

(2004) 04 PAT CK 0110
In the Patna High Court
Case No : L.P.A. No. 1377 of 1995

Umrailli Mian and Others

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 16-04-2004

Acts Referred:

Santhal Pargana Tenancy (Supplementary Provisions) Act, 1949 — Section 29, 60

Citation : (2004) 2 PLJR 666

Hon'ble Judges : S.N. Hussain, J;Nagendra Rai, J

Bench : Division Bench

Advocate : Nandan Pd. Singh, for the Appellant; J.P. Shukla, Subodh Kr. Jha and Jitendra Pandey, for the Respondent

Final Decision : Allowed

Judgement

Nagendra Rai and S.N. Hussain, JJ.—This appeal is directed against the order dated 7.8.1995 whereby the, learned Single Judge has dismissed the writ application filed by the Appellant challenging the order passed by the Commissioner, Santhal Pargana Division, Dumka in Rev. Misc. (Review) Petition No. 223 of 1994-95 by which he has reviewed his earlier order dated 9.5.1994 whereby he had upheld the order of the Deputy Commissioner, Santhal Pargana remanding the matter to the Sub-Divisional Officer, Deoghar to consider the matter of settlement in accordance with the observations made by him. The order dated 11.5.1984 passed by the Sub-Divisional Officer, the order dated 2.4.1991 passed by the appellate authority, the order dated 9.5.1994 passed by the revisional authority and the review order passed by the revisional authority dated, 27.12.1994 have been annexed as Annexures-1, 2, 3 and 4 respectively.

2. The appeal was dismissed by a Division Bench of this Court on 13.8.1996 with an observation that the controversy can be disposed of effectively by the civil court. The Appellants moved before the, Apex Court against the aforesaid order in Civil Appeal No. 4997 of 1997 and the Apex Court by order dated 21st July, 1997 set aside the order passed by this Court on the ground that the jurisdiction

of the civil court is expressly barred and the matter was remitted to this Court to dispose of the appeal on merit.

3. The controversy in this case relates to the settlement of the land of plot Nos. 71, 73, 76, 80, 81, 87, 88 and 89 situate (sic) village Piparbadiya, the then district of the Santhal Pargana, now district Deoghar which forms part of Jharkhand State. In normal course, the matter would have been (sic) and disposed of by the Jharkhand High Court but in view of the provisions contained under the Bihar Re-Organisation (sic) as the writ application was disposed the learned Single Judge before (sic) of the State, the matter has to be heard and disposed of by this Court.

4. The Appellant and Respondent Nos. 9 to 11 filed two separate application for settlement of the aforesaid land on the ground that the same is waste land and that should be settled in terms of the provisions of Santhal Pargana Tenancy Act. Respondents-1st party, who are the sons of Mul-Raiyat Abdul Hoda. Khan raised objection of the settlement on the ground that one Saraswati Mishra was the. Mul-Raiyat of the village and in the year 1966 their father purchased the Mul-Raiyat right and in the year 1969 the Mul-Raiyat Abdul Hoda Khan settled the land in dispute to his sons after getting approval from, the Sub-Divisional Officer and since then they are coming in possession of the same and as such there is no question of settlement of land to the Appellants.

5. The Sub-Divisional Officer having considered the matter rejected the claim of settlement and upheld the claim of Respondents 1st set. The Appellants preferred appeal before the Deputy Commissioner, Santhal Pargana and as stated above, the Deputy Commissioner by order dated 2.4.1991 set aside the order of the Sub-Divisional Officer on two grounds; firstly, as the Mul-Raiyat was Mohammadan his sons had no interest, in other words, they were not the raiyats in their own right and as the settlement can be made only to the Raiyats, the Mul-Raiyat cannot settle the land to them and secondly, there was no compliance of Section 29 of the Act which provided for prior sanction of the Deputy Commissioner for settlement of the land by the Mul-Raiyat to himself or to any other co-Mul-Raiyats. The Deputy Commissioner accordingly remanded the matter to the Sub-Divisional Officer to consider the matter afresh in the light of the observations made by him.

