
(2023) 03 JH CK 0029

In the Jharkhand High Court

Case No : Writ Petition (C) No. 4240 Of 2007

Umakant Rai And Others

APPELLANT

Vs

State Of Jharkhand And Others

RESPONDENT

Date of Decision : 27-03-2023

Acts Referred:

Bihar Land Reforms Act, 1950 — Section 4(h)
Santhal Parganas Tenancy (Supplementary Provisions) Act, 1949 — Section — Section
20, 28, 32, 36, 42

Citation : (2023) 03 JH CK 0029

Hon'ble Judges : Anubha Rawat Choudhary, J

Bench : Single Bench

**Advocate : Rajeeva Sharma, Om Prakash, Prashant Kumar Rai, Onkar Nath
Tewary**

Final Decision : Disposed Of

Judgement

Anubha Rawat Choudhary, J

1. Heard the learned counsel for the parties.
2. This writ petition has been filed for the following relief:

"For quashing the order dated 03.10.2006 passed by the Commissioner, S.P. Division, Dumka (Respondent No. 2) in R.M.A. No. 200/86-87 whereby the learned Court confirmed the order of Eviction of the Petitioner dated 18.6.86 from the land in question passed by the Charge Officer, Dumka (Respondent No.3) in RMA No. 156/1985 and the order dated 21/1/85 passed by the Asstt. Settlement Officer, Tasdik Camp-Amdiha (Respondent No. 4) in R.E. Case No. 2/1984."

Arguments on behalf of the Petitioners

3. Learned senior counsel for the petitioners has submitted that the petitioners are claiming the property on the basis of Hukumnama issued in favour of the

original petitioner (Babu Ram Rai) by the ex-landlord. The Hukumnama is dated 19.12.1948. He has further submitted that the property involved in this case stood recorded in the name of one Kasturi Raiyain wife of Lalit Rai who was none else than the own cousin aunt of the original petitioner namely Babu Ram Rai. She had no son and had only one daughter who got married and the original petitioner was kept by the recorded tenant as her son while he was a boy of only 10 years and was brought up by her. The original petitioner lived with his aunt since 1934-35 and used to take care of her and also performed her last rites who died sometimes in the year 1943-44. He further submits that the landlord (Ex-intermediary) of Handwa Estate finding the original petitioner in long continuous possession of the land in question, not only during the life time of the recorded tenant but also after her death, granted Hukumnama Patta No. 23 dated 19.12.1948 and since then the original petitioner has remained in possession of the property.

4. Learned senior counsel for the petitioners has submitted that even in the returns filed by the Ex-zamindar, the name of the original petitioner has been mentioned in connection with the property involved in the present case. The learned counsel submits that the very fact that in the return, the name of the original petitioner was mentioned, itself indicates that Hukumnama was issued in favour of the original petitioner and the original petitioner was in continuous possession of the property. He submits that the original petitioner continued to pay rent even after vesting of Zamindari. The learned counsel has submitted that true copy of the return has been annexed as Annexure-4 to the writ petition.

5. However, a proceeding under Section 20 and 42 of Santhal Parganas Tenancy Act was initiated against the original petitioner for eviction which was numbered as R.E. Case No. 2 of 1984 by the court of Asst. Settlement Officer, at Camp Amdiha as back as on 20.12.1984. It is submitted that from the order dated 20.12.1984 it appears that one Gangadhar Rai, original private respondent herein, appeared before the Settlement officer and sought adjournment, but the settlement officer proceeded to decide the case and ultimately passed impugned order dated 22.01.1985 (Annexure-3) directing eviction of the original petitioner and rejecting the Hukumnama Patta dated 19.12.1948. Learned senior counsel submits that Gangadhar Rai never claimed the land in question and is not the legal heir of the recorded tenant but still an order of eviction was passed.

