HANDBOOK ON LAND LAW
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LAND LAW:
C.N.T., S.P.T., B.L.R., ACT
a. INTRODUCTION

Land is at the root of many a litigation both civil and criminal in the Subordinate Courts. The core of civil litigation in the subordinate courts is related to the land and different types of rights associated with it. Suits of different nature like declaratory suit for title based on inheritance, or partition, specific performance of contract for sale, claim of title over the land on the basis of adverse possession have all their genesis in land disputes. Trial Courts as well as first appellate courts, being courts of fact have to arrive at a clear finding of facts in such cases.

In civil cases documentary evidence assumes greater significance as it excludes oral evidence under Sections 91, 92 and 94 of the Evidence Act. To gain clear grip over the facts of a case the ability to read and analyse the documents adduced into evidence is of fundamental importance. The documents which usually come up for consideration in a civil case are land revenue records like, record of rights, revenue receipts, settlement deeds, sale deeds, records of mutation proceedings. It is a settled principle of law that revenue records neither create nor extinguish title nevertheless they are valuable piece of evidence. The ability to read these documents is the first requisite before the import and effect of these documents could be fully appreciated.

The main Tenancy and land reform laws in the state of Jharkhand are Bihar Land Reforms Act, 1950, Chotanagpur Tenancy Act, 1908 and Santhal Pargana Tenancy Act, 1949. Different provisions of these Acts may apply in one case depending upon the facts of the case. There is an interplay of tenancy and land reform Acts and therefore a clear conception of law on the point is essential for a Presiding Officer of a court. In most of the cases involving land dispute these Acts come up for consideration and therefore a clear understanding of these Acts is of paramount importance. This article attempts to deal with the broad outline and important provisions with case laws, which is necessary to understand the land law and its evolution.

The CNT and SPT Act were enacted for different administrative districts of Chotanagpur and Santhalpargana. At present in the Districts of Dumka, Sahebganj, Godda, Jamtara, Godda and Deogarh and Pakur the provisions of SPT Act apply and in other districts of Jharkhand the provisions of CNT Act apply.

The claim of title invariably involves determination of the chain of title through which the property is claimed to have devolved. It can be based on inheritance, partition, conveyance and will. In any case, devolution of title depends upon the title of person, through whom the title is claimed. The oft repeated saying goes that no one can convey a better title than he himself has. Therefore the title of the person through whom the claim of title is made becomes a crucial issue on which the fate of the civil suit turns either way. In order to give a finding regarding title, the issues of the classes of tenants and tenure holders and their right over the land in question may
come up directly or incidentally in a suit. Bihar Land Reforms Act 1950 brought a tectonic shift in the agrarian relation by removing intermediaries and their interest came to be vested in the State. Certain lands in the Khas Possession of the intermediaries were saved from the rigors of vesting. Briefly stated, the type of land which vested in the State, depends largely on the nature of the land and the tenure.

**HISTORICAL BACKGROUND**

To comprehend the present Land law it is necessary to travel to pre-independence time.

**Pre-colonial Administrative system of Chota Nagpur:**

Though Chota Nagpur has long history of settled life, it never had any strong centralized system of governance. Different tribal communities were governing their own villages.

During the Mughal empire the formal allegiance of local ruler was obtained but it never penetrated deep into the villages so as to exercise direct control.

**Munda Manki System:**

This village based administrative system varied depending upon the communities, but usually it was governed by the village headman known as Munda and the priest was known as Pahan. Network of 8-10 villages were headed by a Manki who used to solve disputes arising between/among different mundas.

The pieces of land were held jointly by the villagers and there was no concept of an individual holding of land as a proprietor of land in his own personal capacity. Different portions of land were earmarked for different purpose, like some portion of the land was marked as rajhas the produce of which was reserved to be sent to the king as tribute, certain portion was reserved for religious activities called sarana land, some portion of land for community dancing and celebration known as akhars land and some portion of agricultural produce was for everyday use.

Munda Manki system has to a large extent been retained in Kolhan area under the Wilkinson rule.

**Structural changes in the land administration in colonial era:**

Land revenue was the primary source of the State income and therefore the Govt took keen interest to regularize the Land Record. East India Company in 1765 received Dewani Right to Collect land rent of Bengal subha from the Mughal emperor by the Allhabad Treaty after the battle of Buxar. By and large the company initially continued the system of revenue collection of the Mughal. Chotanagpur fell in the Bengal province hence, the company asserted its right to collect land revenue in cash from the inhabitants of Chotanagpur. The first major step in this direction was taken by Lord Cornwallis in 1790 with announcement of permanent settlement of land-revenue for a period for ten years in Bengal. The East India Company introduced zamindari system to collect land revenue in Bengal presidency including the area of Chotanagpur. Its effect was to make the Zamindars permanent owners of the land subject to payment of a fixed annual revenue to the Government. Bihar was part of Bengal at that time and the introduction of the new system
of land revenue collection resulted in exploitation and tribal unrest in parts of Chota Nagpur and Santhal Pargana. Furthermore, the system of revenue collection in cash was strongly disliked by the inhabitants which resulted in Kol uprising in 1832. It was against this background that CNT Act was enacted basically to protect the interest of tribals from being dispossessed from their land. The Chotanagpur Tenures Act, 1869 was enacted, which provided for appointment of Commissioners and the Commissioners were empowered to investigate and ascertain the titles and tenures of all lands within the limit assigned to him which may be alleged by any person to be held upon “Bhuinhari and Majhahas” respectively. The power of restoration was also vested with the Special Commissioner for restoration of Bhuinhari and Majhahas tenures wrongfully dispossessed.

Chotanagpur Landlord and Tenant’s Procedure Act was enacted in the year 1879 and apart from the subsequent amendments made therein complementary legislations in the shape of Chotanagpur Commutation Act, 1897, the Chotanagpur Tenancy (Amendment) Act, 1903 and the Chotanagpur (Amendment) Act, 1905 were duly promulgated. Because of the necessity to amend and consolidate the law relating to the landlord and tenant and the settlements of land in Chotanagpur the Chotanagpur Tenancy Act, 1908 was promulgated and the statutes mentioned above were then repealed. To give further protection to raiyats in general and particularly to those who were members of the scheduled tribes amendments were made in the Act by substituting section 14 by section 46 of the CNT (Amendment) Act, 1947 placing restrictions on the right of the raiyat to transfer the land. To effectuate the same purpose later section 71A was inserted by serial no. 3 of the Bihar Scheduled Areas Regulation, 1969 with specific reference to the raiyats, who were members of the scheduled tribes. By the same amending Act in section 72 a further limitation was placed on the surrender of land by a raiyat in so far as it could be done only with the previous sanction of the Deputy Commissioner in writing.

**LAND SURVEY OPERATION**

Land revenue being the biggest source of the revenue of the State, it was the primary concern of the Govt to conduct Survey of land to prepare the record of rights with the details of the land, tenant and the Land Lord. The Government of India wrote to the Secretary of state for India vide letter bearing No. 6 dated the 21st March, 1882 explaining the general objects of survey and preparation of record of rights to put an end to the uncertainty which led to land disputes, to protect the raiyats, to improve local knowledge and enable Revenue officers and civil courts to more effectively examine and deal with various land related disputes.

The special objects were:

1. The preparation of reliable maps of estates, tenures and holdings.
2. The protection of the aborginals (tribes) against unscrupulous landlords.
3. Fixation of the amount of praedial conditions (abwabs and begari) and their commutation into fixed cash payments.
4. The recording of local usages and customs.

The colonial government conducted massive cadastral survey (1902 onwards) and revisional survey (1927 onwards) to prepare record of the rights of the land holders. A *cadastre* is normally a parcel based and up to date land information system containing a record of interests in land.
The revisional survey and settlement operation 1930 settled rents for the raiyats of every denomination. Every raiyat was given khatian which contained the description of the plots and the rents which he was to pay to the landlord. The record of the cadastral and revisional survey is still the only authentic records of the land in Jharkhand.

Land surveys were conducted in different areas. The survey was conducted to prepare the land records and the detailed procedure has been laid down in chapter XII of the CNT Act. Section 81 provides the particulars to be recorded in the record of rights.

Section – 81 of CNT prescribes the particulars to be recorded such as:

(a) Name of each tenant or raiyat / occupant
(b) The class of the tenant whether tenure holder, Mundari Khunt- Kattidar, settled rayiat, occupancy rayiat, non-occupancy-rayiat, under -raiyat etc.
(c) The boundary of the land
(d) The name of the landlord.
(e) The name of each proprietor in the local area or estate
(f) The rent payable
(g) The mode in which the rent has been fixed whether by contract, by the order of the court or otherwise.
(h) If the rent is gradually increasing the time to recorded
(i) The rights and obligation of the raiyats
(j) The special conditions
(k) Any easement attaching to the land for which the record of right is being prepared.
(l) If the land is claimed rent free – whether the rent is actually paid.
(m) The rights on forest produce, jungle land or waste land or to graze cattle on any land.
(n) The right of any resident of the village to reclaim jungle land / waste land or to convert land into korkar.

Before the final publication of record of rights a preliminary publication is made under section 83, which is the draft record of rights so as to receive and consider the objections made in the entries therein. Under it the objections have to be considered and disposed of in the prescribed manner. Revenue Officer shall finally frame the record and cause it to be finally published which shall be a conclusive evidence that record has been duly made under this chapter. There is a presumption of correctness of final publication of record of rights under Section 84(3) of the CNT Act.

Section 87(1) makes a special provision for institution of suits before Revenue Officer at any time within three months from the date of certificate for final publication of record of right. With the insertion of Section 87 (1)(ee) CNT Act by amendment Act 1920 , the power of Revenue Officer was extended to hear suits where such dispute included question relating to the title in land or to any interest in land as between parties to the suit.

Section 87(2) makes provision for appeal from the decision of the revenue officer in Sub-
Section (1) before the Judicial Commissioner under chapter XVI and second appeal lies to the High Court.

Section 258 C.N.T. Act – Bar of jurisdiction of civil court.

It will be appropriate at this stage to consider the scope of Section 258 which provides that no suit shall be entertained in any Civil Court to vary, modify or set aside, either directly or indirectly, any decision, order or decree of any Deputy Commissioner or Revenue Officer in any suit or proceeding under Sections 20, 32, 35, 46(4), 49, 50, 54, 61, 63, 65, 73, 74(A), 75, 85, 86, 87, 89 or Section 91 (Proviso) or under chapter XIII, XIV, XV, XVI and XVIII except on the ground of fraud or want of jurisdiction.

Whether section 258 bars the jurisdiction of civil court to decide the title has been answered by the Hon’ble Patna High Court in Paritosh Maity vs. Ghashi Ram Maity (1987 PLJR 354) in which it has been held that section 258 creates only conditional bar of jurisdiction of civil court. There is nothing in chapter XII or in any other provision of the CNT Act that a party can be debarred from instituting a suit in Civil Court to establish his title and recover possession of his property merely because there having been a proceeding under section 87 with regard to such property. Under section 87 a Revenue Officer cannot entertain a suit for possession---A decree or order of a revenue court can also be challenged, in a civil court, where such decree order or decision is the result of fraud. A civil suit for declaration of title and confirmation of possession and, inter alia, challenging the entries in the revenue record would still be maintainable even after insertion of clause(ee) in S 87(1) CNT Act -- Thus, the pre-condition for the applicability of S.258 is the existence of an earlier order or decree of a Revenue officer or Deputy Commissioner in a prior proceeding. From perusal of this Section it is manifest that if earlier any decision has been made by a Revenue Court in any suit under S. 87, then only other courts or the civil court have no jurisdiction to entertain any suit either to vary, modify or set aside the decision. It also makes it clear that the aforesaid decision or order will have the force or effect of a decree of a civil court in a suit between the parties. However if there is no order or decision under the Sections specified in Section 258 including therein Section 87, the jurisdiction of the civil court will not be barred and specially so for declaration of title and confirmation of possession or recovery of possession. In this case the earlier view in Gobardhan Sahu AIR 1936 Pat 611 was affirmed.

What can be inferred from the above is that inspite of the interdict of Section 258, a suit is maintainable in a civil court for declaration of title and recovery or confirmation of possession even if the party has not filed a suit under Section 87(1). The reason being that the revenue court can not pass an order for confirmation or recovery of possession. Such an order can also be challenged on the ground of fraud and want of jurisdiction. The question can still be raised as to whether a purely declaratory suit can be filed against a final publication of record of right. To my mind such a suit will be barred in terms of Section 258. The ratio decided in Paritosh Maity case permits a suit to be filed in the Civil court when the relief of recovery of possession is pleaded.

2005 (2) JCR 462 (Jagdishprasad SahuVersus State of Jharkhand and others) Division Bench Section 71A, 46 and 258 C.N.T. Act cannot deal with title. The aggrieved who had challenged order under section 71A C.N.T. Act by filing writ was advised to seek remedy by filing suit.

2004 (2) JLJR 169 (Etwa Oraon and others Versus Karo Oraon and others) suit for
declaration of title along with consequential reliefs is maintainable in civil court and is not barred under Section 258 C.N.T. Act. After adverse order under Section 71A of the C.N.T. Act suit was filed which was held to be maintainable.

2005 (3) JCR 132 (Lucas Kharia and others versus Baraik Bahadur Singh and others)
Application under Section 71A of C.N.T. Act was filed after statutory period of thirty years. It was held that order is illegal and without jurisdiction. Subsequent suit for declaration of title is maintainable and not barred by Section 258 of the C.N.T. Act.

Bheem Singh Munda vs State of Jharkhand 2013 (2) JCR 691 (Jhar.) – This case involved Mundari Khuntkattidari Tenancy in which there was a dispute between the petitioner Madhusudan Munda (deceased) and the present appellant Bheem Singh Munda with respect to particular Mundari Khuntkattidari Tenancy for Khewat No. 4/1. The Circle Officer passed an order in Uttaradhakari Case No. 121 of 1995-96 and decided the title in favour of the petitioner Madhusudan Munda. This order was challenged before S.D.O., Khunti under Section 242 of the CNT Act, wherein it was held that for declaration of title and right the proper forum was to approach the Civil Court in view of the disputes between the parties. Madhusan Munda, moved the Hon'ble Court by filing Writ Petition wherein the Hon'ble Single Judge quashed the order of the Circle Officer. The order of the Hon'ble Single Judge was challenged in LPA. It was held that as per section 87 of the CNT Act, 1908 where a dispute arises involving a question relating to title in land or interest in land, in between the parties the suit can be instituted before the Revenue Officer under section 87, but it appears that this can be a suit in relation to the proceeding under chapter XII only, which chapter deals with records of right and settlement of rent and Section 81(b) includes the particulars which are required to be recorded like the Mundari Khuntkattidar. Therefore, with respect to the correction in entry, a suit can be entertained by the Revenue Officer only. Civil Suit with respect to entry relating to Mundari-Khuntkattidari tenancy right in record of right is barred. Section 245 of the Act provides that if in the course of any proceeding under section 244, any question of title is raised, which could, in the opinion of the Deputy Commissioner, more properly be determined by the Civil Court, the Deputy Commissioner shall refer such question to the Principal Civil Court in the district for determination. Therefore, on the reference of the Revenue Officer of such a dispute as mentioned in Section 244 only the Civil Court could examine the issue of the above right. Instead of referring the dispute under section 245 of the CNT Act, the Revenue Officer directed the parties to get their title decided through Civil Court. It was held that this order was right quashed.

Revision by Revenue officer - Under section 89 any Revenue Officer especially empowered by the State Government in his behalf may on application, or his own motion within 12 months of the final publication of record of right or decision under section 83, Section 85 or Section 86 revise the same. Section 89(2) provides for appeal from the order passed under Sub-Section(1) before the prescribed officer. The forum of preferring appeal has been provided in Rule 74 of the CNT Rules, 1959.
TYPES OF REVENUE REGISTERS

Register I-A

Jamabandi Register is prepared under Survey Settlement operation under CNT and SPT Act. The entry in the register is called khatian. It has 17 columns but entries are made in 14 columns as per the particulars given in Section 81 of the CNT Act.


Register No IA is prepared under Survey Settlement operation and no change can be made in it until there is another revisional survey. Before the next survey operation is taken up, if there is any change with respect to the land, it is incorporated in Register IB which is called continuous Khatian. Where there has not been revisional survey this register will be in form IA. Where there has been a survey and record of rights prepared it will be updated in form IB (the continuous Khatian).

The tahsildar is not permitted to make any alteration or correction either in the Register IA or IB continuous khatian, except by the general or special order of the khasmahal Deputy Collector.

Computerization of up to date land record is done on the basis of Register IB. The computerization has the advantage to do away with the practice of manual entry and once it is stored in the PDF file any manipulation can to a large extent be ruled out. One of the difficulty in computerization of the land record in the state of Jharkhand is said to be non-availability of up to date land records.

Register II - Tenant’s Ledger or Rent Roll

It is maintained in Form No. 2 of Bihar Tenant Holding[Maintenance of Records] Act 1975 (it is enclosed at appendix NoII). It is prepared on mutation of the land after the change of tenant and/or their rent roll. It contains the land revenue demand along with the cess. The revenue receipts are prepared and issued on the basis of this register. Such entries are to be made in pursuance to the order passed in a mutation proceeding. Any entry against such order is a nullity.

2009 (2) JCR 153 (Jhar.) Jagdeo Mahto Vs. Commissioner, North Chotanagpur Division, Hazaribagh – Jamabandi standing in the name of a particular person can be cancelled in appropriate cases when brought to the notice of the revenue authorities that order for creating Jamabandi has been passed by an authority, who has no authority or jurisdiction at all, but after giving prior notice and an opportunity of hearing to the concerned person where interest would be adversely affected.

In Mahabir Kansi Vs State of Jharkhand JCR 2008(4) 429 it has been held that a Jamabandi based on forged sada Hukumnama in collusion with the Government officials without obtaining the order of competent authority, is illegal and liable to be cancelled.

Some of the relevant terms are as follows:-
Khata - A record of right in respect of one holding in which plot no. area, boundary, nature of holding etc has been mentioned.

Khatian - A volume containing Khatas ie detailed record for each separate holding for the plots

Khewat - The record of rights in respect of proprietor and tenure holders. Record of the proprietary interest and of the interest of all tenancies intermediate between proprietor and raiyat. Khewat I is with respect to the highest proprietor and II, III, IV etc are for the other intermediaries between and proprietor and raiyat.

Bujharat - Preliminary explanation of the entries in the record by munsarin to the parties concerned before the publication of draft of record of right. Munsarin is the scribe who makes the entries in the record of right.

It is a settled principle of law that revenue records neither create nor extinguish title, but they are valuable peace of evidence with respect to the possession of the parties. Once a record of right is published there is a presumption of correctness with respect to the entries in terms of Section 84(3) of the CNT Act. These entries have to be carefully scrutinized in any case. The entry in the column no2 mentions the name of the raiyats, which can be an evidence of jointness of status when it has been jointly recorded in the name of the brothers. At the same time in the remarks column, if they are shown to be separately in possession of the lands it can be an evidence that at the time of the relevant survey be the that cadastral or revisional, as the case may be, they were separately dealing with the landed properties. These are material evidence which is to be read with other evidence on record to determine the status of jointness or partition in a particular case. Separate possession can be an evidence of separate possession by convenience or it can be an evidence of partition. In AIR 1946 (Pat.) 278 Mt. Ramjhari Kuer and others Vs. Dayanand Singh and others residential houses were recorded in the name of members of different branches separately. Therefore, the entries in the record of rights were regarded of considerable importance indicating separation in the sense of not only definition of shares but also partition. Here in this case in the survey record of rights, khewats and khatians, fauzdar share in the joint family properties had been separately specified. It was held that this by itself is not conclusive proof of separation but it is a relevant evidence which enters into consideration on the question at issue.

So on the question of jointness the entries in the record of right assumes importance. If the name of raiyats is separately recorded in the raiyati column it is an evidence of partition and if it is jointly recorded and separate possession has been shown in the remarks column then it is a matter of appreciation in the light of other evidence as to whether it was merely separate possession for convenience or the presumption of jointness stood rebutted.

In the state of Jharkhand large tract of Govt. land come under forest and there are many cases were unscrupulous litigants stake their claim of title on such lands. The original entries in such cases assume pivotal importance to determine an issue regarding the nature of the land, whether it had vested in the State or whether it was declared a reserved or protected forest under the Indian Forest Act 1927. The entries along with map prepared during survey are relevant in such cases.

In order to determine whether the particular land came under restriction under Section 46 of the CNT Act and Section 20 of the SPT Act one has often to fall back on the original source which is usually the cadastral survey record of rights. These entries are also important for determining
the pedigree of the parties in title suits or land acquisition cases and those involving the title with respect to land in question.

It has been held in 2010(2) JCR 170(Jhr) Yubraj Tiwary Vs State of Jharkhand that Jamabandi once created cannot be canceled by revenue authorities unless there is established ground of fraud or misrepresentation or that the Jamabandi is found to have been created by an order without jurisdiction and assailed within reasonable time.

2008(3) JCR 639 (Jhr) Dineshwar Prasad Vs State of Jharkhand

Long standing jamabandi can not be canceled except by decree or order of a competent court or when it is established that jamabandi was created by playing fraud.-- The right of tenancy is a statutory right and the same can not be taken away except by the procedure prescribed by law. Under the CNT Act the raiyati right can not be denied except in execution of the decree passed in terms of Section 22 of the CNT Act.
b. **MAIN PROVISIONS OF CNT ACT**

When the claim of title in a case is based on inheritance or settlement of land, the right and title of the predecessor-in-interest becomes a relevant issue. This needs to be determined in the light of the relevant Tenancy Act, BLR Act and the laws of inheritance applicable to the parties. After the coming into force of the Bihar Land Reform Act 1950, the estate or tenure of a proprietor or tenure-holder vested in the State. So in order to adjudicate on the claim of title, it is necessary to understand the class of Tenants and Tenure Holders provided under the CNT Act, along with the nature of land so as to determine the implication of vesting on these class of tenants or tenure holders. Whether such a tenure was alienable or not also needs to be answered. This can be relevant in a case to adjudicate on the claim of title by any party through such tenure-holder; as to whether that particular tenure-holder had the capacity to settle that particular land or pass a valid title with respect to it to the present claimant. What are the classes of tenants and tenure-holders and whether they come under the category of occupancy-raiyat can be germane in any case together with consequences of vesting under Section 4 BLR Act on the particular class of tenure-holder. Section 6 and 7 are the saving clauses which provides that certain lands in khas possession and building, golas, factories or mills to be retained by the intermediaries on payment of rent as occupancy raiyats. Therefore if the land was in khas possession of the tenure-holder then it was saved from the rigors of Section 4 of the BLR Act.

**CLASSES OF TENANTS AND TENURE HOLDERS**

Tenant under Section 3(xxvi) means a person who holds land under another person and is liable to pay rent for that land to that person.

**Section 4 of the CNT Act describes following classes of tenants :-**

1. **Tenure holders** including under-tenure-holders.
2. **raiyat, namely**
   - (a) occupancy-raiyats, that is to say raiyats having a right of occupancy in the land held by them,
   - (b) non-occupancy raiyats having no such occupancy right.
   - (c) raiyats having khunt katti rights.
3. **under raiyats,** that is to say tenants holding whether immediately or mediately under raiyats.
4. **Mundari Khut Kattidar** – A Mundari who cleared the jungle and made the land fit for cultivation and his descendants in the male line.

Section 5 lays down the meaning of a tenure-holder as a person who has the right to hold the land for the purpose of collecting rents or bringing under cultivation by establishing tenants. **Raiyat** as defined under Section 6 means primarily a person who has acquired a right to hold land for the purpose of cultivating it.

Section 8 of the CNT Act provides that a Mundari Khuntkattidar means a Mundari, who has acquired a right to hold jungle land for the purpose of bringing suitable portion thereof under cultivation by himself or by male members of his family. The heirs in the male line alone are in the category of Mundari Khuntkattidar. There are certain restrictions on transfer of Mundari Khuntkattidar tenancy under section 240. But, section 241 provides and permits certain transfers. If any person encroached upon the Mundari Khuntkattidar tenancy or a portion thereof such person can be ejected under section 242 of the CNT Act. Mundari Khuntkattidar tenancy gives certain rights to the person, who are known as khewatdars in chapter XVIII of the CNT Act, 1908.

**Chapter IV of the CNT Act deals with Occupancy raiyat and Chapter VI deals with Non-occupancy raiyat.**

Section 16 confers the status of occupancy raiyat on every raiyat who immediately before the commencement of the Act had a right of occupancy by custom usage or otherwise whether they had completed 12 years of cultivation or not. Meaning thereby occupancy raiyat signifies a class of raiyat having a right of occupancy at the time of the commencement of the CNT Act.

Apart from the above under Section 17 a settled raiyat is a person as a person who for a period of **12 years before or after** the commencement of this Act has continuously held as raiyat land situated in any village. Under Section 18 Bhuinhars and Mundari Khunt-Kattidars is to be deemed to have occupancy right. A settled raiyat within the meaning of Section 17 or Section 18 of the Act shall have occupancy right. Under Section 19 every person who is a settled raiyat of a village has occupancy rights. Thus, a person who held the land for 12 years or Bhuinhars and Mundari Khuntkattidars had occupancy right over the land. The occupancy raiyats were guaranteed certain rights, which have been recognized as the incidents of occupancy right laid down in Sections 21 to 24 of the CNT Act. Section 22 protects occupancy raiyat from eviction except on specific grounds mentioned therein. Section 23 provides devolution of occupancy right on the death of the raiyat underlining its hereditary character. The status of raiyats having occupancy right remained the same as before vesting.

Chapter VI (S/38 to S/42) lays down the provision with respect to non-occupancy raiyats. This class of raiyats stood on a different footing and was not conferred with the same privileges as enumerated above in case of occupancy raiyats. Section 41 enumerates the ground on which a non occupancy raiyat can be ejected.

For all practical purposes after independence, with respect to the incidents these two categories of raiyats has ceased to exist. Any raiyat, whose name is now entered in Register II is an occupancy raiyat and has all such rights.

Section 37 of the CNT Act provides that provisions of the Act relating to occupancy-raiyats shall also apply to raiyats having Khunt Katti right.
All the Tenures except Bhuinhari Tenures and Mundari Khunt katti Tenures have vested in the State in terms of sections 3A and Section 4 of the Bihar Land Reforms Act, 1950.

**MANJIIHAS LAND**: Lands which were cultivated by the landlord himself with his own stock, or by his own servants or by hired labour, or were held by a tenant on lease for a term exceeding one year or on a lease written or oral for a period of one year or less and which were by custom recognized as privileged land were called Manjihas land. A person who obtained this land on lease from the landlord, **did not acquire occupancy rights** in it irrespective of the period under his possession.

**ZIRAT**: Zirat land means a privileged land of the land lord as defined under Section 118 of CNT Act.

*BLT 1989 page 267 Santa Lohar - Vrs- Dwarika Sahu*. It is absolutely clear that no occupancy right could accrue in respect of the land in question. Even assuming that the defendant being adhbataidar were under-raiyat the suit properties were neither heritable nor transferable. Admittedly some of the persons whose name in remarks column find place as adhbataidar have died and it is also evident. The defendants no. 1, 2, 3 have sold their properties to the defendant no. 5 and 6.

**BAKAST LAND**: Bakast land is the land which were in cultivating possession of the landlords and were unprivileged land in direct possession of the proprietor or tenure holder. It was within the competency of the landlord either to cultivate it personally or through his person or settle to it any raiyat. The land which was cultivated by the landlord himself is also called Bakast malik.

After settlement it becomes the raiyati land of a raiyat.

**RESTRICTIONS ON TRANSFER BY RAIYAT**

*Section – 46 – Restrictions on Transfer of their right by raiyats.* (1) No transfer by a raiyat of his right in his holding or any portion thereof--by mortgage or lease exceeding five years or by sale or gift or any other contract or agreement **shall be valid to any extent**.

Provided that a raiyat may enter into Bhugut Bandha Mortgage of his holding for a period not exceeding seven years provided further that –

(a) an occupancy-raiyat, who is a member of *Scheduled Tribe may transfer with the previous sanction of the Deputy Commissioner* his right in his holding or a portion of his holding by sale, exchange, gift or will to another person who is a member of Scheduled Tribe and who is a **resident within the local limits of the area of the police station** within which the holding is situate;

(b) an occupancy-raiyat, who is a member of *Scheduled Caste or Backward Classes* may transfer **with previous sanction of the Deputy Commissioner** his right in his holding or a portion of his holding by sale, exchange, gift, will or lease to another person who is a member of [Scheduled Caste or Backward Class as the case may be] and who is a **resident within the local limits of the District within** which the holding is situate;

(c) any occupancy-raiyat may transfer his right in his holding to a society or bank registered
under Bihar and Orissa Cooperative Societies Act 1935 or to the State Bank of India or a Bank specified in column 2 of the first schedule to the Banking companies Acquisition and transfer of under takings Act, 1950 or to a company or a corporation owned by or in which less than 51% of the share capital is held by the State Government or the Central Government or partly by the State Government and partly by the Central Government and which has been set up with a view to provide agricultural credits to cultivators.

