

IN THE HIGH COURT OF JHARKHAND, RANCHI.

W.P(C) No. 4890 of 2005
Purusottam Modi Petitioner(s)
Versus
The State of Jharkhand and ors Respondent(s)

CORAM :- HON'BLE MR. JUSTICE P.P. BHATT

For the Petitioner(s) :- Mr. K.P. Deo
For the Respondent-State :- Miss. Sunita Kumari
For the respondent no. 5 :- Mr. Mahesh Tiwari.
Mr. Onkar Nath Tiwari

3-31.10.2012 The petitioner by way of filing this petition under Article 227 of the Constitution of India has prayed for issuance of an appropriate writ/order/direction for quashing the order dated 15.3.2005 passed by the learned Divisional Commissioner, S.P. Division, Dumka in Revenue Misc appeal No. 31 of 2000-01 whereby the learned Divisional Commissioner set aside the order dated 11.3.2000 passed in Misc. Case No.78 of 1993-94 by the learned Deputy Commissioner, Deoghar and affirmed the order dated 14.6.1993 passed by the learned Sub-Divisional Officer, Deoghar in Settlement Case No 226 of 1990-91 whereby two acres of land of plot No. 20 of Jamawandi no. 5 of Mouza Pathalchopti has been settled with the respondent no.5.

The learned counsel appearing for the petitioner submitted that the learned Sub-Divisional Officer Deoghar has settled the land in question in favour of the respondent no.5 in contravention of the provision contained in Section 28 of Santhal Pargana Tenancy (Supplementary Provisions) Act, 1949. It is further submitted that the said order has been passed ignoring the interest of the villagers and the residents of the locality as the land in question was used for Sam San Ghat and other public purposes. The learned counsel appearing for the petitioner by referring counter affidavit filed by the respondents no. 6 and 7 along with photographs annexed with the affidavit pointed out that the said land has been used for the purpose of Sam San Ghat. However, ignoring the said fact the Respondent State Authority settled the said land in favour of the respondent no.5. It is further submitted that the respondent no.5 is also not

satisfying the requisite criteria/ condition as laid down for settlement of land in question as he was not a Jamabandi raiyat. The learned counsel appearing for the petitioner further submitted that on the basis of the representation made by the petitioner and other villagers the learned Divisional Commissioner remanded the matter to the Deputy Commissioner, Deoghar and the order passed in Misc. case no. 78 of 1993-94 was carried further by the respondent no.5 by way of filing Revenue Misc. Appeal No. 31 of 2000-01 before the court of the learned Divisional Commissioner, Santhal Pargana Division Dumka. It is further submitted that the learned Divisional Commissioner has failed to appreciate the provision contained in section 28 of the Santhal Pargana Tenancy (Supplementary Provision) Act. 1949 and thereby passed an order in favour of the respondent no.5. It is further submitted that the respondent no.5 is not eligible and entitled to get the settlement of land in question.

As against that, the learned counsel appearing for the respondent no.5 while justifying the order passed in favour of the respondent no.5 submitted that the learned Divisional Commissioner, S.P. Division Dumka, after appreciating the various contentions raised before him in Revenue Misc. Appeal No. 31 of 2000-01, had passed a detailed order and recorded its reasons for setting aside the previous order passed by the learned Deputy Commissioner, Deoghar. It is further submitted that initial allotment/settlement was made by the Sub-Divisional Officer, Deoghar way back on 14.6.1993 and it was approved by the Deputy Commissioner, Deoghar. It is further submitted that land in question was allotted in favour of the respondent no.5 after fulfilling of the requisite formalities which is required under the law. It is further submitted that the respondent no.5 is an Army Personnel and he has been extended this benefit under the policy decision taken by the Government of India which is annexed to the counter affidavit filed by the respondent no.5 vide Annexure-1 series. The learned counsel appearing for the respondent no.5 by referring those documents pointed out that all the State Governments have been directed to carry out the instruction contained in the said policy decision. It is further submitted that respondent no.5 was eligible and entitled to get two acres of agricultural land under the said policy decision and accordingly, the request made by the respondent no.5 was processed in accordance with law by the Respondent-State authority and allotment/settlement was done in favour of the respondent no.5 by the Sub-

