

Atul Kumar Vs. the State of Bihar and ors.

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Court : Patna

Decided On : May-02-2006

Judge : Ramesh Kumar Datta, J.

Acts : Bihar Tenancy Act, 2001 - Sections 3A

Appeal No. : C.W.J.C. No. 13695 of 2005

Appellant : Atul Kumar

Respondent : The State of Bihar and ors.

Advocate for Def. : Sanjay Pandey, Adv.

Advocate for Pet/Ap. : Rajesh Kr. Singh, J.C. to A.A.G.2

Disposition : Appeal allowed

Judgement :

Ramesh Kumar Datta, J.

1. The petitioner has approached this Court for quashing the order dated 18.8.2005 passed in Case No. 1/05 issued by the Sub-Divisional Officer, Sasaram by which the application of the petitioner for issuance of a caste certificate declaring him as 'Gond' has been rejected and consequential relief.

2. The petitioner has earlier filed C.W.J.C. No. 15297/2004 raising a similar grievance and by order dated 15.7.2005 the application was disposed of with the direction that the petitioner should approach either the District Magistrate, Rohtas at Sasaram or the Sub-Divisional Magistrate, Sasaram, whereafter they should consider the request of the petitioner for grant of caste certificate that he belongs to the Gond Tribe and if the claim of the petitioner is found not maintainable speaking order should be passed. The petitioner thereafter applied for a caste certificate in terms of the said order of this Court. But the same was rejected by the impugned order dated 18.8.2005 of the Sub-Divisional Officer, Sasaram.

3. From the impugned order it is evident that the reasons for rejection are an enquiry report by the Block Development Officer, Sasaram dated 10.8.2005 wherein it has been stated that enquiry has been made into the residence and connected documents with respect to the petitioner and it has been found that no member of the family of the petitioner has been married in Gond dominated Adivasi area: it is further stated that the petitioner stays in Urban area and marriages take place in his family according to Hindu customs and rites; a further reason stated is that in the Revenue Khatian it has been found that the khatian No. 350 is in the name of petitioner's grand father. Hari Prasad, and in the said khatian the original entry was also Hari Ram Gor son of Ram Kishun Gor the caste Gor was clearly written but later on attempt has been made by manipulating the word 'Gor' and changing into Gond. The said changes have been made in different handwriting and ink and on the basis of the said khatian entry the petitioner has tried to obtain a caste certificate of Gond. Thus, on the basis of the said report of the B.D.O. the Sub-Divisional Officer reached the conclusion that the petitioner does not belong to Gond tribe but to the Gor caste, which is extremely backward caste. Accordingly, the petitioner's application for issuance of caste certificates as Gond arbitrarily has been rejected. Learned Counsel for the petitioner also submitted that only on the basis of certain cutting in the revisional survey entry made in the year 2001 the claim of the petitioner could not have been rejected when there are documents of unimpeachable character starting from 1929-30 in all of which the petitioner's ancestors have been shown as belonging to Gond tribe and not as Gor. In this connection the petitioner has referred to Annexure-16 series in which a Municipal Survey Khativan of Sasaram Municipality has also

been enclosed wherein the name of the occupier has been shown as Ram Kishun Gond whose community has been shown as Gond. The said Ram Kishun Gond according to the pleadings was great grand father of the petitioner. There are other documents coming up to contemporary period wherein the petitioner's ancestors have been shown as belonging to the Gond caste and carrying the Gond surname. Learned Counsel for the petitioner also referred to Annexure-27 which is the Census report of 1961 wherein Gond Schedule tribe have been found to be residing in Sahabad District. At the relevant time Sasaram formed a Sub-division of the said District. It has also been submitted on behalf of the petitioner that when the said entry in the Revisional Survey Entry Khativan of 2001 came to the notice of the father of the petitioner he filed an objection under Section 3A of the Bihar Tenancy Act, 2001 objecting to his surname and Caste which has been wrongly shown as Gor and seeking correction of the same as Gond.

4. The petitioner has also filed an Interlocutory Application No. 1756 of 2006 praying for an amendment by addition of further reliefs for quashing of the order contained in Memo No. 612 dated 10.4.2006 by which the caste certificate of the petitioner's father mother and uncle as Gond caste issued earlier by the District Magistrate has been cancelled by the Sub-Divisional Officer, Sasaram. However, from a perusal of the said order it appears that it has been passed on the basis of the impugned order passed with respect to the petitioner in the present case and not the other way round and, therefore, the petitioner can have no occasion to feel aggrieved by the order dated 10.4.2006 and accordingly the prayer for amendment made in the said I.A.No. 1756/06 is rejected. However, it is clarified that the authorities cannot rely upon the said orders in order to defeat the claim of the petitioner in future and further the persons affected by the said order are at liberty to challenge the same through appropriate proceeding.

5. Learned Counsel has also relied upon an order of the Apex Court dated 2.2.2006 passed in Civil Appeal No. 8014 of 2003; the State of Bihar and Ors. v. Sumit Anand. The said appeal had been dismissed by the Apex Court on the ground that the respondent's father, grand father, mother as well as maternal-uncle have been certified that they belong to the Gond tribe and thus there was no reason to come to a conclusion other than the one arrived at by the High Court to

the effect that the respondent was entitled to issuance of the caste certificate.

6. This Court is of the view that the order impugned has not been passed in accordance with law and the S.D.O. while passing the order has not considered the large number of documents of substantial and unimpeachable character in possession of the petitioner which ought to have been taken by him in consideration before the impugned order was passed and merely relying upon the report of B.D.O. and certain entries in the Revisional Survey Khatiyani of 2001-2 the claim of the petitioner could not have been defeated. The grand father, mother and ancestors had been earlier issued certificate as belonging to Gond Schedule Tribe by the authorities of the State. Learned Counsel for the State further contended that the application by the petitioner's father as annexed, for correction in the Revisional Survey Khatiyani entry does not appear to have been received by the proper authority nor there is any correction duly certified by the competent authority in the Revisional Survey Khatiyani so far as the change of the caste from Gor to Gond is concerned.

7. Be that as it may, the impugned order dated 18.8.2005 cannot be permitted to stand and it is for the authorities concerned to look into all the relevant documents which are produced by the petitioner in his favour as also the relevant records available with them and pass a fresh order in accordance with law.

8. In the result this writ petition is allowed. The impugned order dated 18.8.05 is set aside and the matter is remanded to the Sub-Divisional Officer. Sasaram to pass a fresh order in accordance with law within a period of two months from the date of receipt/production of a copy of this order after taking into consideration the necessary documents and material to be produced by the petitioner. However, in the facts and circumstances of the case there shall be no order as to cost.