(d) any occupancy-raiyat, who is not a member of the Schedule Tribes, Schedule Caste or Backward classes, may, transfer his right in his holding or any portion thereof to any other person, by sale exchange, gift, will, mortgage or otherwise.

3) No transfer in contravention of sub section (1) shall be registered or shall be in any way recognized as valid by any court whatever in exercise of civil, criminal or revenue jurisdiction. In order to further safeguard the interest of the tribal Sub-Section 3A and 4A were inserted by the amendment Act of 1975

Under Sub-Section 46(3A) - Deputy Commissioner has been made a necessary party in all suits of civil nature relating to any holding or any portion thereof in which one of the parties is a member of Scheduled Tribe and the other party is not a member of Scheduled Tribe.

Sub-Section 4 takes the safeguard forward and provides that where the transfer has been made in contravention of clause (a) of Sub-Section (1) the Deputy Commissioner either on his own motion or on the application of the raiyat put the raiyat in possession of the holding or portion thereof, at any time within 3 years after expiration of the period on which a raiyat has transferred his right in his holding or any portion thereof.

Section 46-4A (a) – The Deputy commissioner on his own motion or on an application filed by the occupancy raiyat, who is a member of Scheduled Tribe that the transfer has been made in violation of Section 46 (1)(a) hold an inquiry in the prescribed manner to determine if the transfer has been made in contravention of clause (a) of this Sub-Section

Provided that no such application be entertained by the Deputy Commissioner unless it is filed within 12 years by such occupancy raiyat from the date of transfer of his holding

Section 46-4A(b) If after the inquiry the Deputy Commissioner comes to a finding that there has been no such contravention the petition shall be rejected.

Section 46-4A(c) If after holding such inquiry the Deputy Commissioner comes to a finding that such the transfer has been made in contravention of Section 46(1)(a) he shall annul such transfer and eject the transferee from such holding or portion thereof.

Provided further that where the Deputy Commissioner is satisfied that the transferee has constructed a substantial structure or building on such holding or portion thereof before the commencement of Chota Nagpur Tenancy amendments Act 1969, he may notwithstanding any other provision of this Act validate such a transfer made in contravention of Section 46 (1)(a) of the Second Proviso to Sub-Section(1) if the transferee either makes available to the transferor any alternative holding or portion of holding, as the case may be, of the equivalent value, in the vicinity or pays adequate compensation.

(5) Nothing in this Section shall affect the validity of any transfer of a Raiyat's right in his holding made bonafide before the 1st day January 1908
In 1938 there was an amendment in C.N.T. Act by Chotanagpur Amendment Act, 1938 which received the assent of Centre / Governor on 9th of May, 1938 and was published in Bihar Gazette dated 1/6/1938. By this Amendment Act, amendments were made in different sections of the C.N.T. Act including Section 46. It was provided that an occupancy raiyats of an aboriginal or a member of scheduled caste may transfer his right in his holding or portion of his holding by sale or exchange to another aboriginal or to another person who is a member of scheduled caste, as the case may be and who is a resident with the local limits of the police station area within which the holding is situate and with the sanction of the Deputy Commissioner, by gift or will to a near relative without limitation of residence. Thus according to this amending provision there were no restriction whatsoever in sale of raiyati holding belonging to a member of scheduled tribe by sale or exchange to another member of scheduled tribe within the local limits of the police station and no permission of the Deputy Commissioner was required. The permission of the Deputy Commissioner was required only in a case where the tribal wanted to gift his raiyati land or bequeath by way of will his right in the holding to near relative relative without limitation of residence.

From the above provision it will be manifest that Section 46 of the CNT Act provides not only the restrictions on the transfer of the land, but also it provides the procedure for restoration and annulment of such transfer in case of such a transfer in contravention of the restrictive clause. The remedy of restoration under Section 46(4) is available to all and is not confined to Scheduled Tribes, but the limitation is three years after the raiyat has transferred his right.

The provision for annulment of any transfer in contravention of Section 46 has been made under Section 46(4-A)(a). This remedy is restricted to an occupancy-tenant who is the member of Scheduled Tribes and the period of limitation to entertain such an application is 12 years. The Deputy Commissioner before passing an order has to hold an inquiry in this regard.

Another special feature of this provision is that where the transferee has constructed a building or structure, the Deputy Commissioner shall order to remove the same within a period of Six months or at most two years extended period from the date of such order. Where however a substantial structure has been constructed by the transferee, DC may validate such a transfer on two conditions. Firstly, if the transferee makes available to the transferor an alternative holding or portion of a holding, as the case may be, of the equivalent. Or Secondly, transferee makes pays adequate compensation to the transferor.

Fagua Oraon Vs State of Jharkhand 2008(4) JCR 249 (Jhr)

A Civil suit is not maintainable under Section 258 of the CNT Act against statutory permission granted under Section 46 by statutory authority.

Sanjay Kumar Raha Versus Michael Tigga, 2013 (2) JCR 421 (Jhr.), Section 46 C.N.T. Act is not applicable to a n Oraon who has adopted Christianity and was following Christian custom and tradition.

The scope of the proviso to section 46(1) regarding the right of the raiyats to enter into a “Bhugut Bundha” mortgage or his holding or any portion thereof came up for consideration in Felix Tamba Vs. The State of Jharkhand and others 2008 (4) JCR 542 (Jhar.).

In this case a circular of Government of Jharkhand whereby it had been notified that no person, who is a member of scheduled tribe community can obtain loan for construction of his
house and for the purpose of education by mortgaging his land. It was held that although sub section 1 of Section 46 restricted transfer by a raiyats by his holding by way of mortgage, lease, sale and gift but the proviso to sub-section 1 is an exception which provides that a raiyats may enter into a Bhugut Bundha of his holding for any period not exceeding 7 years and if mortgagee is a society then such period may be extended to 15 years. The object to this is to prevent the raiyats from falling in the clutches of private money lenders. It was held that section 46 does not restricts or prohibits the members of scheduled caste and scheduled tribe from getting financial assistance from the banks for the purpose of construction of the residential houses by creating mortgage of the raiyati holding sought to be used for residential purposes. It was further held that members of scheduled caste and scheduled tribes were entitled to higher education. The circular was held to be in contravention with the provision of section 46 of the CNT Act.

**Section 71 A Power to restore possession to member of the Schedule Tribes over land unlawfully transferred**-- If at any time it comes to the notice of the Deputy Commissioner that transfer of land belonging to a raiyat or a mundari Khunt Kattidar or a bhuinhar who is a member of the Scheduled tribe has taken place in contravention of Section 46 or Section 48 or Section 240 or any other provisions of this Act or by any fraudulent method including decrees obtained in suit by fraud and collusion, he may after giving reasonable opportunity to the transferee, who is proposed to be evicted, to show cause and after making necessary inquiry in the matter evict the transferee from such land without payment of compensation and restore it to the transferor or his heir, or in case the transferor or his heir is not available or is not willing to such restoration, resettle it with another raiyat belonging to the Scheduled Tribe according to the village custom for the disposal of an abandoned holding.

Provided that if the transferee has within 30 years from the date of transfer, constructed any building or structure on such holding or portion thereof, the Deputy Commissioner shall, if the transferor is not willing to pay the value of the same, order the transferee to remove the same within a period not exceeding six months from the date of order, or within such extended period of two years from the date of order as the Deputy Commissioner may allow failing which the Deputy Commissioner may get such building or structure removed.

Provided further that where the Deputy Commissioner is satisfied that the transferee has constructed a substantial structure or building on such holding before coming into force of Bihar scheduled Areas Regulation 1969, he may, notwithstanding any other provisions of the Act, validate such transfer where the transferee either makes available to the transferor an alternative holding or portion thereof or as the case may be of the equivalent value of the vicinity or pays adequate compensation.

Provided also that if after an inquiry the Deputy Commissioner is satisfied that the transferee has acquired a title by adverse possession and that the transferred land should be re-settled or restored, he shall require the transferor or his heir or another raiyat as the case may be, to deposit with the Deputy Commissioner such sum of money as may be determined by the Deputy Commissioner having regard to the amount for which the land was transferred or the market value of the land as the case may be and the amount of any compensation for improvement effected to the land which the Deputy Commissioner may deem fair and equitable.

Section 71 A of the Act has been brought under the Statute by virtue of Section 4 of the Bihar Scheduled Area Regulation, 1969. The Bihar Scheduled Areas Regulation, 1969 was published in the
Bihar Gazette extra-ordinary dated **9th of February 1969** in order to make certain provisions and to amend certain laws in Scheduled Areas in the State of Bihar for the peace and good government of the said areas. In exercise of the powers conferred by Sub-paragraph (1) of paragraph 6 of the fifth schedule to the Constitution of India, the President of India by virtue of notification published in the Gazette of India dated 26th of January 1950 promulgated the Scheduled Areas part A States (Order) 1950 and declared in the State of Bihar, Ranchi District, Singhbhum District excluding Dhalbhum Sub-Division, Santhal Parganas District excluding Godda and Deoghar Sub-Division and Latehar Sub Division of Palamau District as Scheduled Areas. The said order was rescinded and the Scheduled Areas (State of Bihar, Gujrat, Madhya Pradesh and Orissa) Order 1977 was promulgated by the President of India by publication in the Gazette of India extra-ordinary part II Section 3(i) dated 31.12.1977 according to which in the State of Bihar, Ranchi District, Singhbhum District, Latehar Sub-Division and Bhandaria Block of Garhwa Sub-Division in Palamau, District Dumka, Pakur, Rajmahal and Jamtara Sub-Division and Sundar Pahari and Boarijor Block of Godda Sub-Division of Santhal Pargana District were declared as Scheduled Areas. The above order was rescinded and the Scheduled Areas (State of Chhattisgarh, Jharkhand and Madhya Pradesh) Order 2003 was promulgated by virtue of notification published in Gazette of India extra-ordinary Part II Section 3(i) no. 79 dated 20.2.2003 by the President of India according to which so far as the state of Jharkhand is concerned the areas specified below were declared as Scheduled Areas:

**Jharkhand**

1. Burmu, Mandar, Chanho, Bero, Lapung, Ratu, Namkom, Kanke, Ormanjhi, Angara, Silli, Sonahatu, Tamar, Bundu, Arki, Khunti, Murhu, Karra, Torpa and Rania block in Ranchi District.

2. Kisko, Kuru, Lohardaga, Bhandra and Senha blocks in Lohardaga District.


4. Simdega, Kolebira, Bano, Jaldega, Thethaitangar, Kurdeg and Bolba blocks in Simdega District.

5. Barwadih, Manika, Balumath, Chandwa, Latehar, Garu and Mahuadarn blocks in Latehar District.

6. Bhandaria block in Garhwa District.

7. Bandgaon, Chakradharpur, Sonua, Goelkera, Manoharpur, Noamundi, Jagannathpur, Manghgaon, Kumardungi, Manjhari, Tantnagar, Jhickpani, Tonto, Khuntpai and Chaibasa blocks in West Singhbhum district.

8. Govindpur (Rajnagar), Adityapur (Gamharia), Seraikella, Kharsawan, Kuchal, Chandil Inhagarh and Nimdih blocks in Seraikella Kharsawan district.

9. Golmuri, Jugsalai, Patmada, Potka, Dumaria, Musabani, Ghatsila, Dhalbhumgarh, Chakulia and Bahragora blocks in East Singhbhum District.

10. Saraiyahat, Jarmundi, Jama, Ramgarh, Gopikandar, Kathikund, Dumka, Sikaripara, Raneshwar and Masalia blocks in Dumka district.

11. Khudhit, Nala, Jamtara and Narainpur blocks in Jamtara district.
12. Sahebgang, Borio, Taljhari, Rajmahal, Barharwa, Pathna and Barhet blocks in Sahebganj District.


The expression used in Section 71 A is “...if at any time it comes to the notice of the Deputy Commissioner........” The ratio of the authorities on this point is that the power under this Section is to be invoked within a reasonable time. It has been held in Fulchand Munda Vs State of Bihar [2008(2)JCR(SC)1] that although no period of limitation is provided for exercising the power under Section 71 /A by the Deputy Commissioner, the party affected is called upon to approach the appropriate authority or the power has to be exercised by the Deputy /commissioner within a reasonable period of time.

In Kameshwar Narayan Singh Vs State of Jharkhand [2009]3 JLJR 48 the application for restoration was filed in 1995, after 54 years which was held that it can not be termed as reasonable and it was even otherwise barred by limitation. 2009 (4)JLJR 325 is also to the same effect.

The right of the raiyat to transfer his holding has been recognized subject to certain conditions enumerated under Sections 46 Proviso(a),(b) (c) and (d). Under Section 46(a) An occupancy raiyat who is a member of the Scheduled Tribe may transfer with the previous sanction of the Deputy Commissioner his right in his holding by sale, exchange, gift or will to another person who is member of the scheduled tribes and who is a resident within the local limits of the area of the police station within which the holding is situate.

(b) An occupancy raiyat who is member of the scheduled caste or the backward classes may transfer with the previous sanction of the Deputy Commissioner his right in his holding or a portion of his holding by sale, exchange, gift, lease or will to another person, who is a member of schedule caste or the case may be backward class and is resident within the local limits of the districts.

The above restrictions do not apply to others. No transfer in contravention of the above provisions can be registered or recognized as valid.

It has been held in 2014(1)JCR 342(Jhr) State of Jharkhand Vs Taurian Infrastructure Pvt. Ltd that transfer of land of a tribal in favour of non-tribal is prohibited in law consequently possession by a non-tribal on basis of illegal transfer can not be recognized.

Limitation:

Section 46 (4) of the Act provides that at any time within 3 years after the expiration of the period of transfer in violation of the provisions of section 46 the Deputy Commissioner on the application of the raiyat shall put the raiyat into possession of such holding or portion.

Section 46(4-A)(a) provides period of limitation of 12 years within which a Deputy Commissioner may entertain application for annulling the transfer on the ground that the transfer was made in contravention of clause (a) of second proviso to Sub-section(1).

A combined reading of Section 46 and 71 A will reveal that under Section 46(4) there is limitation of three years from the transfer by raiyat of his right in his holding within which the raiyat has to move the DC for restoration. This provision applies to all raiyats and is not restricted
to the Tribals. The Proviso to Sub-Section (4-A) (a) extends the limitation to 12 years to consider an application for restoration of a tribal. There is no limitation provided under Section 71 A within which the restoration may be allowed. A close look at these provisions will make it clear that these provisions operate in distinct and different fields and there is no contradictions in them. Both Section 46(4-A)(a) and Section 71 A are specific provisions relating only to Scheduled Tribe and does not apply in case of Scheduled Caste and Backward Caste. The difference being that Section 71 A is only with respect to Scheduled areas for transfer made in violation Sections 46,48 and 240 of the Act, whereas Section 46 (4-A)(a) shall apply in other areas when the transfer is in violation to second proviso(a) to Section 46. It may therefore be said that any transfer in contravention of Section 46 can be challenged by the Scheduled Caste and Backward Classes within three years and by the Scheduled Tribe within 12 years. In case of Scheduled under Section 71 A there is no time fixed for restoration in case of Scheduled Tribe, but nevertheless it is to be within reasonable time as per the ratio decided by Hon’ble The Apex Court in case of Situ Sahu case.

The above restrictions initially failed to produce the desired result and in order to circumvent the provisions collusive suits were filed. To check this practice Section 46(3A) and (4A) were inserted by amendment Act of 1976. The Deputy Commissioner was made a necessary party in all suits of civil nature relating to any holding or portion there of in which one of the parties to the suit was the member of the scheduled tribe under Section 3A. Under Sub-Section 4A the DC has the power to annul such a transfer which was in contravention to clause(a) of the second proviso to sub-section (1).

It is to be noted that the necessity of permission of Deputy Commissioner for transfer of land between tribal to tribal came into force by the Amendment Act, 1947 with effect from 5.5.1948 and it has got no retrospective effect. Therefore, the transfer of land without the permission of Deputy Commissioner before 5.5.1948 cannot be held to be invalid. It has been held in Manu Oraon & anr. vs. Hira Kuar 2003 (1) JCR 494 that for partition there is no requirement of obtaining the permission of Deputy Commissioner.

A legal question arose as to whether surrender of land by raiyat in favour of landlord without obtaining previous permission of the Deputy Commissioner amounted to transfer in violation of provisions of section 46 of CNT Act. Whether the surrender by a scheduled tribe of his statutory right to hold land for the purpose of cultivation would amount to transfer within the meaning of section 71A of the CNT Act, 1908 came up for determination in the full bench judgment of the Patna High Court in Bina Rani Ghosh vs Commissioner South Chota Nagpur Division [1985 AIR Pat 352]--Surrender of a raiyati interest by by Scheduled Tribe-- Landlord making settlement of such surrendered raiyat interest the same day-- Surrender amounts to transfer-- Surrender without prior permission of the Deputy commissioner is invalid under Section 72 of the Act

Note: The requirement of surrender with the previous sanction of the Deputy Commissioner has been inserted by the CNT amendment Act of 1947 which came into force with effect from 5-1-1948.

RESTRICTION ON TRANSFER OF LAND BY BACKWARD CLASSES AND SCHEDULED CASTE

Validity of transfer in contravention of clause (b) to 2nd Proviso of sub-section(1) to Section 46
Analogous provisions putting a clog on transfer by protected tenant who were members of Scheduled Castes and Backward Classes has been laid in Chapter VIIA of the Bihar Tenancy Act.

These provisions came under challenge in Bhageran Thakur VS Kewal Singh 1969 PLJR 30(FB) It was held in this case that in the restrictions to transfer as laid down in Chapter VIIA of the Bihar Tenancy Act, the test of reasonableness of Section 49-C was not satisfied and it was held to be void so far as it provided that no sale by members of backward classes of his right in his tenure, holding or tenancy is valid.

Chotanagpur constituted part of Bihar and following this judgement, the restriction of transfer as provided under Section 46 proviso (b) was deemed to be lifted by analogy and transfer of land started taking place.

Whether restriction on transfer as provided under Section 46 proviso (b) with respect to transfer of land by scheduled caste or backward class in favour of a person belonging to some other category is valid or not came up for consideration in Budhni Mahtain VS. Gobardhan Bhokta reported in 1984 BLT 226 in this case it was held that the restriction imposed by proviso (b) to Section 46 (1) of the CNT Act as ultra vires under Article 19 (1)(f) and 19 (5) of the Constitution. This issue again came for consideration before full bench in Mathura Singh VS. Tetli Dom 1996 (2) BLJR 1116. Mathura Singh filed a declaratory suit for a decree for confirmation of his possession. One of the issues in the suit was whether purchase of the suit land by the plaintiff – appellant from defendant was in violation of section 46 (1) of the CNT Act. It was not in dispute that defendant vendor had not obtained permission of Deputy Commissioner before transferring the land in favour of the plaintiff. The Additional Munsif decreed the suit on the reason that the sale cannot be held to be invalid as defendant was estopped from raising the plea under section 46 (1). On appeal the first appellate court came to a contrary finding and in first appeal the matter came up before the High Court. The Hon'ble Court held that the provision under section 46(1) was not ultra vires and the transfer being without permission was not valid. Section 46 is completely immune from attack of violation of Article 19(1)(f) in view of its inclusion in IXth Schedule item no 209. In the said judgment the decision reported in 1984 BLT 226 was held per-in-curium and not a good law. Their Lordships also considered the decision reported in 1969 PLJR 30 (FB) and in paragraph 11 of the judgment it was held that Bhageran Thakur's case related to backward classes and this case and Budhni Mahtain’s case related to members of scheduled caste. It was further held that direct decision of the court in Shashtri Pado’s case (AIR 1967 Patna 25) which upheld the constitutional validity of Section 46(1)© was not brought to the notice of their Lordships.

Further in the decision reported in 2002 (2) JCR 150 (Pogi Kuer Vs. Nageshwar Pradhan and os others) it was held that sale of land by scheduled caste to another person without sanction of the Deputy Commissioner is in violation of the provision of section 46 and is invalid.

Similarly in the decision reported in 2003 (4) JCR 233 (Sital Baitha alias Ram and others Vs. Rudi Chamar and others) it has been held that if sale deed is executed by a member of scheduled caste without the permission of the Deputy Commissioner is invalid and sale deed is ab-initio void and the vendee has acquired no right, title and interest in the suit land.

According to the law existing at present an occupancy raiyats who is a member of scheduled class or backward raiyati land by sale, exchange, gift, will or lease to another person who is a
member of scheduled caste or Backward class community, as the case may be and who is resident of the District within which holding is situate with the previous sanction of the Deputy Commissioner.

Their Lordships in the decision reported in 2012 (1) JLJR 199 (Shalkhan Murmu Versus State of Jharkhand) have observed that court should be strict in implementation of Land Reforms Law and protect the interest of down trodden people belonging to scheduled tribe, scheduled caste and backward class community. Thus the law which exists now provides that an occupancy raiyats belonging to a member of scheduled caste or backward class community can transfer his raiyati land by sale, exchange, gift, will or lease to another member of scheduled caste and backward class community, as the case may be and who is resident of the same district in which the holding is situate with the previous sanction of Deputy Commissioner.

Kanti Devi Versus State of Jharkhand and others, 2009 (4) JCR 384 (Jhr.) -Section 46 – Transfer in violation of compromise decree passed in the title suit would amount to a fraud upon the statute itself and cannot create and right in favour of the vendee.

Ramesh Pramanik Versus State of Bihar and others, 2009 (3) JCR 25 (Jhr.) – Section 46(3-A) – Compromise in the title suit regarding transfer of the right in raiyati land in contravention of the provision of Section 46(3) of the Act is illegal and invalid.

Md. Munna Ali and another Versus State of Bihar and others) 2002 (3) JCR 121 – Section 46 – Compromise decree obtained by Civil Court is violation of Section 46 –such decree is of no avail.

Rambriksh Gupta Versus State of Bihar and others, 2003 (4) JCR 206 – Section 46(1) and 71A – Applicability of transaction in contravention of section 46 of Act – Subsequent confirmation by compromise – effect of compromise between the parties may not be a fraud on the court but it was certainly a fraud against the statute – Authorities in exercise of power under Section 71A of the Act are competent to restore possession by annulling such transaction- Restoration order rightly passed.

BHUINHARI LAND:

Bhuinhars are the descendants of the Pioneer families who cleared the jungle and brought that particular area under cultivation and became owners. The word Bhuinhar means the owner of the soil. Bhuinhari lands are the land which are really the ancestral holdings of the descendants of the aboriginal clearers of the village.

The above tenure was included in the survey done by Babu Rakhal Das Haldhar under the Chhotanagpur Tenure Act (Act II of 1869) commonly known as Bhuinhari survey.

The object of the survey was to make a record of the ancestral Holdings of the aboriginal tribes in Ranchi District and the lands entered in the register prepared under this survey are generally shown as Bhuinhari tenure held by persons claiming to be descendants of original founder of villages. If a particular land is entered in the register maintained under the Act then it will be deemed to be a Bhuinhari Tenure. The Bhuinhari Tenure has been treated as a separate class under the Act and specific provisions have been made in respect of such tenures.

In the survey of 1869 the Bhuinhari Register were prepared according to the different khunt into which the Bhuinhari were divided. The word khunt means lineage and it is applied
to the agnatic descendants from common ancestors. In the last settlement the Bhuinhars were entered in Khewat according to Bhuinhari Register of 1869 survey and the particulars of khunt of Bhuinhars was shown in column no. 3 of the khewat.

Taylor classified the bhunhri land under the Chotanagpur Tenure Act in seven categories–

1. Bhuinhari – The cultivation of the original clearers of the village.
4. Bhuinhari Pahanie – The official cultivation of the Pahan or village priest.
5. Bhuinhari Pabbhara – Lands given for the service of carrying after at the village sacrifices.
6. Bhuinhari Dalikatari lands – The income of which is devoted to religious purposes in the village.
7. Bhuinhari Bhutkheta lands – The income of which is devoted in the religious purposes in the village.

**Section 48 - Restriction of transfer of Bhuinhari Tenure**

A member of 'Bhuinhari' family may transfer any Bhuinhari tenure which is held by him or any portion thereof in the same manner and to the same extent as an aboriginal raiyat may transfer his right in his holding under clause (a) and (b) of Sub-Section 2 of Section 46.

Sub-Section 4 lays down the power of the Deputy Commissioner to eject the transferee and place such member of Bhuinhari Tenure in possession when the transfer has been made in contravention of the Section within 12 years of the said transfer.

It has been held in the judgment reported in 1997 (1) BLJR 401 (Harihar Sahu Versus Commissioner, South Chotanagpur and others) that if claim for restoration of bhuinhari land is made after 12 years the same would be barred by limitation according to Section 48(4) of the C.N.T. Act. It is pertinent to mention here that by virtue of amendment in Section 71A of the C.N.T. Act by Regulation 1 of 1986 the land belonging to Mundari KhuntKattidar and bhuinhari also come within the purview of Section 71A of the C.N.T. Act. The said amending provision is not retrospective in operation as would also be evident from the judgment reported in 1992 (2) BLJR 986 (Bukan Ansari and others versus State of Bihar and others).

Section 48A – Restriction on the sale of Bhuinhari Tenure.

**Section 49 - Transfer of occupancy holding or Bhuinhari Tenure for certain purposes**

The land could be transferred for religious, charitable and educational purpose prior to amendment of Section 49 of the CNT Act, 1996. By virtue of the said amendment land can be now transferred for industrial and mining purpose with sanction of the Deputy Commissioner. In Section 49 there was amendment by CNT Amendment Act, 1975 and clause (5) was inserted according to which power has been given to State Government to annul the transfer if consent of the Deputy Commissioner has been obtained in contravention of the provisions of sub-section (1) and (2) by misrepresentation or fraud if claim is made within 12 years from the date on which written consent is given by the Deputy Commissioner in regard to transfer of holding of occupancy raiyats belonging to a member of Scheduled Tribe.
Sections 49 and 71A C.N.T. Act.

If the land has been transferred pursuant to permission granted by the Deputy Commissioner under Section 49 of the C.N.T. Act, according to Section 49(5) of the said Act which has been inserted by section 5 of C.N.T. (Amendment) Act, 1975, the State Government may at any time within a period of twelve years from the date on which written consent is given by the Deputy Commissioner in regard to the transfer of any holding or part thereof belonging to an occupancy raiyats who is a member of scheduled tribe either on its own motion or on an application made to it in his behalf set aside such written consent and annul the transfer, if after holding an enquiry in the prescribed manner and after giving reasonable opportunity to the parties concerned to be heard it finds that the consent had been obtained in contravention of the provisions of Sub-sections (1) and (2) by misrepresentation or fraud and in case any holding or part thereof has been transferred on the basis of such written consent, direct the Deputy Commissioner to take further necessary action under Clause (C) of sub Section 4A of Section 46. Thus the aggrieved member of scheduled tribe cannot invoke the provision of Section 71A of the C.N.T. Act. It has been consistently held that if transfer of land has taken place in pursuance of sanction of the Deputy Commissioner under Section 49 of the C.N.T. Act the provision of Section 71A of the said Act is not attracted as held in the decisions reported in 1990 BLT 352 Division Bench (Sri Rajendra Nath Kapoor Versus the State of Bihar and others), 2003 (3) JCR 492 (Niranjan Mahli and another versus State of Bihar and others), 2001 (1) JLJR 225 (Jiwan Lal, Hemanth Kumar and others versus State of Bihar and others), 2004 (3) JCR 343 (Kusum Devi etc and Pravir Kumar and others versus State of Bihar and others), 2007 (7) JCR Division Bench (Etwa Oraon Versus Smt. Kusum Devi and others), 2009 (2) JCR 20 (arish Chandra Keshri versus State of Jharkhand and others), 2010 (3) JCR 468 (Paika Murmu and others versus State of Jharkhand and others).

Mundari khunt Kattidari Tenancy Chapter XVIII

Section 240 of the Act lays down the restriction on transfer of Mundari Khunt Kattidari tenancy - No Mundari Khunt Kattidari tenancy or portion thereof shall be transferable by sale, whether in execution of decree or order of a court or otherwise. No mortgage shall be valid except bhugut bandha mortgage. No lease of this tenancy or any portion thereof shall be valid except a mukarari lease of uncultivated land when granted to a mundari or a group of mandaris.

The above restriction has been partly lifted under Section 241 and Mundari-khunt-kattidar may without the consent of his landlord transfer the land comprised in his tenancy for any reasonable and sufficient purpose having relation to the good of the tenancy or of the tenure or the estate.

Section 241 Transfer for certain purposes - Mundari Khunt-Kattidar may transfer the land comprised in his tenancy for a religious or charitable purpose such as the use of the land for any charitable, religious or educational purpose or for the purpose of manufacture or irrigation. The consent of the Deputy Commissioner is required for transfer of the land.

Section 242 provides that if any person obtains possession of a Mundari-khunt-kattidari tenancy or any portion in contravention of the provision of Section 240 the Deputy Commissioner may eject him therefrom.

