

**(1991) 08 PAT CK 0006**

**In the Patna High Court**

**Case No :** Civil Writ Jurisdiction Case No. 386 of 1987 (R)

Smt. Dhaniya Kujur and others

APPELLANT

Vs

State of Bihar and others

RESPONDENT

**Date of Decision :** 02-08-1991

**Acts Referred:**

Chotanagpur Tenancy Act, 1908 — Section 71(A), 84(3)

**Citation :** (1993) 1 PLJR 342

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

**Bench :** Single Bench

**Advocate :** A. Sahay and S.P. Bhartuar, for the Appellant; M.Y. Eqbal and Shyama Kant Sinha for the State, for the Respondent

**Final Decision :** Allowed

## Judgement

S.B. Sinha, J.—This application is directed against an order dated 21.11.1980 passed by respondent No. 4 and as contained in Annexure-3 to the writ application, the order dated 10.6.86 passed by the respondent no. 3 and as contained in Annexure-6 to the writ application as also the order dated 9.12.1986 passed by the respondent No. 2 and as contained in Annexure-7 to the writ application. The fact of the matter lies in a very narrow compass.

2. An application for restoration u/s 71 (A) of the C. N. T. Act, 1908 was filed by the respondent Nos. 6 and 7. According to the respondents they are members of the Scheduled tribe and one Mudhusudan Raut had entered into the possession of their house by committing fraud. It is the admitted case of the petitioners that the house in question stands in the name of the petitioner No. 1.

3. However, notices was issued in the name of petitioner No. 2 who in his evidence admitted that he purchased the said house in the name of his wife. Before the court below both the parties adduced their respective evidences.

4. It appears that in the record of rights as also in three deeds of sale which are contained in Annexure-2 and 2/b to this writ application, the respondent Nos. 6

and 7 described themselves as Lohar.

5. It is admitted that a member of Lohar Community is not a member of Scheduled Tribe whereas a Lohra or Lohara is a member of scheduled tribe.

6. It has been held in a number of decisions that the question as to whether a person is Lohar by caste or is Lohara and thus a member of Scheduled Tribe is essentially a question of fact. Such a question of fact is to be determined on the basis of evidences on record.

7. For the said purpose the entries made in the records of right is relevant but it is possible for a party to rebut the presumption arising out of the same.

8. From a perusal of the impugned order as contained in Annexure-3 to the writ application, it appears that the respondent no. 4 has discussed the evidences adduced on behalf of the parties in some details. However he did not take into consideration the documents filed by the parties and the effect thereof.

9. The respondent No. 3, however, in the appeal preferred by the petitioners from the order dated 21.11.80 (Annexure-3) did not consider the evidences adduced by the parties at all.

10. The revisional court also by reason of its impugned order dated 9.12.1986 as contained in Annexure-7 to the writ application summarily dismissed the revision application filed by the petitioner.

11. Mr. Debi Prasad Learned Counsel appearing on behalf of the petitioner submitted that the learned court of appeal below as also the learned revisional court have not taken into consideration, the essential features of the case nor did they take into consideration the evidences adduced by the parties on records.

12. The Learned Counsel in this connection has relied upon a division bench decision of this Court in Chand Mahto v. State reported in 1989 BBCJ page 296.

13. In view of what has been found hereinbefore, viz that the respondent no. 4 has not considered the material evidences on records at all nor the same having been done by the revisional court, in my opinion, the impugned orders passed by them cannot be sustained.

14. In this situation, I am of the view that the matter should again be considered afresh by the respondent no. 3 inasmuch as even trial court has not considered all the materials on record including the documentary evidences brought on record by the parties.

15. The respondent No. 3 being a final court of fact was bound to consider the entire evidences on record and ought to have applied his own independent mind and thus he could not have dismissed the appeal by holding that the respondent no. 4 has dealt with all aspects of the matter, without independently analysing the evidence on record.

16. The learned court of appeal below while considering the materials on record

shall also keep in view the provisions of regulation 3 of the Bihar Scheduled Area Regulation as also the provisions of section 84 (3) of the C. N. T. Act, 1908.

17. In this situation, this application is allowed, the impugned orders as contained in Annexure-6 and 7 are set aside and the respondent no. 3 is hereby directed to hear the appeal preferred by the petitioner afresh and pass a judgment in accordance with law.

18. It goes without saying that in the event it is held by the said respondent that the evidences brought on record are inadequate and/or insufficient in order to do justice between the parties, it may consider the desirability of giving an opportunity to both the parties to adduce further evidence so that the controversy between them may come to an end.

19. This application is allowed with the aforementioned observations and directions. However, in the facts and circumstances of the case, there will be no order as to costs.