
(1999) 10 PAT CK 0015
In the Patna High Court
Case No : C.W.J.C. No. 5267 of 1990

Smt. Parvati Devi and Others	Vs	APPELLANT
The State of Bihar and Others		RESPONDENT

Date of Decision : 12-10-1999

Acts Referred:

Santhal Parganas Settlement Regulations, 1872 — Section 25(3)

Citation : (2000) 1 PLJR 72

Hon'ble Judges : P.K. Deb, J

Bench : Single Bench

Advocate : Subhro Sanyal, for the Appellant; Rajiv Sinha, for the Respondent

Final Decision : Dismissed

Judgement

P.K. Deb, J.—Prayer has been made for issuance of writ of certiorari for quashing the order dated 1.5.1989 passed by the Respondent-Commissioner, Santhal Parganas Division, Dumka, in Revision Misc. case Appeal No. 57 of 1983-84 as contained in Annexure-1 to this writ petition. By the impugned order the learned Commissioner has set aside the order dated 12.9.1983 passed by the Settlement Officer, Santhal Parganas, Dumka, in Settlement Objection Case No. 17 of 1982 and thereby upheld the order of Assistant Settlement Officer (Attestation) passed on 28.8.1982 in Tasdik Parwana Case No. 1 of Mouza Chotinan-Bahiyar as contained in Annexure-8 whereby Gantzer's plot Nos. 192, 236, 127 and 238 were directed to be restored to the respondent No. 6 and the same to be recorded in khata in the name of respondent No. 6. The petitioners happen to be the successors of Triveni Sah who is hailed from the original ancestor Bisheshwar Sah, the geneology of which is described in para-4 of the writ petition. Similarly, the respondent No. 6 (He is now dead and his successors have been substituted) is the successor in interest of original ancestor Radha Ballabh Mukherjee. The admitted position remains that Gantzer's plot Nos. 192, 236, 237 and 238 are comprised in Jamabandi No. 45 P.S. Ramgarh now Hansdihia within subdivision and district, Dumka, and those were recorded in the name of original tenant

Radha Ballabh Mukherjee, the grand-father of respondent No. 6. Radha Ballabh Mukherjee died leaving behind two sons Bhootnath Mukherjee and Bomkesh Mukherjee and both of them inherited the lands comprised in Jamabandi No. 45 of village Chotinan-Bahiyar. Bomkesh died issueless and as such it is alleged that the respondent No. 6 had inherited the whole of the property. During the life time of the father of respondent No. 6 i.e. Bhootnath Mukherjee filed the petition before Panchayat of Chotinan-Bahiyar for exchange of his lands bearing plot Nos. 192, 236, 237 and 238 of Jamabandi No. 45 with the lands bearing plot No. 143 and 291 owned by Ganpat Sah and Nand Kishore Sah of the same village who happen to be the predecessors in interest of the petitioners. It is alleged that such prayer of exchange was allowed in exchange case No. 9 of 1933-34 after having a report from the Panchayat and the Amin on the proposed exchange of land. According to the petitioner the report of the panchayat dated 17.4.1933 had given favourable opinion regarding the exchange. And on the basis of that exchange order of the S.D.O. Dumka, the predecessor of the petitioners came in possession over plot Nos. 236 & 237 in Jamabandi No. 45 comprising an area of 5 bighas 5 Kathas 13 dhoors. Afterwards as per the petitioner a title suit was filed by the predecessor the plaintiffs and Triveni Sah before the Court-III, Dumka, being Title Suit No. 23 of 1939 against Bhootnath Mukherjee & ors. in which a compromise petition was filed before the Court by which plot No. 192 comprising an area of 1 bigha 18 kathas 14 dhoors and plot No. 238 comprising an area of 6 kathas 14 dhoors was ordered to be remained with Triveni Sah and plot No. 136 having an area of 2 bighas 2 kathas remained with Bhooth Nath Mukherjee. Thus according to the plaintiff, on the basis of exchange and also on the basis of compromise decree the predecessor of the petitioners came in possession of plot No. 192, 236, 237 and 238.

2. Dispute started during the present settlement which is stated in the bar to be continued now also. When respondent No. 6 filed objection to the effect that although the above plots were recorded in Jamabandi No. 45 in the name of respondent No. 6 but the same were in illegal possession of the petitioners and as such Tasdik Parwana case No. 1 of Mouza Chotinan-Bahiyar was registered before the Assistant Settlement Officer (Attestation). On hearing both the parties, the Assistant Settlement Officer (Attestation) vide order dated 28.8.1982 found the same exchange proceeding collusive and fraudulent for the reasons that the same was not mutual and bonafide and consequently ordered that plot Nos. 192, 236, 237 and 238 to be restored back to respondent No. 6 and the same was to be entered in Jamabandi No. 45. Further plot No. 143 sought to be given by the petitioners" predecessor in exchange was directed to be returned or restored back into the khata of the petitioners. In the order the Assistant Settlement Officer also held that plot No. 291 which was also given by the petitioner in exchange to the respondent No. 6 was given by the petitioners" predecessor to respondent No. 6 was not Jamabandi land of the petitioners and the same is still in the name of State of Bihar and is lying vacant. Annexure-8 is the order of Assistant Settlement Officer (Attestation) on 28.8.1982. Against that

