
(2022) 08 JH CK 0050

In the Jharkhand High Court

Case No : Writ Petition (C) No. 2120 Of 2007

Sanju Turi And Others

APPELLANT

Vs

State Of Jharkhand & Others

RESPONDENT

Date of Decision : 25-08-2022

Acts Referred:

Santhal Parganas Tenancy (Supplementary Provisions) Act, 1949 — Section 28, 28(a), 28(b), 28(c), 28(d)

Citation : (2022) 08 JH CK 0050

Hon'ble Judges : Dr. Ravi Ranjan, CJ; Sujit Narayan Prasad, J

Bench : Division Bench

Advocate : Kundan Kumar Ambastha, Rakesh Kr. Shahi, Nipun Bakshi

Judgement

Sujit Narayan Prasad, J

1. With consent of the parties, hearing of the matter was done through video conferencing and there was no complaint whatsoever regarding audio and visual quality.

2. The following issue has been referred by a learned Single Judge of this Court to a Division Bench :-

Whether the judgment and order passed in Sheikh Allauddin & Others v. State of Bihar & Others [2000 (2) BLJR 1084] by the Patna High Court which has been subsequently followed by this Court in Baldeo Mandal v. The State of Bihar & Others [2006 (3) JLJR 663] or the order passed in Mihir Kumar Jha Vs. The State of Bihar & Others [1997 (1) PLJR 716] will govern the field in respect of settlement of waste land and vacant holdings in favour of Jamabandi Raiyats or Permanent Raiyat or Permanent Resident of the village and recorded in the Records of Right.

3. The writ petition has been filed seeking for the following relief :-

“(1) That in the instant writ petition, the petitioners pray for issuance of an

appropriate writ (s)/ rule (s)/ order (s) / direction (s) for quashing the order No.20/2005 dated 13.04.2005 passed by the Deputy Commissioner, Deoghar in Misc. Case No.55/98-99 contained in Annexure-4 to the writ petition by which the Respondent No.3 has illegally allowed settlement of the lands measuring 2.12 acres out of Dag No.128 of Khata No.41 situated at Mouza-Karnibad P.S. Kunda, Dist. Dumka (Now Deoghar) in favour of the Respondent No.6 contrary to the provision contained in Section 28 of the Santhal Pargana Tenancy Act although the Respondent No.6 is neither Jamabandi Raiyat nor permanent resident of the said village and for quashing the order dated 19.02.07 passed by the Commissioner, Santhal Pargana Division, Dumka in R.M.A. No.32/05-06 contained in Annexure-5 to the writ petition by which the Respondent No.2 has illegally dismissed the appeal filed by the petitioners on absolutely irrelevant consideration of the materials on the record and for such other relief or reliefs to which the petitioners are legally entitled to."

4. The petitioners claim themselves to be the Jamabandi Raiyats of Mouza Karhanibad, P.S. Kunda, District Dumka (now Deoghar) and belong to the members of Scheduled Caste community.

A piece of land measuring an area of 2.95 acres, out of Plot No.128 appertaining to Jamabandi No.41 of Mouza Karnibad stood recorded as Parti Kadim in the last Gantzer's settlement records. Out of 2.95 acres, 2.50 acres of land was settled in favour of the grandfather of the petitioners along with other Raiyats, vide order dated 28.10.1940 passed by the Sub-Divisional Officer, Deoghar in Settlement Case No.86/39-40, delivery of possession was also given to the settlee with respect to the aforesaid lands.

The writ petitioners came into possession of the said land and while in possession, the Respondent No.6, namely, Girish Kumar Dubey, an ex-serviceman and resident of another village, namely, Puwari Kothia, P.S. Jasidih, District Deoghar, applied for settlement of the lands which was in the possession of the petitioners, being registered as Settlement Case No.41/1997-98.

The Sub-Divisional Officer, Deoghar, vide order dated 12.12.1998, recommended for settlement of 2.12 acres of land out of Dag No.128 of Khata No.41 of the said village in favour of Respondent No.6.

The Deputy Commissioner did not accept the report of Sub-Divisional Officer and made enquiry on the point that since the Respondent No.6 is resident of another village, why he did not chose to get settlement of the land in his own village and sent back the record to the Sub-Divisional Officer for fresh enquiry into the matter vide order dated 07.06.2000.

The Sub-Divisional Officer conducted an enquiry relating to Settlement Case No.41/97-98 and vide letter dated 21.03.2005 sent the report proposing therein that the land should not be settled with the Respondent No.6 and accordingly, recommendation was not made for settlement of the said land in favour of Respondent No.6.

The issue was remanded back to the Sub-Divisional Officer, Deoghar for further enquiry. The Sub-Divisional Officer, Deoghar directed the Circle Officer, Deoghar to conduct an enquiry afresh. The Circle Officer, in its report had recommended for settlement of the land in favour of Respondent No.6.

