
(1987) 07 PAT CK 0036
In the Patna High Court
Case No : C.W.J. No. 425 of 1980 (R)

Nakul Mahto and Others

APPELLANT

Vs

Chhuta Monjhi and Others

RESPONDENT

Date of Decision : 07-07-1987

Acts Referred:

Chotanagpur Tenancy Act, 1908 — Section 71A

Citation : (1988) 36 BLJR 74

Hon'ble Judges : S.B. Sinha, J

Bench : Single Bench

Judgement

S.B. Sinha, J.—In this writ petition, the orders as contained, in Annexures 4, 5 and 6 are under challenge which were passed by respondent Nos. 3, 4 and 5 respectively. The said respondents passed the aforementioned orders in purported exercise of the powers conferred upon them u/s 71-A of the Chotanagpur Tenancy Act whereby and where under it was directed that the lands in question be restored in favour of respondent Nos. 1 and 2.

2. For the purpose of disposal of this writ petition, it is necessary to state the facts at all as Mr. P. K. Prasad has raised a pure question of law. He submitted that, from a perusal of the order of the Executive Magistrate as contained in Annexure-4 to the writ petition, it would appear that a contentious question was raised, namely, as to whether respondent Nos. 1 and 2 are members of the Scheduled Tribe or not inasmuch as they are Manjhi by caste and the caste Manjhi has not been mentioned as member of the scheduled tribe in the Constitution Scheduled Tribes Order, 1950.

3. While an appeal was preferred, from the aforementioned order the appellate court merely found that Manjhi and Bedias are of same caste and the customs of Manjhi and Bedias are the same in the district. The revisional court merely quoted the order of the appellate court which is reproduced hereinbelow :

In the last survey record of rights many members of Bedias have been recorded

as Manjhis in this district. The customs of Manjhis and Bédias are same in this district. During that survey recording of caste had no importance. The survey authorities who surveyed into the Bédias of this district recorded the caste of the tenants according to their own reading. As a matter of fact, Manjhis and Bédias have got same culture and custom. Therefore, Manjhis and Bédias are same caste. Thus we find that the respondents are members of Scheduled Tribe.

4. From the aforementioned order of the appellate court and the revisional court, it is evident that they have not taken into consideration any evidence whatsoever as to whether Manjhis in this district are really Bédias by caste or they are members of the scheduled tribe or not. Manjhi cannot become a member of the scheduled tribe only because of the fact their custom and that of the Bédias are the same in the district. The appellate authority and the revisional authority are also not right in saying that during the last survey, recording of caste had no importance. In my opinion, both the appellate authority and the revisional authority have taken into consideration irrelevant matters and failed to take into consideration the relevant facts. If Manjhis are not mentioned as members of the scheduled tribe then the same has got to be held that in fact they are not members of the scheduled tribe. In the instant case, the appellate court and the revisional court have not referred to any evidence at all in the impugned orders. In this view of the matter, the impugned orders as contained in Annexures 5 and 6 to the writ petition are set aside and the matter is remanded back to respondent No. 5 for fresh consideration in accordance with law. The Executive Magistrate shall give an opportunity to the parties to adduce evidence as to whether respondent Nos. 1 and 2 are members of the Scheduled Tribe or not. This application is accordingly allowed with the aforesaid observation/direction, but, in the circumstances of the case, there shall be no order as to costs.