6. Thereafter an appeal was filed by the original petitioner before the Charge Officer, Dumka, which was numbered as R.M.A. Case No. 156 of 1985. The Charge Officer confirmed the order passed by the Settlement Officer vide order dated 18.06.1986 (Annexure-2) by holding that the Hukumnama dated 19.12.1948 cannot be accepted as genuine as there was overwriting in the date and the plea of adverse possession was also rejected by the appellate authority by holding that the original petitioner had not completed 12 years of possession over the land in question prior to commencement of Santhal Parganas Tenancy (Supplementary Provisions) Act, 1949.

7. He submits that revision application was filed before the learned Commissioner numbered as R.M.R. Case No. 200 of 1986-87 and by the impugned order dated 03.10.2006 the revision has also been rejected.

8. The learned Senior counsel submits that the learned Commissioner has committed error of record by recording that the claim of the petitioner i.e ex-landlord filed return in support of the Hukumnama, was not supported by any document. The learned senior counsel submits that the return of the Zamindari is on record which clearly refers to the rent being paid by the original petitioner in connection with the property involved in this case. The learned senior counsel has submitted that the impugned order is illegal. He submits that there was continuous possession of the original petitioner since 1934-35 and therefore the original petitioner had acquired the title by adverse possession under Santhal laws.

9. The learned Senior counsel has relied upon a judgment passed by this court in W.P. (C) No. 5055 of 2003 decided on 07.04.2008 and also judgment passed by the Hon'ble Patna High Court reported in 1995 BBCJ 448 (Division Bench). He has also submitted that a recent judgment has been passed by the Hon'ble Division Bench of this Court in L.P.A. No. 199 of 2019 dated 16.12.2022 wherein it has been held that long running jamabandi cannot be cancelled. The learned counsel submits that jamabandi was running in the name of the original petitioner since long and by the impugned order, long running jamabandi has been indirectly cancelled in as much as the original petitioner was directed to evict the property involved in the present case.

10. He further submits that the original private respondent never contested the case before the authorities and the original private respondent is a third person altogether and not a jamabandi raiyat at all and no such finding has been recorded that the private person is a jamabandi raiyat.

11. Learned counsel for the petitioners, has further submitted that Section 20 of the Santhal Parganas Tenancy Act is not at all applicable. The same deals with protection to raiyats and restriction by way of sale, gift etc. He has submitted that no raiyat has transferred the property to the original petitioner and the original petitioner claimed the property by way of Hukumnama executed on 19.12.1949. He has also submitted that the so-called legal heir and successor of the recorded tenant never participated in the proceedings and did not file his show-cause before the authority who was the original private respondent in the present case. The learned counsel submits that the private respondents have no locus and the entire proceeding is vitiated as the same has been initiated on the basis of so-called claim made by the original private respondent, who could never substantiate his claim as he never filed his show-cause before the authority.

Arguments on behalf of the Private Respondents

12. Learned counsel appearing on behalf of the private respondents has

vehemently opposed the prayer of the petitioners and has submitted that the authority had primarily considered the status of the original petitioner to continue with the possession of the property. He has submitted that as per their own documents filed by the petitioners at Annexure- 6, the property was recorded in the name of two raiyats and the petitioners have mentioned the details only in connection with one of the raiyats and the private respondents are claiming through the other recorded raiyat. The learned counsel has also submitted that there is nothing on record to show as to what happened to the other recorded raiyat.

13. The learned counsel for the private respondents has further submitted that so far as the present petitioners are concerned, their status has been decided by the impugned orders and ultimately, the necessary enquiries will have to be made by the authorities to ascertain the legal heirs and successors of both the recorded tenants and if no legal heir is found, then the property is declared to be *fauti* and it has to be settled in terms of the various priorities mentioned under the provisions of Santhal Parganas Tenancy Act.