Divisional Officer Deoghar which was confirmed by the learned Deputy Commissioner. It is further submitted that the present petitioner has initiated the proceeding with a view to create hurdle for allotment/settlement of the land in question in favour of the respondent no.5. The learned counsel appearing for the respondent no.5 further pointed out that the petitioner never raised any objection with regard to eligibility and entitlement of the respondent no.5 in respect of the land in question. For the first time before this court he has raised such plea which was never raised before any of the authority. Therefore, at this juncture the petitioner is not permitted to raise such plea. The learned counsel appearing for the respondent no.5 lastly submitted that the Respondents-State authorities have also filed affidavit justifying the allotment made in favour of respondent no.5 and thereby supported the case of the respondent no.5 and therefore, the present petition, which is filed for ulterior motives, may be dismissed.

The learned counsel appearing for the Respondent-State Authority by referring the paragraphs 5,6 and 7 of its counter affidavit submitted that the land in question was allotted in favour of the respondent no.5 after completing all requisite formalities and also after due verification/inquiry. It is further submitted that the respondent no.5 fulfilled the requisite condition for allotment of land in view of the policy decision of the Government of India. He further pointed out that the land has been settled in favour of the respondent no.5 in view of the provision of the Government of Bihar as contained in Memo No. Ad/M/1/64-1551 dated 24.2.1964, which is also confirmed and approved by the Ministry of Defence, Government of India, vide letter no. 2500/XIII/AG/PS-05(E)81/5 DCAD-11, dated 15th January, 1984. It is further submitted that the nature of land, which is allotted to the respondent no.5, is Parti Kadim Land and that is why, it has been settled pursuant to the Circular of the Government.

Considering the aforesaid rival submissions and on perusal of the materials on record and more particularly the impugned order it appears that the learned Divisional Commissioner, S.P. Division, Dumka vide order dated 15.3.2005 set aside the order dated 11.3.2000 passed by the Deputy Commissioner, Deoghar in Misc. Case No. 78/1993-94 and thereby restored the settlement made by the Sub-Divisional Officer, Deoghar in Settlement Case no. 226/1990-91 making settlement of 2 Acres of land. On perusal of the said order it appears that the learned Deputy Commissioner,

Deoghar while delivering the judgment in Revenue Misc Appeal No. 31/2000-2001 has taken into account the provision of law and also the policy formulated by the Government of India and necessary notification issued by the State Government in this regard as well as decision rendered in 1997 P.L.J.R 716 wherein settlement with a non-Jamabandi Raiyat was confirmed. On perusal of the order passed by the learned Divisional Commissioner, S.P. Division it appears that the learned Divisional Commissioner, Deoghar has not committed any error while passing the said order and the said order has been passed in accordance with law and therefore, intervention of this court is not called for under Article 227 of the Constitution of India.

The argument advanced by the learned counsel appearing for the petitioner cannot be accepted in view of reason assigned by the learned Divisional Commissioner, S.P.Division Dumka in its judgment. Moreover, the respondent no.5 appears to be an Army Personnel rendering service for safety and security of the country since last 20 years and he is eligible and entitled to get the benefit of allotment of land of two acres in view of the policy decision taken by the Government of India which is annexed with the counter affidavit filed by him vide Annexures 1 series .On perusal of the said documents it appears that the respondent no.5 satisfied all required criteria which is required under the law and after considering his eligibility the Respondent-State Authority passed an order in favour of the respondent no.5. On perusal of the order passed in favour of the respondent no.5 it appears that the order of settlement of the land was passed by the Sub-Divisional Officer way back on 14.6.1993 and the said order was approved by the learned Deputy Commissioner, Deoghar but thereafter on the representation made by some of villagers to the Divisional Commissioner, Deoghar the matter was remanded to the Deputy Commissioner and it went up to the learned Divisional Commissioner. The learned Divisional Commissioner has taken decision in the appeal which was filed by the respondent no.5 wherein all relevant aspect of the matter was discussed. It appears that respondent no.5 is legally eligible and entitled to get piece of the land under the policy decision made by the Government of India.

In view of discussion made herein above, I find no merit in this petition and it is accordingly dismissed. The interim order that has been passed on 11.12. 2007 stands vacated.

SD .

(P.P. Bhatt, J)