

(2003) 03 JH CK 0004
In the Jharkhand High Court
Case No : CWJC No. 3113 of 1995 (R)

Santan Shukla and Others	Vs	APPELLANT
State of Bihar and Others		RESPONDENT

Date of Decision : 11-03-2003

Acts Referred:

Bihar Land Reforms (Fixation of Ceiling Area and Acquisition of Surplus Land) Act,
1961 — Section 37

Citation : (2003) 4 JCR 379

Hon'ble Judges : Tapen Sen, J

Bench : Single Bench

Advocate : K.K. Sahay, for the Appellant; R.R. Mishra, GP II and Kiran Burman, JC to GP II, for the Respondent

Final Decision : Allowed

Judgement

Tapen Sen, J.—In this Writ Application the petitioners have prayed for quashing the report dated 11.8.1995 of the Circle Officer, Daltonganj (respondent No. 3) as contained at Annexure 5 and also the Order dated 18.10.1995 passed thereupon by the Deputy Commissioner, Palamau, (respondent No. 2), whereby and where-under he came to the conclusion that the lands had been settled in violation of the provision of the Bihar Land Reforms (Fixation of Ceiling Area and Acquisition of Surplus Land) Act, 1961 (hereinafter referred to for the sake of brevity as the Ceiling Act). He accordingly cancelled the settlements which had been made in favour of the petitioners and further directed the Circle Officer to take possession of the records and to send recommendation to the sub-divisional officer for purposes of distribution of the lands in question to persons of the appropriate category. The Deputy Commissioner also observed that if the opposite parties therein had any thing to say then they could do so by filing an appeal under the provision of 37 of the Ceiling Act.

2. The aforementioned order was passed on 18.10.1995, Mr. K.K. Sahay, learned counsel for the petitioners has stated that by a gazette notification published on

8.9.1995, Section 37 of the Ceiling Act was deleted. The aforementioned gazette notification was communicated to all Divisional Commissioners, Additional Collectors and Deputy Commissioners by forwarding a letter dated 26.9.1995. In support of the aforesaid contentions, Mr. Sahay draws attention of this Court to Annexure 6 (running pages 61 to 64 of the Writ Petition).

3. From a perusal of the impugned order of the Deputy Commissioner as also the contents of Annexure 6 (the forwarding letter) and also upon reading the gazette notification (relevant portion at running page 64 of the Writ Petition) it is apparent that on the date the impugned order was passed i.e. on 18.10.1995, Section 37 had been deleted on 8.9.1995 and communication of such deletion was circulated to all senior officers including the Deputy Commissioner on 26.9.1995. Therefore the first argument of Mr. K.K. Sahay to the effect that the Deputy Commissioner, Palamau while passing the impugned order did not apply his mind at all and mechanically directed relegation of the petitioners to the status of appellants to a non-existing forum, is of much force and accepted. On the basis of the reasonings given aforesaid, this Court holds that the action of the Deputy Commissioner in asking the petitioner to file an appeal u/s 37 was totally mechanical and wholly uncalled for.

4. Apart from the aforesaid, the order of the Deputy Commissioner passed on 18.10.1995 would go to show that the same suffers from yet another irregularity. It is an order which straight away accepts the report of the Circle Officer, Sadar at Daltonganj and proceeds to cancel the settlement without so much as even bothering to give any notice to the affected persons. In fact, by order dated 16.11.1995 this Court, while giving opportunity to the State to seek instructions, was also of the same view and it was recorded therein as follows :

"The grievance of the petitioners, as made out in the writ petition which has, prima facie, impressed me is that in any view of the matter the petitioners having remained in possession of the land in question pursuant to/order of settlement made by the competent authority as contained in Annexure "4" series since 1977-78 they were at least entitled to opportunity of hearing.

From the copy of the enquiry report as also the order passed thereon vide Annexure "5" it does not appear that any such opportunity was given....."

5. At paragraph 16 of the writ application, the petitioners have clearly stated that a few days ago the petitioner No. 1 had learnt that the respondent No. 3 (Circle Officer) had opened a confidential file bearing No. LC No. 1/1995-96 wherein he has submitted, of his own accord, a confidential report to the respondent No. 2 (Deputy Commissioner) recommending cancellation of all settlements made in favour of various settlees including the petitioners. In this paragraph, the petitioners have also stated that the Circle Officer, at no stage made his intentions known to the public nor did he issue any notice. On the contrary, he prepared the impugned report on 11.08.1995 and submitted it directly to the respondent No. 2 bypassing all other Revenue Officers. The Deputy

Commissioner in his turn also acted and did not issue notice and by his impugned order dated 18.10.1995, cancelled all settlements including the ones which were made in favour of the petitioners by Annexure 4 series. The aforementioned statement of the writ application has been answered at paragraph 15 of the counter-affidavit but from a perusal thereof, it is evident that the respondents have avoided to answer such specific assertions. Thus, the first limb of the argument of Mr. K.K. Sahay holds good and it is held that the petitioners were deprived of an opportunity not only before the Deputy Commissioner at the time when he passed the order on 18.10.1995 but also by relegating the petitioners to a non-existing forum knowing fully well that such a forum had already stood deleted.