The writ petitioners, being aggrieved with the said report, made objection raising the issue about resident of another village and not a Jamabandi Raiyat. But the Deputy Commissioner passed the order of settlement in favour of Respondent No.6.

5. The matter was heard by learned Single Judge of this Court on 07.11.2019. In course of argument, learned counsel for the petitioner relied upon a judgment rendered by Patna High Court in the case of Sheikh Allauddin & Others v. State of Bihar & Others (supra), relying upon paragraph 4 and 5 thereof which read as under :-

"4. Section 28 of the Act contemplates that regard shall be had to the following considerations in addition to the principals recorded in the record-of-rights:

(a) fair and equitable distribution of land according to the requirements of each raiyat and his capacity to reclaim and cultivate;

(b) any special claim for services rendered to the village community, society or State;

(c) contiguity or proximity of the wasteland to jamabandi land of the raiyat;

(d) provision for landless labourers who are bona fide permanent residents of the village and are recorded for a dwelling house in the village.

5. All the pre-requisites for settling Wasteland and vacant holdings connote that the settle must be a jamabandi raiyat or must be permanent raiyat or must be permanent resident of the village and they are recorded in the records of right. From the materials on record, it appears that the Sub-divisional Officer before making the settlement of the land in question in favour of the petitioners had not even called for a report from the village Pradhan nor had verified the records of right. There is nothing in the writ application to show that the petitioners are jamabandi raiyats of the village and they have been recorded under Clause 16 of the records of right."

The learned Single Judge has also referred that on the basis of the judgment rendered by Patna High Court in Sheikh Allauddin & Others v. State of Bihar & Others (Supra), this Court has also passed an order in Baldeo Mandal Vs. The State of Bihar & Others (Supra).

The learned counsel for the respondent has relied upon a judgment rendered by the Patna High Court in Mihir Kumar Jha Vs. The State of Bihar & Others (Supra) relying upon paragraph 13 thereof which reads as under :-

"13. For the reasons aforesaid the order of the Deputy Commissioner cancelling

the settlement of wasteland with petitioner as also the order passed by the Commissioner cannot be sustained in law. In my opinion, the settlement made by the Sub-divisional Officer is not against any of the mandatory provisions of the said Act. In other words, the said Act does not in express term debar the authorities to make settlement of wasteland with non-jamabandi raiyats. In the result this writ application is allowed and the impugned orders dated 22.03.1985 and 20.05.1985 passed by the Deputy Commissioner and the Commissioner of Santhal Parganas as contained in Annexures 1 and 2 respectively are quashed."

6. The learned Single Judge, after taking into consideration the conflicting views in the judgments while making interpretation of Section 28 of the Santhal Parganas Tenancy Act, 1949, referred the matter before the Division Bench of this Court for the purpose of authoritative pronouncement on the said issue.

7. We have heard the learned counsel for the parties, perused the record and also gone through the judicial pronouncements, as referred hereinabove.

8. The conflicting views in both the judgments are with respect to the provision of Section 28 of the Santhal Parganas Tenancy Act, 1949. Therefore, Section 28 of the Santhal Parganas Tenancy Act, 1949 is required to be referred herein which reads as under :-

"28. Principles to be followed in settling waste land or vacant holdings – In making settlement of waste land or vacant holdings regard shall be had to the following considerations in addition to the principles recorded in the record-of-rights,-

(a) fair and equitable distribution of land according to the requirements of each raiyat and his capacity to reclaim and cultivate;

(b) any special claim for services rendered to the village community, society or State;

(c) contiguity or proximity of the waste land to jamabandi land of the raiyat;

(d) provision for landless labourers who are bona fide permanent residents of the village and are recorded for a dwelling house in the village."

The provision of Section 28 speaks about settling of waste land or vacant holdings and while exercising such power, the consideration to the conditions stipulated therein, in addition to the principles recorded in the record of rights, are required to be followed i.e., (a) fair and equitable distribution of land according to the requirements of each raiyat and his capacity to reclaim and cultivate, (b) any special claim for services rendered to the village community, society or State, (c) contiguity or proximity of the waste land to jamabandi land of the raiyat and (d) provision for landless labourers who are bona fide permanent residents of the village and are recorded for a dwelling house in the village.

9. The Patna High Court, while delving upon the issue about interpretation of

Section 28 of the Santhal Parganas Tenancy Act, 1949 in the case of Sheikh Allaiddin & Others v. State of Bihar & Others (Supra) has come to the finding as under paragraph 5 thereof to the effect that all the pre-requisites for settling wasteland and vacant holdings connote that the settlee must be a jamabandi raiyat or must be permanent raiyat or must be permanent resident of the village and they are recorded in the records of right. It has further been stipulated that the Sub-divisional Officer before making the settlement of the land in question in favour of the petitioners had not even called for a report from the village Pradhan nor had verified the records of right. There is nothing in the writ application to show that the petitioners are jamabandi raiyats of the village and they have been recorded under Clause 16 of the records of right.