order the petitioner filed objection case No. 17 of 1982 before the Settlement officer, Santhal Pargana, Dumka. In the said objection case the allegation was that the predecessor in interest Triveni Pd. Sah had acquired the land by virtue of order dated 12.6.1933 passed in settlement exchange case No. 9 of 1933-34 and the same was acted upon by the parties and plot Nos. 291 and 143 have been given in exchange to the private respondents-predecessors. The area in respect of the exchange were not equal and no reasons have been given in that exchange order as to how waste lands and barren lands, which were construed to be second class lands, have been exchanged with Dhani lands but the Settlement Officer by his order on the basis of the order in the exchange case and the subsequent order of compromise decree between the predecessor of the petitioners and respondent No. 6 annulled the order of the Assistant Settlement Officer as contained in Annexure-8. Then respondent No. 6 filed appeal before the Commissioner and, as stated above, the Commissioner after hearing the parties and on perusal of the documents filed by the parties arrived at the finding that the order of the Settlement Officer was not proper although the exchange was alleged to be a mutual one but it was not to the benefit of the parties and on perusal of unequal exchange it was rightly held to be a fraudulent one. Regarding the compromise decree also it was held that such compromise was a collusive one and cannot be looked into for the purpose of attestation and hence the order of the Assistant Settlement Officer (Attestation) was upheld by the Commissioner setting aside the order of the Settlement Officer. Hence this writ petition.

3. Short argument has been placed by Mr. Subhro Sanyal, advocate appearing for and on behalf of the petitioners, that the matter requires to be remanded back to the Commissioner. Although a huge number of documents have been produced from the side of the petitioners but those were not considered and by a single stroke of pen it was held that the earlier exchange which became final long back in the year 1933 had been annulled and the compromise decree passed by the court of law had also been annulled which was beyond the jurisdiction of the Revenue Authorities within the four corners of the Santhal Parganas Act and the Rules and Regulations which were prevailing at the relevant time.

4. On the other hand, learned counsel appearing for and on behalf of the respondent No. 6 submitted that on perusal of the very order of the Commissioner it could be found that he had perused the lower court records and also the documents filed before him and also considered the cases of both the parties and then passed the order and in that way there is no scope of entering into the merits of the case by this Court under the limited scope of writ jurisdiction.

5. On the submissions of the learned counsel for the parties and by looking into the relevant Rules and Act it is found under the Santhal Parganas Settlement Regulation III of 1872 u/s 25 Clause-3 that when a record of rights became final, such record shall not, until the fresh settlement is made, be reopened without the previous sanction of the State Government. Here, in the present case, when

fresh settlement was going on then the Assistant Settlement Officer (Attestation) had gone into the merits which was within the power to do as he had the authority under the said regulations to go into the right and title of the persons by reopening the matter during the course of settlement. The Assistant Settlement Officer is a competent authority having the powers of civil court for disposing of objections to the survey and settlement proceedings under Rules XIV-XV. The Settlement Officer have got the powers of the civil court under the said Regulation III of 1872 as per notification made by the Government on 8.8.1978. The main ground for reopening the matter by the Assistant Settlement Officer (Attestation) was that the exchange as claimed was not for mutual benefit as second class lands were exchanged with first class lands to the detriment of aggrieved party and that such an exchange had never been implemented as the Jamabandi is still continuing in the name of respondent No. 6. The necessary ingredients for valid exchange are that it must be bonafide for mutual convenience of the parties and the transactions must not be concealed sale. At the time of attestation the Assistant Settlement Officer is empowered to look into the bonafide of the exchange and as such in the present case it had been looked into and he had set it aside. Moreover, in respect of the compromise decree when the Assistant Settlement Officer was having the powers of the civil court during the course of fresh settlement had every authority to ignore the compromise decree when such compromise decree also suffers from collusiveness on the face of it as the lands belong to the State of Bihar, have been included in the compromise decree which definitely vitiates the whole of the decree itself. It appears, on going into the orders of the Assistant Settlement Officer, that he had entered into the merit of the case of both the parties in detail and as such came to the finding that the exchange was not for mutual benefits and hence he had asked for inclusion of the name of respondent No. 6 in the Jamabandi ignoring such exchange. The compromise decree was also considered by the learned Assistant Settlement Officer on the materials on record and on the above grounds as mentioned had come to the finding that it was a collusive one as the lands not belonging to the parties had been included in the compromise decree. In appeal the settlement officer echoed only to the documents on exchange and of the compromise decree and had set aside the order of the Assistant Settlement Officer. Before the Commissioner original records were produced and all the documents were construed although detailed orders had not been passed on each and every documents he had set aside the settlement officer's order restoring the Assistant Settlement Officer's order as contained in Annexure-8. Only because the documents filed by the petitioners had not been elaborately discussed by the Commissioner in Annexure-1, it cannot be said that he had not considered those documents. He had considered those documents and it appears from his short order that he had gone into deep in the matter and then upheld the Assistant Settlement Officer (Attestation)'s order. Assistant Settlement Officer's order is an elaborate one and practically that order has been merged with the appellate court's order. When illegality or impropriety cannot be shown on the face of it by the petitioners in the order of the Commissioner, there is no

scope under the writ jurisdiction of this Court to re-enter into the disputed points of facts when the power exercised by the revenue authorities were within the ambit of Santhal Parganas Act and the Regulations and Rules framed thereon. In the result, the writ petition had got no force and hence the same is rejected. But in the facts and circumstances, no order as to costs.