

(2008) 07 JH CK 0035
Jharkhand High Court
Case No: None

Sulochana Devi

APPELLANT

Vs

The State of Jharkhand and
Others

RESPONDENT

Date of Decision: July 3, 2008

Acts Referred:

- Forest (Conservation) Act, 1980 - Section 2
- Forest Act, 1927 - Section 29, 30, 31, 82, 83

Citation: (2008) 4 JCR 557

Hon'ble Judges: Ajit Kumar Sinha, J

Bench: Single Bench

Final Decision: Dismissed

Judgement

@JUDGMENTTAG-ORDER

Ajit Kumar Sinha, J.

The present writ petition has been filed for issuance of a writ in the nature of certiorari or any other appropriate writ, order or direction for quashing the order dated 6.5.2002 passed by the Commissioner, Dhanbad in Dhanbad C.N.T. Appeal No. 140 of 1994 as also the order dated 6.10.1994, passed by the Charge Officer, Dhanbad in Janch Badar Case No. 6 of 1994.

2. The facts, in brief, as stated by the petitioner are that one Shiv Kumar Pandey granted settlement of a total area of 10 acres of land in Plot No. 667 (9 acres) and Plot No. 1061 (1 acre) both under Khata No. 170 by terms of a Hukumnama in favour of the petitioner, Sulochana Devi, and, accordingly, she became her Raiyat and came in possession of the settled land. It has also been submitted that in exercise of her rights as Raiyat, she continued in occupation on payment of rent against the grant of rent receipts to the Ex-landlord and also converted the settled land and made the same cultivable into Dhan Khet I, II and III.

3. The Ex-landlord was also paid compensation in lieu of vesting of estate in respect of his Khewat interest, including the land settled with the petitioner in Compensation Case No. 5865 of 1956-57 and the name of the petitioner was shown as Raiyat in respect of the settled land. On the basis of the Return submitted by the Ex-landlord, Jamabandi was created in favour of the petitioner and her name was also entered in the Tenant Ledger Register II in respect of the settled land and, as such, the petitioner continued as a Raiyat under the State Government on payment of rent against the rent receipts.

4. A notification u/s 29 of the Indian Forest Act was issued some time in the year 1964 in respect of 151.85 acres of land out of 172.41 acres of Plot No. 667 and 10.02 acres out of 11.02 acres of Plot No. 1061 of Khata No. 170 and, accordingly, realization of rent was stopped. On account of issuance of the aforesaid Notification, Case No. 2(x) of 1982-83 was registered before the Circle Officer, Baghmara, praying therein for acceptance of rent in which an enquiry was held and after verification from Forest Department, the land of the petitioner was found beyond the forest demarcation area and, accordingly, an order was passed by the Circle Officer, Baghmara, to continue the rent receipts by enhancing the rent to Rs. 23 per annum. The petitioner, thereafter, continued to pay the enhanced rent against the grant of rent receipts. Thereafter, the State Government passed an order u/s 82 of the Act, directing that a survey be made for preparation of records of rights and steps were taken for preliminary publication of the draft record of rights u/s 83 of the Act and during the course of survey and settlement operation, an area of 10 acres was shown and carved out from Cadastral Survey Plot No. 667 and 1061 and the same was shown in the draft records of right in the name of the Forest department. In the remarks column, the possession of the petitioner was recorded as "Awaidh Dakhal".

5. The petitioner being aggrieved, filed petitions u/s 83(1) of the Act and the same were registered as Objection Case Nos. 222 of 1986 and 223 of 1986. The objections filed by the petitioner were rejected by the Revenue Officer vide order dated 5.8.1988. The petitioner, thereafter, preferred two revision applications u/s 89(1) of the Act being Case Nos. 9185 of 1989 and 9186 of 1989, which were heard together and vide common order dated 25.3.1991 both the revision applications were allowed. A direction was also issued for making correction by entering the name of the petitioner as Raiyat in respect of Survey Plot Nos. 1218 and 1224 and for deleting the name of the Forest Department.

