
(2012) 04 JH CK 0145
In the Jharkhand High Court
Case No : C.W.J.C. No. 4903 of 1995 (P)

Surya Narain Rai and Others

APPELLANT

Vs

State of Bihar and Others

RESPONDENT

Date of Decision : 19-04-2012

Acts Referred:

Constitution of India, 1950 — Article 226, 227

Santhal Pargana Tenancy (Supplementary Provisions) Act, 1949 — Section 6, 71

Citation : (2012) 2 JCR 598

Hon'ble Judges : P.P. Bhatt, J

Bench : Single Bench

Advocate : J.P. Jha, S.P. Jha and A. Prakash, for the Appellant; Altab Hussain, JC to GP-V, for the Respondent

Judgement

P.P. Bhatt, J.—Petitioner by way of filing the present writ petition under Articles 226 and 227 of the Constitution of India has prayed for issuance of appropriate writ, order or direction for quashing the order of the learned Commissioner, Santhal Pargana Division, Dumka in Rev. Misc. Appeal No. 70/89-90 dated 17.4.1995 by which he has upheld the order of the Deputy Commissioner, Dumka in Rev. Misc. Appeal No. 137/1987-88 dated 24.4.1989 who has set aside the order of the Subdivisional Officer, Dumka in P.D. Case No. 56/86-87 dated 21.8.1987. The Commissioner while upholding the aforesaid order of the Deputy Commissioner has approved the order of dismissal of the petitioner from the post of pradhan of mouza Sadhudih under Ramgarh police station, District Dumka. It is the case of the petitioner that the Deputy Commissioner as well as the Commissioner by their aforesaid orders have committed material error and constitutional illegality apart from the fact that they have ignored the order of the Sub-divisional Officer, Dumka as well as the inquiry report of the Circle Officer, Ramgarh (Landlord). The petitioner has raised several issues on fact as well as law in the present petition and while challenging the aforesaid orders, but during pendency of this petition, petitioner Hira Rai died on 28.4.1996 and thereafter his legal heirs were brought on record.

2. Learned senior counsel for the petitioner submitted that in view of the provisions as contained in Section 6 of the Santhal Parganas Tenancy (Supplementary Provisions) Act, 1949, the respondent-authorities will have to undertake the exercise of making fresh appointment of pradhan (Village Headman) in a prescribed manner.

3. Learned senior counsel for the petitioner also referred to and relied upon sub-rule (5) of Rule(3) of the Santhal Parganas Tenancy (Supplementary) Rules, which has been framed u/s 71 of the Santal Parganas Tenancy (Supplementary Provisions) Act, 1949 and submitted that as per the procedure prescribed for appointment of pradhan (Village Headman), the respondent-authorities will have to undertake a fresh exercise for making appointment of pradhan and therefore, this matter may be referred to the respondent-authorities for starting de novo procedure for the purpose of making appointment of pradhan.

4. Learned senior counsel for the petitioner invited attention of this Court to Schedule-V of the Santal Parganas Tenancy (Supplementary) Rules, 1950 ie. with respect to the appointment of headmen in khas and pradhani village.

5. Learned senior counsel for the petitioner also invited attention of this Court that recently this issue has been addressed by this Court in the case of Sogen Murmu v. State of Jharkhand & others, reported in 2012(2) JCR 1 (Jhr).

6. It appears that no counter-affidavit has been filed by the State; however, learned counsel appearing for the respondent-State submitted that in view of the fact that the original petitioner has died and therefore, the process for new appointment is required to be undertaken by the respondent-authorities in accordance with law and therefore, he has no objection if the matter is referred to the authorities concerned for starting de novo exercise for making appointment of pradhan in accordance with law.

7. Considering the aforesaid rival submissions and on perusal of the material on record, it appears that the petitioner has challenged the orders passed by the respondent-authorities, but during pendency of this writ petition, the original petitioner died on 28.4.1996 and thereafter, his legal heirs were brought on the record. Therefore, the learned senior counsel for the petitioner has rightly pointed out that the present matter is required to be referred to the respondent-authorities for undertaking the exercise of making fresh appointment in view of the provisions as contained in Sections 5 and 6 of the Santhal Parganas Tenancy (Supplementary Provisions) Act, 1949 as also under the relevant Rule ie. sub-rule (5) of Rule (3) of the Santhal Parganas Tenancy (Supplementary) Rules, which has been framed u/s 71 of the Santhal Parganas Tenancy (Supplementary Provisions) Act, 1949. Sections 5 and 6 of the Santhal Parganas Tenancy (Supplementary Provisions) Act, 1949 are reproduced hereinbelow :

5. Appointment of a village headman of a khas village.--On the application of a raiyat or of landlord of any khas village and with the consent of at least two thirds of the jamabandi raiyats of the village ascertained in the manner

prescribed, the Deputy Commissioner may declare that a headman shall be appointed for the village and shall then proceed to make the appointment in the prescribed manner.

6. Landlord to report the death of village headman.--When the village headman of a village which is not khas, dies, the landlord of the village shall report the fact within three months of its occurrence to the Deputy Commissioner with a view to the appointment of a village headman in the prescribed manner.

8. Sub-rule (5) of Rule (3) of the Santhal Parganas Tenancy (Supplementary) Rules, which were published vide Notification dated the 23rd January, 1951 by the Revenue Department, reads as under :

(5) In making the appointments of headman u/s 5 or Section 6, the Deputy Commissioner shall, as far as possible, follow the rules prescribed in Schedule V except where these rules, expressly or by necessary implication, provide otherwise.

9. Procedure for making appointment is also prescribed in Schedule-V of the Santhal Parganas Tenancy (Supplementary) Rules, 1950. Therefore, this Court is of the view that no further detail discussion is required while dealing with this matter and this matter is required to be referred to the respondent-authorities for starting de novo procedure for the purpose of making appointment of pradhan (Village Headman) in accordance with law. Accordingly, this petition stands disposed of.