14. The learned counsel has also submitted that three authorities have given consistent findings against the petitioners. He submitted that so far as the *Hukumnama* claimed by the petitioners is concerned, the date of the same is a material date in view of the fact that Santhal Parganas Tenancy (Supplementary Provisions) Act, 1949 though enacted on 01.01.1949 but the same came into effect from 01.11.1949. He submits that the *Hukumnama* is dated 19.12.1949 which is certainly after coming into force of the Santhal Parganas Tenancy Act. The interpolations or the overwriting in *Hukumnama* is a relevant fact and all the authorities have consistently recorded adverse finding against the petitioners on account of such overwriting on the

15. The learned counsel has thereafter submitted that one of the pleas which was taken up by the petitioners before the authorities was that Kasturi Raiyain i.e. one of the recorded tenants had no son and only one daughter who was married in another village in the district of Dumka. The original petitioner claimed that he was kept by her (Kasturi Raiyain) as his son since he was 10 years of age. He used to take care of her as son and also used to take care of the property and on her death, he inherited the property as a nearest heir. The learned counsel has further submitted that the plea of adverse possession taken up by the petitioners before all the three authorities has been negated by a well-reasoned order.

Arguments on behalf of the respondent- State

16. Learned counsel for the respondent –State, on the other hand, has opposed the prayer of the petitioners and has submitted that the land involved in the present case are non-transferrable. He has also submitted that the land was recorded in the name of two persons, but the *Hukumnama* claimed by the petitioners only mentions in connection with one of the recorded tenants. He has

also submitted that so far as the return is concerned, the same is also mismatching with the Hukumnama which is relied upon by the petitioners, inasmuch as, three plots namely plot nos. 367, 368 and 369 are not mentioned in the Zamindari returns.

17. The learned counsel for the State has also submitted that the Hukumnama by itself is doubtful on account of the interpolations and cuttings and this finding has been recorded by all the three authorities. He submits that no claim of the petitioners can be sustained on the basis of the Hukumnama which has been relied upon by the petitioners.

Findings of this Court

18. After hearing the learned counsel for the parties and considering the materials on record including the copy of the khatian and also the uncontroverted specific statement made by the respondent – State in the counter-affidavit dated 23.07.2009, this Court finds that the property involved in this case as recorded in last survey settlement record commonly known as Gantzar's Survey Settlement, Jamabandi No.3 of Mouza Rehra, P.S. Ramgarh of Dumka sub-division stood recorded in the name of Mosamat Kasturi Raiyain, wife of Lalit Rai and Mosamat Mahabarni Raiyain, W/o Mahanand Rai.

19. The property involved in the present case as stated by the writ petitioners in para 4 of the writ petition is plot nos.449, 450, 452, 453, 535 and 536 appertaining to Jamabandi No.10 corresponding to last settlement plot no.42, 43, 46, 47, 48, 49, 50, 51, 52, 367, 368, 369 of mouza Rehra. Although, in the writ petition, it has been stated that as per last settlement parcha, it was in the name of Kasturi Raiyain, wife of Lalit Rai, it is the specific case of the petitioners that Kasturi Raiyain had only one daughter namely Bechni Devi, who was married in village Kesri, District – Dumka and the original petitioner was kept by Kasturi Raiyain as her son while he was a boy of 10 years and was brought up by Kasturi Raiyain and that the original petitioner's brothers lived with the parents of the original petitioner .

20. It is further case of the petitioners that the original petitioner had been living with his aunt Kasturi Raiyain since 1934-1935 and used to take care of her and upon her death in the year 1943-1944, original petitioner performed her "Sharadh" as son and inherited her properties including the property involved in the present case as her nearest heir. It is further case of the petitioners that the ex-land lord (ex-intermediary) of Handwa Estate found the original petitioner in long continuous possession of the land in question not only during the lifetime of the recorded tenant, but also after her death and granted hukumnama patta no.23 dated 19.12.1945 and thereby recognized the title and possession of the original petitioner over the land in question. Since then, the original petitioner has been in continuous possession of the land on his own capacity of owner and has been regularly paying rent to the State. In the main writ petition, the original petitioner had stated that a copy of the hukumnama will be produced as and

when required. Pursuant to an order passed by this Court, the petitioners have filed a supplementary affidavit dated 08.04.2022 and have annexed a copy of the hukumnama mentioning therein that the hukumnama patta number is 23 which is dated 19.12.1949.

21. During the course of arguments also, different dates of hukumnama were referred and even in the writ petition at one place the date of hukumnama has been mentioned as 19.12.1945 and when this discrepancy was pointed out to the learned senior counsel for the petitioners, he ultimately submitted that the hukumnama patta no.23 is dated 19.12.1949 which is the date mentioned in the supplementary affidavit also.

