

(2019) 04 JH CK 0021

In the Jharkhand High Court

Case No : Writ Petition (c) No. 1944 Of 2017

Most Bishun Orain

APPELLANT

Vs

State Of Jharkhand And Ors

RESPONDENT

Date of Decision : 04-04-2019

Acts Referred:

Constitution Of India, 1950 — Article 226

Citation : (2019) 04 JH CK 0021

Hon'ble Judges : Sujit Narayan Prasad, J

Bench : Single Bench

Advocate : Ranjan Kumar, Aanya

Final Decision : Dismissed

Judgement

1. This writ petition is filed under Article 226 of the Constitution of India wherein order passed by the Commissioner, South Chhotanagpur Division, Ranchi in Ranchi Misc. Revenue Appeal No.84 of 2010 is under challenge by which the appeal preferred by the petitioner against the Jamabandi Cancellation Case No.12/2001-02/T.R.19/2001-02, by which the Jamabandi running in the name of Tale Bhagat with respect to land appertaining to Khata No.336, Plot No.2155, Area-0.47 acre of Village Bero, P.S. No.76, District Ranchi, is under challenge, whereby and whereunder instead of settling the land to the extent of 0.6 acres of land has been settled in favour of the petitioner while the aforesaid land was in possession and interest of the predecessor/petitioner since long.

2. It is further case of the petitioner that the aforesaid land of 0.47 acres had been settled in favour of one Shri Tale Bhagat, son of Jhirga Bhagat in the year 1985 but the settlement made in his favour has been cancelled when it was found by the revenue authorities that the said Tale Bhagat is not utilizing the land. After cancellation of the settlement made in favour of the said Tale Bhagat, the part of the aforesaid land to the extent of 0.6 acres have been settled in favour of the petitioner.

3. The petitioner's grievance is that when the land had been settled in favour of the said Tale Bhagat, the entire area of land ought to have settled in favour of the petitioner but having not done so the authorities have acted in arbitrary and illegal manner, therefore, the instant writ petition has been filed.

4. Ms. Aanya, learned A.C. to G.P.-IV, has submitted that the matter may not be entertained taking into consideration the nature of prayer as sought for by the petitioner which is in the nature of command/writ of certiorari to be issued upon the State-respondent seeking the direction for settlement of the land to the extent of 0.47 acres while the petitioner has got no legal vested right for settlement of land of a particular area.

She submits that even if the Government has made out a policy for the settlement of land, the Government being a competent body is to consider the case depending upon the position of each and every people of the society in order to extend benefit, in order to consider that aspect of the matter the Government, through his Competent Authority, has settled the area in favour of the petitioner with extent of 0.6 acres and, therefore, the petitioner cannot get by way of the right, claiming the settlement over the area which is settled in his favour.

She submits that the petitioner has prayed for cancellation of Jamabandi running in the name of Tale Bhagat and therefore the petitioner has got no locus to assail the cancellation of Jamabandi made in favour of the said Tale Bhagat erstwhile settlee, rather it is the case of cause of action to invoke the jurisdiction of the of the appropriate forum against the cancellation of Jamabandi.

5. Having heard the learned counsel for the parties and on appreciation of their rival submissions, it is evident from the materials available on record that it is not in dispute that the land in question had been settled in favour of one Tale Bhagat in the year 1985. The petitioner has raised the grievance before the Circle Officer, Bero for settlement of the land and on the basis of her application a proceeding has been initiated on the ground that the land which was settled in favour of the Tale Bhagat in the year 1985. She is residing along with the family since last 30 to 35 years.

6. The revenue authority has conducted the spot enquiry and taken statement of the local people and has found that the said Tale Bhagat has never in occupation of the land in question and, therefore, it was decided to cancel the Jamabandi running in the name of said Tale Bhagat and accordingly the same was cancelled and thereafter out of 0.47 acres of land was recorded in the Khatiyana as Gairmajaruwa land has been settled in favour of the petitioner to the extent of 0.6 acres.

The petitioner, with the settlement only a part of 0.47 acres of land, has approached before the appellate authority against the order passed by the original authority which has been registered as Ranchi Misc. Review Appeal No.84 of 2010 but he has declined to interfere with the order, therefore, the instant writ

petition.

7. The issue raised by the petitioner that when the entire land of 0.47 acres have been settled in favour of the said Tale Bhagat and it is on her application a proceeding has been initiated for settlement of land upon which she was residing for last 30 to 35 years, i.e. land which was settled in the name of said Tale Bhagat, the entire land of 0.47 acres ought to have been settled in favour of the petitioner.

8. The question herein is that as to whether the settlement can be demanded as a matter of right although the Government has formulated policy for settlement of the land in favour of the poorest person living in the society and the Government is to keep into consideration the condition of the other people residing in the society so that the minimum requirement of house to be provided by the Government.

9. Herein, the land admittedly, is recorded in the records of right as Gairmajuruwa Malik as the Government being the owner, as to what extent of land is to be settled in favour of a party is to be decided by the State.

10. Although herein, in the instant case the said land in question, to the extent of 0.47 acres, has been settled in the year 1985 in favour of one Tale Bhagat but he has not utilized the entire land since he has never come in possession of the same and the petitioner, since was residing in the aforesaid land, has made an application for the settlement of the entire land in her favour.

11. Question herein is that the Government after taken the decision, the petitioner is residing in the house which has been constructed in the area of 0.6 acres and therefore, has settled the aforesaid land in her favour so that he may not be displaced and deprived from the benefit of residential accommodation.

So far as the other part of the land since the Jamabandi recorded is in the name of said Tale Bhagat, has been cancelled, therefore, the Government has taken decision not to settle the said part of the land in favour of the petitioner.

12. This Court is of the view that merely non- settlement of the part of the said land in favour of the petitioner cannot be said to be arbitrary or illegal decision rather the competent authority of the State-respondent has taken decision to settle the land where the house of the petitioner is there.

The policy of settlement is also to make available the land in favour of the others, i.e. on the ground taken into consideration by the State-respondent being welfare state and therefore, if the Government has taken decision not to settle the 0.47 acres of land that cannot be said to be unjust and illegal decision.

The other point as has been pointed out by the learned counsel that the petitioner as also challenged the cancellation of Jamabandi which was made in favour of one Tale Bhagat and as such after cancellation of the same, the said Tale Bhagat can be said to be an aggrieved party of the petitioner.

This Court has found substance in the arguments because if the Jamabandi over the land in question made in favour of the said Tale Bhagat has been cancelled, the said Tale Bhagat has a cause of action and the aggrieved party to agitate the issue.

In the facts and circumstances of the case, this Court is not inclined to exercise the power of extraordinary jurisdiction conferred under Article 226 of the Constitution of India in the writ petition.

13. In view thereof, the writ petition lacks merit and is accordingly, dismissed.