
(1990) 12 PAT CK 0008

In the Patna High Court

Case No : Civil Writ Jurisdiction Case No. 4533 of 1981

Suraj Narain Mandal

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 06-12-1990

Acts Referred:

Santhal Pargana Tenancy (Supplementary Provisions) Act, 1949 — Section 23, 57, 59

Citation : (1992) 1 PLJR 80

Hon'ble Judges : G.C. Bharuka, J

Bench : Single Bench

Advocate : Ram Chandra Sinha and Vijyeshwar Narain Sinha, for the Appellant; Jay Prakash Jha, Rajendra Pd. Singh and Prakash Jha for Respondent Nos. 5, 6 and Ashok Kumar, for Respondent Nos. 7, 8, Dinu Kumar, for Respondent No. 9, Ashok Kumar Keshari and Mritunjay Pd. Singh for State, for the Respondent

Final Decision : Allowed

Judgement

G.C. Bharuka, J.—The present writ application has been filed for quashing the orders contained in Annexure ?5? and ?6? to the writ application. Annexure ?5? is the order dated 23.9.1980 passed by of the Respondent deputy Commissioner, Dumka, as an Appellate authority u/s 57 of the Santhal Parganas Tenancy (Supplementary Provisions) Act 1949 (hereinafter to be referred to as the Act only). By this order he has set aside the order dated 12.8.1978 passed by the Subdivisional officer, Dumka, as contained in Annexure 4 to this application, by which order permission was accorded for exchange of certain lands u/s 23 of the said Act. Annexure 6 is the provisional order passed by the commissioner of Bhagalpur u/s 59 of the Act by which he has affirmed the order as contained I n Annexure 5 to this application.

2. The facts giving rise to the present dispute are being state hereinafter. The sole Petitioner in the case is one of the Jamabandi raiyats of village Porepani in the subdivision of Dumka. One Kudu Rai was also one of the Jamabandi Raiyats of that very village. But he died leaving behind three daughters, namely, Rabai,

Tetli and Mithbi. According to the Petitioner, sometime much prior to the passing of the orders by the Subdivisional Officer as contained in Annexure "4" to this application, Rabni also died leaving behind her husband and one son Manbharan Rai, who is Respondent No. 7 to the writ application. Further case of the Petitioner is that since he was in need of a suitable piece of land for construction of a house, therefore, he approached the heirs of late Kudu Rai, namely, son Manbharan Rai, Tetli and Mithbi for exchange of a part of his land with a part of the lands belonging to those Respondents. Accordingly, an application was filed before the Respondent Sub-divisional Officer u/s 23 of the Act seeking permission for the said exchange of lands.

3. Section 23 of the Act contemplates that raiyats desiring to exchange their lands may" apply in writing to the Deputy Commissioner, who may in his discretion, permit such an exchange to be made. But the proviso to this Section makes it incumbent upon the Deputy Commissioner to make proper enquiry with regard to the matters contained in the proviso before according the said permission. Two of the important factors to be looked into before according permission are that the lands proposed to be exchanged should be of the same value and further that the transaction is not a concealed sale but is a bonafide exchange sought to be made for the mutual conveniences of the parties. I may state here that a notification issued by the Government has been produced before me, according to which, the Sub-divisional Officer has been empowered to exercise the powers of the Deputy Commissioner as provided u/s 23 of the Act.

4. It appears that on receiving the application for grant of permission as stated above, notices were given to all the 16 Annas raiyats of the village inviting their objections in this regard. Shankar Mandal who is Respondent No. 6, and is one of the 16 Annas raiyats of the village, filed an objection. His plea was that the transaction, in fact, was that of a sale and not exchange and further that the lands proposed to be exchanged are not of the same value. On this objection the learned Sub-divisional Officer got an enquiry held by the Circle Officer. The Circle Officer reported that the transaction was, in fact, a bonafide exchange and not any concealed sale and further the lands of the Petitioner measuring 3 Kathas 7 dhoors will be equivalent in value to 15 kathas 3 dhoors of lands of the Respondents concerned. It seems that after this enquiry, another objection was filed on behalf of one Kamal Rai, who is Respondent No. 5 to this application, raising similar objection. Kamal Rai had objected by asserting that he is also one of the sons of Rabni. The Sub-divisional Officer again got the matter enquired into by the D.C.L.R. The D.C.L.R. also after thorough enquiry held that the transaction was not a concealed sale but a bonafide exchange. Thus, basing on the said enquiry reports, which are Annexures "2" and "3" to the writ petition, permission was granted by an order dated 12.8.1978, which is Annexure "4" to this application.