22. It is further case of the petitioners that the Ex-intermediary of Handwa estate had filed return showing the original petitioner as raiyat with respect to the property involved in the present case. The zamindari return has been filed which refers to plot nos.42, 43, 46, 47, 48, 49, 50, 51 and 52. The specific case of the petitioners is that since the Ex-intermediary had filed return showing the original petitioner as raiyat therefore, there can be no doubt that the original petitioner was the raiyat of the property involved in the present case and there has been continuous Jamabandi running in the name of the original petitioner and therefore, the petitioners had valid right, title and interest over the property.

23. The cause of action of the present proceeding arose when during the Khanapuri of the present settlement operation, the original petitioner was found in possession and was shown as "awaidh dakhalkar" and consequently, the eviction proceeding being R.E. Case No.02 of 1984 was started in the court of Assistant Settlement Officer, at Camp Amdiha on 20.12.1984. The records reveal that the original private respondent as well as the original petitioner had appeared before the authority. The original private respondent was claiming to be descendant of the recorded raiyat and ultimately, the impugned order dated 21.01.1985 (Annexure – 3) was passed.

24. Upon perusal of the impugned order dated 21.01.1985, this Court finds that the original private respondent, claiming to be jamabandi raiyat, had prayed for time, but the authority refused to grant time and proceeded to decide the legality and validity of the possession of the original petitioner. Admittedly, no show cause as such was filed by the original private respondent before the authority. The authority while passing the impugned order dated 21.01.1985 recorded that Eviction Case was initiated in connection with Khesra no.449, 450, 452, 453, 535 and 536 and considered the hukumnama produced by the original petitioner and found that there were cuttings in the hukumnama and upon closely looking at the hukumnama, it was recorded that the hukumnama was dated 19.12.1949 and it was also recorded that on that day, the Jamabandi raiyat was alive and further there had been no material to show that the property was declared as fauti so as to entitle the zamindar to settle the land . It was held that by merely filing return, the title is not decided.

So far as the claim of adverse possession by the original petitioner on the plea that the original petitioner was in possession of the property since last 30-40 years is concerned, the authority recorded that the Santhal Pargana Tenancy (Supplementary Provisions) Act, 1949 came into effect in the year 1949 and the possession of the original petitioner can at best be said to be only from the year 1944 (the year of death of Kasturi Raiyain as claimed by the original petitioner) i.e. for less than 12 years from coming into force of Santhal Pargana Tenancy (Supplementary Provisions) Act, 1949 and rejected the claim of adverse possession. It was held that the original petitioner was in illegal possession of the property and directed that the property be returned to the jamabandi raiyat.

25. Thus, the claim of the original petitioner that he inherited the property as legal heir of Kasturi Raiyain; the claim that the property was settled in his name by the zamindar vide hukumnama patta dated 19.12.1949 and also the claim of adverse possession were rejected by the authority vide impugned order dated 21.01.1985 (Annexure – 3).

26. An appeal was filed before the Charge Officer, Dumka which was numbered as RMA No.156/85. In the said proceedings, the original private respondent did not appear and vide order dated 18.06.1986 (Annexure – 2), the appeal was dismissed by recording that the hukumnama dated 19.12.1948 cannot be accepted as genuine because there was over-writing in the date and that the original petitioner had not completed 12 years of possession over the land in question prior to commencement of Santhal Parganas Tenancy (Supplementary Provision) Act, 1949 in order to claim adverse possession. Thus, both pleas of the original petitioner claiming property on the basis of hukumnama as well as claiming property on the ground of adverse possession, were rejected by the appellate authority.

27. Against the appellate order, the original petitioner filed revision bearing no. RMR No.200/1986-87 and before the revisional authority, the original private respondent did not appear. The revisional authority recorded that the plea of the original petitioner was based on continued possession, hukumnama and the claim that the ex-land lord filed return in support of hukumnama. After examining the records, the revisional authority held as follows:

“(1) The petitioner claims that the recorded tenant gave the land to him some 50 years back is only a statement not supported by any document or evidence.