6. It appears that the Charge Officer-cum-Settlement Officer under the Janch Badar Case No. 6 of 1994 initiated a proceeding and invited objections and finally by a speaking order dated 6.10.1994 set aside the order passed by the Assistant Settlement Office in Case Nos. 9185 of 1989 and 9186 of 1989 and confirmed the entry made in the draft record of rights. Thereafter, the petitioner filed an appeal before the Commissioner, which was registered as Dhanbad C.N.T. Appeal No. 140 of 1994, challenging the maintainability of the proceeding and jurisdiction of the

Charge Officer. Finally the Commissioner vide its order dated 6.5.2002 dismissed the appeal, holding that the Janch Badar Case was disposed of in terms of Circular contained in Survey Circular Manual and not under the provisions of the Act.

7. In the aforesaid facts, the learned Counsel appearing on behalf of the petitioner has raised the following contentions for kind consideration, namely, as to whether a suo motu proceeding initiated by the Charge Officer-cum-Settlement Officer was devoid of any jurisdiction and authority of law much after the expiry of the period of limitation. The second contention raised is that the only remedy available was to file an appeal u/s 89(2) of the Act. The third contention raised is that the order in the Janch Badar case was an executive/administrative order and the Settlement Officer cannot set aside the order exercised under statutory powers provided u/s 89(1) of the Act.

8. The learned Counsel appearing for the respondents has submitted that the plots, in question, were also recorded under Khatiyani Part II and the character of the land was recorded as Jangal Jhari forest land and waste land and were declared or comprised within the demarcated protected forest area. It is also submitted that after commencement of the Indian Forest Act, 1927 and Bihar Private Forest Act, 1947 whenever the Governor of Bihar has decided to constitute protected forest, It has issued Notification and published the same in Bihar Gazette (Extraordinary). The Governor of Bihar was pleased to issue Notification u/s 14(21) of the Bihar Private Forest Act, 1947 being Notification No. 5398-VIF-98/47R dated 22nd May, 1947 through its Secretary and the same was published in the Bihar Gazette (Extraordinary) and, accordingly, the right and title of the Ex-landlord have ceased and extinguished and the Government acquired proprietary right over such Jangal Jhari forest land and waste land recorded under Khewat and Gair Abad Malik Khata as also Khatiyani Part II, which were rent free lands and the Government has proposed and decided to constitute Forest land. Thereafter, the Government of Bihar was pleased to issue notification u/s 29(3) of the Indian Forest Act, 1927 being Notification No. C/F-17038/64-3349 dated 23rd September, 1964 and also appointed Forest Settlement Officer to enquire into and determine the existence, nature and extent of any rights alleged to exist in favour of any person in or over any land comprised within such limits. The Forest Settlement Officer finally concluded the enquiry and submitted its report by demarcating the forest land in Master Plan i.e. village map and also prepared Forest Demarcation Register, which included the land, in question, as well. After receipt of submission of the report by the Forest Settlement Officer the Governor of Bihar was pleased to issue notification u/s 30 of the Indian Forest Act, 1927 being Notification No. C/F-17038/64-3349R dated 19th December, 1964, declaring any trees or class of trees in a protected forest to be reserved, including building etc. and the same was published u/s 31 of the Indian Forest Act and duly promulgated by beat of drum under the orders of the Deputy Commissioner, Dhanbad. In the aforesaid background, it has been submitted by the respondents that the Forest Department has valid, legal and perfect right, title and

interest over the forest land and they were under legal possession of the forest land, which included the land, in question. It has also been submitted that after abolition of Jamabandi and commencement of Bihar Land Reforms Act, 1950, the land vested with the Government were free from all sorts of encumbrances and collection of rent was prohibited for the demarcated protected forest land and thus, even if any rent receipt was issued, it was of no consequence and could not create any title. It has also been submitted that the Hukumnama was never acted upon and the petitioner Sulochana Devi, daughter of Shiv Kumar Pandye, never entered in possession of the land, in question and, thus, the question of possession and becoming a raiyat does not arise at all. It has also been submitted that issuance of rent receipt and entry in the Tenant Ledger Register-II does not create any legal and valid right or title over the land. The respondents have specifically submitted and argued that the report of the Forest Settlement Officer has become final and binding since the master plan and forest demarcation register prepared by the Forest Settlement Officer was not challenged. Even the Forest department of the State has got no jurisdiction to make any change in the same without permission of the Central Government after commencement of the Forest Conservation Act, 1980 and also in view of the order dated 12.12.1996, passed by the Hon"ble Supreme Court in [T.N. Godavarman Thirumulkpad Vs. Union of India and others](#), It has been stated that the Assistant Settlement Officer had partly allowed the claim of the petitioner vide its order dated 25.3.1991, which was finally rejected by the Charge Officer on his "Janch Badar" vide order dated 6.10.1994. As such, the order, passed on 25.3.1991 does not survive and is of no consequence. It has also been submitted that the Charge Officer is well empowered under the provisions of C.N.T. Act to hold "Janch Badar" and pass orders under the provisions of the Act and circulars and, accordingly, he was fully justified in passing the order dated 6.10.1994.

