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Godabari Devi Vs. State of Jharkhand and Ors

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Court : Jharkhand

Decided On : Sep-22-2017

Appellant : Godabari Devi

Respondent : State of Jharkhand and Ors

Advocate for Pet/Ap. : Mr. Shree Prakash Jha

Judgement :

1 W.P. (C) No. 771 of 2003 IN THE HIGH COURT OF JHARKHAND AT RANCHI W.P. (C) No. 771 of 2003 Godabari Devi, wife of Bageshwari Prasad Yadav Petitioner VERSUS1 The State of Jharkhand 2. The Deputy Commissioner, Deoghar 3. The Additional Collector, Deoghar 4. The Deputy Collector, Land Reform, Deoghar 5. The Circle Officer, Deoghar 6. Bhado Mahato @ Jainarayan Mahto 7. Siban Mahto ... Respondents CORAM: HON'BLE MR. JUSTICE DR. S. N. PATHAK For Petitioner : Mr. Jai Prakash Jha, Sr. Advocate Mr. Shree Prakash Jha, Advocate Mr. Aishwarya Prakash, Advocate For the State: Mr. H.K. Mehta, AAG Mr. Rakesh Sahi, JC to AAG. For the Respondent Nos. 6 and 7: Mr. Anjani Kumar Verma, Advocate. Mr. Amit Kumar Verma, Advocate. C.A.V. on 14/06/2017 Pronounced on 22 /09/2017 Dr. S.N.Pathak, J.

Heard learned counsel for the parties.

2. Petitioner has approached this Court with a prayer to direct the respondents authorities to mutate the land of Jamabandi No. 6 of Mauza - Chandpur and

further to quash the order dated 27.06.1998, passed by Additional Collector, Deoghar in Rev. Misc. Appeal No. 67/93 - 94 by which he had upheld the order dated 28.02.1994, passed by Deputy Collector, Land Reform, Deoghar in Mutation Case No. 3/93 - 94 and thereafter, to remand the matter to consider the mutation afresh.

3. Case of petitioner in narrow campass is that Plot Nos. 560, 561, 562, 796, 1140 and 1143 of Mauza - Chandpur, appertaining to Jamabandi No. 6 of Mauza - Chandpur No. 261, P.S. Jasidih and the same stands recorded in the name of Most. Kamli Mahatwain, wife of Fulo Mahato in 'Purcha' of the last survey settlement. Claim of the petitioner is on the basis of genealogical table, as mentioned in paragraph5 of the writ petition. Kalabati Devi, grand mother of the petitioner was married with Debi Mahato of Village - Chandpur. The recorded tenant - Kamali Mahatwain, during her life time, used to cultivate all lands and properties with the help of her husband's sister Kalabati Devi. Kamali Mahatwain died issueless in the year 1938 leaving behind Kalabati Devi as her nearest heir who, on her death, inherited and succeeded all her lands and properties of Jamabandi No. 6 of Mauza - RC2W.P. (C) No. 771 of 2003 Chandpur and started possessing the same with her husband - Debi Mahato, who also started paying rent. Yasoda Devi, another sister of husband of Kamali Mahatwain, had predeceased her. After death of Kamali Mahatwain in the year 1938, Debi Mahato also died in the year 1940. After death of Debi Mahato, the grandfather of opposite party namely Madhu Mahato started claiming land of Jamabandi No. 6 in question. The dispute however was amicably settled and lands of Jamabandi No. 6 was divided between Madhu Mahato and Bandhu Mahto including his mother Kalabati Devi. In the said amicable partition, entire Plot Nos. 560, 562 and 1143, the NorthWestern and South Eastern portion of Bari Plot No. 561, area 0.24 Acres of the said Jamabandi No. 6 had fallen to the share of Kalabati Devi and her son Bandhu Mahato, the total area of which was 58 Decimals and entire plot nos. 796 and 1140 besides the remaining portions of Plot No. 1143, in all measuring total 57 Decimals, had fallen to the share of Madhu Mahto, the grand father of opposite 1st party and accordingly the said persons began to separately cultivate and possess their respective share of lands. Bandhu Mahato remained all along in possession of the land and after his death in the year 1957, his wife Durpatia Devi,

