

(2012) 09 JH CK 0081

In the Jharkhand High Court

Case No : Writ Petition (PIL) No. 2154 of 2011

Rajendra Mahto

APPELLANT

Vs

The State of Jharkhand and Others

RESPONDENT

Date of Decision : 17-09-2012

Acts Referred:

Chotanagpur Tenancy Act, 1908 — Section 264, 63B

Citation : AIR 2013 Jhar 57 : AIR 2013 Jhar 53 : (2013) 1 AJR 766 : (2013) 1 JLJR 49

Hon'ble Judges : Prakash Tatia, J;Jaya Roy, J

Bench : Division Bench

Advocate : Shreeprakash Jha, Mr. Sunil Kumar Sinha, in W.P. PIL No. 2154/2011 and M/s. Chandra Deo Singh, Mr. Shailendra Kumar Singh and Mr. Pawan Kumar Sahu, in W.P. C No. 2541/2011, for the Appellant; Mr. R.R. Mishra (G.P.II), Mr. Ramprakash Singh, J.C. to G.P.II and Mr. Sameer Saurabh (for Intervenor), for the Respondent

Judgement

1. Heard learned counsel for the parties. A writ petition being W.P.(PIL) No. 2154 of 2011 has been filed by one Rajendra Mahto questioning the action of the respondents whereby the respondents have decided to construct a Block building in the village Chamrom, which is one of the village in the newly constituted Block Dulmi by carving out some area from the Ramgarh district so as to have one more Block within the Ramgarh District. The Dulmi Block consists of 10 Panchayats and one of the Panchayat is Dulmi also.

According to writ petitioner, vide Notification dated 08.8.2009 by which the new Block Dulmi was constituted in the Ramgarh district itself, it has been provided that the headquarters of the Dulmi Block shall be within the Dulmi Panchayat. It is submitted that since Dulmi is an identifiable place within the Dulmi Block being Dulmi village, therefore, Block should have been constructed within Dulmi village only. The contention of the writ petitioner is that due to influence of the respondent No. 5, who is a sitting Minister in the Government of Jharkhand, it was decided to construct the Block office building in the village Chamrom in place

of village Dulmi itself.

2. This Court entertained this Public Interest Litigation and on 20th June, 2011, after hearing both the parties, passed interim order staying the further construction at the place i.e., construction of the Block building in the village Chamrom.

3. The respondents submitted counter affidavit and the petitioner submitted reply to the counter affidavit. In the reply, the petitioner annexed a photo copy of information which the petitioner received under the provisions of the Right to Information Act, whereby it has been made clear that the Deputy Commissioner of the Ramgarh district, issued requisite order for construction of Block building in village Chamrom.

4. One another writ petition being W.P.(C) No. 2541 of 2011 has been filed by eight petitioners claiming that they are settlees of the land in dispute where the Block headquarters sought to be constructed by the State in the village Chamrom. According to writ petitioners, several pieces of land had been separately settled in favour of 26 persons, who are the members of Schedule Caste and Schedule Tribes. The petitioners paid the rent to the Government up-to the year 2008-09. However, on 14.02.2011, the respondent performed the "Bhoomi Pujan" for construction of Block headquarters building and on 15.2.2011, the Deputy Commissioner, issued requisite order for construction. Till that time, neither the petitioners' settlement was cancelled nor their "Jamabandi" was cancelled. The petitioners were not even evicted from the land in question and when the villagers came to know about this activity of construction of Block building on their land, they protested it. It has been stated by the respondents that respondents claimed that a spot enquiry was conducted on 08.4.2011 by five of the officers of the Government and they opined that land appears to be "Banjar" land. On the same day i.e., on 08.4.2011, a Miscellaneous Case No. 01/2011-12 was registered and on the same day, Anchal Adhikari passed the order and recommended for cancellation of settlement and Jamabandi which was in favour of the settlees since 1976-77 i.e., since last more than 35 years. Before passing the order dated 08.04.2011, neither information about any cancellation was given to the writ petitioners nor any notice was given for holding any enquiry with respect to the allegations as has been found true in the order dated 08.4.2011. The Anchal Adhikari sent a letter dated 09.4.2011 to the Land Reforms Deputy Collector informing about the above facts and the order dated 08.4.2011. The Land Reforms Deputy Collector in turn forwarded the recommendation of the Anchal Adhikari to Sub-Divisional Officer, Ramgarh vide letter dated 19.04.2011. On 21.04.2011, the Sub-Divisional Officer, Ramgarh passed the order of cancellation of Jamabandi of the writ petitioners including other settlees. The petitioner also placed on record one of the letter dated 08.04.2011, whereby the Deputy Commissioner, Ramgarh gave letter to the Deputy Development Commissioner, Sub-Divisional Officer, Land Reforms Deputy Collector, Anchal Adhikari and the concerned engineer of the Building