On the other hand, in the judgment rendered in the case of Mihir Kumar Jha Vs. The State of Bihar & Others (Supra), it has been laid down while quashing the order passed by the Deputy Commissioner cancelling the settlement of waste land with the petitioner of the aforesaid case as also the order passed by the Commissioner, on the ground that the settlement made by the Sub-divisional Officer is not against any of the mandatory provisions of the said Act. The interpretation of Section 28 has been made to the effect that the aforesaid provision does not in express term debar the authorities to make settlement of waste land with non-jamabandi raiyats.

Thus, in the case of Sheikh Allaiddin & Others v. State of Bihar & Others (Supra), the law has been laid down for not settling the land in favour of non-Jamabandi Raiyat. While in the case of Mihir Kumar Jha Vs. The State of Bihar & Others (Supra), it has been laid down that the provision of Section 28(b) does not in express term debar the authorities to make settlement of waste land with non-jamabandi raiyats.

10. We have considered the provision of Section 28, wherefrom it transpires that in making settlement of waste land or vacant holdings, the consideration of conditions as referred under (a), (b), (c) and (d) in addition to the principles recorded in the record of rights, are required to be followed.

The stipulation made therein with respect to the word "in addition to the principles recorded in the record of rights" clarifies that apart from the principles recorded in the record of rights, the conditions stipulated as under (a), (b) (c) and (d) are also to be considered while making settlement of waste land.

It further appears, by going through the condition stipulated under Section 28 (a), (c) and (d), that reference of "Raiyat/ residents of the village" has been made, meaning thereby, the waste land can be settled in favour of a "Raiyat/ residents of the village" by taking into consideration the conditions stipulated as under Section 28 (a), (c) and (d).

But, when this Court considered the condition stipulated under Section 28 (b), found that "Raiyat/ residents of the village" has not been referred therein, rather, the settlement can also be provided to be made in case of any special claim for

services rendered to the village community, society or State.

11. This Court has also considered the principles recorded in the Record of Rights since under Section 28, it has been referred that in addition to the principles recorded in Record of Rights, the conditions as under (a), (b), (c) and (d) of Section 28 of the Act to be followed, as referred under Part-II under caption heading "Rights and Duties of the Raiyats" wherein it has been provided that the village community has joint rights over the waste land of the village. Jamabandi Raiyats have a preferential rights to the settlement of it for reclamation. No waste land may be settled with a non-Jamabandi Raiyat without the consent of the Sub-Divisional Officer and the proprietor. The relevant portion of the same is being referred hereunder:-

"(a) The village community has joint rights over the waste land of the village. Jamabandi raiyats have a preferential rights to the settlement of it for reclamation. No waste land may be settled with a non-Jamabandi raiyat without the consent of the subdivisinal officer and the proprietor."

Thus, it is evident that the principles recorded in the Record of Rights does stipulate that the waste land can be settled with non-Jamabandi Raiyats but with the consent of the Sub-Divisional Officer and the Proprietor.

The word "Proprietor" in the present scenario, i.e., after vesting of Jamabandi after enactment of Bihar Land Reforms Act, 1950, will not be applicable, since the State will be treated to be Proprietor after vesting of the land in it. Therefore, the Sub-Divisional Officer, being the functionary of the State, will have jurisdiction to grant such consent for settlement with a non-Jamabandi Raiyat.

12. Thus, after considering the stipulation made in the Record of Rights, as quoted and referred hereinabove, according to our considered view, the waste land can be settled even in favour of the non-Jamabandi Raiyat but with the consent of the Sub-Divisional Officer.

13. Therefore, the view expressed by the Patna High Court in Sheikh Allauddin & Others v. State of Bihar & Others (Supra) and this Court in Baldeo Mandal Vs. The State of Bihar & Others (Supra), according to our considered view, since has been based without taking into consideration the implication of the Record of Rights, therefore, cannot be considered to be a good law.

14. This Court, after taking into consideration the stipulation made in Record of Rights, is of the view that the condition as under Section 28(b) of the Act, has been inserted to take care of settlement of waste land even in favour of non-Jamabandi Raiyats.

15. Considering the same, the view expressed by the Patna High Court in Mihir Kumar Jha Vs. The State of Bihar & Others (Supra), since has opined by making reference of Section 28(b) of the Santhal Parganas Tenancy Act, 1949 that mandatory provision of the said Act does not in express term debar the authorities to make settlement of the waste land with non-Jamabandi Raiyats, is

to be considered to be a good law.

16. Accordingly, the issue is answered.

17. Having held as above, now we direct that the matter be placed before the appropriate Bench having jurisdiction to hear and decide it.