son Palku Mahto and daughter - Godabari Devi (petitioner) inherited and succeeded all the land and properties including the land of Jamabandi No. 6 allotted to the share of Kalabati and Bandhu Mahto. After death of Bandhu Mahto, his son Palku Mahto also died and there remained Durpatia Devi and petitioner - Godabari Devi in the family. Durpatia Devi also died in the year 1974 and thereafter, petitioner remained as a sole surviving owner in the family and she continued to possess the land of Bandhu including the land in question. In the year 1948, Bandhu Mahto had exchanged Plot No. 1143 of Jamabandi No. 6 of his share with one Nathu Mahato of village - Chandpur for his Plot No. 623 of Chandpur over which Bandhu Mahto had constructed his house wherein petitioner along with her family members were residing. The Plot No. 1143 given in exchange is in possession of Kamal Mahato, son of Nathu Mahato. Similarly, Madhu Mahto remained in possession of only his share of land in Jamabandi No. 6 which was allotted to him and on his death, his son Chhaku Mahato and after his death, his sons Bhado Mahto and Shibu Mahto have been possessing the same and both branches had been paying the rent by contributing half and half. RC3W.P. (C) No. 771 of 2003 It is case of the petitioner that opposite 1st party therein, suppressing the real facts, wrongly applied for mutation of Plot Nos. 560, 561, 562, 796, 1140 and 1141, falsely claiming himself to be Nati of recorded tenant by filing a petition before the Deputy Collector, Land Reforms, Deoghar on 15.02.1993, which gave rise to Mutation Case No. 3 of 1993 -

94. Said Deputy Collector called for a report from the Circle Officer, Deoghar who did not enquire into the matter and simply forwarded the socalled procured enquiry report submitted by Karamchari. Being aggrieved by the order of Deputy Collector, Land Reform, Deoghar dated 28.02.1994 in Mutation Case No. 3/93 - 94, petitioner approached before the Additional Collector, Deoghar, in Rev. Misc. Appeal No. 67/93 - 94, which was also disposed of vide order dated 27.06.1998 upholding the order of Deputy Collector, Land Reform, Deoghar. Being aggrieved by the aforesaid orders, petitioner has approached before this Court.

4. Mr. J.P. Jha, learned Sr. counsel assisted by Mr. Shree Prakash Jha, learned counsel for the petitioner submits that the report submitted by the Circle Officer, Deoghar is not sustainable as the same was merely a procured document

submitted by the Karamchari. There was never any enquiry and the alleged report was a collusive table work prepared at the instance of the opposite party. The mechanical way of working is evident from the fact that Karamchari recommended for mutation of Plot No. 1141 also with other plots when plot no. 1141 was not even land recorded under Jamabandi No. 6 or belonged to Mt. Kamali Devi. Learned Sr. Counsel further submitted that the petitioner was intentionally not made party before the Deputy Collector and notice issued to 16 Annas Raiyats were not validly served and manipulated service report was submitted at the instance of opposite party no.

1. Learned counsel further submitted that the Deputy Collector, Land Reforms, Deoghar had miserably failed to appreciate that the respondent nos. 6 and 7 have been able to procure a manipulated report from the Karamchari and further the Additional Collector, Deoghar had wrongly held that the documents did not seem to be a genuine one in absence of any expert opinion. The Additional Collector as well as the Deputy Collector, Land Reforms have failed to see that the respondent nos. 6 and 7 have no right and title on the landed property in question and thus no order of mutation could have been passed in their favour and as such, the order of the Additional Collector, Deoghar dated 27.06.1998 in Rev. Misc. Appeal No. RC4W.P. (C) No. 771 of 2003 67/1993 - 94 [Annexure1] and the order of the D.C.L.R. Deoghar dated 28.02.1994 in Mutation Case No. 3/1993 - 94 [Annexure1/A] are fit to be quashed. Learned Sr. Counsel further submitted that the petitioner had submitted all the legal and valid documents so as to prove that the landed property situated in Jamabandi No. 6 is a nontransferably land and the authority under the Mutation Law has no jurisdiction to entertain any petition for mutation. Learned Sr. Counsel further submitted that the the Additional Collector as well as the Deputy Collector, Land Reforms, Deoghar have failed to see that the fixation of rent and entry of names of the Raiyats in the land lord Sarista are being made by the settlement authority in entire Deoghar District after Notification under Section 9 of the Santhal Paragana Settlement Regulation No. 3 of 1872 and such power of enquiry into the landed rights are to be made in view of Sections 12 and 13 of the said Regulation and for that purpose, the SubDivisional Officer of Deoghar has also been appointed as the Assistant Settlement Officer but the Deputy Collector, Land Reforms, Deoghar as well as the Additional Collector,

