur and thereafter passed an order making settlement of 3 acres of land to the petitioner for plot No. 3 which is the disputed land. The petitioner further stated that after the said settlement delivery of possession was made to the petitioner by the Sub-divisional Officer and the petitioner came in possession thereto and his name was mutated in the record of the Anchal Office and the petitioner paid that rent to the State of Bihar since 1982. It was further stated that after the settlement and delivery of possession the petitioner reclaimed the entire waste land at his own cost and dug a well for irrigation purposes which was sanctioned by the Block Development Officer and the petitioner, was given subsidy for the purpose. The petitioner constructed a farm house at an expenditure of Rs. 15, 000/-. The petitioner's further case was that all on a sudden the petitioner received a notice on 12.3.1984 by the Deputy Commissioner, Deoghar stating, inter-alia, that settlement made by the Sub-divisional Officer of the disputed land was illegal and the Deputy Commissioner proposed to re-open the matter with a view to cancel the settlement. The Deputy Commissioner by the impugned order cancelled the settlement. Aggrieved by the said order the petitioner filed an appeal before the Commissioner, Bhagalpur which was numbered as Revenue Appeal No. 1 of 1984-85. The Commissioner, Bhagalpur admitted the appeal and stayed further action by an order dated 9.4.1984. The appeal was transferred to the Commissioner, Santhal Pargans and the Commissioner, Santhal Parganas after hearing the parties dismissed the same in terms of an order dated 20.5.1985, copy of the said order is Annexure 2 to the writ application.

3. Mr. R.C. Sinha, learned senior Advocate appearing on behalf of the petitioner vehemently challenged the authority of the Deputy Commissioner by cancelling the settlement inasmuch as the Deputy Commissioner neither given any opportunity to the petitioner nor proceed with the matter in accordance with law. Learned Counsel submitted that when the settlement was made in accordance with law and in a prescribed manner it could not have been cancelled or annulled by the Deputy Commissioner in exercise of power u/s 59 of the Santhal Pargans Tenancy Act (hereinafter referred to as the Act). Learned Counsel further submitted that Deputy Commissioner did not any adjournment on the application filed by the petitioner stating that he has filed writ petition in the High Court which was not taken up because of the vacation of the High Court. Learned Counsel further submitted there was no provision under the law for cancellation of settlement retrospectively by he Deputy Commissioner.

4. In this case No. counter affidavit has been filed on behalf of the state.

5. Mr. N.K. Sinha learned Government Pleader No. III appearing on behalf of the State in reply to the said argument submitted that the settlement of land made by the Sub-divisional Officer in favour of the petitioner was ab initio, void. Learned Counsel further submitted that even assuming that the Sub-divisional Officer had power to settle the land under the said Act, it was not done in accordance with Section 27 and 28 of the said Act. Learned Counsel further submitted that there was no provision in the Act under which the disposed land could be settled with non-aborigines.

6. Before appreciating the rival contention of the parties it is necessary to look into the relevant provision of the Santhal Parganas Tenancy Act (Supplementary Provisions Act) 1949. This Act was enacted to amend and supplement certain laws relating to landlord and tenant in the Santhal Parganas. The Deputy Collector, Landlord, non-aboriginal raiyat has been defined as under:-

Section 4 (vii):- "Deputy Commissioner" means the Deputy Commissioner of the Santhal Parganas and includes-

(a) Additional Deputy Commissioner Sub-divisional Officer or Deputy Collector empowered by the State Government to discharge any of the functions of the Deputy Commissioner under this Act; and

(b) any Deputy Collector, whom, subject to the control of the State Government, the Deputy Commissioner may, by general or special order, authorise to exercise any of his functions under this Act;

Section 4 (x):- "landlord" means a person other than the village headman or mulraiyyat entitled to receive rent and include a proprietor a tenure holder, ghatwal and the Government.

Section 4 (xi):- "non-aboriginal" means a person who does not belong to any aboriginal or semi-aboriginal tribe or caste specified in Schedule B or to any other aboriginal or semi-aboriginal tribe or caste notified by the State Government under Clause (i) of Section 4;

7. Chapter IV of the said Act lays down provision of the Settlement of waste lands and vacant lands, Section 27 read as follows:-

Section 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 mulraiyyat, as the case may be.

8. Section 28 of the said Act lays down the principles to be followed in the settlement of waste land which reads as under:-

Section 28:- Principles to be followed in settling waste land or vacant holdings- In making settlement of waste land or vacant holdings regard shall be had to the following considering in addition to the principles recorded in the record-of-rights-

(a) fair and equitable distribution of land according to the requirements of each raiyat and his capacity to reclaim and cultivate;

(b) any special claim for services rendered to the village community, society or State;

(c) contiguity or proximity of the waste land to the jamabandia land of the raiyat;

9. Section 59 is power of revision given to the Commissioner or the Deputy Commissioner which reads as under:-

Section 59:- Revision (1)-The Commissioner or the Deputy Commissioner may on his own motion or otherwise, call for the record of the case decided by a Court 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 thereof and may pass such order in the case as he thinks. 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.