(2) When the holding was in the name of a raiyat than how the ex-landlord gave hukumnama without having first getting the holding declared as fauti has not been explained by the petitioner here. The lower court’s order was based on such finding also.

(3) The claim of the petitioner that the ex-landlord filed return in support of hukumnama is not supported by any such document.

(4) The hukumnama itself due to cutting on it makes it completely doubtful

which cannot be relied upon. The lower court's order is based on such finding also and the petitioner has not explained this cutting or overwriting. On the basis of the facts mentioned above the petitioner's claims is not proved and so his eviction from the land was justified.

The revision is therefore disallowed."

28. Thus, all the three authorities rejected the claim of the original petitioner on the basis of hukumnama having cuttings and over writings, plea of adverse possession and also plea that Kasturi Raiyain gave the property to the original petitioner and subsequently expired in the year 1943-1944.

29. The original petitioner was claiming adverse possession by stating that he was in possession for last several years and even during the lifetime of Kasturi Raiyain and it was claimed that Kasturi Raiyain had expired only in the year 1943-1944. This court finds that all the three authorities have rejected the plea of adverse possession by well-reasoned orders and in absence of any perversity no interference is called for in this writ jurisdiction.

30. The plea that Kasturi Raiyain had given the property to the original petitioner has also been rejected by the respondent authorities. The revisional authority has clearly held that the original petitioner has no evidence to support such a plea. The learned senior counsel for the petitioners has also not referred to any evidence to show that the property was given to the original petitioner during the lifetime of Kasturi Raiyain. This court finds that such plea is based on no evidence from the side of the original petitioner. This court does not find any illegality or perversity with regards to this point also calling for any interference under writ jurisdiction.

31. This Court finds that all the three authorities have rejected the plea of adverse possession of the original petitioner over the property involved in this case by well-reasoned orders. The original petitioner has not been able to prove his possession since 12 years prior to coming into force of the Santhal Pargana Tenancy (Supplementary Provisions) Act, 1949. No ground for interference has been made out to take a different view on this point also. This court does not find any illegality or perversity with regards to this point also calling for any interference under writ jurisdiction.

32. All the three authorities have disbelieved the hukumnama as placed by the original petitioner, not only on the ground that hukumnama had cutting, but also on the ground that the property involved in this case was never declared as fauti so as to enable the ex-landlord to issue hukumnama in favor of the original petitioner. On both the grounds, the hukumnama was disbelieved. So far, the reliance on the return filed by ex-landlord is concerned, the revisional authority has held that the plea that ex-landlord filed return in support of hukumnama was not supported by any such documents. In the present case, the return has been filed and apparently the property claimed by the original petitioner to the extent it relates to plot nos. 367, 368 and 369 does not find place in the return of ex-

landlord. Moreover, the plot numbers mentioned in the hukumnama filed by the petitioners through the supplementary affidavit also do not exactly match with the return filed by the zamindar.

Otherwise also, the return of the zamindar will not create any right, title or interest in favour of the original petitioner in view of the fact that the original petitioner cannot be said to be legal heir of the recorded tenant in the light of the fact stated by the original petitioner himself. Admittedly, the original petitioner was not the son of Kasturi Raiyain. Kasturi Raiyain is also said to have a married daughter as per the original petitioner.

This Court also finds that the property was recorded jointly in the name of 2 persons namely Kasturi Raiyain and Mosamat Mahabarni Raiyain. The petitioners are completely silent about Mosamat Mahabarni Raiyain. However, in the order dated 21.01.1985 passed by the respondent authority, it has been recorded that Jamabandi raiyat was still alive on the date of issuance of patta as claimed by the petitioners. Even after death of one of the recorded tenants, the right of the other recorded tenant does not extinguish.

All the three authorities have rejected the claim of the original petitioner on the basis of hukumnama and zamindari return and no case for interference in writ jurisdiction has been made out by the petitioners.

