(2014) 11 JH CK 0031

Jharkhand High Court

Case No: C.W.J.C. No. 2213 of 1991(P)

Maheshwar Marik	APPELLANT
Vs	
The State of Bihar	RESPONDENT

Date of Decision: Nov. 1, 2014

Acts Referred:

- Constitution of India, 1950 - Article 226
- Penal Code, 1860 (IPC) - Section 426

Citation: (2015) 1 AJR 240 : (2015) 1 JLJR 392

Hon'ble Judges: S. Chandrashekhar, J

Bench: Single Bench

Advocate: Rajeeva Sharma, Sr. Advocate and Mithilesh Singh, Advocate for the Appellant; Sweta Singh, J.C. to G.P. V, Advocate for the Respondent

Judgement

S. Chandrashekhar, J.
I.A. No. 1320 of 2011 was filed seeking substitution of Maheshwar Marik as legal heir of the deceased writ petitioner and vide order dated 29.01.2013, the said Maheshwar Marik was substituted in place of his father.

2. Challenging order dated 05.09.1983 passed by the S.D.O., Sadar in P.D. Case No. 93 of 1979-90, order dated 11.11.1985 in Misc. Appeal No. 237 of 1983-84 passed by the Deputy Commissioner, Dumka and order dated 20.08.1990 in Rev. Misc. Appeal No. 420 of 1985-86 passed by the Commissioner, S.P. Division, Dumka whereby the Original Writ Petitioner (deceased) was removed from the post of "Pradhan", the present writ petition was filed.

3. The brief facts of the case as disclosed in the writ petition are that, a proceeding was initiated against the petitioner for removing him from the post of Pradhan on an application given by 16 Annas Raiyats of Basbutia village, Chaturbhuj Marik and 27 other persons. It was alleged that the petitioner amalgamated Gochar No. 200 in his Plot No. 105 and he amalgamated Gochar No. 254 in his Plot No. 252. Similarly,

he encroached upon Parti Land No. 202 and amalgamated the same in Plot No. 248. The petitioner made Bandobast of Gochar No. 94 and 110 in favour of one Gopal Rai by way of Patta and he made Bandobast of Gochar Land No. 167 in favour of one Dukhan Mahto for Rs. 200/-. Other allegations of irregularities were also levelled against the petitioner. The case of the petitioner is that, one Bibhuti Rai, the previous Pradhan who was dismissed from the post for certain allegations was instrumental in getting complaints filed against him. After the petitioner was appointed Pradhan he asked Bibhuti Rai to vacate the Gochar Land unauthorisedly occupied by him and when he did not vacate certain Gochar Land, a criminal case under Section 426 I.P.C. was filed against the said Bibhuti Rai. Another person namely, Sachin Mehra was set up by Bibhuti Rai. He also filed an application against the petitioner before the S.D.O. however, the said application was dismissed on 14.02.1952. The petitioner filed cases against several persons for encroachment upon Gochar Lands and they were ultimately dispossessed from the Gochar Land and due to action taken by the petitioner against the co-villagers, they ganged up together against him and levelled false allegations. The allegation of encroachment in Gochar Land No. 200 is not correct. The area of Plot No. 252 belonging to the petitioner was 3.56 which was encroached by his elder brother Hari Marik, for which the petitioner filed a case before Circle Officer, Jarmundi. Similarly, Plot No. 202 was Parti Land and it was encroached by the father of the petitioner. The other allegations were also denied by the petitioner.

4. After an enquiry was conducted and a report was submitted by the Circle Officer, the petitioner objected to the report and sought a fresh measurement which was declined by the Sub-Divisional Officer, Dumka and therefore, the petitioner preferred Rev. Misc. Appeal No. 155 of 1980-81. Vide order dated 05.08.1980, the Deputy Commissioner, Dumka directed the Sub-Divisional Officer to depute the Deputy Collector Land Reforms along with Circle Officer and Kanungo to get the land in question measured. Accordingly, a report was submitted to which the petitioner again objected however, vide order dated 05.09.1983 the Sub-Divisional Officer, Sadar ordered the removal of the petitioner from the post of Pradhan. The appeal preferred against order dated 05.09.1983 was dismissed by order dated 11.11.1985 and the Rev. Misc. Appeal was also dismissed vide order dated 20.08.1990.

