

Chandrika Devi. Vs. State of Jharkhand and ors

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Court : Jharkhand Ranchi

Decided On : Apr-05-2011

Judge : R.R.Prasad, J.

Appeal No. : W.P.(C) No.3575 of 2003.

Appellant : Chandrika Devi.

Respondent : State of Jharkhand and ors.

Advocate for Def. : Mr.R.A.Gupta; Mr. Manjul Prasad, Advs.

Advocate for Pet/Ap. : M/s. S.N.P.Singh; Arvind Kumar Choudhar, Advs.

Judgement :

1. This writ application is directed against the order dated 8.1.2003 passed by the Commissioner, Santhal Pargana Division, Dumka as contained in Annexure 5 whereby the order of eviction (Annexure 4) from the land in question passed by the Charge Officer against the petitioner was set aside.

2. Before advertng to the submission advanced on behalf of the petitioner, the facts of the case emerging out of the record need to be noted. It appears that in Gantzers Survey Settlement Records of right, the lands of Jamabandi no.3 measuring an area of 9.93 acres comprising several plots of mouza Pirhamo had been recorded in the names of Most. Alkhi Ahrin and Siban Ahri. Since the aforesaid recorded tenants had defaulted in making payment of rent, Rent Execution Case No.1060 of 1934 was brought by Mishri Chaudhary, the then mul

raiyyat of the mouza which was decreed in favour of the said Mishri Chaudhary. Thereafter Raiyati Execution Case No.43 of 1935-36 was filed in the court of Sub-divisional Officer, Deoghar for recovery of the possession. By virtue of the order passed by the revenue authority, recorded tenants were evicted from the entire lands of 9.93 acres of Jamabandi no.3. Subsequently, at the behest of Most. Anchchi Ahrin, widow of Sibani Ahri (one of the recorded tenants) an application was filed wherein it was stated that Most. Alkhi Ahrin, widow of Laru Ahri has left the village. On such assertion a prayer was made to settle half of the lands of Jamabandi no.3. Accordingly, settlement was restored in favour of Most. Anchchi Ahrin with respect to half of the lands of Jamabandi no.3 whereas remaining half of the lands of the said Jamabandi were settled with Dhanusdhari Choudhary, co-sharer of the mul raiyat who happened to be the father of the respondents 5 to 8. Thereupon possession of the settled land was delivered to Dhanusdhari Choudhary on 5.10.1936 through the process of the court.

3. The report regarding delivery of possession submitted by the court Amin was confirmed by the Sub-divisional Officer, Deoghar in the said Rent Eviction Case No.43 of 1935-36. Further case of the respondents is that during Khanapuri stage of present survey settlement operation, respondents 5 to 8 were found in possession over the aforesaid lands but their possession were recorded as illegal possession which is quite wrong as they are in possession by virtue of the order of the court. At that time, possession of the respondents 5 to 8 over plot no.668 and 375 could not be recorded but on objection being raised, possession over the same was also recorded. At this stage, when the petitioner (one of the recorded tenants) came to know that the respondents got their possession recorded over the lands in question, an application was filed before the Charge Officer at the stage of Tasdik for correction of the entry made with respect to possession of the respondents as the respondents had never been in possession over the lands and whatever documents relating to possession are there, they were never acted upon.

4. On such application, the Charge Officer vide its order dated 11.1.1999 in stead of passing order relating to correction in the revenue record, passed an order for eviction of the respondents no. 5 to 8 from half of the lands of Jamabandi no.3 over

which possession of the respondents had been recorded on the ground that though possession has been recorded over half of the lands of Jamabandi no.3 but the said document does not refer to either plot number, kheshra number or dag number. Being aggrieved with that order the respondents 5 to 8 herein preferred revision, vide R.M.R No.104 of 1999-2000 whereby the Commissioner after recording that half of the lands of Jamabandi no.3 had been settled in favour of the father of respondents 5 to 8 and were given possession over the same, set aside the order passed by the Charge Officer and passed an order that the lands in question be recorded in the name of the respondents 5 to 8, who are legal heirs of late Dhanushdhari Choudahry.

5. Against that order, this writ application has been filed. Mr.S.N.P.Singh, learned counsel appearing for the petitioner in order to assail the order passed by the Commissioner submitted that document if any relating to possession of the respondents 5 to 8 over half of the lands of Jamabandi no.3 had never been acted upon and it could not be acted upon as neither the plot numbers nor kheshra number had been mentioned in those documents and that had they been in possession, rent would have been paid but no such rent receipts have been produced. Therefore, the revisional court erred in passing the impugned order which in the aforesaid circumstances is fit to be set aside.

6. As against this, Mr. Manjul Prasad, learned Senior counsel appearing for the respondents 5 to 8 submitted that in view of the case of the parties that the respondents 5 to 8 are in possession over half of the lands of Jamabandi no.3 whereas petitioner is in possession of remaining half of the said Jamabandi, the lands over which the respondents 5 to 8 are in possession are quite identifiable and moreover, the descriptions of those lands do find mentioned not only in the order of the Charge Officer but also in the order of the Divisional Commissioner. It was further pointed out that the documents produced by the respondent go to prove that the father of the respondents 5 to 8 on being settled with the lands was put in possession and that during Khanapuri stage of recent survey settlement operation, possession of the petitioners was also recorded and under this situation, in absence of any cogent material, the plea of the petitioners that documents of possession was never given effect to, in other words, never acted

upon, can not be accepted.

7. I do sufficient force in the submission advanced on behalf of the respondents. The Commissioner after examining the case of the parties with reference to the documents produced, came to the finding that after order of eviction of the recorded raiyat was passed in Rent Eviction Case No.43 of 1935-36, an application was filed before the Sub-divisional Officer on 24.4.1936 at the behest of Most. Anchchi Ahrin, widow of Sibani Ahri (one of the recorded tenants) wherein it was intimated that Most. Alkhi Ahrin, widow of Laru Ahri (other co-sharer) had left the village and made a prayer for settlement of the lands with respect to half of the lands of Jamabandi no.3 which was allowed and at the same time, remaining half of the lands of Jamabandi no.3 was settled with Dhanushdhari Chaudhary, father of the respondents 5 to 8, possession over the same was given by the process of court on 5.10.1936 which fact is evident from a report relating to delivery of possession submitted by the court amin which got confirmed by the Sub-divisional Officer, Deoghar. Thus, when there has been a documentary evidence relating to settlement and possession of half of the lands of Jamabandi no.3 which was also found subsequently during khatapuri stage of the present survey settlement operation, submission advanced on behalf of the petitioner that the same was never acted upon can never be accepted in absence of any cogent material showing otherwise on account of such fact, lands are quite identifiable and in fact, the description of lands over which respondents no.5 to 8 are in possession are there in the order of the Charge Officer as well as in the order of the Divisional Commissioner. Accordingly, I do not find any illegality in the order passed by the Commissioner, Deoghar. Thus, this application being devoid of any merit is hereby rejected.

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