Construction Department, informing that some dispute arose on the spot of the proposed construction and the members of Schedule Caste and Schedule Tribes are claiming their settlement rights which they are claiming since 1976-77. It appears that because of this letter, all these proceedings were started and site was inspected on 08.04.2011 and one Miscellaneous Case No. 01/2011-12 was registered by Anchal Adhikari and he recommended for cancellation of Jamabandi and sent his recommendation to Land Reforms Deputy Collector, who forwarded it to Sub-Divisional Officer, who, in turn, cancelled the Jamabandi of other settlers.

The petitioners' contention is that the petitioners are in possession of the land in question since last more than 35 years and this fact has been admitted by the Anchal Adhikari in his order dated 09.4.2011 specifically and, therefore, there is no dispute with respect to the rights of the petitioners and other similarly situated persons, whose land has been cancelled by these orders. It is submitted that petitioners were paying rent continuously to the State Government till the year 2008-09. The respondents did not give any notice before holding any spot enquiry and they inspected the site at the back of the writ petitioners and registered the case being Miscellaneous Case No. 01/2011-12 on the same day i.e., on 08.4.2011 and passed the order the Anchal Adhikari recommending for cancellation of Jamabandi of their land and thereafter, the Land Reforms Deputy Collector also recommended for cancellation and the Sub-Divisional Officer blindly followed those recommendations and without affording any opportunity of hearing to the writ petitioners, passed the order of cancellation of their Jamabandi. According to learned counsel for the petitioner in writ petition being W.P.(C) No. 2541 of 2011, the said order is void ab initio and deserves to be set aside only on the ground of violation of principles of natural justice.

5. Learned counsel for the State drew our attention to the facts mentioned in the order and submitted that from the order dated 08.08.2009 itself, annexure-1. it is clear that a new Block named Dulmi created within the district Ramgarh. The headquarters was declared to be within this new Block of Dulmi and it was not declared that the headquarters building will be in the village Dulmi itself. The village Chamrom is a part of Dulmi Panchayat and after holding an enquiry and after taking views of the villagers as back as on 3.08.2010, in view of the communication issued by the Deputy Commissioner, Ramgarh, the matter was inquired with respect to the selection of the spot for construction of building in question and it was found that in Dulmi village, sufficient Government land is not available whereas in the village Chamrom, 30 acres of Government land is available. In view of this recommendation, dated 05.2.2011, the Deputy Commissioner, took the decision for construction of Block building in question in the village Chamrom which is within the Dulmi Panchayat. Therefore, nothing wrong has been done. It is also submitted that in view of the above reasons, there is no need to issue notice to other respondents. It is also submitted that it is the decision of the State Government to have a new Dulmi Block in the Ramgarh district and it is administrative decision of the officers of the

Government where the Block building should be constructed. It is submitted that annexure-1, dated 08.08.2009, cannot be read to mean that the headquarters building cannot be at any other village of the Dulmi Panchayat and it should be only within the Dulmi village irrespective of the fact that in Dulmi Panchayat, there are other villages like Chamrom, which has been found more suitable by the Government in administrative side. It is also submitted that the allegations against the sitting Minister of the Government are vague.

6. In W.P.(C) No. 2541 of 2011, learned counsel for the State relied upon the order passed by the concerned authorities and submitted that it is a disputed question whether the disputed land in question belongs to the writ petitioners or not and therefore, they should have preferred the appeal- It is submitted that Section 63B of the Chota Nagpur Tenancy Act, 1908, empowers the State Government to cancel the land which has not been cultivated within five years from the date of the settlement and once the settlement is cancelled u/s 63-B of the Act of 1908, the land vest in the State Government and it can be utilized for any purpose which include resettlement of land to any eligible person. It is submitted that the Government in larger public interest decided to put this land for a better public use instead of resettling it to any villager. It is also submitted that in view of the above reasons, these writ petitions, preferred by the writ petitioners, may be dismissed on the ground of availability of alternative remedy as well as on the ground of power of revenue authority in the matter of cancellation of the settlement.