9. I have perused the facts and circumstances of the case and have also heard the arguments at length of the rival parties. In the instant case, the master plan and forest demarcation was done, which was duly registered by the Forest Settlement Officer and the same included the land, in question. Thereafter, the report has been duly gazetted and notified. A notification was issued u/s 29(iii), followed by issuance of notification u/s 30 and the same was published u/s 31 of the Indian Forest Act and it has been duly promulgated, vesting the land, in question along with other forest land and the same has been declared as demarcated protected forest land. The petitioner has neither challenged it nor objected to it till date and, thus, the same has attained finality. There is another hurdle after the enactment of Forest Conservation Act, 1980. Section 2 thereof provides as under:

2. Restriction on the dereservation of forests or use of forest land for non-forest purpose.- Notwithstanding anything contained in any other law for the time being in force in a State, no State Government or other authority shall make, except with the prior approval of the Central Government, any order directing:

(i) that any reserved forest (within the meaning of the expression "reserved forest" in any law for the time being in force in that State) or any portion thereof, shall cease to be reserved.

(ii) that any forest land or any portion thereof may be used for any non-forest purpose.

(iii) That any forest land or any portion thereof may be assigned by way of lease or otherwise to any private person or to any authority, corporation, agency or any other organization not owned, managed or controlled by Government;

(iv) That any forest land or any portion thereof may be cleared of trees which have grown naturally in that land or portion, for the purpose of using it for reafforestation.

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10. The Hon"ble Supreme Court also had the occasion to consider the same in the famous case of T.N. Godavarman Thirumulkpad v. Union of India reported in AIR 1997 SC 1229, wherein, it was specifically held that u/s 2 of the Forest Conservation Act, nothing could be done without the prior approval of the Central Government i.e. MOEF. It also held that forest land does not only include forest as understood in the dictionary sense but also any area recorded as forest in the government record, irrespective of the ownership. The aforesaid notification under the provisions of Indian Forest Act, 1927 was issued way back on 19th December, 1964 itself and holds good even on the date.

11. The second contention with regard to having a legal or raiyati right does not survive after abolition of Jamindari and commencement of Bihar Land Reforms Act, 1950 since the land vested with the Government free from all encumbrances. Upon specific query from the petitioner, no dispute was raised with regard to the admitted fact that the land, in question, was declared as demarcated protected forest land by the Settlement Officer vide Letter No. F/XXIV-3046/59-1468 LR dated 18th February, 1960. In the aforesaid background, the claim of the petitioner, based on rent receipt, is of no consequence.

12. The fact remains that the demarcated protected forest has a vast track of land and it was never separated or fragmented and hence even the claim of possession and becoming raiyat is devoid of any substance and deserves to be rejected.

13. Counsel for the petitioner has raised specific contention with regard to the power of Janch Badar to set aside the order, passed u/s 89(1) of the Chhotanagpur Tenancy Act. In this regard, it is submitted by the respondents and rightly so that the Janch Badar was a higher officer and was certainly empowered to initiate proceeding in terms of circulars contained in Survey Circular Manual. The petitioner raised no objection about its jurisdiction and the appeal preferred by the petitioner was also dismissed by the Commissioner.

14. Be that as it may, the prayer of the petitioner as aforesaid cannot be granted after the commencement of Forest Conservation Act, 1980 and the series of judgments, passed by the Hon"ble Supreme Court in T.N. Godavarman Thirumulkpad matter (supra).

15. In the aforesaid background, this writ petition is dismissed, without any order as to costs.