In Bhim Singh Munda Vs State of Jharkhand 2013(2)JCR 69 (Jhr) the legal issue that came
for determination was that whether a Civil suit with respect to the entry relating to Mundari Khunt-Kattidari tenancy right in the record of right is maintainable? The question was answered in the negative and it was held that if in the course of any proceeding under Section 244 any question of title is raised, which in the opinion of Deputy Commissioner, more properly be determined by a civil Court, the Deputy Commissioner shall refer such question to the principal for determination.

- If there is a bonafide dispute between two claimants involving question of title, then civil court can examine the issue only on reference Section 251, bars any suit under Section 87 for decision of any dispute regarding Mundari Khunt Kattidari in a record of right.

RESTORATION OF LAND UNDER SECTION 71 A OF CNT ACT

Bihar Scheduled Areas Regulation 1969 inserted Section 71A in the CNT Act to undo the wrongs committed in contravention to the provisions of section 46, 48 or 240 of the Act. This is the specific provision for the scheduled tribe and if at any time it comes to the notice of the Deputy Commissioner the illegal transfer of land belonging to a raiyat or a mundari khunktattidar or a Bhuinhar has taken place by any fraudulent method, including decrees obtained by fraud in the suit by collusion after giving notice, evict the transferee from such and without payment of compensation and restore with the transferor or with his heir of the raiyat or another raiyat belonging to scheduled tribe.

By the above regulation certain amendments were made in different Acts including the Code of Civil Procedure, Limitation Act. The proviso to Article 65 of the Limitation Act was amended and period of adverse possession was extended to 30 years instead of 12 years. Wide discretion was vested in the Deputy Commissioner to restore land.

The only reprieve to the transferee has been given is that where a substantial structure of building has been raised before coming into force of Bihar Scheduled Areas Regulation 1969 he may validate such transfer where the transferee make available to the transferor an alternative holding or portion thereof or pays adequate compensation as may be determined. If the transferee acquired title by adverse possession and the transferred land should be restored he shall require the transferor or his heir or the another raiyat as the case may be to deposit with the Deputy Commissioner such sum of money as may be determined.

The constitutional validity of section 71A was challenged in Amrendra Nath Dutta Vs. State of Bihar AIR 1983 (Pat) 151 in which it was held that the Bihar Scheduled Areas Regulation 1969 was valid piece of legislation. It was further held that section 71A was not retrospective in operation which conferred power to Deputy Commissioner to evict persons to whom transfer has been made prior to coming into force of section 71A.

Section 71 applies to agricultural land and not to land falling under municipal area. So where in the khatian the land has been shown to be Chhaparbandi Section 71 A shall have no application.

In the judgment of the Hon’ble Supreme Court reported in AIR 1992 Supreme Court 195 (Pandey Oraon Versus Ramchandra Sahu and others) it has been held that the term transfer contemplates situation where possession has passed from one to another and as a fact member of scheduled tribe is entitled to hold possession has lost it and one not a member of said tribe has come in possession. It has further been held that the provision of Section 71A of the C.N.T. Act is beneficial and the legislative intention is to extend protection to a class of citizen who is not in a position to keep his properties in absence of protection. Their Lordships of the Hon’ble Supreme
Court in the decision reported in AIR Supreme Court 2276 (Jaimangal Oraon Versus Smt. Mira Nayak and others) have held that when surrender of the land was made in the year 1942, previous sanction from Deputy Commissioner was not necessary. Such surrender also cannot be held bad merely because it was not at the end of agricultural year but immediately before, more so when party has acquired right about forty years back. Their Lordships of the Hon’ble High Court of Jharkhand in the judgment reported in 2004 (2) JLR 253 (Chaitu Oraon and another versus the state of Jharkhand and others) have held that application for restoration of land filed after forty three years from the date of surrender is apparently barred by limitation. Similarly in the judgment reported in 2013 (1) JCR 313 (Shyam Narayan Singh and another versus Commissioner, South Chotanagpur Division and others) it has been held that power under Section 71A of the C.N.T. Act cannot be exercised after unreasonable long time during which third party’s interest might have come into effect. In that case claim for restoration of the land was filed after delay of forty one years. The writ application was allowed. In the judgment reported in 2011 (4) JCR 73 (Smt. Sharda Devi Versus the Commissioner, South Chotanagpur Division, Ranchi) it has been held that there was no restriction of transfer inter-se-between the members of scheduled tribe at the relevant time and as such violation of section 71A of the C.N.T. Act does not arise. Restoration application filed after lapse of forty four years can by no stretch of imagination be reasonable time. In another judgment reported in 2011 (4) JCR 334 (Malati Murmu Versus State of Jharkhand and others) it has been held that application for restoration of land filed after thirty five to forty years from the date when the person concerned came in possession of the disputed land is not maintainable being barred by limitation. In the judgment reported in 2009 (1) JCR 193 (Akhouri Akhileshwari Charan Lal and others Versus State of Bihar and others) it has been held that surrender and settlement of land made within the span of few days is quite legal and valid. It has further been held that application for restoration of the land filed after thirty five years from the date of surrender was barred by limitation. Their Lordships in the decision reported in 2012 (4) JCR 580 (Budhwa Munda Versus State of Jharkhand and others) have held that seeking exercise of jurisdiction under Section 71A of the C.N.T. Act cannot be sought after long delay of more than fifty years. In view of the above consistent judicial pronouncements, it cannot be said that there is no period of limitation for claiming restoration of the land under the provision of section 71A of the C.N.T. Act.

Whether section 71A of the C.N.T. Act applies in a case where the land has been auction sold by the order of Court?

It has been held in the decision reported in 1988 BLT 172 (Raj Sewak Singh and another versus State of Bihar and others) that transfer does not cover involuntary transfer. When transfer took place in execution of decree by direction of court for auction, such a transfer is beyond the scope of Section 71A of the C.N.T. Act. In the judgment reported in 1990 BLT 217 (Abdul Salim Versus the Commissioner, South Chotanagpur Division and others) it has been held that application under Section 71A of the C.N.T. Act is not maintainable in case of auction sale of the land by court in execution of a decree. Further in the judgment reported in 2003 (4) JCR (Jagdish Prasad Singh and another Versus State of Bihar and others) it has been held that in a case where disputed land has been transferred in pursuance to the execution case and the auction purchaser has been put in possession, provision of Section 71A is not applicable. Similarly in the judgment reported in 2013 (1) JCR 174 (Bana Munda Versus State of Bihar (now Jharkhand) it has been held that if there has been auction of the property by Official liquidator pursuant to the order of the Kolkata High Court, provision of Section 71A of the C.N.T. Act is not attracted.
Whether transferee of land can claim restoration under Section 71A of the C.N.T. Act?

Section 71A of the C.N.T. Act is applicable when transfer of land is made by a raiyats who is a member of scheduled tribe and not where such a raiyats is himself a transferee and not a transferor as held in the judgment of Ramchandra Sahu alias Ramchandra Prasad alias Kolha Sahu versus State of Bihar and others reported in 1990 (1) PLJR 604 Division Bench. Further it has been held in the judgment reported in 2010 (1) JCR 427 (Saraswati Devi Versus State of Jharkhand and others) that application under Section 71A of the C.N.T. Act for restoration of possession of land filed by person claiming land by way of purchase by registered sale deed is not maintainable.

Whether principle of resjudicata applies in a proceeding under Section 71A of the C.N.T. Act?

It is a settled principle of law that principle of res-judicata is well applicable in a proceeding under Section 71A of the C.N.T. Act. Thus if an earlier proceeding under Section 71A of the C.N.T. Act has been decided against the applicant and which was attained finality, subsequent proceeding for restoration of the land is not maintainable and is barred by the principle of res-judicata as held in the decisions reported in 1987 BLT 234 (Sohan Mahto and others versus State of Bihar and others), 1993 (1) PLJR 14 (Md. Salimuddin alias Dhaiba Khan versus Commissioner, South Chotanagpur Division, Ranchi), 1996 (2) PLJR 719 DB (Smt. Satyabati Devi Versus the State of Bihar and others), 1995 (1) BLJR 604 (Harikrishna Prasad Keshari and others versus State of Bihar and others), 2005 (1) JCR 237 (Gadia Oraon and others versus State of Jharkhand and others), 2004 (2) JCR 107 (Bibi Makho and others Versus State of Bihar and others ) and 2003 (4) JCR 395 (Jagdish Prasad Singh and another versus State of Bihar and others).

In the judgment reported in (1991) 2 BLJR 1048 (Patras Oraon Versus State of Bihar and others) it was held that transfer of land between the members of Scheduled Tribe in 1944 is not in violation of Section 46 of the C.N.T. Act. The embargo put by the amending Act of 1947 is not retrospective. The order allowing application for restoration of possession under Section 71A of the C.N.T. Act was quashed.

2003 (3) JLJR 626 Anupama Rai Vs. State of Bihar An application was filed by member of Scheduled tribe against the petitioner under section 71A of CNT Act for restoration of three and half kathas of land in village Kokar, Ranchi on the ground that he has been dispossessed from the said land. The restoration application was contested interalia on the ground that the brother of the petitioner purchased one acre of chapparbandi land from Lakho Oraon by registered deed of sale dated 19/5/1959 and came in possession of the same. The petitioner and his brother got their names mutated and had been paying chapparbandi rent to the state of Bihar. The order of restoration was passed by the special officer. The restoration order was challenged in CWJC 713 of 1980 (R) filed by the petitioner in which the matter was remanded with observation that if the land was chapparbandi, as alleged by the petitioner it will be covered by the Transfer of Property Act and not by the CNT Act. After the remand the special court admitted evidence on behalf of the parties and recorded a finding that the land appears to have been converted into chapparbandi land and therefore the Section 71A of the Chotanagpur Tenancy Act is not applicable. The order of the special Officer was set aside in appeal by the Deputy Commissioner and in revision by the Commissioner. Against the revisional order the writ application was filed by the petitioner. It was contended that the Jamabandi submitted by the ex-landlord showed that it was converted into
chapparbandi and the same was accepted by revenue authorities. Considering the ground the writ was allowed and the order of restoration was set aside.

In the judgment of Kamal Khess and another versus State of Jharkhand and others reported in 2011 (4) AIR Jharkhand High Court Reports 138 it has been held that if the land has not been used for agricultural purpose since 1929, Section 71A of the C.N.T. Act is not applicable. In that case in municipal survey record of right the land was mentioned as makan katcha khaprapose main agan with hata and municipal taxes were paid. Similarly in the judgment reported in 1989 BLT 404 (Akhileshwar Prasad Srivastava and others Vs. Commissioner, South Chotanagpur Division, Ranchi and others) it has been held that provision of Section 71A is not applicable if the land ceases to be agricultural land and has been converted into Chhaparbandi one. Similarly in 1989 BLT 407 (Smt. Munni Devi and others Vs. Special Officer, SAR, Ranchi and others) it has been held that the Chhaparbandi lands are not covered under the provisions of C.N.T. Act. Thus for transfer of Chhaparbandi land by a tribal no permission of the Deputy Commissioner is required.

Situ Sahu and Ors Vs State of Jharkhand & Ors 2004(8) SCC 340

The use of words “at any time” in Section 71 A is evidence of the legislative intent to give sufficient flexibility to the Deputy Commissioner to implement the Socio-Economic Policy of the Act viz. to prevent the inroads into the rights of the ignorants, illiterate and Backward Citizens. Thus, where the Deputy Commissioner chooses to exercise his power under Section 71 A it would be futile to contend that the period of limitation under Limitation Act has expired. The period of limitation is intended to bar suits brought in civil courts where the party himself chooses to exercise his right of seeking restoration of his immovable property. But, where, for socio-economic reasons, the party may not even be aware of his own rights, the legislature has stepped in by making the officer of the state responsible for doing social justice by clothing him with sufficient power. However, even such power can not be exercised after an unreasonably long time during which third party interest might have come into effect.---- Lapse of 40 years is certainly no a reasonable time for exercise of power, even if it is not hedged by a period of limitation.

It has been held in Sarmishtha Sinha & Meera Prasad Vs State of Jharkhand 2010 (2)JLJR 392 That Section 71 A does not apply in case of land validly converted into Chapparbandi land by tenant with the permission of land lord by registered deed. The Hon’ble Court followed the authority of Ashwini Kumar Roy Vs State of Jharkhand, in which it was held that Section 71 A did not apply in case of Chapparbandi Land and lands which fell within the Jurisdiction of Municipality. Application for restoration having been filed after 51 years of transfer it was also held to be barred by limitation.

**SURRENDER & ABANDONMENT OF LAND BY RAIYAT S/72&73**

The right of Surrender of holding by raiyat at the end of any agricultural year is recognized under Section 72 of the CNT Act. The requirement of previous sanction of the Deputy Commissioner has been inserted by the Ammendment Act of 1947 which came into force with effect from 5.1.1948. It is also known as istifanama and and prior to 5.1.1948 there was no requirement of sanction of the Deputy Commissioner.

In some of the case claim to title is based on abandonment of land followed by the settlement of the abandoned land by the land lord in favour of the predecessor-in-interest to the party
concerned. Section 73 is the relevant provision which lays down the condition under which the land is to be resumed by the Landlord on abandonment by raiyat.

Section 73-(1) If a raiyat voluntarily abandons the land held or cultivated by him, without notice to the landlord and ceases to pay his rent it falls due, the landlord may at any time after the expiration of the agricultural year in which the raiyat so abandons and ceases to cultivate, enter on the holding and let it to another tenant or take into cultivation himself.

(2) Before a landlord enters under this Section, he shall send a notice to the Deputy Commissioner in the prescribed manner, stating that he has treated the holding as abandoned and is about to enter on it accordingly, and the Deputy Commissioner shall cause the notice to be published in the prescribed manner and if an objection is preferred within one month from the date of publication of the notice shall make a summary inquiry and shall decide whether the landlord is entitled under Sub-Section (1) to enter on the holding. The landlord shall not enter on the land unless and until such objection has been decided in his favour, or if no such objection is received within one month of the publication of notice.

(3) When a landlord enters under this Section, the raiyat shall be entitled to apply to the Deputy Commissioner for the recovery of possession of the land at any time not later than any time before the expiry of three years in case of a Occupancy raiyat and one year in case of a Non-Occupancy raiyat from the date of publication of notice; and thereupon the Deputy Commissioner may on being satisfied that the raiyat did not abandon his holding may restore him to possession.

[2004] 1 JLJR205 Jamhir Ansari Vs Ketna Oraon

The status of an adhbataidar is that of a tenant and not of a hired labour. Dereliction of duty aggravated by voluntary departure from holding is a strong evidence of severance of relationship of landlord and tenant and landlord becomes entitled to resume possession.-- Instantly defendant-respondent having remained in continuous cultivating possession over the suit part for several years beyond 12 years perfected his right and title in the suit property.

SETTLEMENT OF WASTE LAND

The tenure-holder had the right to settle the wasteland especially gairmazurwa Khas land to bring it under cultivation. This right flows from the definition of tenure-holder which included the right to collect rent by bringing the waste land under cultivation.

Revenue collection being the primary responsibility of the tenure holder, he had right to settle the land to the raiyats which was in the nature of perpetual agricultural lease on condition of paying revenue. But this right was not unfettered and the only a specific category of land could be settled by him.

he ex-zamindars were the custodian of Gairmajarua Malik and Gairmajarua Aam. The G.M. Khas land was also known as Gairawad Malik in cadastral record. They had power to settle Gairmajarua khas land with raiyats for cultivation purpose through plain paper Hukumnama or through registered settlement deeds. These settlement were basically in nature of agricultural lease and there are authorities on the point of Hon’ble Patna High Court which recognizes such settlement by plain unregistered deeds of settlement to show the nature and character of possession.
Sections 73 and 71A of the C.N.T. Act

In a case where recorded raiyat died and ex-landlord treating the land as abandoned took possession and settled it with another person. The nephew of recorded raiyats applied for restoration of land. It was held in the judgment reported in 1998 (1) BLJR 149 (S.K. Rahimuddin and others versus Lakho Devi and others) that no order for restoration under Section 71A of the C.N.T. Act can be passed. It has been held in the judgment reported in 2004 (2) JCR 559 (Shankar Nahak Versus Bharat Coaking Coal Limited through Director, Koyla Bhawan, Dhanbad and others) that section 73 of the C.N.T. Act gives right to the landlord to take possession of abandoned holding without filing a suit. Further their Lordships in the decision reported in 2004 (1) JCR 407 (Jamhir Ansari versus Ketna Oraon and others) have held that when landlord had entered into the land treating the same as abandoned without following the procedure prescribed, rule of limitation will apply. In order to constitute abandonment within the meaning of Section 73 of the CNT Act, there must co-exist a voluntary abandonment of holding, absence of arrangement for payment of rent and cessation of cultivation of the said holding. The cultivation of land and payment of rent are the two permanent duties of tenant and the dereliction of such duties aggravated by voluntary departure from holding is strong evidence of the severance of the relationship of landlord and tenant.

Most Ugni and another Vs Chowa Mahto AIR 1968 (pat) 302 FB

The unregistered Hukumnama though inadmissible can be looked into to show the nature and character of possession. The oral evidence of terms of lease is not admissible, but independent of the hukumnama, the rent receipts themselves would indicate the rate of rent, the area and nature of the right of the lessee. It is true that valid agricultural lease may be created by a registered instrument and if such a registered document is created the delivery of possession is not necessary to prove the title of the lessee, If however, if the lease is not registered, and is inadmissible as evidence of title, it will be open to the tenant concerned to show that he obtained raiyati interest on the strength of actual possession and acceptance of rent by the landlord. There is also no legal bar to a person claiming raiyati interest on two alternative pleas. He may claim such a right on the basis of a written document of lease. If, however, such claim fails on the ground that the document, being compulsorily registrable, nevertheless his alternative plea base on actual possession coupled with acceptance rent by landlord may succeed.

Mahadeo Oraon Vs State of Bihar & Ors 2009(4)JLJR 106

Unregistered Hukumnama is not admissible and can not be considered as a deed of gift

The Supreme Court in Kedar Nath Vs Prahlad Rai AIR 1960 SC 213 approved the observation of "Lord Mansfield in Holman Vs Johnson (1775) 1 Cowp 341,343: The public policy is this: ex dolo malo no ortur actio. No court will lend its aid to a man who founds his cause of action upon an immoral or an illegal act. If, from the plaintiffs own stating or otherwise, the cause of action appears to arise ex turpi cusa or the transgression of a positive law of the country, there the court says he has no right to be assisted"

Section 63A and 63 B are the relevant provisions settlement of waste land by the State Govt.

The tenure-holders had earlier before vesting had similar power to settle waste land with the raiyats in order to bring them under cultivation and increase the revenue of the State. The power

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of settlement was however not unfettered and only a particular class of land could be settled by the landlord. Thus the landlord had no authority to settle Gair majurwa am land. Settlement deed is also called *Hukumnama* which is a written permission by the landlord to a tenant to reclaim waste land or cultivate, the landlords Khas land which is a kind of perpetual and transferable lease.

There are instances galore when the claim of title is made by unscrupulous litigants on the basis of the forged and fabricated settlement deed called hukumnama executed by the ex-landlord. The question that naturally arises is as to what are the evidence to be looked into for a valid settlement deed. If it was a sada hukumnama the court will normally look for additional evidence to test the validity of it. The credibility of such sada hukumnama can be ascertained from the entries in the return filed by the zamindar to the effect and also by the fact of opening of Jamabandi in the local revenue offices quick on the heels of the abolition of zamindari.

**Jagijiwan Singh Vs The State of Bihar (Now Jharkhand) 2013(4) JCR 692 (Jhr)**

Recorded tenant surrendered the land in question to ex-landlord by registered deed of surrender dated 18.5.1942--- Settlement made in favour of the mother of the petitioner subsequent thereto in 1943-- She continued to pay rent to ex-landlord. Merely because a settlement is made within one year of surrender, it would not necessarily mean that surrender and settlement would form part of the same transaction.

**Mahbir Kashi State of Jharkhand (Jhr) 2008(4) JCR 428**

Jamabandi based on forged sada Hukumnama in collusion with the Government officials without obtaining order of competent authority, is illegal and liable to be cancelled. ----- It appears that illegal Jamabandi of Gairmajuwa Khas land is the valuable property of the the State Govt which got vested in the State under Bihar land Reforms Act 1950

**XIII  LANDLORDS PRIVILEGED LAND**

Section 118 of the CNT Act defines Landlords Privileged Land as lands which are cultivated by the landlord himself with his own stock or by his own servants or by hired labour or are held by a tenant on lease for a term (exceeding one year, or on a lease written or oral for a period of one year or less), and which are by custom, recognized as privileged land in which occupancy – right cannot accrue. Zirat land in Chotanagpur division, lands which are known as man, Manjhiahs, Bethkheta also are landlord is privileged lands.

It has been held in Santa Lohar Vs. Dwarika Sahu 1989 BLT (Rep) 267 that if a person was in khas possession on date of vesting he acquired an occupancy right
MAIN PROVISIONS OF SPT (SUPPLEMENTARY PROVISIONS) ACT, 1949

HISTORICAL BACKGROUND

This Act extends to Dumka, Jamtara, Sahibganj, Godda, Deoghar and Pakur.

The historical background of the SPT Act has been lucidly captured in the judgment rendered by Hon’ble Mr. Justice S.S. Sandhawalia in *(1985) 0 AIR (Pat) 196* "The historical retrospect here spans a period of more than a century. Its true perspective is against the back-drop of primordial backwardness of the santhal tribes interspersed in the deeply wooded and semi tropical forests of the district of Santhal Pargana. The underlying rationale of Regulation III of 1872 and earlier regulation going back even beyond the middle of 19th Century may be noticed from the final settlement report in the district of Santhal Parganas by J.F. Gantzer, which is supplemented to the earlier and more celebrated and exhaustive report of Sir Hugh Mcpherson: *The question of transfers with which the settlement has to deal, and it is infact one which affects the very root of the Santhal Parganas System. Broadly speaking it may be said that the whole object of the agrarian law of the districts since 1872, when Regulation III of that year was introduced, is to ensure that the population should be allowed to remain undisturbed in possession of its ancestral property, and that any reclamation of waste lands, which is done in any village shall be done only by the jamabandi raiyats of the village. The history of the district plainly shows that the vast majority of the people in it are quite unable to grasp the principle of outsiders taking possession of their land whether legally or illegally, that is to say, either by force or by the ordinary means of acquiring land such as sale, mortgage or certain form of sub-lease.*

For our purpose it is, perhaps, unnecessary to deal beyond the year 1872, when Regulation III was enacted and subsequently, amendments were made therein. In chronological order, this was followed by the Santhal Pargana Tenancy (Supplementary Provisions) Act, 1949, which came into force on 1st of November, 1949 as the very heading in the statute indicates, it was not intended to altogether repeal or substitute the earlier Regulation III of 1872, but was somewhat supplementary in nature. While some of the provisions or Regulation III of 1972 continued as supplemented by the Act, certain sections thereof were, however, repealed and substituted by more elaborate provisions of the Act, which might have become necessary by passage of time. In this category falls section 20 of the Act, which in terms substituted Section 27 of the earlier Regulation III of 1872”.

There is no court of *munsif* in Santhal Pargana and the power to hear suits up to the value of Rs 500/- is vested in the Deputy Commissioner. One of the factual fall out of this is that suits
are filed in the Courts of Sub-Judge by simply increasing the suit value. This practically leads to increasing the case-load in the Courts of Civil Judge Senior Division. There is a need for a relook on this aspect as the total Sanctioned Sanction Strength of Civil Judge Senior Division is 111 only (including 22 Secretary DLSA) which is inadequate to cope up with the pendency of the cases.

**Appointment of village headman (Secs. 5 to 8)**

**Village Headman :- Sec. 4 (xxiii)** – Means the person appointed or recognized whether before or after the commencement of the Act by the D.C. or other duly authorized officers to hold the office of village headman, whether known as Pradhan, munstajur, Manjhi or otherwise but does not include a mulraiyat.

In the scheme of revenue administration in Santhal pargana the office of village headman or mulraiyat is unique and is clothed with some very important power of settlement of waste land and vacant holdings and collection of land revenue. In many a civil suits the issue of appointment of village head man and his power to settle land in the particular case comes under challenge. It is therefore necessary to have clear understanding of their appointment.

Their mode of appointment is related to the nature of the village. Basically there are two category of villages in Santhal Pargana—Khas village and non-khas village. Khas villages are those villages where the revenue administration is directly under the control of Govt.

**Khas village** has been defined under Section 2(ix) of the SPT Act as a village in which there is no mulraiyat, nor for the time being a village headman irrespective of whether there was or was not previously a mulraiyat or village headman in the village.

A Khas village can over the time become a non-khas village if a headman is appointed under Section 5 of the Act and a non-khas village can become Khas village if there is no heir of a mulraiyat or the village headman is dismissed from his office. Therefore the office of mulraiyat or village headman is only in case of non-khas village. How this classification of khas and non-khas village evolved can be better understood in the light of the report of the district gazetteer which refers to the manner in which the office of mulraiyati was created and in H. Mc. Pherson's settlement 540 such villages were recognized.

**Mulraiyat** is not defined under the SPT Act. As per gazetteer of the Ranchi District, a mulraiyat is like a village headman who is the descendant of the original founder of the village. In 1876-77 in the course of settlement of the then sub-division of Deoghar by Mr. Browne Wood, 80 men, who have been recognized as Headmen, presented a petition to the Government claiming that they were raiyats having a right to transfer their holdings and cultivators under them should be recorded as under raiyats or korfadars with no right of occupancy. It was finally decided that these persons and others in like possession should be styled mulraiyat; but the rights of cultivators were protected by the record of rights. Two criteria were setup for settling claims to the status of mulraiyats both of which need to have been satisfied before a claim was allowed –  
1. That the claimant should be descendent of the original founder of the village; and 
2. That the right of the transfer of the mulraiyati interest had been exercised and established.

On the basis of the above, mulraiyati status had to be recorded in H. Mc. Pherson’s settlement in 540 villages. A mulraiyat is a village Headman, who possesses certain special rights and
subject to some special incidents. He had a right to transfer his mulraiyati rights as a whole and to a single individual and a co-mulraiyat had a similar right to transfer only as a whole one to a single individual in specified share in the mulraiyati right including the official holding (if any) corresponding to that share and the private holding, if any. The transferee needs recognition from the Deputy Commissioner. A mulraiyat or his co-sharer with the sanction of sub-divisional officer for partition of their private holding and on receiving by partition a separate holding, a co-sharer (other than mulraiyat himself) becomes an ordinary jamabandi raiyat. The official holding cannot be partitioned. A mulraiyat or co-mulraiyat had the right to settle out of his private holding as a whole or in part with the consent of the Sub-Divisional Officer on rental to the raiyats. Lands so settled became the ordinary raiyati land of the village. When mulraiyat or co-mulraiyat dies the main heir is entitled to succeed and if there be no main heir, the Deputy Commissioner may permit a female heir to succeed. All succession has to be reported to the Sub-Divisional Officers and by him to Deputy Commissioner, who has to recognize the succession. The mulraiyat or the whole body of co-mulraiyat acting jointly may with the consent of the Deputy Commissioner surrender the right of transfer, in which case (he or they) becomes ordinary Pradhan. If a mulraiyat dies without an heir or is dismissed for misconduct, there shall thereafter, be no mulraiyat of the village. The Deputy Commissioner shall after consulting the proprietor, either appoint a Pradhan or declare the village khas. If a co-mulraiyat dies without an heir or is dismissed, the Deputy Commissioner may appoint another co-mulraiyat or takes such other action for disposal of the deceased or dismisses co-mulraiyat's right and the performance of his duties, as he deems best after consulting the proprietor, villagers and other co-mulraiyats.

District Gazetteer, Santhal Parganas (1938), P. 303

These villages thus in course of time came to be termed as non-khas village in which mulraiyat were vested with the authority to collect land revenue.

Village headman is defined under Section 4(xxiii) as the person appointed or recognized, whether before or after the commencement of the Act by the Deputy Commissioner or other duly authorized officer to hold the office of village headman whether known as pradhan, munstajir, manjhi or otherwise but does not include a mulraiyat.

As discussed above a mulraiyat is like a village headman who is the descendant of the original founder of the village.

In a non-khas village there can be a mulraiyat, pradhan or a village headman. The office of mulraiyat and pradhan is hereditary whereas Headman is an elective office.

The manner of appointment of village Headman depends on the category of the village. In case of khas village he is appointed under Section 5 on an application of a raiyat or of landlord of any khas village and with consent of at least 2/3rd of the Jamabandi raiyats of the village ascertained in the manner prescribed. On such consent, the Deputy Commissioner may declare that the headman shall be appointed for the village and shall then proceed to make appointment in the prescribed manner.