6. Respondents-1st party preferred appeal before the Commissioner, Santhal Pargana, who by order dated 9.5.1994 dismissed the appeal and upheld the order of the Deputy Commissioner. Thereafter, the Respondents1st party filed review u/s 60 of the Act and the learned Commissioner reviewed his order which was challenged by the Appellant before the learned Single Judge which resulted in dismissal as stated above.

7. Two questions have been raised on behalf of the learned Counsel appearing for the Appellants, firstly, that though u/s 60 of the Act power has been, given to the Commissioner to review the order for sufficient reasons but the same does not

empower the Commissioner to review the order with a view to reappraise the materials on record without finding any error apparent on the record or similar other legal infirmities. Secondly, he submitted that the view taken by the Commissioner while exercising power of review with regard to two points on which the Deputy Commissioner has remanded the matter are wholly untenable in law.

8. Learned Counsel appearing for the Respondents-1st party, on the other hand, submitted that the Commissioner has rightly exercised his power of review. Both the grounds given by the Deputy Commissioner for remanding the matter are not tenable in law.

9. In view of the submissions made on behalf of the parties, two questions arise for consideration in this case. Firstly, as to the extent of power the Deputy Commissioner can exercise u/s 60 of the Act and secondly, whether the grounds given by the Deputy Commissioner for setting aside the order of the Sub-Divisional Officer and remanding the matter are valid or not in the eye of law.

10. Review is not the substitute of appeal. By its very nature it requires reconsideration of the earlier matter on certain well settled grounds. Though Section 60 of the Act says sufficient reasons, but that does not mean that review will be permitted only because a different view can be taken on reappraisal of the matter or by giving second thought. Review is permitted on well settled grounds, namely, error apparent on the record or some other similar grounds such as omission to consider relevant provisions of law. From perusal of the impugned order it appears that the Commissioner reheard the parties afresh and has reconsidered the matter as if he was sitting in appeal over his own order. He has stated that after hearing the counsel for the Respondents-1st set he found force in the submission and accordingly allowed the review. In our view, review does not permit to rehear the matter as an appellate forum which has been done by the Commissioner and accordingly on this ground the order passed by the Commissioner in review is vitiated.

11. Even assuming that the review was permissible, the question is as to whether the Commissioner was justified in interfering with the order of the Deputy Commissioner which has remanded the matter on two grounds. Ground No. 1, as stated above, is that the settlement to the sons by Mul-Raiyat, who was Muslim, was not permissible in view of the fact that the sons were not raiyats of the village in view of the fact that they have no right and interest in the land during the life time of their father. Ground No. 2 is that even if the settlement was permissible by Mul-Raiyat to his sons, whether the same could have been done in breach of the provisions of Section 29 of the Act. So far first point is concerned, it is not necessary to decide for the simple reason that if the settlement itself is invalid because of breach of provisions of Section 29 of the Act, that question does not fall for decision. Section 29 of, the Act provides that Mul-Raiyat, Pradhan of the village shall not settle any waste land with himself or any co-Mul-Raiyats without the previous sanction in writing by the Deputy

Commissioner. The appellate authority found that no prior sanction of Deputy Commissioner had been taken for settlement by Mul-Raiyat to his sons even if they are treated to be co-Mul-Raiyats. Nothing has been brought on record to show that any previous sanction had been obtained. In that view of the matter, the Deputy Commissioner as well as the Commissioner in previous order rightly held that the settlement was in total breach, of provisions of Section 29 of the Act. While allowing review application the Commissioner dealing with scope of Section 29 of the Ad held that previous sanction is required only in case of settlement by Mul-Raiyats with himself and thereby settlement can be made. Section 29 of the Act bars settlement by Mul-Raiyat to himself or to other co-Mul-Raiyats and the case of the Respondents was that his sons were co-Mul-Raiyats. In that view of the matter, we hold that the settlement made in favour of Respondents-1st party was invalid and the Deputy Commissioner rightly set aside the order and remanded the matter for considering the question of settlement in accordance with the provisions of the Act.

12. In the result, this appeal is allowed the order passed in review by the Commissioner dated 27.12.1994, as contained in Annexure-4, is quashed and the matter is remitted to the Sub-Divisional Officer, Deoghar, who will consider and decide the same in accordance with the directions issued by the appellate authority