

SUPREME COURT OF INDIA

Sheapujan Bhagat

Vs.

Thakur Hembrom

C.A.No.1085 of 1980

(K. Ramaswamy and G. B. Pattanaik, JJ.)

07.11.1996

ORDER

1. Though notice was sent to the legal representatives of the contesting respondents, the acknowledgment had not been received. Therefore, it must be deemed to have been served.

2. The only question for consideration is : whether the respondent should be appointed as a headman under Section 5 of the Santal Parganas Tenancy (Supplementary Provisions) Act, 1949 (Bihar Act 14 of 1949) (for short, the 'Act') by virtue of hereditary right or by election? It is seen that the village headman, by name Hari Hembrom, had resigned in 1950 as a headman and, thereafter, no appointment of the headman was made. In the meanwhile the village has become khas village within the meaning of Section 4(ix) of the Act. Resultantly, when an application was made by the Raiyats of the village, the Assistant Commissioner had directed to conduct the election in which the appellants were declared the successful candidates. When the respondent challenged the election before the authority, a remand order was passed. The appellants filed a revision before the Commissioner. The Commissioner accepting the contentions of the appellants set aside the order of appointment. When writ petition was filed against the order, the High Court by the impugned order had held that appointment should be made as far as possible under the hereditary principle. In case the candidate in the line of succession on hereditary principle is unavailable, then the election requires to be done.

The question, therefore, is : whether the view taken by the High Court is correct in law? Section 4(ix) defines "Khas village", as a village in which there is no mulraiyyat (headman) nor for the time being any village headman irrespective of whether there was not previously a mulraiyyat or village headman in the village. Section 5 Provides that on an application of a raiyat or of landlord of any Khas village and with the consent of at least two-thirds of the jamabandi raiyats of the village ascertained in the manner prescribed, the Deputy Commissioner may declare that a headman shall be appointed for the village and shall then proceed to make the appointment in the prescribed manner.

3. The question then is: whether a person from different village can contest the election for headman? It is seen that a reading of the provisions does not indicate that a stranger to the village is intended to be elected as a headman. In this case, the appellant is right that the principle of hereditary succession does not arise since the previous incumbent, Hari Hembrom had voluntarily resigned and, therefore, the question of hereditary succession does not arise. It would arise only when the incumbent dies and his successor is available; in such a situation, under the scheme of the Act, the headmanship is required to be given to his son. In this case, since Hari Hembrom had already resigned voluntarily, the question of hereditary succession does not arise. Admittedly, the appellant is not from the same village. Therefore, he cannot claim the right of appointment. The Commissioner, therefore, is directed to hold a regular election in accordance with the prescribed procedure and read with Section 5 of the Act.

4. The appeal is accordingly disposed of. No costs.

Order accordingly.