It has been held in Smt Devimai Murmu Vs State of Jharkhand and others 2009(4) JCR699(Jhr) that Section of the Act is applicable only in the matter of appointment of a village headman for a Khas village and that the office of the “pradhan” of a non-khas village is hereditary in nature and the next heir, who is fit, is entitled to be appointed as headman. There is no provision either in the Santhal Pargana Tenancy Act 1949 or in the Rules made there under which puts
any restriction or debar any female from being appointed as headman. Daughter may however become entitled to become Headman only if she is gharjamai, daughter meaning thereby that she must have been married to a person by performing gharjamai form of marriage and her husband must have been living at her-in-laws place by severing her relationship with his own family.

Section 9 of the SPT Act holds the village Headman's office to be non-transferable.

The traditional right of a mulraiyat to transfer his certain rights is confined to the private or official holding of a mulraiyat called mulraiyat ka jote and mulraiyati jote respectively.

Under section 10 no land which is not recorded as such shall be recognised or treated as mulraiyat ka jote(private holding) or mulraiyati jote(official holding). Any waste land, which is reclaimed by a mulraiyat or a co-mulraiyat or any vacant holding, which is found in the possession of or is settled with a mulraiyat shall be treated as non-transferable raiyati holding.

There is some similarity in bhuinari and mundari-khud-kattidari tenure under the CNT Act and the office of mulraiyat under SPT Act. Both are the heirs and descendants of the original founder of the village. They are invested with right to collect land revenue. The office of mulraiyat is hereditary and the Bhuinhari tenure can transfer his land only to a Bhuinhari tenure and the same applies to a mundari-Khunt-kattidari. This similarity however ends here and whereas Bhuinhari and mundari-khud-kattidar is a tenure the mulrityat is an office headman and their incidence is vastly different.

The office of mulraiyat is hereditary in nature and next heir who is fit, is entitled to be a mulraiyat. He possesses special rights. When a mulraiyat dies, the nearest male heir is entitled to succeed and if there is no male heir the D.C. may permit a female heir to succeed. In Thakur Hembrom vs State of Bihar 1980 448 it was held that authorities should have first considered the case of person claiming right to the post pradhan on the basis of hereditary claim. It was pointed out that the procedure of election under Section 5 comes only after rejecting the hereditary claim.

Under section 9, the office of the village headman is made non-transferable.

It has been held in Babulal Hembrum Vs. State of Bihar 1998 (1) PLJR 43 that in view of the headman's duty it is self evident that for any meaningful discharge of those duties, it would be essential for the headman to permanently and regularly reside in the village in question and it would not be possible to discharge those duties satisfactorily in case he lived outside the village on government postings and came to the village only intermittently. The court was of the considered view that only a person residing in the village can be considered to be suitable candidate for the office of the headman. The word mulraiyat is synonymous with the word "village pradhan" or "village headman" and only difference is that mulraiyats are entitled to retain there raiyati land.

POWERS AND DUTIES OF VILLAGE HEADMAN

The main function of a village headman or mulraiyat is collection of land revenue and settlement of waste land. Under Section 4(xv) rent means whatever is lawfully payable in money by a village headman or mulraiyat of a village to the landlord of that village in accordance with the record of rights also referred as village rent. The mulraiyat or the headman is entitled to commission from each raiyat, one in the rupee on the rent collected by the mulraiyat or other
headman from the raiyat in terms of The Santhal Parganas (Payment of Commission to Headman) Regulation, 1942.

**Chapter IV of the SPT Act deals with the provision of settlement of waste land vacant holdings (Sections 27 to 42)**

When we discuss the power of settlement, it is to be in reference to the particular class of village. With respect to the non-khas village it is the Headman or the mulraiyat who has the power to settle subject to the procedure laid down under Chapter IV, whereas in case Khas village the power of settlement lies with the Govt functionaries.

If it is a pradhani village or Headman village then the wasteland will be settled by village Pradhan or village Headman with the permission of the Deputy Commissioner.

The principles to be followed in settling waste land or vacant holding are laid down in **Section 28** as follows:

(a) Fair and equitable distribution of land according to the requirement of each raiyat and his capacity to reclaim and cultivate;
(b) Any special claim for services rendered to the village community, society or state;
(c) Contiguity or proximity of the waste land to jamabandi land of the raiyat;
(d) Provision for landless labourers who are bonafide permanent residents of the village and are recorded for a dwelling house in a village.

**Section 29** provides that a mulraiyat, Pradhan or Village Headman shall not settle any waste land or vacant holding with himself or any co-mulraiyat without the previous sanction in writing of the Deputy Commissioner.

In case where there are two or more village headman, co-mulraiyat or landlords in a village held jointly by them and the settlement of waste land has not been made jointly, the settlement may on objection set aside or modifies at the discretion of Deputy Commissioner under Section 31.

Under **section 32** a person aggrieved from the settlement or refusal to settle a waste land or vacant holding may make an application before the Deputy Commissioner within one year from the date on which reclamation in pursuance of settlement was made or settlement was refused. The Deputy Commissioner on such an application, shall serve a notice to the parties of the date on which the application is to be heard and after hearing the parties and after enquiry the Deputy Commissioner may where the settlement has been made confirm, modify or set aside the settlement, or, in cases where settlement has been refused, order the waste land or vacant holding to be settled. He may himself settle the land or holding in question with a jamabandi raiyat in accordance with the principles laid down in Section 28 and in the record-of-rights on such terms as he may think proper.

It has been held in **Ghanshyam Pandit Vs Commissioner 1988 PLJR140** that the provisions of **Section 32** are applicable only in respect of such cases where settlements have been made after coming into force of the Act. The settlements which were made by the village pradhan before coming into force of the Act can not be modified or varied or set aside in term of Section 32 of the Act.
Section 33 provides that settlement of waste land is liable to be set aside if not cultivated within 5 years.

It has been held in Sheikh Allauddin Vs. State of Bihar 2000 (3) BLJ 95 (Pat) that for settling waste land and vacant holdings, the settle must be a Jamabandi raiyat or must be permanent raiyat or must be permanent resident and be so recorded in the record of rights.

Section 42 of SPT Act is a special provision wherein the Deputy Commissioner has been invested with power to order ejectment of any person who has encroached upon, reclaimed, acquired or come into possession of agricultural land in contravention of the provisions of this Act.

It has been held in Bhauri Lal Jain Vs Sub-Divisional Officer, Jamtara 1972 PLJR 415 that word ‘may’ in Section 42 means ‘must’ in the scheme or background of the legislation. The Deputy Commissioner, whenever he comes across case of wrongful possession of land held in contravention of the provisions of the Act, is bound to order for eviction as envisaged in the Act. No question of discrimination within the meaning of Article 14 of the Constitution arises and the power under Section 42 being not administrative but quasi-judicial has to be exercised according to the right of the parties.

Nakul Chandra Mandal Vs Commissioner Bhagalpur Division,1979 BLJR 201

Only 16 annas raiyats are entitled for settlement in Santhal Pargana and outsider cannot take settlement. Deputy Commissioner can exercise his jurisdiction to annul the settlement made in favour of outsiders at any time without any restriction of time period. Revenue court has jurisdiction to set aside a compromise decree obtained by suppressing a previous decision. The validity of the order of Deputy Commissioner can not be challenged in the civil court.

This provision reminds us of the power conferred on a DC under Section 46(4) and 71 A of the CNT Act.

Babulal Mandal Vs. State of Jharkhand 2008 (3) JLJR455 – It has been held in this case that in case of dispute about appointment of a village Pradhan due to the death of the earlier Pradhan the claim of the persons claiming right to the post of Pradhan on the basis of hereditary comes first, and thereafter if one of them was not found acceptable by the villagers then as per rule the S.D.O. should go for election.
CLASSES OF RAIYAT AND RESTRICTIONS ON TRANSFER

Classes of Raiyats (Sec. 12)
Classified into three classes of raiyats as given below:

<table>
<thead>
<tr>
<th>Class</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>Resident Jamabandi – raiyats persons</td>
<td>Recorded as jamabandi raiyats who reside or have family residence in the village in which they are resident</td>
</tr>
<tr>
<td>Non-resident Jamabandi raiyats</td>
<td>Persons recorded as Jamabandi raiyats who do not reside or have their family residence in the village in which they are recorded</td>
</tr>
<tr>
<td>New raiyats</td>
<td>Persons recorded as naya raiyats or nutan raiyats</td>
</tr>
</tbody>
</table>

Rights of raiyats given in section 13 to 19 which can be summarised as under:

1. Rights of raiyats in respect of use of land
2. Raiyats not to be ejected by order of the Deputy Commissioner
3. Raiyat’s right to manufacture tiles and bricks
4. Raiyat’s right to construct bandhs, etc. on his own holding and to enjoy fish and other produce
5. Rights of raiyats in trees on his own holding.
6. Raiyat’s right to erect buildings
7. Division of holding and distribution of rent.

Restrictions or transfer of raiyati holding in Santhal Pargana (Provisions contained in Sections. 20 to 25)
Section 20 reads as follows:

“Transfer of raiyat’s right –

(1) No transfer by a raiyat of his right in his holding or any portion thereof, by sale, gift, mortgage, will, lease or any other contract or agreement, express or implied shall be valid unless the right to transfer has been recorded in the record of rights and then only to the extent to which right is so recorded.”
Provided that a lease of raiyati land in any sub-division for the purpose of establishment or continuance of an excise shop thereon may be validly granted or renewed by a raiyat for a period not exceeding one year with the previous written permission of the Deputy Commissioner:

Provided further that gifts by recorded santhal raiyats to a sister and daughter are permissible under the santhal law, such a raiyat with the previous written permission of the Deputy Commissioner validly makes such a gift:

Provided also that an aboriginal raiyat may, with previous written permission of the Deputy Commissioner, make a grant in respect of his land not exceeding one half of the area of his holding to his widowed mother or to his wife for her maintenance after his death.

(2) No right of an aboriginal raiyat in his holding or any portion thereof which is transferable shall be transferred in any manner to anyone but a bonafide cultivating aboriginal raiyat of the pargana or taluk or tappa in which the holding is situated:

Provided that nothing in the sub-section shall apply to a transfer made by an aboriginal raiyat or his right in his holding or portion thereof in favour of his gharjamai.

Provided further that an aboriginal raiyat with the previous sanction of the Deputy Commissioner and other raiyats without such a previous sanction, enter into a simple mortgage in respect of his holding with any scheduled bank or a society or a financial institution or with a company or a corporation owned by or in which not less than 51% of the share capital is held by the State Government, with a view to provide credit to agricultural cultivators.

(3) No transfer in contravention of sub-section 1 or 2 shall be registered, or shall be in any way recognized as valid by any court, whether in exercise of civil, criminal or revenue jurisdiction.

(4) No decree or order shall be passed by any court for the sale of the right of a raiyat in his holding or any portion thereof, nor shall any such right be sold in execution of a decree or order unless such a right of transfer or the raiyat has been recorded in the record of rights.

(5) If at any time it comes to the notice of the Deputy Commissioner that a transfer of land belonging to a raiyat, who is a member of scheduled tribe has taken place in contravention of sub-section 1 or 2 or by any fraudulent method including collusive decree he may after giving notice and making necessary inquiries evict the transferee from such land and restore it to the transferor or his heir or in case the transferor or his heir is not available or is not willing to such restoration, resettle with another raiyat belonging to scheduled tribe:

Provided that if the transferee within 30 years from the date of transfer constructed any building or structure on such holding or portion thereof, the Deputy Commissioner, shall, if the transferor is not willing to pay the value of the same, order the transferee to remove the same within six months from the date of the order, or within such extended time not exceeding two years:

Provided further that where the Deputy Commissioner is satisfied that the transferee has constructed a substantial structure or building on such holding or portion thereof before coming into force of the Bihar Scheduled Area Regulation, 1969 he may validate such a transfer where the transferee makes available to the transferor an alternative holding or portion thereof or pay
adequate compensation to be determined by the Deputy Commissioner for rehabilitation of the transferor.

Provided also that if after an enquiry the Deputy Commissioner is satisfied that transferee has acquired title by adverse possession and the transferred land should be restored or resettled, he shall require the transferor as his heir as the case may be to deposit with the Deputy Commissioner such sum of money as may be determined by the Deputy Commissioner:"

A plain reading of this Section brings out close similarity with Section 46 of the CNT Act with the only difference with respect to the restrictive clause on the raiyat land. Under Section 20 of the SPT Act there is a blanket restrictive on the transfer of all land, save and except those which have been recorded as transferable in the record of rights. On the other hand, the restriction under Section 46 CNT is with reference to transfer of land inter se of different classes as laid down in proviso (1) (a) to (c) of Section 46. Thus under these restrictions in Chotanagpur the land can be transferred from Schedule Tribes to Scheduled Tribes, scheduled Castes to Scheduled Castes and from Backward Classes to Backward Classes, subject to certain restrictions. The restriction in Santhal Paraganas does not proceed on this line rather it applies to all and the transfer is permissible only when it is so recorded in the record of rights.

The above restrictions do not apply if the land was homestead called Basauri land. Such transfer do not fall within Section 20 of the SPT Act.

In Rajo Mian v Puran Mian, 1987 BLJR 91 the principal question that came for determination was whether the Revenue Court had the Jurisdiction to evict a person who had come in possession of the land on the basis of a compromise decree of the civil court, if that compromise was collusive. It was held that a transferee can not perfect his title on the basis of a collusive decree of a civil court. Revenue Court has jurisdiction to evict the person from the land which is obtained by fraud or collusion.

Both Section 20(5) and Section 42 have provisions for eviction of transferee where the transfer took place in contravention to the provisions of the SPT Act.

2008 (1) JLJR 506 Doman Prasad Yadav vs. The State of Jharkhand in which it was held that basauri (homestead land) was a dwelling unit and same did not belong to any cultivator and does not come within the ambit of section 20 of SPT Act. The said section 20 creates bar for registration of raiyati land by sale and gift unless such transfer is committed in the record of rights.

In case of any transfer in contravention of these provision the D.C. can evict the transferee and restore the land to the raiyat or his heir or resettle the land with another raiyat according to village custom. S.A.R. will be applicable in Scheduled Area also.

In Shyam Sunder Barnwal vs State of Jharkhand and ors 2004(3) JCR 371 (Jhr) The petitioner challenged the order issued by Deputy Commissioner-cum-District Registrar, Deoghar vide Memo No. 10, dated 14/1/2004, whereby he had imposed a mandatory condition of production of verification report of the Circle Officer in a prescribed format before the Registrar for registration of deeds in the district of Deoghar. The Hon'ble Court while upholding the order of the Deputy Commissioner held that there is a statutory bar in transferring the holding by sale, gift, mortgage, will, lease or any other contract unless right to transfer has been recorded in the record of rights. Under the aforesaid provision certain instructions have also been issued which inter-
alia provide that if the land falls within the municipal area where no record of rights have been
prepared, an enquiry to that effect has to be made as to whether the land is transferable or not.

The above restriction under Section 20 is subject to the saving clause under Sections 21, 22
and 23.

Under Section 21, a non-aboriginal raiyats can transfer his land by bhugut bandha for a
period not exceeding 6 years up to the extent of one fourth of his paddy and bari lands to a land
mortgage bank, a grain gola, a crop, society and a raiyat of Santal Pargana.

Under Section 22 a raiyat may make over his holding temporarily on trust for cultivation
to a raiyat after notifying to the S.D.O. and Headman or mulraiya in the following circumstances:-

(i) His temporary absence from the village.
(ii) His sicknesses or physical incapacity.
(iii) Loss of plough cattle.
(iv) The raiyat being a widow or minor.

If period has been stipulated, and the raiyat does not resume cultivation himself, the holding
shall be presumed to be abandoned after 10 years.

Section 23 Exchange of raiyati land – (1) of the SPT Act provides for the exchange of lands
desired by the raiyats on an application in writing to the Deputy Commissioner, who may in his
discretion permits such an exchange to be made, if he is satisfied that :-

(a) The parties to the exchanged are both jamabandi raiyats with respect to the lands proposed
to be exchanged.
(b) The lands proposed to be exchanged are situated in the same village or in a contiguous
village.
(c) The transaction is not a concealed sale but is a bonafide exchange sought to be made for the
mutual convenience of the parties.
(d) The lands proposed to be exchanged are of the same value.

(2) Any exchange of lands made otherwise than under provision of sub section 1 and without
previous permission in writing of the Deputy Commissioner shall be deemed to be a transfer made
in contravention of section 20.

2011(2) SCC 591 State of Jharkhand & Anr. Vs. Pakur Jagaran Munch, the brief fact of this
case is that the Department of Health and Family Welfare, Government of Jharkhand and Deputy
Commissioner, Pakur authorized the Executive Engineer, Pakur to construct a hospital building
under National Leprosy Eradication Programme and for improving the standards of health of the
tribal residents of the area. The said Gochar land was identified as suitable for the construction of
the hospital with the consent of village headman and village community. The State government
denotified releasing the said 4.44 acres of Gochar land in plot no. 1061 and in its place declaring
4.44 acre of Gair Majurua (Government) khas land in khata no. 44, plot no. 62, 199 and 427 as
Gochar under section 38 (2) of the SPT Act. This notification was challenged before the Hon’ble
Jharkhand High Court, which was held to be not valid in law being barred under section 38(1) read
with 67 and 69 of the Tenancy Act. This order came under a challenge before the Apex court in this
case. The Apex court allowed this appeal and held that Santhal Parganas Tenancy (Supplementary Provisions) Act, 1949-Section 2(1)-Santhal Parganas Settlement Regulations, 1872- Regulations 10, 13, 24 and 25 – Dereservation or re-categorisation of a land recorded as Gochar in record-at-rights is not within scope of Tenancy Act-However, even if a land had been recorded as a Gochar in record of rights of a village in pursuance of settlement under regulations, it can be re-opened and altered at any time, without waiting for next settlement, with previous sanction of State Govt.
**MAIN PROVISIONS OF BLR ACT**

**VESTING OF THE ESTATE OR TENURE**

The BLR Act, 1950 was a landmark legislation in the sense that it ended colonial land governance system (the zamindari system) by abolishing all intermediary (Tenure holders) between State and tenant and brought state and tenant in direct relation. It provided for the transference to the State of the interests of the proprietor and tenure-holders in the land of the mortgagees and lessees of such interests including interests in trees, forests, fisheries, jalkars, ferries, hats, bazaars, mines and minerals. All the intermediary interests except Mundari Khuntkatidari tenancy and Bhuinhari tenure vested in State (BLR Act Secs. 3 & 4)

The salient features of this Act came up for a detailed discussion in Guru Charan Singh Vs Kamla Singh 1976(2)SCC152. The object and scope of the Act has been succinctly laid down in Full Bench Judgement of Hon’ble Mr Justice Krishna Iyer, “Although there is a blanket vesting of proprietorship in all the lands in the State, the legislation is careful, in this initial stage of agrarian reform, not be deprivatory of the cultivating possession of those who have been tilling the land for long. Therefore while the consequence of vesting is stated to be annihilation of all interests, encumbrances and the like in the land, certain special categories of rights are saved. Thus, the raiyats and under-raiyats are not dispossessed and their rights are preserved. The full proprietor’s khas possession is also not disturbed. Certainly the large landholders whose lands have for long been tenancy, lose their land to the State by virtue of vesting operation(of course, compensation is provided for). Nevertheless, the reform law concedes the continuation of the limited species of interests in favour of those Zamindars. The three classes of lands is brought into the saving bucket by including them in the khas possession of the Proprietors. They are legislatively included in khas possession by an extended itemization in Section 6(1). The purpose and the purport of the provision is to allow the large landholders to keep the small areas which may be designated as the private or privileged or mortgaged lands traditionally held directly and occasionally made over to others, often servant or others, in the shape of lease or mortgages. The crucial point to remember is that Section 3 in its total sweep, transfers all the interest in all lands to the State, the exception being the lesser interest under the state set out in detail in Section 5, 6 and 7. So much so, any one who claims full title after the date of vesting notified under Section 4 has no longer any such proprietorship. All the same, he may have a lesser right if he falls within saving provisions viz Sections 5, 6 and 7. Section does not stop with merely saving lands in khas possession of the intermediary(ernstwhile proprietor) but proceeds to include certain lands on temporary leases or mortgages with others, as earlier indicated. These are private lands known to the Bihar Tenancy Act, privileged lands as Known to the Chota Nagpur Tenancy Act, lands outstanding with the mortgagees pending redemption and the land which are actually
being cultivated by the proprietor himself. Ordinarily what is outstanding with the lessees and mortgagees may not fall within the khas possession. The legislature, however, thought that permanent tillers rights should be protected and therefore, raiyats and under-rajyats should have rights directly under the state, eliminating the private proprietors, the Zamindars or proprietor also should be allowed to hold under the state, on payment of fair rent, such land as has been in his cultivating possession and other land which were really enjoyed as private or privileged or mortgaged with possession by him. With this end in view Section 6(1) enlarged its scope by including the special categories.

Date of vesting means in relation to an estate or tenure vested in the State, the date of publication in the official Gazette of the notification under Sub-Section(1) or (2) of Section 3A in respect of such estate or tenure.

Section 3 provides that the State Govt. may from time to time, by notification, declare that the estate or tenure of the proprietor or tenure-holder, specified in the notification have passed to and become vested in the State.

“Estate” means any land and fishery and ferry rights included under one entry in any one of the general registers of revenue paying lands and revenue free lands prepared and maintained under the law for the time being in force.

“Proprietor” means a person holding in trust or owing for his own benefit an estate or part of an estate, and includes the heirs and successors-in-interests of a proprietor.

Holding means land or lands held by a Raiyat and treated as a unit for assessment of revenue.

Section 3A provides that the intermediary interest of all intermediaries in whole of the State have passed to and become vested in the State.

The consequence of vesting has been laid in Section 4 of the BLR Act. Section 4(a) to(c) lays down different interest which got vested in consequence of the notification of vesting. Once an estate vests in the State, the various interests of the intermediaries enumerated therein are also vested in the State absolutely free from all encumbrances, barring the raiyati or under-rajaty interest. When an estate is vested in the State, any encumbrances is automatically wiped out.

One of the provisions that is often invoked in cases where transfer has taken place soon before vesting and the transfer is challenged on the ground that it has been made to avoid the consequences of vesting is Section 4(h) which provides that the Collector shall have power to make inquiries in respect of any transfer including the settlement or lease of any land comprised in such estate or tenure or the transfer of any kind of interest in any building used primarily as office or kutchery for the collection of rent of such estate or tenure or part thereof and if he is satisfied that such transfer was made at any time after the first day of January 1946, with the object of defeating any provision of this Act or causing loss to the State, he may after giving notice to the parties annul such transfer, dispossess the person claiming it and take possession of such property.

In order to canvass the genuineness of such a transfer by sada hukumnama it is some times argued that the Collector had an opportunity to verify the bonafides of the settlement deed under Section 4(h), failing which the settlement can not be challenged now. In other words it is canvassed that since the transfer was not inquired and annulled in terms of Section 4(h), at the time of vesting, any such transfer can not be inquired and cancelled now.
Now this issue can be approached from two angles, firstly, where following the settlement return has been filed by the outgoing proprietor or the ex-landlord in terms of Rule 7 B of the Bihar Land Reforms Rules 1951. If the return is proved to have been filed, then the Collector can be imputed with the knowledge of the transfer and if the Collector failed to initiate inquiry regarding the genuineness of the transfer under Section 4(h), then it cannot now take the plea that the transfer was made to avoid the consequence of vesting. If on the other hand, if neither return is filed with respect to the transfer, nor any entry is made in register II, then the said document can be only said to be a sham paper transaction and the Collector can not be said to have any knowledge about the said transfer. Unless any information regarding such transfer is given to the Collector, the plea that collector had the opportunity to initiate the inquiry at the time of vesting under Section 4(h) can not be availed. Unless any information regarding transfer in the form of return was given by the outgoing proprietor or tenure-holder, the Collector can not be said to have any material on record to initiate inquiry under Section 4(h).

In *Upendra Narain Singh Vs State of Bihar (1996)5 SCC499* the order of annulment of transfer by Collector on the basis of finding that granting patta in favour of appellant by the ex-landlord-Zamindar, having been effected after the specified date ie 1.1.1946 was fraudulent to defeat the provision of the Act was under challenge. One of the ground of challenge was that order of annulment passed by Collector was not confirmed by State Govt. under the proviso. It was held that confirmation being an administrative act, its absence will not clothe the appellant any right at any stage so as to seek declaration of his on ground that thereby the order of annulment became ineffective.

In *2002 (9) SCC 677 State of Bihar and Others vs. Sharda Prasad Rai and Others* The question came up for determination as to whether proceeding initiated by the appellants under Section 4(h) of the Bihar Land Reforms Act, 1950, but subsequently dropped, would bar initiation of proceeding under Section 4(g) of the Act.

It was held "A perusal of clause (h) would show that it empowers Collector to make an enquiry in respect of any transfer including the settlement or lease of any land comprised in such estate or tenure or the transfer of any kind of interest in any building used primarily as office or cutchery for the collection of rent of such estate or tenure or part thereof. If on making enquiries the Collector is satisfied that such transfer was made at any time after the first date of January, 1946 with the object of defeating any provisions of the Act or cause loss to the State or obtaining higher compensation thereunder, he is required to give reasonable opportunity and notice of being heard to the parties concerned and is entitled to annul such transfer, dispossesses the person claiming under such transfer and take possession of such property on such term as may appear to him equitable.

The import of clause (g) is entirely different. It says that where by the reason of the vesting of the estate or tenure or any part thereof in the State under the provision of the Act, the Collector is of the opinion the State is entitled to direct the possession of any property, he is enjoined to serve a written order in the prescribed manner on the person in possession of such property requiring him to deliver possession thereof to the State or to show cause, if any, against the order within the period specified therein. When such a person fails to deliver possession or show cause or when a cause has been shown, the Collector after giving such a person, a reasonable opportunity of being heard reject the cause shown, for reasons to be recorded in writing, it can take or authorize taking of such steps including use of force as may be necessary for securing compliance with the order.
or preventing breach of peace. Thus it is clear that these two clauses contemplate two different situations and they operate in different fields an action under clause (h) does not debar the State from taking action under other clause, namely, Clause (g)”.


Facts : Jamabandi number 626, mauza – Pakur, Thana No. 128, was recorded in the name of the husband of the petitioner Late Anand Mohan Pandey in the revenue register and jamabandi was created according to the petitioner, before vesting of the State in the year 1948. The nature of the land was Gair Mazara Malik land. The said land was settled with petitioner’s husband by Amalnama followed by grant of rent receipts and delivery of possession. After vesting of the State enquiry was made regarding the said jamabandi created by the landlord and the same was maintained and the jamabandi was opened and continued in the name of petitioner’s husband by the revenue officer. Since thereafter her husband had been paying rent to the State and was coming in peaceful possession. In the year 1982 after more than 30 years, the petitioner’s husband got a notice under section 4 (h) of the Act 1950 from Circle Officer, Pakur. The Circle Officer being satisfied with the claim dropped the proceeding. Suddenly in the year 1995 another notice under section 4 (h) was issued by the S.D.O. Pakur and in the ensuing proceeding the jamabandi was cancelled.

It has been held in the case that jamabandi once created cannot be cancelled by the revenue authority unless there is established ground of fraud, misrepresentation or the jamabandi is found created by an order passed without jurisdiction and assailed within a reasonable period. Jamabandi as such may not be a document of right, title, interest and possession, but jamabandi once created does establish the relationship of landlord and tenant and creates a valuable tenancy right under the provision of law. Section 13 of the S.P.T. Act, enumerates the right of raiyats in respect of use of land and provides that a raiyats may use the land of his holding in any manner of local usage or custom or irrespective of any local usage or custom in any manner which does not materially impair the value of the land or render it unfit for cultivation. A tenant cannot be ejected on any other ground than as provided under section 39 of the S.P.T. Act.

LANDS IN KHAS POSSESSION OF INTERMEDIARIES

Section 6 is the saving clause which protects the land in khas possession of the proprietor and tenure holder and they will be entitled to retain possession thereof and hold them as raiyat under the State having occupancy right in respect of such lands on payment of rent. The category of lands which have been enumerated in this section are all lands used for agricultural or horticultural purposes, which were in khas possession of an intermediary on the date of such vesting, including –

(a) (i) Proprietor’s private land let out under a lease for a term of years or under a lease from year to year, referred to in section 116 of the Bihar Tenancy Act.

(ii) Landlords Privileged land let out under a registered lease for a term exceeding one year or under a lease written or oral for a period of one year or less : referred to in section 43 of CNT Act.

(b) Lands used for agricultural or horticultural purposes and held in the direct possession of a
temporary lessee of an State or tenure and cultivated by himself with his own stock or by his own servant or by hired labour or with hired stock.

(c) Lands used for agricultural or horticultural purposes forming the subject matter for subsisting mortgage on the redemption of which the intermediary is entitled to recover khas possession thereof.

The above categories of land shall be deemed to be settled by the state with such intermediary and he shall be entitled to retain possessions thereof and hold them as raiyat under the State having occupancy rights.

The proviso further provides that the intermediary shall not be entitled to retain possession of any naukarana land, chowkidari chakran or goraiti jagir or mafi goraiti in the record or right, which has already accrued to the raiyat before the date of vesting.

