

(2019) 01 JH CK 0099
In the Jharkhand High Court
Case No : Writ Petition (C) No. 6256 Of 2011

Vijay Kumar Gambhir

APPELLANT

Vs

State Of Jharkhand And Ors

RESPONDENT

Date of Decision : 02-01-2019

Acts Referred:

Bihar Privileged Persons Homestead Tenancy Act, 1947 — Section 21

Citation : (2019) 01 JH CK 0099

Hon'ble Judges : Anubha Rawat Choudhary, J

Bench : Single Bench

Advocate : Anil Kumar Sinha, Bharat Kumar

Final Decision : Disposed Of

Judgement

1. Heard Mr. Anil Kumar Sinha, counsel appearing on behalf of the petitioner.
2. Heard Mr. Bharat Kumar, counsel appearing on behalf of respondent no. 4.
3. This writ petition has been filed for the following reliefs:-

"For quashing the order dated 16.07.2010, passed by the learned Deputy Commissioner, Giridih, in Revision Case No. 15/2007, whereby and whereunder the order dated 19.03.2007, passed by the learned Circle Officer, Bagodar, has been set aside, illegally without following the provisions of law under the section 21 of Bihar Privileged Persons Homestead Tenancy Act, 1947.

For issuance of a writ or in the nature of Mandamus, commanding upon the respondents, particularly the Respondent No. 3 to pass an order, afresh, in accordance with law, for issuance of "Basgit Parcha" in favour of the petitioner."

4. Counsel for the petitioner submits that Basgit Parcha in connection with the property involved in this case was issued in favour of the petitioner under the provisions of Bihar Privileged Persons Homestead Tenancy Act, 1947 (hereinafter referred as aforesaid Act) after following the procedure of law including on the spot inspection etc. The Basgit Parcha was issued on 10.07.2007 against which

the private respondent herein had filed revision under Section 21 of the aforesaid Act.

5. The grievance of the petitioner is that the Deputy Commissioner, Giridih while passing the order on revision which was numbered as Revision Case No. 15/2007 observed that proper procedure has not been followed while passing the order for issuance of Basgit Parcha but having said so, the matter ought to have been remanded back to the Circle Officer for passing fresh order as per the mandate of Section 21 of the aforesaid Act. He submits that as per the provisions of Section 21 of the aforesaid Act, in case the Collector of the District finds any illegality or irregularity in the proceedings, the said authority after allowing the party concerned an opportunity of being heard, direct that the case or the proceeding be reopened and disposed of afresh in accordance with the provisions of the Act. He submits that in view of the provisions of Section 21 of the Act and the observations made in the impugned order, the authority ought to have remanded the matter back to the Circle Officer for fresh consideration after giving an opportunity of hearing to the parties.

6. Counsel appearing on behalf of private respondent on the other hand submits that the petitioner has made material suppression before the authority and the Basgit Parcha could not have been issued in view of the fact that the property falls within the urban area. He also submits that the property belongs to the private respondent, as the same has been purchased by the private respondent by way of sale deed. However, he could not dispute the legal position that the irregularity, if any, which was observed by the Deputy Commissioner, Giridih, the matter ought to have been remanded the matter back to the Circle Officer for fresh consideration in terms with the provisions of Section 21 of the aforesaid Act. Section 21 of the aforesaid Act is quoted hereinbelow for ready reference:-

"21. Power of the Collector of the District to call for and examine records- Notwithstanding anything to the contrary contained in any judgment, decree or order of any Court or authority; the Collector of the district may on his own motion or on the application of any party, or on reference being made by any subordinate authority, call for and examine record of any case decided or proceeding taken by the Collector under the Act for satisfying himself as to the regularity of the proceeding or to the correctness, legality or propriety of an order passed by the Collector under the Act in the case or proceeding, and may after, allowing the parties concerned opportunity of being heard, direct that the case or the proceeding be re-opened and disposed of afresh in accordance with the provisions of this Act."

7. After hearing counsel for the parties and after considering the materials available on record this court finds that admittedly the Basgit Parcha was issued in the name of the petitioner and the petitioner claims that all procedures were followed which is being disputed by the private respondent herein and also in the impugned order. This court finds that in such circumstances, Deputy Commissioner, Giridih ought to have remanded the matter back to the Circle

Officer for fresh consideration, as admittedly the private respondent herein was never heard by the Circle Officer and the private respondent is claiming the property.

8. Further as per mandate of Section 21 of the aforesaid Act, if any illegality in the proceeding is found then the revisional authority has legal obligation to remit the matter back for fresh consideration. Accordingly, this court finds that the Deputy Commissioner, Giridih after making the observation which he has made in the impugned order dated 16.07.2010 ought to have remanded back the matter to the Circle Officer for fresh consideration and for passing fresh order in relation to the Basgit Parcha.

9. In such circumstances, impugned order dated 16.07.2010 is hereby modified to the extent that the matter is to be reopened and considered afresh by the Circle Officer who is directed to pass fresh order in connection with issuance of Basgit Parcha after giving an opportunity of hearing to the petitioner as well as private respondent within a period of three months from the date of receipt of a copy of this order. The parties are at liberty to raise all legal and factual points before the Circle Officer in support of their respective contentions.

10. It is made clear that this court has not entered into the rival claim of any of the parties.

11. This writ petition is accordingly disposed of.