5. A counter-affidavit has been filed on behalf of the private respondents stating that the office of Pradhan is an elected post in view of Schedule 5 of the Rules framed under Chapter 2 of the Santhal Pargana Tenancy Act. The post of Pradhan is filled up by election by the majority vote of the 16 Annas Jamabandi Raiyats of the village. The Pradhan of the village can be dismissed in terms of the Rules which has been duly complied with in the present case. On the complaint of 16 Annas Raiyats of the village for removing the petitioner, the Sub-Divisional Officer held an enquiry and after receiving report from Amin and Circle Officer which disclosed that the Pradhan (Original Writ Petitioner) had encroached upon Gochar Land and made

certain settlements not in consonance with the provision of the Act, the learned Sub-Divisional Officer vide order dated 05.09.1983 found the allegations against the Pradhan correct and ordered removal of the Pradhan from the post. The Pradhan of the village is custodian and protector of the interest of the 16 Annas Raiyats of village and if he acts contrary to the interest of the Raiyats, the said Pradhan can be dismissed as provided under Schedule 5.

6. Heard the learned counsel appearing for the parties.

7. Mr. Rajeeva Sharma, the learned Senior counsel appearing for the writ petitioner has submitted that in terms of Rule 13(3)(b) of the Santhal Parganas Tenancy (Supplementary) Rules, 1950 a memorandum is required to be prepared in case of a spot verification which admittedly has not been done in the present case. The report dated 04.12.1980 prepared by the Land Reforms Deputy Collector (LRDC) was contrary to order dated 05.08.1980 passed by the Deputy Commissioner before whom the earlier report was challenged. The reliance on the report prepared pursuant to measurement taken on 08.11.1980 was wholly illegal and in the teeth of order dated 05.08.1980 passed by the Deputy Commissioner. It is submitted that it has come on record that the petitioner had initiated several cases of encroachment against the past Pradhan and other villagers and the present complaint against the petitioner was an outcome of the action taken by him against the villagers. Finally, the learned Senior counsel has contended that the report prepared by the Land Reforms Deputy Collector nowhere gives any specific description of the encroachment by the petitioner and therefore, it is completely vague. No definite finding has been recorded in the report of the Land Reforms Deputy Collector (LRDC) and without a "specific report" of encroachment, the allegation against the petitioner could not have been found proved.

8. Per contra, Mr. Ranjan Kumar Singh, the learned counsel appearing for the private respondents has submitted that the issue is concluded by concurrent findings of fact. All the authorities have concurrently held that the misconduct against the petitioner stood proved. On the application of the petitioner fresh measurement was taken which was again objected to by the petitioner on the ground that he has no confidence in the Circle Officer and the objection has rightly been ignored by the Land Reforms Deputy Collector (in-charge) in whose presence the measurement was taken. There is more than one report disclosing encroachment of Gochar Land and the extent of encroachment by the petitioner.

9. Mrs. Sweta Singh, the learned J.C. to G.P.V. appearing for the State of Jharkhand has submitted that the enquiry was conducted in terms of the provisions under the Act and Rules framed thereunder. There is no illegality in the orders impugned and therefore, no interference is required in the matter.

10. I have carefully considered the submission of the learned counsel appearing for the parties and perused the documents on record.

11. Referring to the contention that Rule 13(3)(b) of the Santhal Parganas Tenancy (Supplementary) Rules, 1950 was not complied with in as much as, no memorandum of local Collector visited the site for taking the measurement, I am of the opinion that the contention is devoid of merits. Rule 13 prescribes the procedure to be followed by the Courts in dealing with application and other proceedings under the Act. Rule 13(3)(b) deals with a situation in which the Deputy Commissioner himself proceeds to make local enquiry in person. The report dated 04.12.1980 was prepared after the measurement was taken on 08.11.1980 pursuant to direction of ft. Deputy Commissioner and the said report was not prepared by the Deputy Commissioner after a local inspection by him. Moreover, in the report dated 04.12.1980, the Incharge Land Reforms Deputy Collector, Dumka has recorded that except the family members of Pradhan, all other villagers who were present at the spot, complained against the Pradhan.