From the above definition it is evident that the intermediary was entitled to retain land in khas possession. What is Khas Possession has been defined under Section 1(k) of the BLR Act, 1950, "Khas possession used with reference to the possession of the proprietor or tenure holder of any land used for agricultural or horticultural purpose means the possession of such proprietor or tenure holder by cultivating such land or carrying on such horticultural operations thereon himself with his own stock or by his own servants or by hired labour or hired stock".

The definition as to what precisely constituted “Khas Possession” was put forward in Brajndandan vs J.P.Sahu 1958 BLJR 122. It was stated that in the definition of khas possession stress has been given on two elements ie Juridical Possession and on the form in which the act of possession is exercised at the time of vesting by the outgoing proprietor. The term khas signifies the possession of the proprietor sans the interposition of any tenants, and not physical or actual possession.

The Apex Court held in Suraj Ahir vs Pritam Singh AIR 1963 SC 454 that the above view was not correct and held that the definition as it stands can only relate to actual or cultivating possession by the intermediary or tenure-holder, either personally or by means of hired labours. The intermediary is denied the shelter under Section 6 of the Act by the very fact that any other kind of constructive possession is foreign to the definition.

An interesting question fell for consideration in Ramesh Bijoy Sharma and ors vs Pasupati Rai and ors 1979(4) SCC27 that if the tenant-at-will is in actual possession and holds out against landlord and questions his right to be put in possession, can it be regarded as khas possession of the landlord?

This question was answered in the negative and it has been held that a tenant-at-will is some one other than the landlord. If a tenant-at-will is cultivating land used for agriculture, the agricultural operation carried out by him can not be said to be the cultivation of the landlord himself, nor the stock of the tenant-at-will can be regarded as the stock of the landlord, nor the tenant-at-will can be regarded as the servant of the landlord. The word used in Section 6 is not “possession” but it is qualified by the adjective ‘Khas Possession’ its equivalent being ‘actual possession’ as the word is used in contradistinction to the word ‘constructive possession’. The expression khas possession used in Section 6(1) of the BLR Act does not include the right to take possession. The subsisting title of the Landlord over certain land on the date of vesting would not make that land under his khas Possession.
The ratio of this case is consistent with the earlier authorities on the point viz1971(1) SCC 556, (1964) 3 Scr 363 and so on. In Balehwar Tiwari Vs Sheo Jatan Tiwari 1997 AIR 2089 it has been held that intendment of Khas possession is referable to intermediary who must be in actual possession-- Possession is actual and admits of no dilution except to extent specified u/s 6 of the BLR Act.

Apart form the land under khas possession, such buildings or structures together with lands on which they stood, other than any building used primarily as offices or kutcheries referred to in clause (a) of Section 4, as were in the possession of an intermediary and used as golas, factories or mills for purpose of trade, manufacture or commerce or used for storing grains or keeping cattle or implements for the purpose of agriculture and constructed and used for the aforesaid purpose before the first day of January, 1946 has been deemed to be settled by the State with such intermediary and he shall be entitled to retain possession as tenant under section 7 of the BLR Act.

In State of Bihar Vs Sharda Prasad Rai (2002) 9 SCC 677 the question that came up for determination was whether proceeding initiated by the appellant under Section 4(h) of the Bihar Land Reforms Act, 1950, but subsequently dropped, would bar initiation of proceeding under Section 4(g) of the Act. It was held, "………………".

The determination of the question as to whether an estate vested or not revolves round the crucial date of vesting i.e. 6/11/1951. If the intermediary or proprietor was not in khas possession on that date his title to the property would stand extinguished. In Shashi Bhushan Manki Vs. Sabi Mundaian 1986 BBCJ 716 the ex-ghatwal continued to be in possession of the ghatwali tenure inspite of nomination of new ghatwal on the date of vesting, the land was deemed to have been settled with him following notification under the BLR Act.

In 1996 AIR SC 1936 Mosammat Bibi Sayeeda v s State of Bihar the interpretation of Section 4(a) meaning of 'Bazar' came up for consideration. This is also known as Patna Market case where in the Appellants claimed that the shops are homesteads within the meaning of Section 2(jj) of the BLR Act. The substantial question of law as to the meaning of word “Bazar” namely Patna Market and other such markets came within Section 4(a). Hon’ble the Apex Court answered in the affirmative and held that on and with effect from the date of publication of the notification under Section 3, the totality of the right, title and interest held by the intermediary stands abolished. The consequences thereof, as enumerated in Section 4(a) is extinguishment of the pre-existing right, title and interest over the entire estate including the enumerated items in Section 4(a) which includes hats, and bazars in the State and the preexisting right title and interest held by the intermediary.---- In order to constitute bazar all that is necessary is a place where buyer and sellers congregate to sell and buy. It will be difficult to accept that complexes are not Bazars within the meaning of Section 4(a) of the BLR Act. They being the Bazars of a proprietor or ex-intermediary, must be held to have vested consequent upon notification under Section 3 of the Act.

Apart from the lands in khas possession of the intermediaries which have been saved from vesting, Section 7 extends the protective umbrella to the intermediaries with respect to buildings together with lands on which such buildings stand in the possession of the intermediaries and used as golas, factories or mills to be retained by them on payment of rent at the time of commencement of the BLR Act. The ex-proprietor is entitled to retain possession of golas on his bakast land subject to payment of rent.
Section 35 - **Bar to jurisdiction of civil court in certain matters** – No suit shall be brought in any civil court in respect of any entry in or omission from a compensation Assessment roll or in respect of any order passed under chapter – II to VI or concerning any matter which is or has already been subject of any application made or proceeding taken under the said chapters.

- Form – K - Application by proprietor of tenure Holder for 7B
- Form - L - General notice issued by Collector
- Form – M - Preparation of Rent Roll.

The fair rent or ground rent determined under these rules in each proceeding together with the register particulars shall be entered in form – M rent roll under the signature of the Collector, such rent Roll shall form part of the case record to which it relates.

**UNDER RAIYAT, SIKMIDAR, DAR RAIYAT –**

A Sikmidar is an under raiyat – Under raiyat is a Tenant holding the land under a raiyat – As under raiyat as of right does not acquire any occupancy right in the land held by him under a raiyat in absence of any custom or usage prevalent in the Area.

Sikmidars have neither heritable nor transferable right unless there is a custom or usages contrary to that. The right of under raiyat survives till his life and it extinguishes after death of Sikmidar in possession for more than 12 years no acquisition of heritable right by Adverse possession.

**Right of an under raiyats or sikmidar –** According to Section 76 C.N.T. Act a custom or usage by which an under raiyats can obtain rights similar to those of an occupancy raiyats is similarly, not in consistent with, and is not expressly or by necessary implication modified or abolished by the provisions of this Act and will not be affected by this Act. The said provision says that by custom occupancy right can be acquired by an under raiyats. There is no provision under the C.N.T. Act regarding heritability of the right of an under raiyats or a sikmidar. It is a settled principle of law that right of an under raiyats or sikmidar is not heritable under the law. It has been held in the decision reported in AIR 1936 Patna 384 (Jugesh Chandra Bose versus Maqbul Hussain) that the interest of an under raiyats with occupancy right is not heritable under the law and the defendant has not proved the custom of heritability of the right of an under raiyats and is liable to be evicted from the suit premises. Their Lordships in the Division Bench decision reported in AIR 1964 Patna 31 (Johan Oraon (Ekka) and another versus Sitaram Sao (Bhagat) and others) have held that an under raiyats with occupancy status is not heritable under the law though it may be heritable by custom. Where in a suit for declaration the defence was that the defendants acquired permanent occupancy right in the disputed land from their father who had acquired those property by prescription, it was held that the custom of heritability was not established and the defendants were liable to be evicted. In another decision reported in 1988 BLT 258 (Haripada Mahato and another versus State of Bihar and others and Dasrath Mahato versus Commissioner, C.N. Division South, Ranchi and others) it has been held that the plea regarding custom in a particular village has not been established, Section 76 of the C.N.T. Act cannot be applied. Sikmidar even if remains in possession of land for a period of more than 12 years cannot
acquire heritable right by adverse possession. In para 14 of the said judgment it was held that in
the village note there is no mention about heritability of the tenancy. Further in the single Bench
decision reported in 2002 (3) JCR 554 (Waxpol Industries Limited Versus State of Bihar and
others) it has been held that when the custom of heritability of sikmidar has not been proved by
evidence and even if the sikmidar and / or his heirs remained in possession for more than twelve
years, no acquisition of heritable right by adverse possession is available. It has further been held
that sikmidar has neither heritable not transferable right and without taking resort to Section 46
of the C.N.T. Act any transfer of tribal land by sikmidar is illegal and invalid and confers no right
or title on the vendee. Similarly in the decision reported in 2004 (1) JCR 98 (Sandhya Rani Devi
and others versus Gour Chandra Panda and others) it has been held that right of an under
raiyats is neither transferable not heritable unless there is custom or usage to the contrary. The
right of an under raiyats survives till his life and extinguishes on his death. Their Lordships in
the decision reported in 2005 (2) JLJR 95 Division Bench (Waxpol Industries Limited versus
State of Bihar and others) have held that in absence of any evidence regarding heritable right
of sikmidar which has not been proved and the plea regarding custom has not been established
and as such sikmidar even if remains in possession for more than twelve years cannot acquire
heritable right by adverse possession.

Gautam Kumar Choudhary
Director
Judicial Academy Jharkhand

[Acknowledgement: My thanks to Sri Arun Prasad, Retd. IAS and Sri Bansi Prasad, Senior
Advocate, Civil Court, Ranchi for their invaluable insight and inputs in preparing this article.]
GLOSSARY

Gairahi – A kind of communal land from the produce of which the expense of Ghost worship is made.

Gairmzurwa Malik or Gairmazurwa Khas - Uncultivated land or parti lands ditch or up-land not fit for agricultural purposes of the landlord over which any raiyat can make it fertile by levelling it making Korkar etc, after taking due permission from the land lord and the same can be settled to a raiyat.

Gairmazuruwa Aam Land - Un-cultivated communal land of the land Lord like road, temple, mosque burial place, hat, bazar etc which can not be settled to any body.

Maswar - A system of procurement in which a raiyat pays as rent to his land lord and amount of produce equivalent to the quantity of the seed sown by him.

Mokarry - A Permanent lease,

Mokarridar - leaseholder

Mokarrari- A permanent heritable and transferable tenunre, rent fixed in a pre-emption

Naukrana- Land given by the Land Lord for rendering service.

Village Note- Is attached with the record of right.

Land Lords privileged- Land(Section 118)

BIRIT – A grant or a gift.

BIRIT PUJAI – A grant or gift made to a person on the condition that he carries or worship of any particular God, Temple or deity. Also indicates holding in possession of the recognized Pahan of the village.

BRIT PUJAI – Appertaining to Brit Puja or Ghost Worship.

BHUGUT BANDHA MORTAGAGE – Means a Transfer of the interest of Tenant in his Tenancy for the purpose of securing the payment of money advanced or to be advanced by way of loan upon the condition that the loan with all interest thereon, shall be deemed to be extinguished by the profit arising from the tenancy during the period of mortgage.

KORKAR – Means land whatever name locally known such as ‘Babhala’ Khunwat, Jalsasam’ or ariat which has been artificially levelled or embarked primarily for the cultivation of rice and

a) Which previously was jungle waste or uncultivated or was cultivated up land or which through previously cultivated has became unfit or cultivation of transplanted rice and
b) Which has been prepared for cultivation by a cultivation (other than the landlord) or by the predeceased in interest other than the landlord.

ABAD : Cultivate
ANABAD MALIK : Land Lord’s Waste Community
ANABAD SARBSHADHARAN : Waste Land belonging to village Community
BAKASHT LAND : Raiyati Land temporarily in possession of the land lord
BAKASHT MALIK : In cultivating possession of the Landlord
BANDOVAST : Settlement
BATALI : Actually divided
BATAIDARI : System of division of produce
BAYNAMA : Sale deed
BEDAKHAL : Injection, Eviction from land
BEGAAR : A forced laborer
BE-LAGAN : Without rent
CHAK : Block
DHUR, DHURKI : Unit of measurement
ESTATE : Land included under one entry in any of general registers
GAIR ABAD : Uncultivated
GAIR MAZRUA : Uncultivated, Parti
INDRAJ : Entry in record
JAMABANDI : Rent Roll of the Land Lord
KASTKAR : The person under whose direct cultivation the land is Exclusive Land of the Land Lord
KHATA : Khatian for one holding
KHATIAN : detailed record for each separate holding of the plots
KISTWAR : Survey of all the fields, wasted Land, house etc. of a village by amin
LAGAN : Rent
MALGUJARI : Land Revenue
MAUZA : A village as recognized and separately mapped at the time of revenue survey.
PARCHA : A duplicate of the khatian made over the Land lord and tenant during Khanapuri.
PARTI : Land lying fallow
<table>
<thead>
<tr>
<th>Term</th>
<th>Definition</th>
</tr>
</thead>
<tbody>
<tr>
<td>PARTI KADIM</td>
<td>Old fallow Land not cropped within three years.</td>
</tr>
<tr>
<td>PARWANA</td>
<td>An order by a person in authority</td>
</tr>
<tr>
<td>PATTA</td>
<td>A kind of lease</td>
</tr>
<tr>
<td>RAIYAT</td>
<td>A person who has acquired a right to hold land for the purpose of cultivation</td>
</tr>
<tr>
<td>SAHAN</td>
<td>Enclosure or Court yard; the uncultivated land adjoining and forming part of the home stead</td>
</tr>
<tr>
<td>SALAMI</td>
<td>A capital payment being paid by tenant to land lord.</td>
</tr>
<tr>
<td>TASDIQUE</td>
<td>Attestation of the draft record of rights during survey operation.</td>
</tr>
</tbody>
</table>
FORM - I

Maintenance of records Form of continuous Khatian to be maintained by the Anchal Adhikari under Section 3 (1) 
(See Rule 4)

Continuous Khatian

Village .................................. Anchal ............................ Rev. P. S.................................. Name of proprietor ..................................................
State of Bihar ................................................ Police station .............................................. R.T. No..........................................................
If Shikni Khatian the name of the actual tenant along with khat number.

<table>
<thead>
<tr>
<th>Serial no. in the Khatian</th>
<th>Name of tenant fathers name, caste and residence</th>
<th>Plot Plot no. Boundary</th>
<th>Nature of land (Classification)</th>
<th>Area A E Rec.</th>
<th>Possession, nature of possession Shikni possession etc. Remarks</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>2</td>
<td>3 4</td>
<td>5</td>
<td>6 7 8</td>
<td>9</td>
</tr>
<tr>
<td>Rent about plots with kind rent, its conditions for possession</td>
<td>The period of possession of the non-occupancy raiyat (2) procedure for fixation of rent and condition of rent if it increases gradually (3) special conditions if any</td>
<td>Substance of the order for making charges letter no. and date, name of the officer giving order</td>
<td>Remark</td>
<td></td>
<td></td>
</tr>
<tr>
<td>---</td>
<td>---</td>
<td>---</td>
<td>---</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Rent excluding cess, according to the enquiries of the A. A.</td>
<td>10</td>
<td>11</td>
<td>12</td>
<td>13</td>
<td>14</td>
</tr>
</tbody>
</table>

**Statement** —

1. If Khata is possessory the name of the raiyats who have got possession on the plot shall be entered in col. 9.
2. If the possession is through lease, mortgage then the number of registration deed, date of registration and amount consideration will also be mentioned in col. 9.
3. The name of Shikmi raiyat will also be mentioned in this column, if the period of possession is less than twelve years then the period of possession will also be mentioned.
4. If the trees are not in possession of raiyat, the name of the person to whom it belongs, his share and nature of tree and number will be mentioned.
MAINTENANCE OF RECORDS FORM NO. - 2
Register of Tenants Ledger
(See Rule 4)
Form of tenant Khata Register to be maintained by Anchel Adhikari under Section 3 (i)

<table>
<thead>
<tr>
<th>Area</th>
<th>Annual demand</th>
<th>Rent</th>
<th>Coins</th>
</tr>
</thead>
<tbody>
<tr>
<td>Year</td>
<td>Area</td>
<td>Decimals</td>
<td>Year</td>
</tr>
<tr>
<td>1</td>
<td>2</td>
<td>3</td>
<td>4</td>
</tr>
<tr>
<td>Year</td>
<td>Total Demand Collection</td>
<td>Current Demand Collection</td>
<td>Arrear Demand Collection</td>
</tr>
<tr>
<td>------</td>
<td>--------------------------</td>
<td>---------------------------</td>
<td>--------------------------</td>
</tr>
<tr>
<td>1</td>
<td>3</td>
<td>4</td>
<td>5</td>
</tr>
<tr>
<td>2</td>
<td>9</td>
<td>10</td>
<td>11</td>
</tr>
</tbody>
</table>

**Note:** The table above represents the data for the collection of land law fees under the C.N.T., S.P.T., B.L.R., ACT.
<table>
<thead>
<tr>
<th>Education Cess</th>
<th>Health Cess</th>
<th>Remarks</th>
</tr>
</thead>
<tbody>
<tr>
<td>Arrear Demand Collection</td>
<td>Arrear Demand Collection</td>
<td></td>
</tr>
<tr>
<td>Rupees</td>
<td>Paise</td>
<td>Rupees</td>
</tr>
<tr>
<td>13</td>
<td>14</td>
<td>15</td>
</tr>
<tr>
<td>17</td>
<td>18</td>
<td>19</td>
</tr>
</tbody>
</table>

By: Pradeep Kumar Srivastava,
Principal District & Sessions Judge,
West Singhbhum at Chaibasa.
Dated: 9th day of March, 2015

INTRODUCTION:

The District of Singbhum has an earmarked area which is know as the "Kolehan" for the last few centuries. Sadar Sub-division of Chaibasa comprises the present day Kolehan where a separate system of administration of Civil Justice and other affairs are transacted under the Rules framed by Thomas Wilkinson, Governor General’s agent in South-West Frontier Agency in 1837.

HISTORICAL BACKGROUND OF THE WILKINSON’S RULES

Edward Tuite Dalton C.S.I. In his book “Description Ethnology of Bengal published in 1972” has mentioned the following facts:-

"The district of Singhbhum in which the Ho or Lakra Kola are located lies to the south east of Chutia Nagpur proper or between 22 and 23 of north latitude and 8653 and 85-2 of east longitude. It measures 124 miles in extreme length from east to west and 64 mile, in its greater breadth from north to south. The total area is by survey 4503 square miles, of this 1905 square miles constitute the exclusive Ho territory known as the Kolehan. The most fertile and highly cultivated portion of this tract surrounds the station of Chaibasa at a general level of seven hundred and fifty feet above the sea and here are massed about two thirds of the Kolehan population. The South of this extending to the Baitarnfriver the general level rises to upwards of 1000 feet and the kols of this plateau are less civilized and more turbulent than those of the lowersteppe. The whole district is undulating, traversed by dykes of trap which rise in rugged masses of broken up rock and the views are on all sides bounded by ranges of hill, rising to 2900 feet. To the south west bordering on Chutia Nagpur is a mountainous tract of vast extent sparsely in habited by the wildest of the Kols, this, however, appears to be the region from which they first descended into the Singhbhum plains. Saranda bordering on Gangpur at the extreme south west of the District is called "Saranda of the seven hundred hills". It is a mass of mountains which rise to the height of 3500 feet and contains,
but a few foot hamlets nestled in deep valleys belonging for the most part to a very unreclaimed tribe of kols. The inhabitants of the western hills bordering on Chutia Nagpur generally retain the name of Mundas and connect themselves rather with the people of Chutia Nagpur than with the HOS of Singhbhum.”

Chutia Nagpur, as part of Bihar, was ceded to the British Government in A.D. 1765; but the earliest arrangement with the Rana occurred in 1772, when it is stated that the chief appeared before Captain Camac commanding a force in Palamau, and after exchange of turbans with the Company’s representatives, duly acknowledged himself a vessel of that great power, gave as Rs.3,000 and agreed to do service against the Maharattas. The oldest settlement deed is dated 1179 Fasli, by which Raja Dripnath Sahi of Khukhra, alias Nagpur, agreed to pay 12,000 rupees, viz. Mal or rent 6,000 rupees, nazranah or tribute, 6,000. For some years after this, the Raja was allowed to administer the territory as the chief of a tributary mahal, but in 1816 or 1817, it was found necessary to deprive him of magisterial powers, the estate was placed under the Magistrate of Ramgarh, who held Court alternatively at Sherghati and Chatra. Natives of Bihar who were considered foreigners of Chutia Nagpur were sent into the country as Police officers, and occasionally the Nazir of the Ramgarh Magistrates Court was deputed with extraordinary powers to inspect and report on the administration. Up to A.D. 1831, when the most serious revolt of the Kols of Chutia Nagpur occurred, there can be no doubt that the changes of government which had taken place were not beneficial to them. They were neglected by their new masters, oppressed by aliens and deprived of the means they had formerly possessed of obtaining redress through their own chief. The rajha, by no means satisfied at this own loss of dignity and authority, gave but surely answers to complaints who came before him. The Darogahs (Native Police Officers), the highest resident officials under the British Government, declared it was not competent to them to decide on the grievances that then most harassed the Kols; these were complaints, that they had been dispossessed by foreigners, Muhammadans, Sikhs, and others, who had obtained from the sub proprietors farms of the Kol villages over the heads of the Kol headman; but it often happened that the unfortunate Kol who with difficulty made his way to the far off station found the tables turned on him when he got there. A host of witnesses in the pay of the opposite party were already there prepared to prove “that he had not only no right in the land, but was a turbulent rebel besides.”

The author has further described as under:-

“The judicious officers who was now Agent to the Governor General for the newly formed non-regulation province the south western Frontier the late Sir Thomas Wilkinson at once recognized on the necessity of a thorough subjugation of the Kols and the im-policy and futility of forcing them to submit to the chiefs. He, therefore, proposed an occupation of Singhbhum by an adequate force and when the people were thoroughly subjugated to place them under the direct management of a British Officer to be stationed at Chaibasa in the heart of their country. These views were accepted by Government and in furtherance of them two regiments of Native Infantry a brigade of guns and the Ramgarh battalion the whole force commanded by Colones Richards entered Singhbhum in Nov. 1836. Operations were immediately commenced against the refractory pirs, and by the end of February, following all the Mankis and Mundas had submitted. There appears to have been very little actual fighting during this campaign. All the most important parts of the Kolhan were visited by the Agent and his troops the men whom it appeared desirable to make examples of in consequence of their having been leaders in the previous lawless proceedings were given up for captured, and the others readily acquiesced in the arrangements proposed.”

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2. On examination of early recorded history of Kolhan, it is found that in 1837, 23 Kol Pirs are Parganas belonging to the three chieftains of Porahat, Saraikela and Kharsawan were detached from their Estates and with four others taken from Mayurbhan in Orissa were for the first time brought under the direct control of the British Government under the name of Kolehan, which was named as “Kolehan separate Estate” and included in the South-West Frontier Agency, Chaibasa became the Headquarter of the Kolehan Estate.

In the mean time, Regulation XIII of 1833 was promulgated on 2nd December 1833 for abolition of course of Diwani Adalat of Zilase of Ramgarh, Jangal Mahals and Midnapur and for providing special rules for the Superintendence of certain tracts as was included in the Zilase as was included in the aforesaid Zilase.

Section V there in stipulated, as follows :

“It shall be competent to the Government General by an order in Council to prescribe such rules as he may deem proper for the guidance of the Agent, all the officers subordinate to his control and authority, to determine what shall be exercised by the Agent and his Assistants respectively, also to determine, to what extent the decision of the Agent to Civil Suits shall be final and in what suits an appeal shall lie to the Sadar Dewani Adalat, and to define the authority to be exercised by the Agent in Criminal trials and what case he shall submit for the decision of the Nizamat Adalat.”

Section IV of this Regulation, which is also important, reads as follows :

“The administration of civil and criminal justice, the collection of revenue, the Superintendence of the police, of the land revenue, customs abkaree, stamps, and every branch of Government within the tracts of country separated as prescribed in the foregoing section, shall be vested in an officer appointed by the Governor General in Council, to be denominated agent to the Government-General.”

A Code of Rules was drawn by the Captain Wilkinson for the administration of Civil Justice (commonly known as Wilkinson’s Rules in 1834). Admittedly, it is being acted upon since more than 150 years.

This set of Civil rules was procedural ones, which prepared the framework of Civil justice. The features were ready and expeditious justice, the induction of the tribal Manki-Munda system of governance and rule through tribal customs. These kept Kolhan beyond the jurisdiction of the Civil Procedure Code. This way the Hos of Kolhan have retained their particular identity so far administering civil justice is concerned. Here we will also take into account conflicting values representing by two types of people tribals and non-tribals living in Kolhan. Tribals rather the Hos think that these rules not only provide cheap and expeditious justice but more so the British administered them through their men and customs, which they prize most.

In the background of Kol insurrection in Chhotanagpur during the period 1831-1833 Captain Thomas Wilkinson framed the following rules under the Regulation 13 of 1833 and within the meaning of Section 51 of the Government of India Act 1833.

For the sake of convenience, the Wilkinson’s Rules for the administration of Civil Justice within the jurisdiction of the Agent to Governor General under Regulation XIII of 1833 is hereinafter given below:

1. Civil suits of the value of 300 and under that sum whether for personal or real property shall be cognizable by the Munsif or the native Chiefs or others, who may hereafter be entrusted with the powers of Munsif with exception of suits in which the defendants Cutchary servants
of Europeans or Americans are parties and with exception also of lands held exempt from
the payment of Revenue provided the claim include the whole amount of demand arising
from the cause of action and be not for damages on account of alleged arising from the cause
of action and be not for damages on account of alleged personal injuries or for personal
damages of whatever nature, Munsifs are prohibited from receiving suits in “form a paupers”
but it is competent to the Assistant to the Governor General’s Agent to refer such suits to
them.

2. Civil suits of whatever value are ordinarily to be instituted in the Court of the Assistant within
the limits of whose Division of the jurisdiction, the cause of action may have originated or
in which the defendant may be residing but the Governor General’s Agent may admit the
institution of any suit in the first instance in his own Court whenever for special reasons he
may judge it advisable and he is empowered to try and decide all suits or appeals which may
be instituted before him or referred to him by his Assistant.

3. No Civil suits for personal property shall be cognizable in any court in the jurisdiction
in which the cause of action shall have originated more than six years antecedent to the
institution of the suit the Rule have effect from the date of promulgation of this order. In
like manner twelve years shall be the limit authorised to try and decide in their capacity of
Revenue Collectors shall be instituted within one year from the date on which the cause of
action shall have arisen or if the complaint be for forcible dispossession of lands, it shall be
preferred within three months, provided always that it shall be competent to the Assistant
on sufficient cause of delay being shown, or in cases of violent or fraudulent acquisition of
property to admit and to try the merits of any suit although the period limited shall have
expired.

4. All suits in every court shall be tried and decided openly and publicly in presence of parties
or their authorized agents.

5. In all suits the plaint shall be written on stamped paper of the value of specified in No. 8 of
the schedule B Regulation X of 1829 and answers on stamped paper of the value specified in
No. 9 of Schedule B Regulation X of 1829. Unless the Agent or Assistant in whose court suit
may be instituted be satisfied of the inability of either party to pay the court to admit the
plaintiff to use of the defendant to answer in “Forma pauper” and to remit the stamp duty,
but persons instituting groundless or vexatious suits shall be liable to moderate fine, at the
discretion of the court commutable in defaults of payment imprisonment in the civil jail for
a period not exceeding one month. The value of lands, houses as laid down in notes to 8 of
schedule B Regulation X of 1829 and in suits for damages, injury and loss of caste and the
like amount to be computed of rate assumed by the plaintiff.

6. With exception to the plaint and answer no stamp paper shall be required for any petition
process pleading or Roznamcha in any suit.

7. All complaints relation to balances or under exaction of rent or disputed Revenue account
be received on stamped paper and shall be heard and decided by the assistant any parties
who may be dissatisfied with the decision of an assistant being at liberty to institute an
appeal to the agent.

8. In all suits which may be instituted, the amount or value of the property claimed or involved
shall be specified in the petition of the plaint. On the plaint being filed, summons or notices
shall be served on the defendant containing a requisition to attend in person or be an
authorised agent to defend the suit on or before a certain day to be therein specified; Such
notice shall be served through the head of the village or estate where the defendant, may
reside, or through the jamadar of the court, by whom the summons and notices shall be
returnable on a fixed day with an endorsement, certifying the manner in which it may have
been served.

9. If the defendant shall appear and answer to the plaint, the court after making such enquiries
from the parties or their agents as may appear necessary with a view to ascertain the precise
object of the action and the grounds on which it is maintained and having recorded the same
shall proceed to investigate the merit of suit a sufficient notice being given to the parties of
the day on which the suit may be brought to a hearing. In cases in which the
justness of the claim shall be admitted by the defendants, pleading may be dispensed with.

