

(2015) 02 JH CK 0035
In the Jharkhand High Court
Case No : Writ Petition(C) No. 2458 of 2013

Ramji Ojha

APPELLANT

Vs

State of Jharkhand and Others

RESPONDENT

Date of Decision : 12-02-2015

Acts Referred:

Citation : (2015) 2 JLJR 153

Hon'ble Judges : S. Chandrashekhar, J.

Bench : Single Bench

Advocate : P.K. Mukhopadhyay, for the Appellant; Manoj Kumar, S.C. and Ashutosh Kumar Singh, J.C. to S.C., Advocates for the Respondent

Final Decision : Dismissed

Judgement

S. Chandrashekhar, J.—Seeking a direction upon the respondent No. 4-Circle Officer, Sahebganj for assessing the rent for the land settled vide order dated 13.02.1973 in Settlement Case No. 38 of 1967-68, the present writ petition has been filed.

2. The brief facts narrated in the writ petition are that, the petitioner who was in army service, on the recommendation dated 02.05.1967 of the Commanding Officer for settlement of land, was settled land admeasuring about 15 Bigha, 7 Katha and 19 Dhur at Mouza Kelabadi Dag No. 1431 in Settlement Case No. 38 of 1967-68 and a recommendation for issuance of Purcha was issued vide order dated 13.02.1973. The petitioner superannuated from service on 30.04.1980 and thereafter, he applied for renewal of lease on 21.06.1985 vide Lease Case No. 26 of 1985-86 and the petitioner was directed vide order dated 09.07.1987 to produce all the relevant papers for grant of lease. In the meantime, a show-cause notice was issued to the petitioner on 24.08.1990 to which the petitioner submitted reply on 09.09.1990. After considering the reply of the petitioner, the Deputy Commissioner cancelled the settlement in favour of the petitioner vide order dated 10.10.1990. The petitioner represented before the Sub-Divisional Officer and the Circle Officer vide representations dated 17.07.1989, 12.04.1990,

10.05.1990, 30.11.1992, and 27.10.1997 and, thereafter, the present writ petition has been filed.

3. A counter-affidavit has been filed on behalf of the respondent-State of Jharkhand alleging suppression of material facts by the writ petitioner. It is stated that though the settlement was cancelled vide order dated 10.10.1990 by the Deputy Commissioner, the said fact has been suppressed by the petitioner in the writ petition. It is further submitted that vide settlement dated 13.02.1973, the petitioner was required to pay rent after 5 years of such settlement however, the petitioner did not pay rent and therefore, after issuing notice to the petitioner vide order dated 10.10.1990, the settlement made in favour of the petitioner on 13.02.1973 has been cancelled by the Deputy Commissioner.

4. Heard the learned counsel appearing for the parties.

5. The learned counsel appearing for the petitioner submits that after the settlement was made in favour of the petitioner on 13.02.1973, an encroachment case was initiated against one Basu Gope and in the said proceeding, after the said Basu Gope made a statement that he has no claim over the land in question, the said proceeding was dropped. Thereafter, the petitioner made several representations on 17.07.1989 and thereafter, however, no decision was taken by the respondent-State of Jharkhand and therefore, compelled, the petitioner has approached this Court.

6. In reply, the learned counsel appearing for the respondent-State of Jharkhand reiterated the stand taken in the counter-affidavit and submitted that since settlement in favour of the petitioner was conditional upon payment of rent after 5 years, which the petitioner admittedly, did not pay and therefore, after issuing show-cause notice, the settlement has been cancelled vide order dated 10.10.1990.

7. In reply, the learned counsel for the petitioner submits that in view of letter dated 18.06.1982, the petitioner was not required to pay rent during his service tenure rather, he was required to pay rent 5 years after his retirement or after he left the service. In these facts, the learned counsel for the petitioner has submitted that a direction may be issued to the respondent-State of Jharkhand for fixation of rent for land comprised in settlement dated 13.02.1973.

8. I have carefully considered the submissions of the learned counsel for the parties and perused the documents on record.

9. Paragraph Nos. and in letter dated 18.06.1982 are extracted below:

"2. Land for the purpose of agriculture or residence shall be given to all categories of members of armed forces, as mentioned above, it shall be given only in rural areas.

Pursuant to earlier decision, settlement of the land shall be done without Salami (amount of rent paid in lump-sum against settlement). Whereas the matter of

annual rent is concerned, those members of armed forces who are deployed under Arms Force, the annual rent shall not be charged from them till five years, provided they continued to be in service of armed forces for five years from the date of settlement. If the members of armed forces have sacrificed their life for the nation, or left the service after sustaining injury in war or being handicapped in the service, then no annual rent shall be realised from their family members till next five years from the date of settlement, but those members of armed forces who have been removed from the service due to some other reasons or retired from the service after completion of service, they shall have to pay annual rent with effect from the date of leaving the service of members of armed forces. The members of armed forces as mentioned in above para No.- and shall have to pay annual rent with effect from the date of settlement."

10. From the above provisions, it is apparent that a person employed in Army service, if he continues in service five years after the allotment, then he would have to pay rent five years after the date of settlement and thus, rent for first five years have been waived of. In view of the fact that, the family members of an Army personnel who died in war etc. or who was discharged due to injury while on duty have been granted exemption from paying rent for five year, the contention that the petitioner was required to pay rent after he retired from service is untenable.

11. From the materials brought on record, I find that the settlement was made in favour of the petitioner on 13.02.1973 and he was put in possession however, he did not pay rent for the same even after he superannuated from service. The petitioner superannuated from service on 30.04.1980 and he allegedly applied for renewal of lease on 21.06.1985. The stand taken by the petitioner is contradictory in as much as, when he did not pay rent for the settlement and no lease-deed was executed in favour of the petitioner, there was no occasion for the petitioner to apply for the renewal of lease. Since, the petitioner failed to pay rent for the settlement of the land vide settlement dated 13.02.1973, a show-cause notice was issued to the petitioner on 24.08.1990 and after considering the show-cause reply of the petitioner, the Deputy Commissioner cancelled the settlement vide order dated 10.10.1990. The petitioner has failed to explain the delay of more than 17 years in not paying the rent for the settlement in Settlement Case No. 38 of 1967-68. From the materials brought on record, it appears that the petitioner made his first representation on 17.07.1989 however, the present writ petition has been filed only on 18.04.2013 and no reason has been assigned for the laches and delay on the part of the petitioner in approaching this Court after more than 14 years. In view of letter dated 18.06.1982 and the fact that the settlement has already been cancelled, no relief can be granted to the petitioner.

12. I find no merit and accordingly, the writ petition is dismissed.