12. Referring to the contention of the learned Senior counsel that the enquiry report dated 04.12.1980 does not give a specific finding with respect to the encroachment by the petitioner as it does not disclose the area and nature of encroachment by the petitioner in Plot Nos. 200 and 254, I find that the Sub-Divisional Officer has found that petitioner had encroached 3.50 decimal in Plot No. 200 A, 0.5 Decimal in Plot No. 200 B, 3 Decimal in Plot No. 254 A, 2.50 Decimal in Plot No. 254 B, 0.02 Decimal in Plot No. 254 C, 3.50 Decimal in 25 A and 3 Decimal in 25 B. The Sub-Divisional Officer considered the report of Circle Officer, Jarmundi, the report of the Incharge Land Reforms Deputy Collector, Dumka and also the report of the Amin. He further recorded that the Incharge Deputy Collector, Dumka found the local villagers dissatisfied with the conduct of the Pradhan. The order dated 05.09.1983 indicates that the Sub-Divisional Officer has also taken note of the report dated 19.06.1982 of Amin prepared on the order of the predecessor Sub-Divisional Officer. The report dated 19.06.1982 of Amin, Jarmundi gives detailed description of the encroachment by the petitioner and infact, the extent of encroachment found in report dated 19.06.1982 corresponds to the findings recorded by the Sub-Divisional Officer with respect to encroachment by the petitioner. With the report of Amin, a sketch map is also annexed indicating the encroachment by the petitioner. Referring to the statement in report dated 19.06.1982 that, "presently the extent of encroachment can be more as well as less", the learned Senior counsel submitted that on the face of the report dated 19.06.1982, it cannot be said that the petitioner encroached other lands. I find that the submission of the learned Senior counsel is fallacious. The said observation has been made in report dated 19.06.1982 in view of the fact that earlier also a report was submitted in the year, 1979 and, in that context, the Amin, Jarmundi observed that the extent of encroachment found during the spot measurement can differ from earlier report. Also, from order dated 20.08.1990 in Rev. Misc. Appeal No. 420 of 1985-86 I find that it was contended on behalf of the writ petitioner that the extent of encroachment was meagre and therefore, on the ground of encroachment dismissal of the original writ petitioner from the post of

Pradhan was not warranted. Thus, encroachment by the Pradhan as a fact has been admitted by the petitioner.

13. It is submitted that inspite of order dated 05.08.1980 in Rev. Misc. Appeal No. 155 of 1980-81 directing the Sub-Divisional Officer for fresh measurement of land, the report dated 04.12.1980 of the Land Reforms Deputy Collector merely reiterated the findings recorded in report dated 12.03.1980 by the Circle officer. In the report dated 04.12.1980, there is no specification as to the extent of encroachment and it is also not specified which part of the Plot/Gochar Land has been encroached by the petitioner and in absence of a "specific report", allegation of encroachment cannot be found proved. Since the authorities erred in recording a finding of encroachment by the petitioner without a "specific report", the matter requires interference by this Court. To a pointed query from the Court, how in the facts of the present case, the plea of "specific report" sought to be raised can be a "question of law" warranting exercise of jurisdiction by this Court, the learned Senior counsel responded with unusual aggression and vehemence and said, "after decade of practice at Bar he is unable to understand how without a "specific report" a finding on encroachment can be given". The learned Senior counsel did not argue how the plea of "specific report" raised by him would be a "question of law", of course, he again with unacceptable vehemence asserted that, "this is the only question of law involved in the case". It is the duty of the counsel to assist the Court and answer query of the Court and not to resort to mere rhetorics. Merely because a counsel thinks that a plea urged by him is a "question of law" would not convert a "question of fact" into a "question of law". I am reminded of the observation of the Hon''ble Supreme Court in Subrata Roy Sahara Vs. Union of India (UOI) and Others, "A new phase of advocacy seems to have dawned."

14. In "CIT v. Laxminarain Badridas" reported in 1937 (5) ITR 170, the Privy Council observed, "no question of law was involved; nor is it possible to turn a mere question of fact into a question of law by asking whether as a matter of law the officer came to a correct conclusion upon a matter of fact."