6. The other arguments of Mr. K.K. Sahay, learned counsel for the petitioners are that village Bajraha initially belonged to the erstwhile Rankaraj Estate of which Raja Giriwar Prasad Narayan Singh was the sole proprietor. He made oral grants in favour of his wife. Rani Gunjeshwari Devi and village Bajraha was one of the villages which was given by such grant and it was commonly called as the "Mahaldaru Estate" of Rani Gunjeshwari Devi.

7. While she was in possession, the Bihar Land Reforms Act, 1950 came into force and the intermediary interests vested in the State of Bihar. However, on the basis of her possession over Bakast and other such lands, assessment of rent was made in her favour under Sections 5, 6 and 7 and thereafter by means of Registered Deed of Sale, she transferred her raiyati interest of village Bajraha to her son Ganpati Prasad Singh whose name was mutated in the revenue records in due course of time. According to the petitioners, right from 1944, the Rani had no means of personal cultivation and therefore; she had inducted raiyats to carry on cultivation. This was done on receipt of Salami and grant of Hukumnama in favour of such raiyats. Since she did not submit any return suo motu at the time of vesting, therefore, assessment was done in her name because her land did not vest as she was found to be in possession through her raiyats.

8. The petitioners have further stated that neither the Rani nor her son referred to above ever disturbed the possession of the raiyats and in fact, they collected rent year after year from the settlees. The petitioners therefore, claimed that they and other co-settlees are "under raiyats" under the said Rani and her son.

9. The petitioners have further stated that for purposes of acquiring surplus lands, a Land Ceiling Case No. 140 of 1973-74 was initiated against Ganpati Prasad Singh wherein all lands of various settlees were included. Upon enquiry, an enquiry report was submitted and all subordinate Revenue Officers mentioned in the report about the possession of various settlees. This report, dated 20.4.1976 (Annexure 1) was considered by the Additional Collector by his order dated 31.7.1976 (Annexure 2) who accepted the correctness of the report but refused to exclude those lands which were found to be in possession of various settlees, but he nevertheless, made it clear that even if the lands were declared surplus, it would be open to the settlees to get their lands settled by filing

petitions which were to be disposed off on their own merits.

10. Pursuant to the abovementioned order dated 31.7.1976, a Notification dated 8.12.1976 (Annexure 3) u/s 15(1) of the Ceiling Act was published including the lands of the under raiyats claiming under Ganpati Prasad Singh. All the under raiyats therefore filed separate applications for exclusion of their lands whereafter enquiry was held, their possession found and their status was upgraded from "under raiyats (dar-raiyats)" to the status of full fledged raiyats. This was done through the issuance of "Parwanas", five of which have been brought on record as Annexures 4 to 4/D of the writ application. Annexure 4 and 4/A pertain to the petitioner No. 1 (Santari Shukla); Annexure 4/B pertains to petitioner No. 2 (Ram Kailash Shukla) and petitioner No. 3 (Ram Pati Devi); Annexure 4/C pertains to petitioner No. 4 (Hiramani Devi) and Annexure 4/D pertains to Jashdeo Shukla (father of petitioner No. 5).

11. According to the petitioners similar "Parwanas" were issued in favour of other settlees to and they were inconformity with the preamble of the Ceiling Act.

12. The petitioners have further stated in their rejoinder to the counter affidavit that these "Parwanas"/Sada Settlements were backed by continuous issuance of rent receipts and in support thereof the petitioners have annexed photocopies of some of these as Annexure 7 series.

13. The aforesaid points raised specifically by the petitioners does establish a full "occupancy raiyati status" of the petitioners who were always in possession, in terms of Section 19 of the Chhotanagpur Tenancy Act and they therefore had the right of occupancy in respect of the lands held by them as raiyats. The argument of the respondents do not help them. On the contrary, they have themselves stated at paragraph 9 of the counter- affidavit that the demands were opened in the names of the petitioners in the year 1976 and accordingly rent receipts were issued and since then the lands were in occupation of the petitioners. They have further stated that since the lands were acquired by the State and since the same could not be settled with landless Harijan Adivasis, therefore by reason of the order of the Deputy Commissioner dated 18.10.1995, the settlements have been cancelled and the lands have been settled to landless Harijan.

14. Such an argument has been made only for argument's sake without any basis. In fact the reason appears to be totally different. The relevant portion of the confidential report at pages 50, 51 and 52 points to the displeasure felt by the Circle Officer on account of the lands having been settled to people belonging to the "upper caste" (Brahmins) and it also refers to a meeting of the Communist party.

15. Thus what has been stated above it appears that the purpose for passing the impugned order was something else and it was not in accordance with law. The petitioner's status of occupancy raiyats could not have been taken away by revenue authorities and that too in the manner resorted to both by the Circle Officer as also by the Deputy Commissioner.

Consequently this writ petition succeeds. The writ petition is allowed and the impugned report of the Circle Officer and the order of the Deputy Commissioner are hereby quashed and set-aside. No order as to costs.