10. One more section i.e. Section 61 is necessary to be taken notice. Section 61 reads as under:-

Section 61:- Order not revisable on technical grounds a. lone:- An order passed by the Deputy Commissioner in the exercise of any of the powers conferred by this Act shall not wherever or varied on appeal or revision on account of any irregularity of procedure, unless the irregularity has occasioned or is likely to occasion failure of justice.

11. From perusal of the order of the Deputy Commissioner cancelling the settlement it appears that he started cancellation proceeding on the basis of his routine inspection of the revenue office of the concerned district when it came to his knowledge that the disputed land was settled. The Deputy Commissioner proceeded u/s 59 of the said Act on the ground that the order of Sub-divisional Officer was wholly illegal and without jurisdiction. The Deputy Commissioner held that he was fully competent to take recourse to the provision of Section 89 of the said Act. The Deputy Commissioner further held that settlement was bad as the settle was not a resident of that district or that village where the land situates. The Deputy Commissioner further took a view that the objection filed by some of

the persons were not considered by saying that objections did not appear. The Deputy Commissioner further came to conclusion that in a special case which is covered by Section 28 (b) or any other circumstances when the settlement is made with non-jamabandi rayats it was obligatory to obtain consent of the Sub-divisional Officer and the proprietor before settlement was finally done. On this ground the settlement made in favour of the petitioner was cancelled. In appeal the Commissioner although took a view that the Deputy Commissioner proceeded with the cancellation proceeding so lastly that as no opportunity was given to the appellant to put his case before him. However, but held that this deficiency in the conduct of the proceedings has not vitiated the proceedings and has caused no material damage to the appellant's case. The question the regard to jurisdiction of the settlement of the land by the Sub-divisional Officer and the Government the filling of the Commissioner is worth to be reproduced herein below:-

This leaves us with one more point to be disposed of. It has been observed that since the permission of the proprietor is necessary according to the terms of the Record of Rights before a waste land is settled with a non-jamabandi raiyats, the decision of the learned Sub-divisional Officer in settling land with the appellant suffered from legal infirmities. I am unable to agree with this view. The State of Bihar is undoubtedly the proprietor, but Officers of the State belonging to different sections of the hierarchy have customarily acted as agents of the State in regard to the State's role as the proprietor of land. Besides, the Government of Bihar in the Revenue and Land Reforms Department, in its letter dated April 6, 1981 itself has mentioned that the Deputy Commissioner is competent to take a decision in the matter of settlement of the land in question. There are sufficient cases the authority of the Deputy Commissioner is exercised by the Sub-divisional Officer.

12. However, learned Commissioner affirmed the order of the Deputy Commissioner holding that although the decision of the Sub-divisional Officer cannot be faulted on technical and procedural grounds, it fails to safeguard the interest of the village community in settling land to an outsider. As quoted above the word "landlord" means a person other than the village headman or mulraiayat entitled to receive rent and includes a proprietor a tenure holder, a ghatwal and the Government. From the order passed in revision it was not disputed that Sub-divisional Officer of the concerned area was authorised to discharge the function of the Deputy Commissioner. From Annexure 6 to the supplementary counter affidavit it appears that after initiation of settlement proceeding by the Sub-divisional officer the matter was referred to D.S.I.R who after enquiry submitted a report. After submission of report notices were issued to the 16 anna raiyats of mouza khijuria. The Sub-divisional Officer also made local enquiry and inspection. The Sub-divisional officer also considered the relevant provision of Rule 16 (A) of the Record of Rights, according to which waste land can be settled with non-jambandi raiyat. The Sub-divisional Officer, accordingly, after complying all necessary requirements passed a final order for settlement. Learned Counsel

appearing on behalf of the State argued that there is no provision under the said Act which authorises the Sub-divisional Officer to settle the land with non-adibasies. However, learned Counsel failed to show any of the provisions under the Act which restrict settlement of waste land to non-jambandi raiyats. The Commissioner in revision appreciated the fact that the Deputy Commissioner started a proceeding in a routine manner and acted hastily by cancelling the settlement without giving reasonable opportunity to the petitioner. Learned Commissioner further differed with the finding of the Deputy Commissioner that Sub-divisional officer was not authorised to initiate proceeding for settlement. It did not safeguard the interest of villages. In such circumstances learned Commissioner ought not to have affirmed the order of the Deputy Commissioner merely on the ground that settlement made by the Sub-divisional Officer amounts to failure on the part of the Sub-divisional Officer to safeguard the interest of village community.

13. For the reasons aforesaid the order of the Deputy Commissioner cancelling the settlement of waste land with petitioner as also the order passed by the Commissioner cannot be sustained in law. "In my opinion, the settlement made by the Sub-divisional Officer is not against any of the mandatory provisions of the said Act. In other words, the said Act does not in express term debar the authorities to make settlement of waste land with non-jamabandi raiyats. In the result this writ application is allowed and the impugned orders dated 22.3.1985 and 20.5.1985 passed by the Deputy Commissioner and the Commissioner of Santhal Parganas as contained in Annexures 1 and 2 respectively are quashed.

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