15. In Kashmir Singh Vs. Harnam Singh and Another, , it has been held that "to be a question of law ''involving in a case'' there must be first a foundation for it laid in the pleadings and the question should emerge from the sustainable findings of fact arrived at by Court of facts and it must be necessary to decide that question of law for a just and proper decision of the case".

16. In Meenakshi Mills, Madurai Vs. The Commissioner of Income Tax, Madras, , the Hon''ble Supreme Court discussed the issue of "question of fact" and "question of law" as under:

8. "..... When the Legislature in terms restricts the power of the court to review decisions of Tribunals to questions of law, it obviously intends to shut out questions of fact from its jurisdiction. If the contention of the appellant is correct, then a

finding of fact must, when it is an inference from other facts, be open to consideration not only on the ground that it is not supported by evidence or perverse but also on the ground that it is not a proper conclusion to come to on the facts. In other words, the jurisdiction in such cases is in the nature of a regular appeal on the correctness of the finding. And as a contested assessment - and it is only such that will come up before the Tribunal under section 33 of the Act, must involve disputed questions of fact, the determination of which must ultimately depend on findings on various preliminary or evidentiary facts, it must result that practically all orders of assessment of the Tribunal could be brought up for review before courts. That will, in effect, be to wipe out the distinction between questions of law and questions of fact and to defeat the policy underlying sections 66(1) and 66(2)....."

9. "Considering the question on principle, when there is a question of fact to be determined it would usually be necessary first to decide disputed facts of a subsidiary or evidentiary character, and the ultimate conclusion will depend on an appreciation of these facts. Can it be said that a conclusion of fact, pure and simple, ceases to be that when it is in turn a deduction from other facts? What can be the principle on which a question of fact becomes transformed into a question of law when it involves an inference from basic facts? To take an illustration, let us suppose that in a suit on a promissory note the defence taken is one of denial of execution. The court finds that the disputed signature is unlike the admitted signatures of the defendant. It also finds that the attesting witnesses who speak to execution were not, in fact, present at the time of the alleged execution. On a consideration of these facts, the court comes to the conclusion that the promissory note is not genuine. Here, there are certain facts which are ascertained, and on these facts, a certain conclusion is reached which is also one of fact. Can it be contended that the finding that the promissory note is not genuine is one of law, as it is an inference from the primary facts found? Clearly not....."

17. The report dated 12.03.1980 prepared by the Circle Officer, Jarmundi is a detailed report, a copy of which has been annexed in the supplementary affidavit dated 10.10.2014 filed on behalf of the petitioner. The petitioner filed objection to the said report however, his objection was rejected by the Sub-Divisional Officer vide order dated 05.07.1980. The petitioner preferred Rev. Misc. Appeal No. 155/1980-81 against order dated 05.07.1980 and the Deputy Commissioner without expressing any opinion on the merits directed the Sub-Divisional Officer to depute the Land Reforms Deputy Collector along with Kanungo and Amin to get the land measured. On 08.11.1980 the measurement was taken by the Circle Inspector in presence of Incharge Land Reforms Deputy Collector, Dumka. However, on 11.11.1980 the petitioner objected to the measurement taken on 08.11.1980 stating that he has no confidence in the Circle Officer and the Circle Inspector. The Land Reforms Deputy collector, Dumka receded that since the land was measured in his presence, he found no reason to discard the measurement taken on 08.11.1980. It further

appears that on 06.11.1980 when the Incharge Land Reforms Deputy Collector along with the Circle Officer and Circle Inspector visited the spot, the petitioner stated that he wanted measurement of Plot No. 200 and 254 only and the measurement of both the plots was done in presence of both the parties and again it was found that the petitioner encroached upon Gochar Plot No. 200 and Gochar Plot No. 254. The Land Reforms Deputy Collector, Dumka has recorded that in view of the fresh measurement taken, he found the earlier report dated 12.03.1980 prepared by the Circle Officer, Jarmundi correct. The report dated 19.06.1982 submitted by Amin, Jarmundi also records that the petitioner encroached upon Gochar Plot No. 200 and Gochar Plot No. 254. The extent of encroachment by the petitioner has been given in the report dated 12.03.1980 and report dated 19.06.1982. The finding recorded by the Sub-Divisional Officer is based on the reports dated 12.03.1980, 04.12.1980 and 19.06.1982. In (1949) 17 ITR 269, with respect to ascertaining a "question of law" the test is stated as follows:

"A fact is a fact irrespective of the evidence by which it is proved. The only time a question of law can arise in such a case is when it is alleged that there is no material on which the conclusion can be based or no sufficient material."