10. Should the defendant in suit abscond or neglect to attend to defend the suit the agent’s or
assistant’s courts as the case may be shall at the expiration of three weeks from the date
of the return of the summons proceed to try the “ex-parte” or in the event of the plaintiff
neglecting to proceed on his suit for three weeks such suits shall be dismissed unless good
cause for the delay shall be shown. Under the like circumstances the Munsifs shall refer to
the assistant for orders, before trying a suit, “ex-parte” whose duty shall be to ascertain if
the summons was served on the defendant or if the plaintiffs neglect has been satisfactorily
established.

11. The attendance of the witness of the parties shall either be procured by means of sub-peon
to be served through the heads of villages or estate in which they reside or by a process to be
served by the parties themselves or by the jamadar of the Court, and any witness who may
fail to refuse to attend shall be liable to a fine at the discretion of the Court to be enforced,
if necessary by attachment of his personal property. The court may on all cases order the
parties to reimburse their witnesses the expense incurred by their attendance or to provide
for their subsistence while in attendance on the court. Time deposition of witnesses shall be
taken in either Hindustance or Bengalee language I whichever they may be most conversant,
and such oath shall previously be and inserted by the court as may be most binding on their
conscience. In case in which a witness may reside at a considerable distance, or may be
unable from sickness, or other cause to attend the court, his deposition may be taken by the
nearest Munsif or Darogah or written interrogations to be transmitted by the court.

12. In the Bihar portion of the jurisdiction the proceedings shall be recorded in Hindustance
and in the Bengal portion in the Bengalee language. The parties shall in all cases be at liberty
to plead their own cause either in person or by an authorised agent.

13. Every decree in a suit which may be passed by the agent, his assistant, or a Munsif shall
specify the names of witnesses whose deposition have been taken, the amount money or
value of the property decreed, the costs of the suit of every description and if the latter in
what proportion, and on fees or costs whatsoever shall be levied from parties in civil suits,
except as may be authorised by these Rules or by any special orders of Government, and
the parties in all cases in which they may desire it to be furnished with a copy of the decree
within ten days after the decision shall have been passed.

14. An appeal in all suits shall be from the court of the Munsifs to those of the assistants and
from the court of the assistants to that of agent provided the petitions of appeal from Munsifs to assistants court, and from assistants court to agent, be preferred in the first case either to Munsifs or assistants in the latter to assistant or an agent within six weeks of the date of the decree. All petitions of appeals, shall specify the grounds of dissatisfaction with the decisions and (unless preferred by the pauper, shall be written on stamped paper of the value specified in No. 8 of schedule b Regulation X of 1829. The Execution of decrees passed by the Munsifs or assistants shall not be stayed, not withstanding the appeal unless the appellant given security, to the fulfillment of the decrees, should they fail in furnishing security, respondent to be at liberty to sue out for execution of the decree on giving security for performing the final orders passed by the higher courts.

15. Whenever an appeal shall be preferred to an assistant from the Munsifs decision, or to the agent from the assistants decisions, it shall not be necessary to summon the respondent in the first instance but forthwith to call for the original record of the proceedings in the case, and if after the perusal of the record of the original suit and petition of appeal in the presence of the appellant or his agent, the assistant or agent, as the case may be shall see no reason to alter the decision appealed from, it shall be competent to the assistant or agent to confirm the same and to communicate the order for confirmation through the court from whose judgment the appeal was made to the execution of the decree. Should the assistant or the agent admit the appeal he will cause a notice to be issued to the respondent; on the attendance of the parties, or if the respondent shall not appear after the due notice having been served on him, on the attendance of the appellant only or his authorised agent, the assistant or Governor General’s Agent as the case may be shall proceed to try and decide the merits of the appeal and shall pass a final decision confirming, modifying or reversing the decision of the Musif or assistant as the case may be as he shall judge proper.

16. The agent or assistant as the case may be empowered to call for any further evidence in a case appellant, or to refer the same back to the munsif or assistant or further evidence, when not sufficiently investigated. The agent or assistant is likewise empowered on the application of any party suit decided by a Munsif or an assistant but not appealed, to grant a view of judgment, provided sufficient cause be shown and the application be preferred within six weeks or cause shown why that period has been exceeded and the agent or assistant is further competent to remove to his own or any other court in the jurisdiction by precept under his official seal and signature any cause which may be pending in a lower court recordings his reasons for so doing.

17. With the exception of the court of the agent which shall be at liberty to employ an assistant or Munsif, all decrees shall be carried into effect by the court by which the suit may have been originally tried and decided and shall be enforced by attachment and sale of personal property, or arrest and imprisonment of the person or the debtors except, Rajas and other whom the agent may consider it proper to exempt. Decrees shall be executed by an order addressed to an officer of the Court or the Head man of the estate in which the debtor may usually reside or where the property may be situated.

18. The agent is empowered to afford relief to insolvent debtors or their sureties who may have no means of discharging the amount demandable from them, on receiving a statement on oath containing a fair disclosure of all property belonging to him of whatever description, and if the agent, shall be satisfied from the inquiry he may make, or cause to be made by his
assistants, that the statement is true, and that the party in confinement has surrendered for
the disposal of the court any property in his possession, the agent, may order his release
from confinement, but the creditor may at any period bring to sale, in satisfaction of his
demand, by application to the court, any property landed being subject to Rule 27 which may
subsequently be possessed by the party released, may cause the party to be again confined if
he shall appear to have been guilty of any fraudulent concealment of his property at the time
of discharge.

19. Persons confined in civil jail in execution of a decree shall receive daily subsistence allowance
of two annas to be paid through an officer of the Court by the party at whose suit, the debtor
shall be confined and it shall be the duty of that officer of the Court to require a deposit in
advance for such persons of one month, subsistence allowance, in default of payment of
which he shall report the circumstances to the agent of his assistant within 12 hours and
the prisoner shall forthwith be released from confinement and it is hereby further provided
that no person shall be liable to personal confinement in satisfaction of a decree for any
sum not exceeding Rs. 50/- beyond a period of six months at the expiration of which he
shall be released by any personal property belonging to such person shall be liable to sale in
execution of the judgment, or such part thereof as may remain due. The following rules are
passed for the adjustment of suits by panchayat.

20. The Governor General’s agent and his assistants are authorised at their discretion refer
suits for decision to Panchayats after the plaints had been filed and defendant’s answer
received. Either at the sadar station or any other party of the district where the Agent’s on
the assistant’s cutchery may be at the same time. The Panchayat to consist of three of five
persons to be selected by the agents or assistants from amongst the person most conversant
with the matter at issue. The persons to compose the Panchayat shall not be nominated until
the plaintiff, defendant, and witnesses had been assembled. The plaintiff and defendant shall
each be permitted to challenge any member of the Panchayat and on giving sufficient reason
for the challenge or other person or person shall be selected to supply his or their place.
The plaintiff and the defendant or their Agents. Shall each be called on. On the Governor
general’s Agent or his assistant determining to refer a suit to a Panchayat, and before the
member of the Panchayat have been nominated to enter into engagement to abide by the
decision of a Panchayat to be nominated by the Governor General’s Agent or his Assistant
shall immediately direct a moharrir to attend the Panchayat, whose duty it shall be under the
direction of the Panchayat to record their proceedings and award. He shall then direct them
to proceed forthwith to some convenient place in his kutchery or adjoining it to investigate
the matter at issue, when the pleadings shall have been finished and evidence taken the
Panchayat shall direct the Moharrir the parties to retire, consult and decide on their award
and when they have come to a decision they shall recall the Moharrir to record the award,
which award having been duly attested with their signature they shall deliver to the court
appointing it whom a decree in conformity therewith shall be passed which shall not be
appealable or set side, unless corruption can be proved against the Panchayat or unless
the award shall be contrary to the common law of the country or the rules enacted by the
Governor General in Council.

21. When the matter at issue is a boundary dispute between two villages within the same estate
the Panchayat shall be selected from amongst the Head, most influencial and respectable
men from the adjacent village with the Estate, who shall proceed to the boundary and decide
the dispute after careful investigation and fix such boundary marks as will leave no room for further disputes. When the boundary dispute in between petty Zamindars, jagirdars or other holding a taluk or Estate or several villages in same large Estate the panchayat shall be selected from amongst the most respectable and influential persons on the neighboring Zamindars or jagirdar, who shall proceed to the boundary, to decide the point at issue after careful investigation and place such boundary marks as will prevent further dispute. With exception the Panchayats shall be formed and proceed in manner directed in the last rule.

22. As the decisions of suit by Panchayat is to expedite justice and for the general good, all persons shall be liable to be employed on them, it shall however be the duty of the Agent and Assistants to make their selection from amongst the persons above indicated, in the manner which subject them to last convenience.

23. When a matter at issue is a boundary dispute between two large Estate paying Malguzari direct to Govt. the governor General’s Agent or Assistant ats the case may be shall proceed to the spot and after minute investigation pass the decree. An appeal laying from the Assistant to the Agent who shall, whether the suit originated in his own Court, or has appealed from the Assistants, pass his decree. Except when the tranquility of the country will be likely to be disturbed by so doing in which case shall make a previous reference for the order of the Right Hon’ble the Governor general in Council.

24. The Governor General’s Agents and his Assistants are required to encourage all persons to refer their disputes to private arbitration or Panchayat without coming into Court.

25. Parties shall be at liberty to settle suit by Rajinamas at any state of the proceedings, but shall only be entitled to receive back their stamp when settled before the witness have been heard.

26. Wakeels shall not be permitted to plead in any of the Court within the jurisdiction, but parties shall be allowed to conduct their business in the Courts either in person or by Mokhtears or or authorised agents. But suits for the remuneration of agents or Mokhtears shall not be heard or decided in any Court.

27. No sale, transfer or mortgage of any landed property on account of rent or on any other account shall be legal until the authority of the Governor General’s Agent. The object of this Rule is to discourage exactions litigation which the Regulation Province is greatly promoted by intriguing Wakeels and Mokhtears.

28. The Governor General’s Agent shall immediately have proclaimed that in future his consent to the sale, transfer of mortgage of landed property belonging to the Rajas, Jagirdars, Zamindars and other proprietors whose lands have been in possession for generations will generally withheld.

29. In all suits originally filed in the Court of the Agent and decided by him involving money transaction exceeding Rs. 5000/-, if either party be dissatisfied with the decision and the Agent shall doubt the soundness of his decisions he shall receive a petition of appeal from the party dissatisfied on the stamped paper of the value of Rs. 350 and forward it with his original proceedings and a translation of them into the Persian language to the Sudder Diwany for its final orders when the Sudder-Diwany after making such further investigation
as shall appear necessary shall give final judgment on the merits of the case. Although the form of the proceedings may be at variance to that prescribed by the General Regulations.

30. In all cases of disputed succession (original or in appeal) to large or small estates when a decision may endanger the public tranquility or when the Agent shall have a difficulty in coming to a decision previously in giving final judgment he shall make reference to the Right Hon'ble the Governor General in Council.

31. On any point connected with the administration of Civil Justice, which may not be provided for by these, Rules the assistants and Munsifs shall be guided by the instruction they may receive from the Agent who in all cases appearing to require reference to the Government shall suspend passing any orders and report the circumstances of the case for the orders of the Governor General in Council.

The rules framed for the administration of criminal justice were superseded by the Code of Criminal Procedure which was extended to the entire area of Chhotanagpur by the Government order No.3167 dated 26.12.1861 and as Kolehan was held to be an integral part of the province of Chhotanagpur, the appellate Criminal Procedure jurisdiction over the Kolehan was transferred from the Commissioner of Chhotanagpur to the Judicial Commissioner of Chhotanagpur. The Indian Penal Code and the Code of Criminal Procedure again formally extended to the Kolehan by notification no. 1384 dated 21st October 1881, as against it Civil Procedure Code and the Civil Court Acts were not extended to the Kolehan.

It, therefore, follows that the Rules framed by Captain T. Wilkinson for the administration of Civil Justice in Chhotanagpur (although, no trace of its promulgation by the Governor General in Council is found) are operative in Kolehan, thus, neither the High Court nor the Judicial Commissioner could interfere in Civil Matter connected with the Kolehan so long as these rules are not superseded by the formal extension to it by the Civil Courts’ Act and the Code of Civil Procedure.

3. In 1874 (Act 14 of 1974) scheduled District Act was promulgated S.7 thereof reads as under:-

SECTION 7- CONTINUANCE OF EXISTING RULES AND OFFICERS:

“All the Rules herebefore prescribed by the Governor General in Council are the local Government for the guidance of officers appointed within any of the scheduled Districts for all or any of the purposes mentioned in Section 6 and in force at the time of passing this Act, shall continue to be in force unless and until the Governor General in Council or the local Govt., as the case may be, otherwise directs. All existing officers so appointed previous to the date on which this Act comes into force in such District, shall be deemed to have been appointed hereunder.

In Duli Chand Khirwal AIR 1958 (Patna) 366 and Mahendra Singh AIR 1958 (Patna) 603, it was held that Wilkinson’s Rules were in force after promulgation of Scheduled District Act 1874 by virtue of Provisions of Section 7 of that Act.

In 1874, the post of Kolehan Superintendent was created for looking after the interest of tribals and he was made the principal revenue officers of this area. HE implemented various schemes, settled government waste land and was the sole custodian of triabals in the area, even arbitrating the matter of domestic and family disputes. He also discharged the function of Munsiff
in Kolehan and tried Civil Suits. Munda and Manki served processes, Civil disputes were preferred to arbitration of the Mankis. The case in which the decision was divided the decision by the Deputy Commissioner was final. Thereafter an appeal lie before the Commissioner of Chhotanagpur Division and Board of Revenue.

4. During 1913-1918 A.D., Tucky I.C.S., Assistant Settlement Officer, Chhotanagpur conducted Survey and settlement of the Kolehan and published in his report in 1920, whose observation regarding the system is a Bench Mark information regarding the working of the system in the early part of this century, which may be quoted as follows:-

"The Kolehan, which was a Government estate if situated within the district of Singhbhum which, forms south eastern portion of Chotanagpur Division. The Kolehan was divided into 26 Pirs. The whole estate is a non police tract, but for administrative convenience three of the north western Pirs, Kuldia, Kainua; and Gulkera, have been put in the jurisdiction of Chakradharpur Police Station, and Saranda and Rela Pirs in the south west in Manoharpur. The remaining 21 Pires constitute the Kolhan Thana. The larger Pirs are further subdivided into Mankis divisions or ilakas, each under a Manki or Divisional headman. There are 75 such divisions. The number of village under one Manki varies from 3 to 33, and the area from 1,002 acres to 31,349 acres. In each village there is a Munda or village headman. On the 12th August, 1765, the Dewani of Bengal, Bihar and Orissa was conferred upon East India Company by Emperor Shah Alam. The tract of Chhotanagpur was included in Suba Bihar and had several fudal lords. Their mutual rivalry gave the British opportunities to occupy the Hazaribagh and palamau and part of the district of Gaya, Manbhum and Monghyr, as well as Chotanagpur proper. This was formed in 1780 with headquarters at Sherghati in the Gaya district and at Chatra in the Hazarbagh district. The Raja was allowed a free hand in the internal administration of the country, though it was nominally included in the Military collectorship of Ramgarh. The internal condition of the district during this Collector ship was marked by incessant rivalries among Jagirdars, incursions of the Marathas and occasional infiltration of the Larka Kole of Singhabhum into Chota Nagpur, and above all the incompetence of the Raja to keep in subjugation the dependent Rajas and the turbulent elements. Therefore, in absence of peace and order, discontent among the masses increased, suggesting the failure of the Military Collectorship. Owing to the repeated rising of the Mundas and Oraon, Chota Nagpur, as part of the Ramgarh district was brought under the administration of the East India Company and the Maharaja was no longer a Tributary Chief. In 1819, a political agent to the Government of South Bihar was appointed. This Synchronised with a great drought in the Tamar Pargana, and the transfer of the police administration from the Raja to the British under the Superintendent of Police. The administration took an ultimately measure in imposing a tax on hanria (rice-beet) when a Munda rising in the pargana of Tamar, Rahe, and Silli was gaining ground. This added to the discontent among the aboriginals. The suppression of the revolt was followed by a number of administrative reforms. The insurrection brought home the necessity for a closer administration and more effective control by British officers on the spot. Accordingly, the whole system of administration was changed, and the South -West Frontier Agency was established in 1834, with headquarters at Kishanpur (Ranchi). The Agency included, Ramgarh, Kundu, the Jungle Mahals (except Bishenpur, Sainpahari and Sherghar) Pargana Dhalbhbum an the dependant tributary Mahals. Captain Thomas Wilkinson was appointed the first Agent, and one of his Principal Assistant, Leutenant Oseley, was placed in charge
of the Lohardaga Division, which corresponded roughly to the present district of Palamau and Ranchi with headquarters at Lohardaga.

It is further observed that an officer in charge of the Kolehan (Koleha Superintendent) in addition to the usual work of Estate Management, tried all the Civil Cases and usually the criminal cases also. The C.P.C. was not in force and civil cases were instituted in the first instance by ordinary petitions, and were as a rule treated as miscellaneous cases without the formality necessary for a civil suit. If the case was complicated the Kolehan Superintendent may have put it as a regular civil suit and allow pleaders to appear, but this can not be done without his permission.

The staff of the Kolehan Superintendent consisted of a couple of clerks, the Kolehan Inspector whose work had been explained as an overseer who dealt with road, building and irrigation works. There was a Kolehan sub-Inspector of Police with a few constables. They were employed in the investigation. This was the whole staff of Kolehan except for the village official.

The administration was paternal, largely by executive order and direct touch was kept between the D.C. and the Kolhan Superintendent on the one hand, and the headman and the raiyats on the other.

Cases of all kinds were referred to the Mankis and Mundas, and the objects of the administration was in so far possible to decide everything on the spot and discourage litigation in the Courts.

All the administrative matters civil, revenue and criminal were kept as far as possible in the hands of the same officer and it is necessary to understand, as to how the whole of the work lumped together just to appreciate the affert of the introduction of the Chotanagpur Tenancy Act as the working basis of the revenue administration.

Two main objects of their system of administration had been (1) to preserve the paternal government through the village communal system and (2) to keep the Kolehan as a reserve for the Hos. For these objects it was essential that -

(a) The Mankis and the Mundas should be controlled by the Deputy Commissioner of Singhbhum District.

(b) Only the Deputy Commissioner should have powers to settle land with the Dikkus.

This control had been secured hitherto by executive orders, but such executive orders had no legal basis, and it was necessary either to legalize the present form of administration and to give up that 80 years experience has evolved.

**EFFECT OF THE APPLICATION OF THE C.N.T. ACT.**

Under the C.N.T. Act as it extends at present the Mankis and Mundas were recorded as a tenure holders and unless it was held that this fall within the provisions of Sec.77, punishments of fine and dismissal by the orders of the Deputy Commissioner appear to be illegal. So were the provisions for the recovery of rent both from the headmen and the raiyat and the measures taken to control dikkus, while auction purchase holdings allowed Dikkus to gain admission into Ho villagers without restriction.
HALLETT’S PROPOSALS

In correspondence regarding the settlement of the Kolhan the necessity for amendment of the C.N.T. Act was recognized and proposals to that effect were asked from the Deputy Commissioner of Singhbhum. These proposals were submitted by Mr. Hallett’s Latter No. 1269 R. From Hallett Dy. Commissioner Singhbhum to the Commissioner C.N.Division, Dated Chaibasa the 9th June, 1977. The powers proposed to be given to the Deputy Commissioner to take action on his own illegal settlement made by a village headman was felt to be necessary, because it is so much the interests of the particulars raiyat that have to be safeguarded as that of village community that will suffer through the introduction of an undesirable Dikku. On the same grounds it was recommended the extension of that power to the provision of Section 71 of the Act, and give the D.C. the right to restore on his own motion to a tenant his possession in his tenancy or any part thereof, if objected from it was a Dikku may obtain a footing on a village as an agriculturist by gaining forcible possession of land.

DAYAL’S RECOMMENDATION:

Sri R.L. Dayal, Deputy Commissioner of Singhbhum in 1956 was of the opinion that only a portion of the Wilkinson’s Rules were out of date so far as the own existence of Sadar Diwani Adalat are the Governor General in Councils were concerned, but the essence of the Wilkinson’s Rules still holds good. He advocated for continuance of the system with gradual change over because Manki Munda were established institution in the society and any decision to replace might have popular repercussion. He was sure that the whole idea of this system was to prevent the Hos from being exploited by intermediaries either in bureaucratic or legal and by outsiders and non-adiwasies.

5. Propriety of the Wilkinson’s Rules and justification for it’s retention :-

(a) In Miscellaneous Judicial Case No. 548 of 1962 Jyotindra Nath Roy Vs. A.C.C. Ltd. Jhinkpani (Patna High Court), it was held that Kolehan Superintendent was never invested with any power by any notification or under any law to exercise the powers of Munsiff to try the suit in questions under Wilkinson’s Rules.

The result was that whole basis of Wilkinson’s Rules and Kolehan System were jeopardized, Kolehan Courts suspended their activities and ultimately the State Government had to pass the Kolehan Civil Justice (Regulating and validating) Act 1966 (Bihar Act 3 of 1967).

Again in the Kolehan Civil Justice Judgment dated 19.12.69 in C.W.J.C. No. 644 and 645 the Hon’ble Patna High Court held that the Additional Deputy Commissioner Singhbhum has no jurisdiction to try Civil Suit in the Kolehan Area under Kolehan Civil Justice (Regulating and Validating) Act 1966 (Bihar Act 3 of 1967) without proper authorization of District Commissioner, Singhbhum, prior to the aforesaid enactment civil suit in Kolehan area were tried by the Additional D.C., the Kolehan second officer and the Kolehan third officer etc. Since as far back as 1941 they have been deciding cases all without any authorization by the D.C., these trials were without jurisdiction.

Considering the serious consequences flowing from the aforesaid judgment, the State Government of Bihar parts the Kolehan Civil Justice(Regulating and Validating) Act (Bihar Act
8 of 1978) to regulate the administration of Civil Justice and validate certain past action in the Kolhan with the exception of the areas comprised within the Municipality of Chaibasa in the Sadar Sub-division of the District of Singhbhum is enacted by the Legislature of the State of Bihar. The Section 2(1) of the Act speaks that “Notwithstanding anything contained in any other law for the time being in force any judgment, order or decree of any court, the officers mentioned in column 1 of the schedule shall, in regard to the trial of civil suits and proceedings arising within the local limits of the Kolhan with the exception of the areas comprised within the Municipality of Chaibasa in the Sadar Sub-division of the district of Singhbhum and hearing of appeals or petitions for review of revision arising therefrom, be deemed to have validly exercised the powers which the officers, mentioned in the corresponding entries in column 2 thereof exercised under the Wilkinson’s Rule and under Regulation XIII of 1838, and no order, judgment or decree passed by them shall be deemed to be invalid or shall be called in question in any court or proceeding whatsoever merely on the ground that they were not so empowered”.

SCHEDULE

<table>
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<th>Column 1</th>
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<tr>
<td>a.) Kolhan Superintendent or Kolhan Second Officer or Kolhan Third Officer or Deputy Collector-in-charge of Land Reforms or any other Officer authorized by the Deputy Commissioner of Singhbhum to try civil suits and proceedings of the value not exceeding 5000 rupees.</td>
<td>Munsif</td>
</tr>
<tr>
<td>b.) Deputy Commissioner or Addl. Deputy Commissioner of Singhbhum or any officer authorized by the Deputy Commissioner of Singhbhum to try civil suits and proceedings of the value not exceeding 5000 rupees and to hear appeal arising from the judgments of the officers mentioned in column 1 above.</td>
<td>Assistant to the Governor General’s Agent</td>
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<td>c.) Commissioner of Chotanagpur Division</td>
<td>Governor-General’s Agent</td>
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(b) The validity of the Wilkinson’s Rules was earlier challenged before the Patna High Court in the case of Duli Chand Vrs. State of Bihar, AIR 1958 (Patna) 366, Mahendra Singh Vrs. Commissioner of Chotanagpur Division, AIR 1958 (Patna) 603 and in the case of V.Ahya Vrs. Deputy Commissioner, 1970 BLJR-855.

Wherein the rules have been held intra-virus but, in a recent reported judgment of Full Bench of Patna High Court in Mora Ho Vrs. State of Bihar, AIR 2000 (Patna) -201, held that Wilkinson’s Rules have not been framed by a Competent authority therefore they lack statutory force, under regulation XIII of 1833, Section V, it was Governor, who was competent to prescribed rule, by in order in council. No power was delegated to the agent though the original of the Wilkinson’s rules is not available and in the typed copy, it was shown to have been signed by Captain Thomas Wilkinson’s, he having not delegated with power to frame rules, the same can’t be held to be a rule framed u/s V of Regulation XIII of 1833. Wilkinson’s rules cannot be stated to have saved and continued by virtue of Section 7 of Scheduled District Act 1874. Thus, the Wilkinson’s rules cannot be said to be statutory.

Accordingly, judgment rendered in Duli Chand Vrs. State of Bihar, AIR 1958 (Patna) 366 and Mahendra Singh Vrs. Commissioner of Chotanagpur Division, AIR 1958 (Patna)-603 overruled.
It was further observed by the majority view that these rules have not statutory force but, 
the admitted position is that they have been followed and acted upon in the administration of Civil 
Justice in the Kolehan area of Singhbhum District for about 150 years. If these rules are made in 
applicable, now, in the absence of any suitable substitute, it may cause hardship and confusion. 
Therefore, it is expedient that till the new rules / regulations are framed by the government in 
place of these rules, these rules should continue to hold the field. 

Accordingly, State Government was directed to do the needful in this regard within a period 
of three months. 

Aforesaid direction of the Hon’ble Patna High Court has not yet been complied with by 
the Government. In a recent case reported in 2010 (4) JLJR-335, it has been held by the Hon’ble 
Jharkhand High Court that Wilkinson’s rules which has not been framed by the Competent Authority 
and lack statutory force, have been accepted as a valid law and acted upon by the Government, 
officers and people of Kolehan area and still Civil Justice is administered under these rules. The 
administration of Civil justice in Sadar Sub-division of Singhbhum couldn’t be governed by the 
C.P.C. but by Wilkinson’s rules which have no statutory force, even then, this rule is applicable in 
Kolehan Division in Singhbhum District, relied upon the judgment in 2001(2) JCR-77 (F.B.) Mora 
Ho Vrs. State of Bihar under appeal before Supreme Court.

6. The deficiencies of the Wilkinson’s rules has been pointed out in the following judicial 
pronouncement :-

(i) In the Judgment of Tata Iron & Steel Co. Ltd. vs State Of Jharkhand And Ors. Decided 
on 6 May, 2002 it has been held that:

“The Wilkinson’s Rules was framed sometime in the year 1833. The Rule 20 of Wilkinson’s 
Rules provide decision through panches. The Deputy Commissioner cannot nominate 
himself as one of the punches but to accept the nomination of panchas as made by the 
plaintiff and defendant, whatever the finding is given by the punches is binding on 
the Deputy Commissioner except in the case of bias or mala fide. In this background, 
the question of appointment of an Arbitrator and to entertain application under the 
Arbitration Act by a Kolhan Court does not arise. Such appointment of Arbitrator will 
be against the provision of Rule 20 of the Wilkinson’s Rules and will vitiate the entire 
proceeding.”

(ii) In the case of Sura Kudada And Ors. vs State Of Bihar And Ors. decided on 4 February, 
2000 reported in 2000 (3) BLJR 1858 the Hon’ble Patna High Court laid down that:

“It appears that the record of rights were definitely wrongly prepared giving go-by to the 
decision arrived at earlier by the Kolhan Superintendent already mentioned above and 
the title and possession of the plaintiffs had already been established long back in the 
year 1914-15, but the revenue records were not corrected accordingly and this gave a 
handle to the defendants to create trouble about the possession and title of the plaintiffs 
and then, the plaintiffs have no other alternative but to come in the suit, I do not find 
that in the circumstances of the case, Rule 3 of the Wilkinson’s Rules would create a bar 
in coming up for declaration of the title over the suit land.”

It was further held at para 11:

Moreover, it is an established principle of law that majority of the award should be accepted
unless it can be shown that the same suffers from the procedural defect as contemplated under Rule 20 of the Wilkinson’s Rules or that the same is devoid of consideration of the customs prevailing amongst tribals. There was no plea of misconduct against the majority members who gave their award in favour of the plaintiffs. This aspect has been considered when objection was raised against the award by both the Courts below and came to the concurrent findings. There is no scope of this Court to interfere with such concurrent findings unless the same suffers from jurisdictional error or error apparent on the face of it.”

(iii) Whether Panchas constituting the Panchyat under Rule 20 of the Wilkinson Rules must be aware of tribals law and customs and whether the customary law of tribals would prevail over the general law of country?

This question was decided by the Hon’ble Patna High Court in the judgment reported in 1988PLJR39:1987BBCJ551, Ganga Ho vs. State of Bihar, whereby it has been held that “The customary laws of the Oraon and Munda tribal communities in the matter of inheritance are akin to each other. The customary law of inheritance prevalent among tribals would prevail over the general law of country. The law applicable to Oraon community would also be applicable to members of HO community. Presumption in law in that judicial or official acts have been performed in regular manner, therefore, Panches constituting the Panchayat, must be presumed to be fully conversant with tribal laws and customs, and also to have acted fairly in making their award”.