33. In view of the aforesaid findings, this Court finds no illegality or perversity in the impugned orders. Accordingly, the impugned orders and actions do not call for any interference by this court in writ jurisdiction.

34. So far as the judgement passed in W.P. (C) No. 5055 of 2003 decided on 07.04.2008 is concerned, the same does not apply to the facts and circumstances of this case. It was a judgement relating to proceedings under section 4(h) of Bihar Land Reforms Act and section 36 of the aforesaid Act of 1949 whereby the jamabandi was cancelled. In the facts of the said case it was held that section 36 of the aforesaid Act of 1949 was not attracted and there was no finding that the settlement made in the year 1948 was to defeat the provisions of the Bihar Land Reforms Act of 1950. In the said case, there was no proceeding for ejectment and the state having accepted the petitioner as raiyat could not eject the petitioner except in terms of the provision of law. In the present case, the original petitioner was found to be in illegal possession of property and all the grounds to justify his possession were rejected by all the three authorities resulting in a direction of ejectment. The facts as well as the applicable law in the present case are totally different from those of the judgement passed in W.P. (C) No. 5055 of 2003 decided on 07.04.2008.

35. So far as the judgement passed by the Hon'ble Patna High Court reported in 1995 BBCJ 448 (Division Bench) is concerned, the same also does not apply under the facts and circumstances of this case. In the said case, settlement was made in terms of section 28 of the aforesaid Act of 1949 and the eligibility of the petitioner of the said case for settlement was under challenge and the issue was

whether suo-moto action could be initiated in terms of section 32 of the aforesaid act of 1949 and whether the nature of land was such that it could not be settled with any person. No such issue is involved in the present case. Rather in the present case the hukumnama, on the basis of which the original petitioner claimed settlement, has itself been disbelieved by all the three authorities and the claim of the original petitioner on various grounds has been rejected by citing reasons whose details have already been mentioned above.

36. So far as the judgement relied upon by the learned senior counsel for the petitioners passed in LPA No. 199 of 2019 dated 16.12.2022 is concerned, the same does not apply to the facts and circumstances of this case. In the said case, the order cancelling settlement was quashed by Hon'ble Patna High Court earlier vide order passed in C.W.J.C. No.12537 of 1993 which had attained finality. In the present case, the three authorities have found that the original petitioner was in illegal possession of property involved in this case. The present case is a case of illegal occupation of land by the petitioners based on hukumnama whose genuineness, legality and validity has been rejected by all the three authorities. Once the very basis of the possession of the property has been held to be illegal, the petitioners have been rightly directed to be evicted from the property. The present case neither relates to cancellation of jamabandi nor related to cancellation of settlement but is related to illegal possession of non-transferrable land by the petitioners, who have been directed to be evicted from the property so that it could be restored to legal heirs of the recorded tenants. The impugned action has been taken under section 20 and 42 of the aforesaid Act of 1949. It cannot be disputed that the property involved in this case would devolve by succession, and in absence of legal heirs of recorded tenants such property is required to be declared 'fauti' for settlement with other raiyats in terms of the Santhal Parganas Tenancy (Supplementary Provisions) Act, 1949 and other applicable provisions. The petitioners have failed to prove their rights over the property either by inheritance, or by adverse possession or by settlement through hukumnama or through any other process of law.

37. However, the fact remains that the original private respondent had not filed any show cause before the original authority nor the original private respondent had contested the case before the appellate authority or before the revisional authority. In the present writ petition also, the original private respondent or his substituted legal heirs have not filed any counter-affidavit. Accordingly, the status of the private respondents, claiming to be the legal heirs of one of the recorded tenants, is required to be verified before taking any further steps pursuant to the impugned orders to return the property to the legal heirs of the recorded tenant(s). The necessary enquiries in connection with the claim of the private respondents over the property involved in the present case be carried out within a period of three months from the date of receipt of a copy of this order and the respondent authorities shall proceed further in accordance with law.

38. This writ petition is disposed of without interfering with the impugned orders

and with the aforesaid observations and directions as contained in para 37 of this judgement.

39. Pending interlocutory application, if any, is closed.