18. After reviewing several English decisions, the Hon''ble Supreme Court in Oriental Investment Co. Ltd. Vs. Commissioner of Income Tax, Bombay, , observed that ultimately the House of Lords found that "the matter of degree" is a question of fact. In view of the above discussion, I conclude that the finding recorded by the Sub-Divisional Officer, Dumka is a pure "question of fact."

19. I find that there is concurrent finding recorded by the courts below with respect to the misconduct committed by the original petitioner. The High Court exercising jurisdiction under Article 226 of the Constitution of India is not constituted as an appellate authority and it does not sit in appeal over the decisions of the inferior tribunal. In State of Andhra Pradesh and Others Vs. Chitra Venkata Rao, , the Hon''ble Supreme Court has held that the High Court exercising the supervisory jurisdiction under Article 226 of the Constitution does not act as an appellate court. It has been reiterated that;

23. "The jurisdiction to issue a writ of certiorari under Article 226 is a supervisory jurisdiction. The Court exercises it not as an appellate court. The findings of fact reached by an inferior court or tribunal as a result of the appreciation of evidence are not reopened or questioned in writ proceedings. An error of law which is apparent on the face of the record can be corrected by a writ, but not an error of fact, however grave it may appear to be..... The adequacy or sufficiency of evidence led on a point and the inference of fact to be drawn from the said finding are within the exclusive jurisdiction of the Tribunal".

20. The contention advanced by the learned Senior Counsel is in ignorance of the settled principles of judicial review. In Nagendra Nath Bora and Another Vs. The

Commissioner of Hills Division and Appeals, Assam and Others, , it has been held that, "it is not every error either of law or fact which can be corrected by a superior Court. Mere formal or technical error even though of law, would not be sufficient to attract the extraordinary jurisdiction of High Court of Certiorari". In Meenakshi Mills, Madurai Vs. The Commissioner of Income Tax, Madras, , it has been pointed out that, "questions of fact are not open to review by the court unless they are unsupported by any evidence or are perverse". In Syed Yakoob Vs. K.S. Radhakrishnan and Others, , Constitution Bench of the Hon''ble Supreme Court held thus,

7. ".....There is, however, no doubt that the jurisdiction to issue a writ of certiorari is a supervisory jurisdiction and the Court exercising it is not entitled to act as an appellate Court. This limitation necessarily means that findings of fact reached by the inferior Court or Tribunal as result of the appreciation of evidence cannot be reopened or questioned in writ proceedings. An error of law which is apparent on the face of the record can be corrected by a writ, but not an error of fact, however grave it may appear to be. In regard to a finding of fact recorded by the Tribunal, a writ of certiorari can be issued if it is shown that in recording the said finding, the Tribunal had erroneously refused to admit admissible and material evidence, or had erroneously admitted inadmissible evidence which has influenced the impugned finding. Similarly, if a finding of fact is based on no evidence, that would be regarded as an error of law which can be corrected by a writ of certiorari. In dealing with this category of cases, however, we must always bear in mind that a finding of fact recorded by the Tribunal cannot be challenged in proceedings for a writ of certiorari on the ground that the relevant and material evidence adduced before the Tribunal was insufficient or inadequate to sustain the impugned finding. The adequacy or sufficiency of evidence led on a point and the inference of fact to be drawn from the said finding are within the exclusive jurisdiction of the Tribunal, and the said points cannot be agitated before a writ Court. It is within these limits that the jurisdiction conferred on the High Courts under Article 226 to issue a writ of certiorari can be legitimately exercised".

21. From the materials brought on record I do not find any infirmity in the orders impugned and accordingly, this writ petition is dismissed.

22. It is stated at Bar that after the Pradhan was removed vide order dated 05.09.1983, no Pradhan has been appointed in the last 30 years. The learned counsel appearing for the respondent-State of Jharkhand has submitted that since the matter was subjudice, no step was taken for appointment of Pradhan. I hereby direct the Sub-Divisional Officer, to take necessary steps for appointment of Pradhan.