(iv) Whether the Courts constituted under the Wilkinson’s Rules can pass the order of Injunction

This matter was raised before the Hon’ble Patna High Court in the case of Orissa Manganese & Minerals Pvt. Ltd. vs. Commissioner reported in 1987 BBCJ 617, whereby held that: “The courts constituted under the Wilkinson Rules are statutory tribunals. Such authority must confine its jurisdiction within the four corners of the provisions of these rules. The courts constituted under these rules, cannot exercise jurisdiction which is not specifically vested in it nor can it exercise any power for purpose of grant of Injunction, which power has not been conferred by statute.”

(v) Whether the suit is barred by limitation is a question of fact?

From the language of Rule 3, it will appear that the power is on the Court to take cognizance of a suit with regard to real property from the date of cause of action for several dispossession in the year 1950 is barred by limitation under provision of Rule 3 (Goma Ho and Others V State of Bihar and Others) CWJC No.595 of 1980 (R) decided on 10th November, 1989.

7. Apart from lacunas and deficiencies in the rules itself as discussed above certain practical problems were also felt for continuance of the Wilkinson’s Rules in the Kolehan area.

After independence conflict in views started spreading, the people started questioning the utility and continuance of set-up of rules created by the Military Officers hundreds of years ago even after introduction of general laws and regulations and promulgation of Indian Constitution.

This aspect has been agitating the Bihar Tribes Advisory Council as well as the State Government of Bihar since last few decades. The Bihar State Law Commission has already
recommended that the age old system of meeting Civil Justice by the Court of Kolehan Superintendent under Wilkinson’s Rules should be substituted by the introduction of general system of Civil justice so that uniformity with other areas is brought about. The Tribes Advisory Council also got interested in it, Judicial contents also made it imperative on the State Government to enact uniform system of Civil Rules by scraping prevailing old rules.

The Kolehan inquiry committee appointed by the State Government in 1948 has accepted that Civil justice is still administered under the Wilkinson’s Rules and these rules are statutory rules framed under Regulation XIII of 1833 and still in force by virtue of Section 7 of the Scheduled District Act 1874. However, the committee made the following recommendations/ suggestions to the Government:-

(i) The administration of Kolehan has to be developed progressively to approximate to the administration of the rest of the Chotanagpur which maintaining the essential features of the existing system prevailing in the Kolehan.

(ii) In Kolehan suits the Deputy Commissioner and Kolehan Superintendent may allow appearance of lawyers in cases which they considered involve complicated question of law.

(iii) The Wilkinson’s Rules are out of date and Santhal Civil Rules with suitable modification to suit the Kolehan may be adopted.

(iv) In Kolehan suits there should be a provision that the Deputy Commissioner and the Kolehan Superintendent should transfer cases to the Civil Court if both contested parties make a joint prayer that their cases should be tried in a Civil Court. In cases so transferred, the Code of Civil Procedure should be made applicable. Para-73. At this stage, it is worth to mention here some special features of the Wilkinson’s Rules under which civil justice is being administered in the Kolehan. The original Court for cases for the value less than R.300/- is that of the Kolhan Superintendent with an appeal to the Deputy Commissioner and the original Court for cases of higher value is the Deputy Commissioner with an appeal to the Commissioner.

Para-74. Cases are instituted by ordinary petitions. Where the case is allowed to assume the form of a regular civil suit it is valued according to Court-fees Act. As regard procedure, normally the procedure provided under the Wilkinson’s Rules and the procedure provided in the Code of Civil Procedure, not inconsistent with the Wilkinson’s Rules, are valued. But all endeavors are made for adjudication of dispute by village Panchayat as arbitrators. The majority of petitions are however treated as miscellaneous petitions and settled by the Kolehan Superintendent without being allowed to assume the form of a civil suit. The method of administration of civil justice in this area are that the disputes be arbitrated in the village assembly and not heard by Secretary from such individual witnesses as may be produced in Court. The parties are entitled to apply to the Deputy Commissioner to have their cases decided in regular form of civil suit on payment of Court fees but this is allowed only after all efforts are made first to settle the dispute in village assembly and the result of such proceeding is always placed on record before a formal suit is admitted. The Panchas can be appointed at any time even after a formal suit has commenced, if the party agreed to abide by their decisions. The outstanding advantage of this system is that it is a cheap, speedy and efficient system of justice but in ordinary matters.

Para-75. There is a wrong notion about the Wilkinson’s rules among the general public
specially the aboriginals of Kolehan who misconstrued it and thought it to be a law protecting their general interest. They nourished an idea that Wilkinson’s Rules would protect their right and give relief to all troubles after little knowing of it. They hardly know that it is almost a customary law for administering civil justice in Kolehan. The rules were framed in 1833 when the people of Kolehan were illiterate, ignorant, uncivilized and were living mostly in jungle. There are large deficiency in the said rule to cope with the present system of life in Kolehan.

Para-76. Wilkinson’s Rules given justice to the people with lesser expenditure but there has been a drastic change in the civilization of the tribals and now a days the Kolehan aboriginals became literate and therefore, how the said rule which was originally meant to administer justice to illiterate and ignorant people shall continue when literacy and wisdom have progressively dawn in them. Moreover, the Wilkinson’s Rule followed in a very pocketed portion of the Singhbhum District but in the rest portion of the district, such as Bandgaon etc. the rule is not followed though aboriginals reside there in majority.

Para-77. There are other deficiency in the said rule also. For example, in Kolehan area there are at present factories, mines and offices of big companies like TISCO etc. have cropped up. If any dispute or grievance arises in Kolehan due to dismissal, wrongful transfer etc. then where the aggrieved party would seek his legal remedy. There is no Court for them and there is no remedy under the said rule inasmuch as the Kolehan Superintendent has no jurisdiction to try such suit. Similarly the Courts established under the Wilkinson’s Rules lacks statutory jurisdiction to decide the dispute in between landlord and tenant. There are other anomalies also in the cases where the remedy lies under the Company law, Workmen Compensation Act, Industrial law, Service matter etc. There are thousands of tribals who are employed in factories, mines and other big organization in Kolehan and if any dispute arises regarding their dismissal and suspension from service or their transfer they have no Court to get justice, when other tribal of Chaibasa town or of Jamshedpur may get such remedy from their civil Court under the Code of Civil Procedure. There is no provision under the Wilkinson’s Rule for grant of immediate and expeditious remedy in the matter of dismissal, suspension or transfer of the tribals by the employers. Likewise, if a dispute arises with regard to the quantum of compensation payable under the Land Acquisition Act, the matter has to be referred in accordance with the provisions of Land Acquisition Act. But for the land situated in Kolehan and if such disputes arisen after acquisition the aggrieved tribals cannot seek remedy under the Wilkinson’s Rules for final settlement of the compensation. Similarly the Courts constituted under the Wilkinson’s Rules have no jurisdiction to decide the question with regard to the grant of probate, letter of administration and succession certificate in the manner provided under the Indian Succession Act. A very interesting anomaly appears to be that a decree passed by a Court under the Wilkinson’s Rules can be executed only in Kolehan and nowhere else. A decree passed by Kolehan court cannot be executed in any other Courts in India. Unlike, a decree passed by a Civil Court can be executed in any Civil Court situated within the territory of India.

Para-78. The Kolehan Enquiry Committee in his report dated 31st July, 1948 has recorded the following finding on the issue of administration of civil justice :- “Cases are instituted by ordinary petitions. The Court fees Act is nominally in force in the Kolehan and where a case is allowed to assume the form of a regular civil suit, it is valued according to the Court-fees Act. As regards procedure, the Civil Procedure Code is followed in a modified form, so that it is not inconsistent with Wilkinson's Rules; but great use is made of the ordinary village Panchayat as arbitrators. The majority of petitions however, are treated as miscellaneous petitions and settled by the Kolehan Superintendent without being allowed to assume the form of a Civil Suit. Though
this is the procedure still followed, it appears that the results are not as happy as it was in the past. The Hos have advanced from their backward State; they have lost faith in their Mankis and Mundas and have also come under the influence of lawyers and touts. While recording the evidence of witnesses, it transpired that some Mundas act as touts for lawyers. So most of the miscellaneous petitions, do not end with the Kolehan Superintendent, Arbitration by Mankis is in many cases a failure these days. So ultimately the Kolhan Superintendent has to allow most of these petitions to assume the form of civil suits. This is putting a strain on the existing staff and is perhaps not giving real satisfaction to the litigant. Ho. In the past this system gave cheap and speedy justice to Ho. But now it is neither cheap nor speedy.

Para-79.- The Committee in his report has come to the following conclusion: - "The Wilkinson’s Rules" are out of date. It is suggested that the Santal Civil rules might be adopted for the Kolehan. This will be a move in the right direction and in course of time the Civil Procedure Code can be brought in. If the new rules are brought into force a provision may be added providing for the transfer of such cases as is considered fit by the Deputy Commissioner to the regular Munsiff or Sub-judges Court for disposal according of law. If both the contesting parties want to have their case tried in a Civil Court, then the Deputy Commissioner (including the Kolehan Superintendent) should have no discretion, but must transfer the case to the Court. When a case is thus transferred, the Civil Procedure Code should be made applicable. Wilkinson’s Rules will no longer be applicable to them.

Para-80.- All these deficiencies in the Wilkinson’s Rules were also considered and discussed in a symposium on Wilkinson’s Rules held in the district of Chaibasa. This symposium was organized by Mr. Barun Sen Gupta, the Protect Director of Free Legal Aid Committee and was presided by Mr. Bagun Sumbrai, M.P. In which many dignitaries also participated. It appears that on the suggestion made by the enquiry committee for framing of a new set of rule on the line of Santhal Pargana Civil Rules, an initiative was taken by the Government.

It further appears that in 1983 a draft regulation namely, The Bihar Schedule Area (Wilkinson’s Rule) Regulation, 1983 was prepared in order to amend and re-arrange the Wilkinson’s Rule for its application to the entire Kolhan Area. But, there is nothing to show that this draft regulation or any other rule or regulation has been enacted by the State Government in order to remove the deficiencies in the Wilkinson’s Rule or to enforce any other rules or procedure in the Kolehan area.

8. Government of Bihar Welfare Department has also called for a report after thorough investigation from Bihar Triabl Welfare Research Institute, which submitted its report on 04.09.79. The institute during survey found following practical difficulties due to Wilkinson’s Rules:-

* The Wilkinson’s rule don’t provide and form for having any Succession Certificate under the Indian Succession Act.

* Now with the growth of industrialization and mining activities and urban development in Kolehan area lots of industrial workers or their heirs requires succession certificate to obtain their respective legal dues from their employees which is very difficult to obtain under Wilkinson’s rules. The succession certificate in uncontested cases are granted by the Court of District Judge and governed by the Civil Procedure.

* In Land acquisition matter they feel great trouble for developmental purposes facilitated by new industrialization, opening up of new mines, industrial growth
centre, city etc. the State Government acquire land in the Kolehan area, when there is a dispute about quantum of compensation and claims for compensation the matter is referred to the Court of District Judge, Singhbhum, who as a matter of fact has no jurisdiction over this matter as Wilkinson’s Rule is silent about it.

* In Labour Laws matter also there is same difficulties. In Kolehan area there are lots of mining, industrial and agricultural workers but the appellate Court regarding payment under minimum wages Act and other such Acts have no jurisdiction over the Kolehan area. Rules also don’t provide any remedy regarding this.

* There is no provision of deciding Matrimonial Suits under Wilkinson’s Rules.

* The Kolehan area has also been brought under the Bihar State Panchayati Raj Act and appointment of statutory Panchayat Authority have considerably curtained and overlooked the working of rule’s personnel.

* Order XIV of C.P.C. regarding framing of issues, material position of facts and law shall have to be taken into consideration because it has been observed that Additional Collector can reject many cases without following any legal decorum.

* Application under the Indian Succession Act or the Provincial Insolvency Act or complicated legal issues involving industries, mines, business establishment should not be sent for arbitration necessarily but could be heard in the Kolehan Court.

* The party should be given reasonable opportunity to set aside the ex-parte order in reasonable time.

* There is no provision for appeal against orders unlike the provisions of Section 104 read with Order XLIII Rule 1 C.P.C.

* The institute after proper survey has came to conclusion that the Kolehan system has become by now part and parcel of the social fabrics of the Hos. The best thing would be to strike the balance by having a well-disciplined rural administrative system cadre with Manki at the head at Pir level and Munda at the village level. Every village and every Pir should have separate Munda and Manki of his Secretariat Staff with knowledgeable village officials, talking in Ho language and having fair knowledge as the aspirations of the Hos, then alone this responsible Arbitration Type of Kolehan system of administration can bring solace to the people. The State may not have any difficulty in bringing the bribe taking dishonest village officials and functionaries to book. The Deputy Commissioner can change his Hukumnama as and when find that a particular Manki and Munda has transgressed his limit. Accordingly, the institute advised for some amendment in the old Wilkinson’s Rules.

* It was further observed that the scraping of the Wilkinson’s Rules is a legislative questions and it should be settled in the legislative assembly. This report at best can give some ideas for necessary amendment and reforms in the Wilkinson’s Rules so that the new challenges are met and the Ho’s are not left dis-satisfied on the issue like this.
CONCLUSION

9. From the aforesaid discussion of the history of promulgation of the Wilkinson’s Rules for administration of Civil Justice in Kolehan Area and its continuous application about more than one and half century, when compared with the need and requirements of the developing society as pointed out in various reports and judicial pronouncement as discussed above, it is evident that the Wilkinson’s Rules are not able to cope with the all practical problems faced by the modern society of Kolehan area. The main reason for not adopting any change in Rule by the dominant tribals of Ho communities is that Hos of Kolehan are renowned for their bravery and self respect and self rule, the Britishers granted them these boon (Wilkinson’s Rules) and autonomy of self rules as they realized that it was useless to wage war for years to subjugate them. They feel that any drastic change in the system will create drastic situation and it will touch off popular violent agitation. Any such change will drastically disrupt the social democratic set-up.

In my humble opinion change in law as per demand of society is common phenomena of any legal system. It has been said by eminent jurist Rasco Pound that law is social engineering. As an engineer removes defects from any instrument and makes it workable in right manner. Similarly, the law grows through amendments or interpretations suitable to the condition of society from time to time. The law can’t remain rigid, in-elastic or standstill. Although time tested Wilkinson’s Rules is prevailing since more than 150 years in the Kolehan area but, it has been proved that the rule itself has many inherent deficiencies/lacunas due to passage of time and various legislation made applicable in the territory of India.

The Indian constitution which is the supreme law of the land was enforced in the year 1950, it contains various provisions for development and safeguard of schedule tribes and people belonging in tribal areas. It guarantees the equality of law and equal protection of law to every person, it ensures social, political and economic justice for all. The constitution contemplates a welfare state, and enjoins duties on state to secure that the operation of the legal system promotes justice, on a basis of equal opportunities, and shall, in particular, provide free legal aid by suitable legislation or schemes or in any other way, to ensure that opportunities is for securing justice are not denied to any citizen by reason of economic or other disabilities.

Accordingly, Legal Services Authorities Act 1987 was enacted, a unit under this Act at District level is District Legal Services Authorities which makes access to justice more cheaper even without cost to people belonging to Schedule Caste and Schedule Tribes community by providing free legal aid and assistance through Competent Advocates as well as by Financial support in matter of Court fee, Process fee etc.

Here it is pertinent to mention that vide notification no. A/AB/303/53-3533J dated 26.08.1952 the Government of State of Bihar has extended the application of code of Civil Procedure to the Municipality of Chaibasa and Chakradharpur which is working satisfactorily without any agitation from any corner. Now, it is high time to enforce the provisions of Civil Procedure Code throughout the Kolehan Estate which is more efficacious than the Wilkinson’s Rules as it stands now. The Section 89 of the Code of Civil Procedure mandates for redressal of disputes at first through the settlement of disputes outside the Court, through Arbitration, Conciliation, Judicial Settlement including settlement through
Lok Adalat or Mediation. The litigants in Kolehan areas are being deprived from taking advantage of these provisions and also deprived from time bound speedy redressal of their disputes as provided in C.P.C., due to rigid Wilkinson’s Rules and they are compelled to get justice from incompetent, ignorant, illiterate and untrained Arbitrators of their own. The present forum for Civil justice is being presided by the Executive Officers, who are also not trained in arbitration and Law Graduate to appreciate the legal questions properly. Most of the time of these officers are spent in administrative works leaving no sufficient time for trial of the contested suit or miscellaneous petitions which are mounting. It appears that the old cases are pending since 1975 and the ratio of institution of contested Title Suit in recent few years have been drastically decreased in number showing that the people have lost their faith in the present system of administration of Civil justice.

The Indian constitution has commenced since about 65 years and undergone more than 100 amendments. The old age Wilkinson's Rule has never undergone any change up till now in spite of changing need of the society, and virtually has become incapable enough to cope with the diverse legal problems that arise in Kolehan today. The Ho’s and other such genties have particular allergy for the steps like substantive Wilkinson’s Rules. There is no valid justification for retention of these Rules as it exist at present and it is high time for State legislature to do needful at earliest for fulfilling the hopes and aspirations of the people in Kolehan.
Hope for Land Losers under 1894 Land Alienation Act in Jharkhand

Nalin Kumar
OSD (J) to Hon’ble Governor
Jharkhand, Ranchi

Jharkhand, literally meaning as the “land of forest, is one of the most adversely affected states of the consequences of large scale land acquisition done by the State for mining, construction of dams and industrialization, even before independence of India.

The negative fallout of archaic provisions contained in colonial enactment called Land Acquisition Act 1894 manifests itself everywhere throughout the state leading to large scale alienation of local people, primarily tribals, without any alternative arrangement for rehabilitation. The disastrous impact of the unbridled exercise of land acquisition continuing for more than a century in this part of the country has led not only to a permanent loss of great number of flora and fauna but has also led to loss of livelihood, and way of life, transforming the lives of millions of uprooted people from their source of livelihood and leading to large scale migration, cultural, social and economic alienation and ultimately destitution.

According to one study broadly speaking, within a short span of five years between 1981 to 1985 only the land acquisition for coal mines displaced about 1,80,000 people out of which only 11901 got job. Out of the total displaced families, even one family members of only 36.34% families got the compensatory job. Big industries like Heavy Engineering Corporation, Hatia, Bokaro Thermal Power, Bokaro Steel Limited, Tenughat Dam, Mathon Dam, Kutko Dam, Chandil Dam, Netarhat Field Firing Range, Koel Karo Hydro Electric Project and the earliest of all Tata Steel has displaced 72 to 90 lakhs people out of which around 1/4th belonged to tribal community. The people displaced by HEC, Ranchi, the first industrial unit constructed post independent have not been rehabilitated so far. Surprisingly the amount of land acquired for establishing these industries is highly disproportionate to the actual requirement as is evident from its subsequent use. While HEC displaced 36 villages, Bokaro Steel factory engulfed land of 65 villages and Tenughat Dam marred the life of another 35 villages. Post nationalization large scale recourse to open cast mining by government coal companies has further aggravated the problem of land alienation.

In the factual backdrop above referred stood corroborated by judicial notice taken by the Jharkhand High Court in the case law State of Bihar Versus Chinivas Mahto and another (2008) (1) JCR 451 (JHR) wherein the division bench of Jharkhand High Court presided over by Hon’ble Mr.Jusice M.Y.Eqbal has taken cognizance of the fact that more than 10,000 families, majority of whom are scheduled caste and scheduled tribe persons were dispossessed from their agricultural land 45-50 years back under the land acquisition act for construction of Bokaro Steel Plant were yet to get the compensation amount when the judgment was pronounced on December 6, 2007. Underlining the fact that it is not only violative of their statutory right but also Human right violation, the Court lamented that the raiyats and land losers have not been paid their rightful and legitimate compensation amount despite passage of more than 5 decades since they were dispossessed from their land by the state authorities. The Hon’ble Court has recorded that 46 appeals and 10312 applications under relevant provisions of the land acquisition act were still
HOPE FOR LAND LOSERS UNDER 1894 LAND ALIENATION ACT IN JHARKHAND

...pending and the land losers were made to wait for payment of their compensation. Ironical aspect of the case was that payment to the raiyats were not being made by the state authorities because the compensation amount assessed around Rs.70 crores only was not being transferred to the state authorities as they were unwilling to execute the conveyance deeds in accordance with legal provision in favour of Bokaro Steel Limited, a fully owned subsidiary of Steel Authority of India Limited, a Government of Indian Enterprise. Thus, the two different state authorities creating legal hurdle among themselves were using & enjoying the land of raiyats but has denied lawful rights of the land loser in a most abominable exercise of its kind.

The story of Chinvas Mahto and others is being repeated throughout Jharkhand in thousands of cases across a period of more than seven decades and the gross injustice done to the erstwhile landholders can be corrected to some extent by taking recourse to the latest Supreme Court judgment discussed below.

The Supreme Court verdict delivered in Pune Municipal Corporation and another Versus Harak Chand Misrimal Solanki and others 2014 (3) SCC 183 while interpreting Section 24(1)(2) of the substituted law of land acquisition namely, Right to Fair Compensation and Transparency in Land Acquisition Rehabilitation and Resettlement Act 2013 has laid down law which will go a long way to help raiyats of Jharkhand whose lands has been acquired by the state government under erstwhile Land Acquisition Act 1984, but who are yet to be paid with the compensation amount.

Underlining the fact that both Section 24(1) and Section 24(2) starting with non obstinate clause meaning thereby that these provisions shall have overriding effect, it has been held that wherever in land acquisition proceeding under the 1894 Act the award has been made five years or more prior to commencement of 2013 Act and either of the two contingency is satisfied viz

(i) Physical possession of the land has not been taken, or

(ii) The compensation has not been paid;

Such acquisition proceeding shall deem to have lapsed. If the appropriate government still chooses to acquire the land which was subject matter of acquisition under 1894 Act then it has to initiate the proceeding afresh under 2013 Act. Another provision appended to Section 24(2) deals with the situation where in respect of the acquisition enacted under the 1894 Act an award has been made and compensation in respect of majority land holding has not been deposited in the account of the beneficiary then all the beneficiaries specific in Section 4 notification become entitled to compensation under 2013 Act.

The Supreme Court does not stop here. It proceeded further to define what actually is meant by the word “paid” to the land loser with the help of Section 31 of the 1894 Act. It has been held that while enacting Section 24(2), Parliament definitely held in view Section 31 of 1894 Act, which makes it clear that it did not anyway equate the word “paid” to “offer” to “tender” but in fact by the use of word “paid”, parliament intended receipt of compensation by the land owners/persons interested. It was clarified that for the purpose of Section 24(2) of the Act the Compensation shall be recorded as “paid” if compensation has been offered to the person interested and such compensation has been deposited in the court where reference u/s 18 can be made on happening any of the contingencies contemplated u/s 31(2) of the 1984 Act, in other words, compensation can be said to have been paid only when the Collector or the land acquisition...
officer has discharged his obligation and deposited the amount of compensation in court and made the amount available to the interested person to be dealt with as provided u/s 32 and 33 of 1894 Act.

The Supreme Court undertaking legal proposition propounded by the Privy Counsel in *Nazir Ahmed Versus King Emperor AIR 1936 PC 253* wherein it has been held that where the power is given to do a certain thing in a certain way, the thing must be done in that way or not at all. Other methods of performance are unnecessarily forbidden.

Going by the practices being followed in the State of Jharkhand and the large scale land acquisition having been made for the purposes above discussed the consequences of the Supreme Court judgment in Pune Municipal Corporation case above discussed is going to be far reaching, provided the same is effectively implemented in letter and spirit. It will also go a long way in soothing the inflamed passion of land losers who having felt cheated since generations from none other that the State and his authorities, and has taken recourse to violent protests and in fact many of them has lost hope to get justice. The reactionary and violent resistance of the land holders/owners even to purposeful and reasonable land acquisition proposals by the state is in fact a direct fallout of the historical excesses & injustice having been done to the raiyats which has made a strong foot print in the mass memory. We hope the Supreme Court judgment above referred, if implemented honestly, will go a long way help to restore faith of the people at least to some extent that justice prevails at last.
LAND ACQUISITION REHABILITATION AND SETTLEMENT ACT, 2013

"Opposing Right To Fair Compensation And Transparency In Land Acquisition Rehabilitation And Resettlement Act -2013"

"The Storm In A Cup of Tea"

"An act to ensure in consultation with the institution of the Local Self Government and Gramsabha established under the CONSTITUTION, a humane, participative, informed and transparent process for Land Acquisition for Industrialization development of essential infrastructure facilities and urbanization with the least disturbances to the owners of the land and other affected families and provide just and fair compensation to the affected families whose land has been acquired or proposed to be acquired or are affected by such acquisition and make adequate provisions for such affected persons for their rehabilitation and resettlement and for ensuring that the commutative out come of compulsory acquisition should be that affected persons became partners in development leading to an improvement in their post acquisition social and economic status and for matters connected there with or incidental there to.” And with this preamble The Right To Fair Compensation And Transparency In Land Acquisition Rehabilitation And Resettlement Act 2013 was enacted.

Prior to this Act the Land Acquisition Act 1894 was a general law relating to acquisition of land for public purposes and also for companies and for determining the amount of compensation to be made on account of such acquisition. For the reason that the Act of 1894 did not address the issues of Rehabilitation And Resettlement of the affected persons and their families, the provisions of the said Act have been found to be inadequate in addressing certain issues related to the exercise of the statutory powers of the State for involuntary acquisition of private land and property. The Right To Fair Compensation And Transparency In Land Acquisition Rehabilitation And Resettlement Act 2013 as is evident from its preamble reproduced here in above has been enacted with the aim to ensure, a more fair and transparent procedure for land acquisition. Prior to coming into force of the new law Land Acquisition Act of 1894 was the Act in India which allowed the Government Of India to acquire any land in the country. The Land Acquisition Literally means acquiring of land for some public purposes by Government / Government agency, as authorized by Law from the individual land owners after paying a compensation fixed by the Government in lieu of the losses sustained by the land losers for surrendering of their land to the concerned Government agency.

In Black’s Law Dictionary, 7th Edition at page 892-893 the expression the land is defined as a immovable and an indestructible three dimensional area consisting of a portion of the earth surface, the space above and below the surface and every thing growing on or permanently affixed to it. An Estate or interest in real property and thus in its legal significance land is not restricted to the earths surface but extends below and above the surface. Nor it is confined to solid but may encompass within its bounds such things as gases and liquids. According to William.C. Burton’s legal thesaurus Second Edition at page 310 land in its associated concepts means and includes property, real estate, seisin terrain tract etc. and since land means property there has to be a Law for depriving the land owner from his property. The earlier act by the passage of time has sustained
multiple amendments not only by the Central Government but by the State Government as well, however there was growing public concerned on land acquisition specially the multi cropped irrigated land and there was no central law to adequately deal with this issues along with the issue of rehabilitation and resettlement of displaced persons. As land acquisition and rehabilitation and resettlement are two sides of the same coin and thus a single integrated law to deal with the issue of land acquisition and rehabilitate and resettlement was long over due. The Right To Fair Compensation And Transparency In Land Acquisition Rehabilitation And Resettlement Act 2013 addresses concerns not only of the poor families and those whose livelihood are likely to be lost on the land being acquired while at the same time facilitates land acquisition for Industrialization infrastructure and urbanization projects in a timely and transparent manner. The Right To Fair Compensation And Transparency In Land Acquisition Rehabilitation And Resettlement Act 2013 shows a sea drift in the orientation of the legislative approach to land acquisition as for the first time provisions for Social Impact Analysis and Recognition Of Non Owners As Affected Persons has been made, the mode of acquisition in a process requiring the consent of the displaced and statutory entitlements for rehabilitation and resettlement has been provided for the first time and the nature of land including multi cropped irrigated land has been given a special treatment. A restriction has been put on the ground on which land may be acquired under the urgency clause and in fact even after acquisition the land is not utilized within a specified span of time, the land is not utilized for the specified purpose, the acquired land shall revert back to the land loser or to the Land Banks to be created by the government in this regard. By introducing amendment by a new ordinance ie by The Right To Fair Compensation And Transparency In Land Acquisition, Rehabilitation And Resettlement (amendment) Ordinance, 2014 broadly the following six changes have been introduced in the original Act.

1. **Excluded Acts brought under the RFCTLARR Act:** According to the Act of 2013, 13 Acts were excluded from the RFCTLARR Act but with the new ordinance they are now brought under its purview. Thus, it brings the compensation, rehabilitation and resettlement provisions of these 13 laws in consonance with the Act.

2. **Removal of consent clause in five areas:** The ordinance removes the consent clause for acquiring land for five areas - industrial corridors, public private partnership projects, rural infrastructure, affordable housing and defence.