7. It will be appropriate to mention here that in W.P.(PIL) No. 2154 of 2011, one Interlocutory Application being I.A. No. 82 of 2012 has been submitted by as many as 33 villagers including Mukhiya of Dulmi Panchayat and along with this I.A., photo copy of one Resolution dated 07.3.2011 has been annexed conveying that a meeting of the villagers and the settlees was convened by Mukhiya of Dulmi Panchayat namely Vinita Devi and all persons decided to give the land for construction of the Block headquarters building. This Resolution has been signed by about 35 persons, some of whom have put their signature on it. By this I.A., it has been submitted that all villagers of Dulmi Panchayat wanted that in Dulmi Panchayat, headquarters building may be constructed in village Chamrom which is being disputed by the petitioners of these two writ petitions.

8. We have considered the submissions of the learned counsel for the parties and perused the documents placed on record. We may consider first, the W.P.(C) No. 2541 of 2011.

Undisputed facts are that the petitioners are members of Schedule Caste and Schedule Tribes. The land in question has been settled in favour of these petitioners as back as in the year 1976-77. This fact is an admitted fact as has been admitted by the Anchal Adhikari in his letter dated 8.4.2011 which gave full details of the land including other settlees, who are total 17 in number. Anchal Adhikari also gave particulars of the area as well as the year in which the land was settled which appears to be from 1976-77. The recommendation of Anchal

Adhikari was forwarded to Land Reforms Deputy Collector, who also did not dispute the settlement of land in favour of the petitioners and others but he incorporated the schedule of particulars of the settlees given by the Anchal Adhikari in his order, dated 19.04.2011 and thereby reconfirmed the right of the petitioners over the land in question. The recommendation of Land Reforms Deputy Collector was accepted by the Sub-Divisional Officer in his order dated 25.4.2011, and therefore, three authorities concurrently held that the petitioners, including other persons were the settlees and had a right under the Chota Nagpur Tenancy Act, 1908 over the land in question.

9. Now, question arises whether the lands settled in favour of the settlees, as back as in the year 1976-77, could have been cancelled by the revenue authorities in the manner in which it has been done? This fact is also not in dispute that proceedings were initiated much after the Bhoomi Pujan" conducted on the land in dispute on 14.02.2011 and after issuance of the order of the construction dated 15.02.2011. Therefore, it appears that the revenue authorities, without looking into the revenue records, proceeded to start for construction over the land of the petitioners and other settlees. However, it was resisted by the villagers, obviously by the petitioners immediately, as it is apparent from the letter of the Deputy Commissioner dated 01.04.2011 wherein it has been mentioned that on the spot, where they are going to construct the building, the public has raised objection and they are claiming that they are settlees of 1976-77. Because of the letter dated 01.04.2011, in hot haste on 08.04.2011, these five officers may have inspected the site but without notice to the petitioners and may be without notice to other settlees. In the order dated 08.04.2011, passed by the Anchal Adhikari, it has been mentioned that land has already been handed-over for construction of the building and when they reached on the spot, nobody claimed right over the land. In spite of the fact that the Anchal Adhikari himself had knowledge that the land in question belongs to the petitioners and other settlees and the lands were settled as back as in the year 1976-77, in that situation, if nobody has raised any claim over the land in dispute, then certainly that may be because of the reason that the settlees had no knowledge of the site inspection. Otherwise also, it is not mentioned in the order dated 08.04.2011 that prior to said inspection, the settlees were given any information about site inspection. The Anchal Adhikari in his order mentioned that the land has not been cultivated since last 30 years but that finding is also at the back of the settlees. The Anchal Adhikari recorded that some of the settlees and Raiyats and their successors offered their land for construction of the building and for that purpose they have submitted a written request. How these persons got the information of site inspection or whether they were also knowing about site inspection is not clear from the order.

10. Be it as it may be, after site inspection, before passing order dated 08.04.2011, no notice was given to any of the settlee. The matter was recommended to the Land Reform Deputy Collector who also did not give any notice or opportunity of hearing to these settlees and the same procedure was

adopted by the Sub-Divisional Officer and even before passing of order of cancellation of Jamabandi, no opportunity of hearing was granted to any of the settlee including the petitioners and it appears that the entire process was totally a colourable exercise of power by the authorities and it appears, so as has been done because of the reason best known to these authorities as they decided to construct the Block headquarter building on the land in question. It appears to be either without finding out the right of the petitioners over the land in question or it may be for any other reason.