Deoghar have exceeded their jurisdiction to usurp the power of Settlement Court. Learned Sr. Counsel further submitted that the finding of the Additional Collector with regard to documentary evidence is perverse and wrong and as such the same is fit to be quashed by this Court. Learned Sr. Counsel further pointed out that under the wrong legal advice Revenue (M) Revision No. 3/9899 was filed by the petitioner before the Commissioner, which was disposed of as being not maintainable on 22.10.2002 (Annexure 2). Learned Sr. Counsel further argued that the Mauza Chandpur is a Pradhani Mauza and one Trilochan Yadav is a Pradhan of the said Mauza. Right of Mutation, creation of Jamabandi etc. in a Pradhani Mauza is vested with the Pradhan of the said Mauza according to records of right and Miscellaneous Incidence of the Santhal Pargana Manual, 1911 and as such, the impugned orders are wholly without jurisdiction and fit to be quashed. Learned Sr. Counsel further argued that the authorities have failed to appreciate the documentary evidence and have come to a perverse finding which is fit to be quashed and set aside. Learned Sr. Counsel has placed reliance on the reported Judgment in the case of Gokul Harijan and others Vs. State of Bihar and others reported in 2003(51) BLJR 2283 : 2004(1) JCR 125 Jhr.

5. Per contra counter affidavit has been filed by State respondents. RC5W.P. (C) No. 771 of 2003 Mr. H.K. Mehta, learned AAG assisted by Mr. Rakesh Kumar Sahi, appeared on behalf of the State. Learned AAG vehemently opposed contention of the learned Sr. Counsel for the petitioner and argued that once petitioner had submitted before the jurisdiction of the State, the contention that order is without jurisdiction, is not tenable in the eyes of law. Learned AAG further argued that Jamabandi No. 6 is not transferable as the respondents are the legal heirs and as such rightly land has been mutated in their names. Learned AAG emphatically argued that there is a concurrent finding of the Court in favour of opposite parties/ respondent no. 6 and 7 and as such no interference is required by this Court. The order of Deputy Collector as well as Additional Collector is fully justified. Learned AAG further argued that who is the absolute owner of the land cannot be decided in Mutation proceeding as disputed question of fact regarding right and title has to be decided by the competent court of civil jurisdiction. Learned AAG has relied on the Judgment in the case reported in 2008(3) JCR

135.

6. Mr. Anjani Kumar Verma, learned counsel appeared on behalf of respondent nos. 6 and 7 and submitted that there is no illegality or infirmity in the impugned order and as such no interference is called for by this Court.

7. The Santhal Pargana Tenancy Act was enacted to amend and supplement certain laws relating to landlord and tenant in the Santhal Pargana. Section 72 of the Said Act very clearly and categorically provides that by the enforcement of the Act, the other laws applicable to the Santhal Pargana has not been expressly or by necessary implication recorded, meaning thereby that all the laws, rules and regulation governing the field in Santhal Pargana continued to be valid and enforceable, in my opinion, therefore, if the mutation of the land was done on the basis of settlement which was made by Pradhan, could not have been cancelled by invoking provisions of Santhal Pargana Tenancy Act.

8. Be that as it may, having gone through rival submission of the parties, this Court is of the considered view that the order passed by Deputy Collector, Land Reforms as well as Additional Collector, are without jurisdiction as the land in question is situated in Jamabandi No. 6, which is a nontransferable land and the authority under Mutation Law has no jurisdiction to entertain any petition regarding the same. In absence of any proper enquiry, the respondents authorities could not have come to a finding regarding the right, title and possession of the land. The respondents RC6W.P. (C) No. 771 of 2003 authorities could not usurp the powers of Settlement Court and had thus exceeded their jurisdiction. The original order itself is without jurisdiction as the land in question is Pradhani Mauza and Deputy Collector, Land Reforms has no jurisdiction to mutate the concerned land in question as petitioner is already paying rent to the Pradhan. 9. As a cumulative effect of the aforesaid observations and settled principles of law, I hereby quash and set aside the order dated 27.06.1998 passed by Additional Collector, Deoghar in Rev. Misc. Appeal No. 67/93 - 94, as also the order dated 28.02.1994, passed by Deputy Collector, Land Reform, Deoghar in Mutation Case No. 3/93 - 94. The matter is remanded back before the concerned Deputy Collector, Land Reforms, Deoghar to consider the matter afresh and pass order in accordance with law. (Dr.

S.N. Pathak, J.) High Court of Jharkhand at Ranchi Dated September 22, 2017 RC RC

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