
(2006) 05 JH CK 0132

In the Jharkhand High Court

Case No : Writ Petition (C) No. 5900 of 2003

Modi Uraon and Others

APPELLANT

Vs

State of Jharkhand and Others

RESPONDENT

Date of Decision : 02-05-2006

Acts Referred:

Bihar Land Reforms Act, 1950 — Section 4
Chotanagpur Tenancy Act, 1908 — Section 22

Citation : (2006) 4 JCR 127

Hon'ble Judges : Narendra Nath Tiwari, J

Bench : Single Bench

Advocate : Ramawatar Choubey, for the Appellant; Monoj Kumar, J.C. to Manjul Prasad, S.C. (L and C) and Suresh Kumar for the respondent No. 7, for the Respondent

Final Decision : Allowed

Judgement

N.N. Tiwari, J.—The petitioners in this writ application, have prayed for quashing the order dated 19.8.2003, passed in Misc. Revision Case No. 59 of 1995 by the Commissioner North Chhotanagpur Division, Hazaribagh, whereby the Commissioner has directed for cancellation of Jamabandi of the petitioners and instead to issue a Vasgeet Parcha.

2. The petitioners case is that they are by caste "Uraon" and the members of Scheduled Tribes and they are residents of Ranchi district and they migrated to Hazaribagh long back in the year 1915. The petitioners got settlement of land of Plot No. 1458/1172 appertaining to Khata No. 45, Village Khodaahar measuring an area 1520 acres from the ex-landlord in the year 1945. After the said settlement, the petitioners ancestors reclaimed the lands and had been cultivating the same. They had converted "tarn" lands into paddy growing lands by dint of their labour and on investment of considerable amount through the years. The petitioners had been paying rent by the ex-landlord in respect of the said land. Their names were also mutated by the Anchal office and they had been

paying rent to the State. In the meanwhile, in the year 19.1.71, the name of Name Kishore Gupta was inserted as raiyat in respect of the said land in Register-II without any order of the competent authority. When the petitioners came to know about the same, they filed an application complaining the said surreptitious inclusion of the name of Nand Kishore Gupta in the revenue record. The Circle Officer got the same inquired into by the Circle Inspector. Subsequently, the inquiry was also made by the Anchal Adhikari, Barhi. Both of them submitted enquiry report in favour of the petitioners. On that basis, learned I.R.D.C. recommended for restoration of the petitioners' name in Register-II. The Sub-Divisional Officer, Sadar Hazaribagh thereafter, directed for cancelling the rent receipt issued to Nand Kishore Gupta and further directed to restore the entry of the petitioners in demand register and to issue rent receipts in their names. The said order was challenged before the Additional Collector, Hazaribagh in Misc. Appeal No. 7 of 1989 by said Nand Kishore Gupta.

3. After hearing both the parties, learned Additional Collector, Hazaribagh dismissed the appeal affirming the order of the learned Sub-Divisional Officer, Hazaribagh. Said Nand Kishore Gupta, respondent No. 7 then preferred revision before the Commissioner, North Chhotanagpur Division, Hazaribagh, the same was registered as Misc Revision No. 59 of 1995. Learned Divisional Commissioner, Hazaribagh, by the impugned order has passed a peculiar order not only affirming the order of cancellation of rent receipt of Nand Kishore Gupta but also directing that in view of provision of Section 4(h) of the Bihar Land Reforms Act, the Jamabandi in the name of the petitioners be deemed cancelled and instead they may be issued a "Vasgeet Parcha" to the extent of their homestead.

4. According to the petitioners, the said order is wholly arbitrary, illegal and without jurisdiction. Learned Divisional Commissioner has no authority to cancel the petitioners long Jamabandi, as there is no deeming provision of Section 4(h) of the Bihar Land Reforms Act and the said provision has been misconstrued by the learned Commissioner. Since the petitioners have acquired valuable tenancy right in question and they are settled raiyat having occupancy right, the Commissioner has no jurisdiction to pass order of their ejectment from their raiyati holdings and to treat them as a privilege tenant for issuing a "Vasgeet Parcha" for their homestead land.

5. Learned Counsel for the State-respondents have filed counter affidavit contesting the claim of the petitioners. However, no provision of law has been brought on record, under which the Divisional Commissioner has got jurisdiction and power to cancel the long running Jarqabandi of the petitioners in exercise of power under the provision of Section 4(h) of the Bihar land Reforms Act. The respondents could not also make out any valid ground on the basis of which the petitioners can be treated as a privileged tenant in respect of only homestead land and get a "Vasgeet Parcha" only.

6. After hearing the learned Counsel for the parties and perusing the impugned

order, I find that learned Commissioner. Hazaribagh has proceeded on assumption and conjectures and has mechanically observed that the document of the petitioners does not appear to be genuine. No valid reason has been recorded for setting aside the order of the L.R.D.C. and the Additional Collector. Learned Commissioner has illegally cancelled the Jamabandi running in the name of the petitioners, which has been held to be validly created in his favour by the competent authority. There is no provision u/s 4(h) of the Bihar Land Reforms Act, which empowers any authority to pass the order of cancellation of Jamabandi, except on the ground and in accordance with the due procedure prescribed in the said provision of the Bihar Land Reforms Act and Rules framed thereunder. The petitioners, who admittedly are settled raiyats, have got occupancy right over the land in question and they have been in cultivating possession of the land since 1945. The petitioners cannot be ejected from their holding except by due procedure established by law, particularly as provided u/s 22 of the Chhotanagpur Tenancy Act. Learned Commissioner has also got no jurisdiction to hold any person a "privileged tenant" not coming within the definition as contained in the Bihar Privileged Persons Homestead Tenancy Act 1947 and in absence of any order passed under the said Act.

7. The order dated 19.8.2003, passed in Misc. Revision Case No. 59 of 1995 by the Commissioner, North Chhotanagpur Division, Hazaribagh is thus wholly arbitrary, illegal and without jurisdiction and is hereby quashed.

8. This writ application is, accordingly, allowed.