11. u/s 264 of the Chhotanagpur Tenancy Act, 1908, Chhotanagpur Tenancy Rules, 1959 have been framed wherein it has been provided how the requisite notice will be served on the parties in a case where any action is required to be taken under the Act of 1908. Even in absence of any provision of opportunity of hearing to any of the settlee or Raiyat in statute, it is mandatory requirement of principles of natural justice that he be given opportunity of hearing before passing any order of cancellation of his rights under the Act of 1908 and particularly, when there are rights of Raiyats or rights of a settlee. In view of the gross violation of principles of natural justice, we are of the considered opinion that in peculiar facts of the case where the petitioners are members of Schedule Caste and Schedule Tribes, there is no need to relegate them so as to direct them to prefer appeal against the order in question when this order has not been justified by the State Government by showing that the principles of natural justice has not been violated before cancellation of the land in question which are vesting in the writ petitioners and other Raiyats.

12. At this juncture, we may observe here that from the very beginning it has been noticed by the revenue authorities themselves that there are two groups in the village and, therefore, in that fact situation, it was all the more necessary for the revenue authorities to take care in the matter of construction of the building. There may be several persons who may decide to do philanthropy work of public importance but there are large number of persons who would like to see this type of philanthropy work in others' land and will not give their own land. Therefore, any person who had no interest in the land in question, had no right to offer and donate the land for even this public purpose. Such intentions when were known to the revenue authorities and such intentions have already been taken note of in all proceedings by the revenue authorities, then in that situation, the learned counsel for the writ petitioners were right in submitting that it is colourable exercise of power by the authorities and that can be at the behest of some other persons. To avoid any controversy which may be between two groups of the parties, we have confined ourselves in this order only to the legal aspect of the matter and we are of the considered opinion that it is a case of gross violation of principles of natural justice as well as colourable exercise of power by the authorities and by taking proceeding from 08.04.2011 starting from the letter of the Deputy Commissioner, Ramgarh, the proceeding taken by the Anchal Adhikari and the Land Reform Deputy Collector and the Sub-Divisional Officer, Ramgarh appears to be only desperate effort of covering up the wrong which has

already been committed by them by starting a "Bhoomi Pujan" on 14.02.2011 on the land of the writ petitioners and other persons who were settlees of the land of 1976-77.

13. So far as contention of the counsel for the State that it was a duty of the writ petitioners to not only plead the true facts of their cultivation over the land in question is concerned, we are of the considered opinion that there is no fact mentioned in the order dated 08.04.2011 passed by the Anchal Adhikari, and the order passed by the Land Reform Deputy Collector and final order dated 25.04.2011, passed by the Sub-Divisional Officer, Ramgarh that how they reached to the conclusion that the land in question was not cultivated in first five years from the year 1976-77. They merely mentioned that at present there appears to be land lying Banjar. The agricultural land may be used when there are sufficient rain and in case the land is not irrigated and for rest of the time, the land may remain idle without any crop without even symbol of possession. The revenue authorities also did not take any action against settlees since 1976-77 and all of a sudden, they became wise after the alleged "Bhoomi Pujan" and immediately within a period of eight days the Anchal Adhikari, without notice to any aggrieved party, completed the proceedings and on the same day on 08.04.2011, recommended for cancellation of the rights of the petitioners over the land in question and that has been followed by the Sub-Divisional Officer without application of mind and by violating the principles of natural justice, therefore, the order passed by the Sub-Divisional Officer dated 25.04.2011, being void ab initio, is held so and quashed. In view of the above reasons, the respondents are restrained from constructing the building in question over the land of the settlees.

14. In view of the decision given in W.P.(C) No. 2541 of 2011, we need not to pass any order in W.P.(PIL) No. 2154 of 2011 wherein the question of selection of the place for construction of the Block building of a newly created Block is under challenge and this issue is left open because of the relief granted to the settlees of the land in question and, therefore, W.P.(PIL) No. 2154 of 2011 is disposed of without any order. In view of the order passed in W.P.(C) No. 2541 of 2011, the respondents are restrained, in addition to setting aside of the order dated 25.04.2011, passed by the Sub-Divisional Officer, Ramgarh, from raising any construction on the land of the petitioners and the respondents are directed to restore the land in question to its original position and hand over the possession of the land in question to the writ petitioners of W.P. (C) No. 2541 of 2011 to the extent of their settlement.