5. Aggrieved by the said order as contained in Annexure "4", Respondent Nos. 5 and 6 preferred an Appeal to the Respondent Deputy Commissioner, who by his

order as contained in Annexure "5" to this application, annulled the permission, inter alia, on the grounds that (i) All the heirs of late Rabni had objected to the transfer; (ii) There is some mistake in giving measurement of the lands proposed to be exchanged; (iii) The reports of the Enquiring Officers were influenced by (sic) and (iv) All the 16 Annas raiyats were not made parties before the S.D.O.

6. The above order on the face of it is bad and unsustainable. The reasons given for setting aside the order of the Subdivisional Officer as contained in Annexure "5" are based on error of record. It nowhere transpires from the order of the Subdivisional Officer or from any other document placed on the record that the heirs of late Rabni had objected to the transfer in question. On the other hand, Manbharan, the son of Rabni has appeared through his own counsel and on affidavit has Stated that prayer for according permission for exchange was made on his behalf by his father considering the need and necessity of the family and his consent is still there in support of the exchange. Further, any clerical error in measurement of the lands to be exchanged is inconsequential for according the statutory permission. So far as the findings regarding bias of the Enquiring Officers are concerned, I find absolutely no basis for recording any such finding. It seems to be based on ipse dixit of the Deputy Commissioner. Such a finding reflects on the career of public servants and before recording any such finding, it is advisable that necessary materials should be strictly scrutinised and carefully looked into. Even before this Court no material has been furnished for arriving at a conclusion that the enquiry reports as contained in Annexures "2" and "3" can be said to have been vitiated because of any undue influence or bias in favour or against any of the parties it is also wrong to say that 16 Annas raiyats had no notice with regard to the seeking of permission for the exchange of the lands in question. Annexure 1 is the order dated 20.5.77 passed by the Subdivisional Officer, which clearly shows that notices had been given to all the 16 Annas raiyats. I may incidentally mention here that no provision under the Act or any Rule framed thereunder or any, other document requiring issuance of notice to the 16 Annas raiyats before according of permission u/s 23 of the Act, has been shown to me. In this view of the matter, I have no hesitation in quashing the order as contained in Annexure "5" to this application.

7. Now coming to the orders of the Com-missioner as contained in Annexure "6" to this application, I find that he has also committed similar errors of record as have been committed by the learned Deputy Commissioner.

8. For the reasons stated above, I quash the orders contained in Annexure "6" as well.

9. Before parting with the judgment, I may state that so far as Kamal Rai, Respondent No. 5, is concerned, in paragraphs No. 18 and 19 of the writ application it has been stated that Rabni, mother of Manbharan Rai, Respondent No. 7, was married to one Tilak Rai. But since Tilak Rai had abandoned her, therefore, she was married to Andu Rai and out of this marriage Respondent No. 7 was born. So far as Kamal Rai, Respondent No. 5 is concerned, according to

the Petitioner, be is the son of the second wife of Tilak Rai and, therefore, he can not claim any right or interest in the lands of late Khudu Rai. This stand of the Petitioner has been duly supported by Manbharan Rai (Respondent No. 7), Tetli (Respondent No. 8) and the heirs of Mithbi, third sister, who has died during the pendency of the present writ application. On the other hand, Kamal Rai has not come forward to contradict these statements made in the writ application with regard to his parentage by filing any affidavit. In any view of the matter, it is not necessary for me to record any concluded finding in this regard.

10. For the reasons stated above, the writ application is allowed and the orders as contained Anannexures "5" and "6" are hereby qashed. However, there shall be no order as to costs.