   The ordinance also exempts projects in these five areas from Social Impact Assessment and acquisition of irrigated multi-cropped land and other agricultural land, which earlier could not be acquired beyond a certain limit.

3. **Return of unutilised land:** According to the Act 2013, if the land remains unutilised for five years, then it needs to be returned to the owner. But according to the ordinance the period after which unutilised land needs to be returned will be five years, or any period specified at the time of setting up the project, whichever is later.

4. **Time frame:** The ordinance states that if the possession of acquired land under Act 1984 is not taken for reasons, then the new law will be applied.

5. **Word ‘private company’ replaced with ‘private entity’:** While the Act 2013 stated that the land can be acquired for private companies, the ordinance replaced it with private entity. A private entity is an entity other than a government entity, and could include a proprietorship, partnership, company, corporation, non-profit organisation, or other entity under any other law.
6. **Offence by government officials:** If an offence is committed by a government official or the head of the department, then she/he cannot be prosecuted without the prior sanction of the government.

The Right To Fair Compensation And Transparency In Land Acquisition Rehabilitation And Resettlement Act 2013 came into forces on 1.1.2014 and in comparison to the land acquisition Act 1894 it has brought the following changes by introduction of new provisions in contrast to the old act which may be summarized as

(1) Chapter-II of the 2013 Act provides for determination of social impact and public purpose which has further been subdivided into.

   A. Preliminary investigation for determination of social impact and put purpose (section 4 to 6).

   B. Appraisal of social impact assessment report by an expert group section 7 to 9

(2) This chapter is followed by Chapter-III containing special provision to safeguard food security and it provides embargo on acquisition of irrigated multi cropped land except under exceptional circumstances provided under section 10(2) and the following sub sections. The new conception of time frame has also been introduced in the Act of 2013 and according to this Act after submission of social impact report by expert group publication has to be made within 12 months under section 11 about notification of acquisition at places indicated in section 11(1) which includes publication in

   (a) Official Gazette,

   (b) In two daily news papers in local regional language

   (c) In the local language in the panchayat, municipality or municipal corporation as the case may be and in the office of District Collector, SDM and Tahasil.

   (d) Uploaded on the website of the appropriate government and

   (e) In the affected area in such manner as may be prescribed.

The following sub sections of section 11 further provides intimation to be given to registry office and other such offices so that no further transaction of land specified in the preliminary notification takes place. This foresight on the part of the legislators A new Chapter-III(A) has also been introduced by the 2014 ordinance where in the appropriate government may in the public interest, by notification, exempt certain projects from application of the provisions of Chapter-II and Chapter-III of the Act and these projects may be namely

   (a) Such projects vital to national security or defence of India and every part thereof, including preparation for defence, or defence production,

   (b) Rural infrastructure including electrification,

   (c) Affordable housing and housing for the poor people,

   (d) Industrial corridors, and

   (e) Infrastructure and social infrastructure projects including projects under Public Private partnership where the ownership of land continues to vest with the government.

The new section 11 corresponds to the old section-4 of the 1894 Act regarding publication of
preliminary notifications and before going to payment of damages a new conception of preliminary survey U/S 12 has been incorporated and it has also been provided that damages shall be paid along with the entry U/S 12 is being made. Section 14 of The Right To Fair Compensation And Transparency In Land Acquisition Rehabilitation And Resettlement Act 2013 further provides that where a preliminary notification U/S 11 is not issued within 12 months from the date of appraisal of the social impact assessment report (SAR) then such report shall be deemed to have lapsed and a fresh SAR shall be required to be under taken. This time frame recognizes the ever changing value of land and the economic impact of acquisition. Section 15 of The Right To Fair Compensation And Transparency In Land Acquisition Rehabilitation And Resettlement Act 2013 also provides a limitation of 60 days from the date of publication of the preliminary notification for raising objections on mainly three points:-

(1) Suitability of land proposed to be acquired,

(2) Justification order for public purposes,

(3) Finding of SAR.

In the 1894 Act declaration that the land is required for a public purpose followed payment of damages and hearing on objections U/S 5 & 5(A) but the rehabilitation and resettlement part of The Right To Fair Compensation And Transparency In Land Acquisition Rehabilitation And Resettlement Act 2013 intervenes the process and acquisition as provided U/S 16 of The Right To Fair Compensation And Transparency In Land Acquisition Rehabilitation And Resettlement Act 2013. A rehabilitation and resettlement scheme is to be prepared by the Collector, the administrator of the rehabilitation and resettlement shall also conduct a survey which shall include public hearing as well as it shall be finalized in consultation of the Gramsabha in the schedule arises and the draft after review by the Collector shall be approved and made to be and it shall also be made available in the local language to the Panchayat etc. The declaration and summary of rehabilitation and resettlement shall also be published in the manner identical to the manner of publication of preliminary notification and again this declaration is also to be made within 12 months from the date of preliminary notification failing which notification shall be deemed to have rescinded.

Earlier the notices to person interested was sent U/S 9 which is now to be sent U/S 21. Section 24 of the Act of 2013 provides that the land acquisition process under the Act of 1894 shall be deemed to have lapsed¹ in certain cases which as per provision of section 24(1)(A) or Section 24(2) as the case may be. But on the other hand where the award has been made U/S 11 of the 1894 Act it shall continues as if the said Act has not been repealed. The Collector as per the provisions of section 25 is given only a period of 12 months from the date of publication of declaration U/S 19 for preparation of award. The new Act has also recognized the value of things attached to the land or building in contrast to the 1894 Act where there was no such provisions and according to section 29 of The Right To Fair Compensation And Transparency In Land Acquisition Rehabilitation And Resettlement Act 2013 the Collector while determining market value of the building and other immovable property which are to be acquired shall use the services of competent engineer or any other specialist in this regard including assessing the value of the standing crops damaged during

¹ 2014(6) Supreme Court Cases 564 ( UOI vs Shiv Raj & others)
2014(6) Supreme Court Cases 583 ( Bimla Devi and Others Vs State of Haryana & others)
2014(6) Supreme Court Cases 589 ( Naresh Kumar Vs State of Haryana & others)
M/s Radiance FinCap (P) Ltd & Ors Vs UOI Civil Appeal No 4283/2011 Decided by SC on 12.01.15
2015 SCC Online SC 59 Kamail Kaur & Ors Vs St. Of Punjab
2014 SCC Online SC 977 M/s. Magma Promoters & Ors Vs UOI
the process of land acquisition. The award shall be prepared after imposing a solatium amount equivalent to the compensation amount and it has also been clarified that it shall be in addition to the compensation payable.

The Chapter-V has been introduced running from section 31 to 42 which has been introduced as a Rehabilitation And Resettlement Procedure where in the Collector shall pass rehabilitation and resettlement, awards, individual awards for each affected family in terms of the entitlement provided in the second schedule of the RTFCLARR Act 2013 and the rehabilitation and resettlement awards shall include all of the following namely:-

(a) Rehabilitation and resettlement amount payable to the family,
(b) Bank account number of the person to which the rehabilitation and resettlement award amounts is to be transferred,
(c) Particulars of house site and house to be allotted in case of displaced families,
(d) Particulars of land allotted to the displaced families,
(e) Particulars of one time subsistence allowance and transportation allowance in case of displaced families,
(f) Particulars of payment for cattle, shed and petty shops,
(g) Particulars of one time amount to artisans and small traders,
(h) Details of mandatory employment to be provided to the members of the affected families,
(i) Particulars of any fishing rights that may beinvolved,
(j) Particulars of annuity and other entitlements to be provided,
(k) Particulars of special provisions for the Schedule Castes And The Schedule Tribes to be provided.

It has also been provided that the appropriate government may by notification increased the rate of rehabilitation and resettlement amount payable to the affected families, taking into account rise in price index. The new law also provides for provisions of infrastructural amenities etc.

The Right To Fair Compensation And Transparency In Land Acquisition Rehabilitation And Resettlement Act 2013 also provides for authority in the name of Land Acquisition Rehabilitation And Resettlement Authority which shall be presided by its Presiding Officer who is or has been a District Judge or by a legal practitioner having more than seven years of experience but in contrast to the 1894 Act The Right To Fair Compensation And Transparency In Land Acquisition Rehabilitation And Resettlement Act 2013 bares the jurisdiction of Civil court as per the provisions of section 63. Earlier in the 1894 Act reference were made to the civil court under the provisions of section 18 and section 30 of the Land Acquisition Act 1894 but now the reference shall be made to the authority and this reference has to be made within a period of 30 days from the date of receipt of application by Collector. The reference has also to be accompanied by the Collectors statement which shall contain the nature and extent of land along with trees, buildings, standing crops etc, the quantum of award as well as the grounds on which the compensation was determined along with other details. A new span of determination of award by the authority in addition to the Collector has also been introduced in section 69 of the 2013 Act.
The old Act provided for penalty for obstructing acquisition of land under the provisions of section 46 of the 1894 Act where as the punishment and penalty introduced in The Right To Fair Compensation And Transparency In Land Acquisition Rehabilitation And Resettlement Act 2013 under the provisions of Chapter XII relating to Offence And Penalties includes punishment for false information, malafide action etc and it includes drawing disciplinary proceeding against a government servant who is proved to be guilty of malafide action in respect of any provision of the Act. The Chapter-XII also takes cognizance of the following offences :-

1. Penalty for contravention of provisions of Act section 85,
2. Offence by companies section 86,
3. Offence by government departments section 87,

These offences are to be non cognizable and a court of Judicial Magistrate of the Ist Class shall be competent to try these offences. The Act has also made provision that the compensation shall be exempt from Income Tax, Stamp Duties And Fees etc (S.96) and in any proceeding under this Act a certified copy of a document registered under the registration Act 1908 may be accepted as evidence (S 97.)

The Act is although made very flexible so far as recognition of rights of socially downtrodden and historically uncared fraction of the society is concerned when it deals with special provisions for Schedule Castes and Schedule Tribes, reservation and other benefits, rehabilitation and resettlement but is sufficiently rigid when it relates to change of purpose for such acquisition is concerned which according to section 100 can not allowed without permission. Section 101 of the Act provides that where the land acquired under this Act remains un-utilized for a period of five years or for a period specified for setting up of an any project, which ever is later, the land shall be returned to the original owner.2 The recent amendment by ordinance has also omitted the provisions contained in section 105(3)&(4) and enactment relating to land acquisition in the forth schedule ie where the Act was not made applicable initially shall be applicable from 1st January 2015.

The Right To Fair Compensation And Transparency In Land Acquisition Rehabilitation And Resettlement Act 2013 and the Right To Fair Compensation And Transparency In Land Acquisition Rehabilitation And Resettlement (Amendment ) Ordinance 2014 appears to me, being a student of law, to be well engineered to redress a number of grievances of the land losers and at the same time also to cater the needs of development in all walks of life. The Act takes care of the rehabilitation and resettlement not only of the of the land losers but also of the other affected parties and that to pro-rata to their socio-economic status providing more to the more deprived and it also contains as an intrinsic part of it the time frames for all such proceedings and acts which may delay the over all system as a whole. The act has been designed by its architects in such a well knit and synchronized manner that the entire process moves with a rhythm and harmony taking care of all those areas for want of which the old act of 1894 needed a total overhaul and was also criticised. Then why this..................

Biresh Kumar
Special Judge Land Acquisition Cum Special Judge Economic Offences Dhanbad
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2 (2015)1 SCC 767-Raunaq Education Foundation Vs State Of Haryana
List of Important Authorities
FELIX TAMBA VS. THE STATE OF JHARKHAND AND OTHERS
[2008 (4) J C R 542 (Jhr)]

Felix Tamba ... Petitioner
Versus
The State of Jharkhand and others ... Respondents

M. Y. EQBAL AND D. K. SINHA, JJ.

(A) Chota Nagpur Tenancy Act, 1908, Section 46(1) Proviso—Restriction on transfer of right by raiyat—By way of mortgage, lease, sale and gift—Proviso to sub-section (1) an exception—Raiyat may enter into a Bhugut Bundha of his holding or any portion thereof for seven years -and for 15 years in case where mortgagee is a cooperative society or a nationalised bank. [Para 12]

(B) Chota Nagpur Tenancy Act, 1908, Section 47—Raiyat interest of a member of scheduled caste or scheduled tribe—To remain in their hands in case of sale in execution of mortgage decree. [Para 16]

(C) Chota Nagpur Tenancy Act, 1908, Section 46(1) Proviso—Circular of Govt. of Jharkhand contained in letter No. 7 dated 30.7.2007—Raiyat belonging to scheduled caste or scheduled tribe—Can mortgage his raiyati right in his holding by way of mortgage for limited period for securing loan from nationalised banks for purpose of constructing their houses in order to live with dignity—Circular issued by the respondents putting an absolute bar and thereby depriving them taking loan from the nationalised banks—Wholly unjustified and without jurisdiction—They are also entitled to financial assistance for higher education. [Paras 30 and 41]


Law laid down:

[Cnt Act, 1908, Sec. 46(1) Proviso].—Provisions of section do not restrict or prohibit the members of scheduled castes and scheduled tribes from getting financial assistance from banks for purpose of construction of their residential houses by creating mortgage of their raiyati holding or for purpose of getting higher education.
Counsel:
Manoj Tandon, S.S. Kr. and N.K. Singh, for the petitioner.
P.K. Prasad, (A.G.), Dr. J.P. Gupta and G. Kr., for the respondents.

JUDGMENT

M.Y. Eqbal, J.—This application by way of public interest litigation has been filed by a member of Schedule Tribe for quashing the circular of the Govt. of Jharkhand as contained in letter No.7/Bhumi/Bandhak-Ranchi-08/07/2623Ra. dated 30.7.2007 issued under the signature of respondent no.2, Secretary, Revenue and Land Reforms Department, Government of Jharkhand, Ranchi whereby it has been notified that no person who is a member of Schedule Tribe community can obtain loan for construction of his house and for the purpose of education by mortgaging his land.

2. In the writ petition, it is alleged that the authorities of the Government are acting totally against the interest of the Schedule Tribe community in general by issuing such notification/circular restraining all the Banks in the entire State of Jharkhand from sanctioning loan to the members of Schedule Tribe community against the mortgage of their land for the purpose of construction of house and/or for the purpose of education.

3. Petitioner's case is that such notification has been issued on the basis of opinion given by Mr. S.B. Gadodia, learned Advocate General, Jharkhand in the light of the decision of Single Bench of this Court in the case of “Mandu Prakhand Sahakari Grih Nirman Sahyog Samiti Ltd & Anr. Vs. State of Bihar”, (2004) I JCR-402. Petitioner's further case is that as a result of the impugned circular of the Government, no person belonging to Tribal Community is entitled to take loan from any bank for educational purposes or for construction of his house against mortgage of his land.

4. No counter affidavit has been filed by the respondent-State. However, Mr. Gadodia, learned Advocate General, as he then was at the first hearing, submitted that the impugned notification/circular was issued on the basis of opinion given by him. Learned Advocate General submitted that he has already given fresh opinion suggesting the Government for withdrawal of the impugned circular and the Government has decided to withdraw the aforesaid circular. By order dated 18.9.2008, at the request of the petitioner many Banks were impleaded as party-respondents. One of them, namely, Bank of India filed counter affidavit wherein it is stated that in the light of the provisions of the Chota Nagpur Tenancy Act as well as the impugned circular issued by the Government of Jharkhand, respondents-Banks have been strictly following the same and are not allowing any loan to the members of the Schedule Tribe against mortgage of their lands except providing housing loan to the staff belonging to the tribal community.

5. At the outset, I would like to quote the impugned circular dated 30.7.2007 which is as under:

- जारखंड सरकार
- राजस्व एवं भूमि सुधार विभाग
- पत्रांक—भूमि वंशक—रांची – 08–2007, 2623 रा
- प्रेषक,
From reading of the aforesaid circular, it is manifestly clear that the circular has been issued on the basis of decision of the learned Single Judge referred therein. In the said decision, the fact of the case was that petitioner No.2 in the years 1966 and 1967 by three registered sale deeds purchased the land from recorded raiyats belonging to the members of Scheduled Castes. In abundant precaution, application was filed before the Deputy Commissioner, Hazaribagh under Section 46(1)(c) for permission to sell about 3.13 acres in favour of...
the Society. The Society, in turn, sold and transferred the land in favour of its members of other communities by executing 35 registered sale deeds upon which most of them have constructed their residential buildings. Subsequently, the Deputy Commissioner recalled the order granting permission to transfer the land. Petitioners-Society challenged the said order in the High Court on the ground that the Deputy Commissioner had no power to review the order. The High Court disposed of the writ petition by directing the respondents to take appropriate steps in accordance with law for setting aside the order. The matter again came to the High Court. The learned Single Judge while deciding the writ petition discussed Section 46(1)(c) and Section 47(bb) and held that since the petitioners-Society was set up for providing residential lands to its members, transfer made in favour of the Society is against the restrictions contained in the aforementioned provisions of the Act.

7. On reading of the decision of the learned Single Judge vis-à-vis the aforesaid notification, prima facie we are of the view that learned Single Judge has not held that a raiyat belonging to a member of Scheduled Caste or Scheduled Tribe cannot mortgage their raiyati lands in favour of the banks or financial institutions and secure loan for education purposes or for construction of their houses.

8. Be that as it may, the impugned circular whether violates the rights of the members of the Scheduled Tribes, the question needs to be decided despite the fact that the then learned Advocate General submitted that he had given a fresh opinion for withdrawal of the circular.

9. Because of change of Government, Mr. P.K. Prasad, learned Senior Advocate has been appointed as Advocate General, we have also heard him. Mr. P.K. Prasad, the present Advocate General, very fairly submitted that Section 46(1)(c) does not restrict mortgage of the land belonging to Scheduled Tribes with the banks for securing loan for the purpose of education and construction of house.

10. I would first like to refer the relevant portion of Section 46 of the Chotanagpur Tenancy Act which reads as under:

"46. Restrictions on transfer of their right by Raiyat. – (1) No transfer by a Raiyat of his right in his holding or any portion thereof -

(a) by mortgage or lease for any period expressed or implied which exceeds or might in any possible event exceed five years, or

(b) by sale, gift or any other contract or agreement, shall be valid to any extent:

Provided that a Raiyat may enter into a ‘bhugut bundha’ mortgage of his holding or any portion thereof for any period not exceeding seven years or if the mortgages be a society registered or deemed to be registered under the Bihar and Orissa Co-operative Societies Act, 1935 (B.& O. Act VI of 1935) for any period not exceeding fifteen years:

Provided further that –

(a) an occupancy-Raiyat who is a member of the Scheduled Tribes may transfer with the previous sanction of the Deputy Commissioner his right in his holding or a portion of his holding by sale, exchange, gift or will to another person who is a member of the Scheduled Tribes and who is a resident within the local limits of the area of the police-station within which the holding is situate;
(b) an occupancy-Raiyat who is a member of the Scheduled Castes or Backward Classes may transfer with the previous sanction of the Deputy Commissioner his right in his holding or a portion of his holding by sale, exchange, gift, will or lease to another person who is a member of the Scheduled Castes or, as the case may be, Backward Classes and who is a resident within the local limits of the district within which the holding is situate.

(c) any occupancy-Raiyat may transfer his right in his holding or any portion thereof to a society or bank registered or deemed to be registered under the Bihar and Orissa Cooperative Societies Act, 1935 (Bihar and Orissa Act VI of 1935), or to the State Bank of India or a bank specified in column 2 of the First Schedule to the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1970 (5 of 1970) or to a company or a corporation owned by, or in which less than fifty-one per cent of the share capital is held by the State Government or the Central Government or partly by the State Government, and partly by the Central Government, and which has been set up with a view to provide agricultural credit to cultivators; and

(d) any occupancy-Raiyat who is not a member of the Scheduled Tribes, Scheduled Castes or backward classes, may transfer his right in his holding or any portion thereof by sale, exchange gift, will, mortgage or otherwise to any other person.

(2) A transfer by a Raiyat of his right in his holding or any portion thereof under sub-section (1) shall be binding on the landlords.

(3) No transfer in contravention of sub-section (1) shall be registered or shall be in any way recognized as valid by any Court, whatever in exercise, of civil, criminal or revenue jurisdiction.”

(4) … … … …

(5) … … … …

(6) … … … …

11. The words “or if the mortgagee be a registered society, as defined in the Co-operative Societies Act, 1912, for any period not exceeding fifteen years” in the proviso to sub-section (1), and the sub-section (6) were inserted by the Chota Nagpur Tenancy (Amendment) Act, 1920. In the report of the Select Committee on the Bill it was stated.

“Experience has shown that the present limit of seven years for a bhugut bundha mortgage of a holding is too short to enable the raiyat to pay off to a registered co-operative society the principal and interest of a loan made to him by the society on such a mortgage, and at the same time to maintain himself from the produce of the holding of which he is retained in possession under the mortgagee, and we have accordingly extended the maximum period in such a case from seven to fifteen years.

There is evidence that efforts, not wholly unsuccessful, at any rate in the more advanced areas, have been made to evade the most salutary prohibition under Section 46 (1) against transfer by a raiyat of his right in his holding or part thereof, the usual method being by surrender by the raiyat to the landlord, on terms agreed upon, of the land which it is desired to transfer. The right of free transfer was restricted from considerations of public policy and of the advantage to the raiyat, and the result was not contemplated that a part of the tenant’s
property would thereby be transferred to the landlord who omniun consensu had no manner of claim to it. Opinions are not unanimous but among non-officials at least the prevalent view is in favour of relaxing the prohibition against transfer of holdings, and we have come to the conclusion that some degree of relaxation of a very conservative character is expedient. The difficulties are, however, very great, and in our view the position can best be met by the cautious provisions which we have introduced in the new sub-section (6). Conditions in Chota Nagpur, though everywhere comparatively backward, present considerable variation. For instance, whereas the utmost relaxation of the prohibition of transfer which could be contemplated in the case of Hos, Mundas and their congener, or of Oraons or Bhuiyas might well be transferred, or even restricted transfer, between members of the tribe, the restriction which, after full inquiry under the safeguards provided, the Local Government will ascertain to be necessary in the case of non-agricultural castes or the more advanced agricultural castes or communities, may well be considerably less and may well vary from caste to caste or even in respect of the same caste in different areas. Accordingly, power is conferred on the Local Government, which has access to the best information and may be relied upon to proceed with caution and with due regard to local and tribal conditions, to declare by rules that specified forms of transfer may be made by special raiyats subject to specified restrictions, and it is laid down that sub sections (1), (3) and (4) will not apply to such transfers. It is, however still essential to maintain intact the statutory bar to transfer by an aboriginal to a non-aboriginal, and it is necessary to provide, as has been done in clause (b) of the sub-section, a speedy method of modifying rules or portions thereof, from which have emanated results contrary to expectation or otherwise disquieting, and of coming to the rescue where experience shows the original safeguards or restrictions to be inadequate.”

12. From reading of the provisions of Section 46 of the Act, although sub-section (1) of Section 46 restricts transfer by a raiyat of his holding by way of mortgage, lease, sale and gift, but the proviso to sub-section (1) is an exception which provides that a raiyat may enter into a bhugut bundha of his holding or any portion thereof for any period not exceeding seven years. It further provides that if a mortgagee is a Society, then such period shall be extended to fifteen years. Under the bhugut bundha mortgage, the raiyat is allowed to cultivate the land himself as the agent of the mortgagee and to appropriate the surplus produce, after payment of annual instalment. The object behind the restriction put in the Section is that the raiyat may not come under the clutch of private money lenders. In our view, therefore, a raiyat belonging to a member of Scheduled Caste or Scheduled Tribe may enter into a bhugut bundha mortgage of his holding with the Society registered under the Bihar and Orissa Cooperative Societies Act or with the nationalized banks.

13. Section 46(1)(c) was inserted by Chotanagpur Tenancy (Amendment) Act, 1975. The aim and object behind inserting the aforesaid proviso is to safeguard the interest of agricultural community by transferring their raiyati lands by way of sale, lease, gift and unconditional mortgage. In our view, therefore, if the raiyat mortgages his raiyati interest in the manner provided under the proviso of sub-section (1) of Section 46 i.e. mortgage for a period not exceeding fifteen years, where the mortgagee is a bank, then it will not violate the provisions of Section 46(1)(c) of the Act.

14. Section 47 put a restriction on sale of raiyat’s right under order of the Court, which reads as under:-

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47. Restriction on sale of raiyat’s right under order of Court.—No decree or order shall be passed by any Court for the sale of the right of ‘raiyat’ in his holding or any portion thereof nor shall any such right be sold in execution of any decree or order:

Provided as follows :-

(a) any holding or portion of holding may be sold, in execution of a decree of a competent Court, to recover an arrear of rent which has accrued in respect of the holding;

(b) any holding or portion of a holding may be sold, under the procedure provided by the Bihar and Orissa Public Demands Recovery Act, 1914 (B. & O. Act 4 of 1914) for the recovery of a loan granted under the Land Improvement Loans Act, 1883 (19 of 1883), or the Agriculturist Loans Act, 1884 (12 of 1884) or otherwise by the State Government;

(bb) any holding or portion of a holding, belonging to any occupancy-raiyat may be sold, under the procedure provided by the Bihar and Orissa Public Demands Recovery Act, 1914 (Bihar and Orissa Act IV of 1914), for the recovery of loan granted by a society or bank registered or deemed to be registered under the Bihar and Orissa Co-operative Societies Act, 1935 (Bihar and Orissa Act VI of 1935), or by the State Bank of India or a bank specified in column 2 of the First Schedule to the Banking Companies (Acquisition and Transfer of Undertaking) Act, 1970 (5 of 1970) or by a company or a corporation owned or in by which not less than fiftyone per cent of the share capital is held by the State Government or the Central Government or partly by the State Government and partly by the Central Government and which has been set up with a view to provide agricultural credit to cultivators so, however, that if such holding or portion thereof belongs to a member of the Scheduled Tribes or Scheduled Castes, it shall not be sold to any person who is not a member of the Scheduled Tribes, or, as the case may be, of the Scheduled Castes.”

(c) Nothing in this Section shall affect the right to execute a decree for sale of a holding passed, or the terms of conditions of any contract registered before the first day of January, 1903.”

Explanation I. – Where a holding is held under joint landlords, and a decree has been passed for the share of the rent due to one or more, but not all, of them, proviso (a) does not authorize the sale of the holding or any portion of the holding in execution of such decree.

Explanation II. – Proviso (c) does not render valid any document which is other illegal or invalid, or authorize a court to take judicial cognizance of any such document.”

15. From reading of the aforesaid provision, it is manifestly clear that this Section put a bar in the sale of a right of raiyat in his holding in execution of any decree or order. This Section is corollary to Section 46 which put a restriction in the transfer of right of a raiyat in his holding subject to certain exception.

16. Section 47(1)(bb) was inserted by Chotanagpur Tenancy (Amendment) Act, 1976. On careful reading of the aforesaid provisions, it appears that such restriction of sale has been relaxed in cases where a right of a occupancy raiyat in his holding is sold for the recovery of loan granted by the Society or bank, but such sale in execution of the order shall not be made in favour of any person who is not a member of scheduled tribe or scheduled caste as
the case may be. Again the object of this newly inserted provision is that in no case, the right of a raiyat who is a member of scheduled caste or scheduled tribe in his holding may go in the hands of the persons who are not the members of scheduled caste or scheduled tribe. In any case, therefore, the raiyat interest of a member of scheduled caste or scheduled tribe in case of a sale in execution of mortgage decree, the holding shall remain in the hands of the members of scheduled caste or scheduled tribe.

17. In the case of "Somra Uraon & Anr. vs. Mostt. Somari Urain & Ors"(1964)BLJR-227, a question came for consideration before a Division Bench of the Patna High Court is as to whether the decree holder are entitled to have a receiver appointed for the agricultural land belonging to Schedule Tribe in the district of Ranchi by way of equitable execution. Considering Section 46 of the Act the Division Bench (V.Ramaswami,C.J. and N.L. Untwalia, J) observed:

"It is manifest that the language employed by the Legislature in Sec.46 of the Chota Nagpur Tenancy Act is different and there is no absolute bar or interdiction on the alienation of holdings in Chota Nagpur under the provisions of the Chota Nagpur Tenancy Act. Sec.46 of the Chota Nagpur Tenancy Act entitles a raiyat to transfer his holding of any portion thereof by mortgage or lease for a period not exceeding five years. Under the proviso to this Section a raiyat is also entitled to enter into a bhugut bandha mortgage of his holding of any portion thereof for a period not exceeding seven years, or if the mortgagee be a society registered under the Bihar and Orissa Co-operative Societies Act for any period not exceeding fifteen years. It is manifest that the Chota Nagpur Tenancy Act enables a raiyat to make a temporary alienation of land by way of mortgage or lease for a limited period mentioned in the statue. In view of this marked distinction in the language of the Chota Nagpur Tenancy Act the Santhal Parganas Regulation it is obvious that the principle laid down by the Full Bench in Surendra Prasad Singh. vs. Tekait Singh cannot govern the present case. For the same reasons the principle of law laid down by the Supreme Court in Union of India vs. Srimati Hira Devi and another will not govern the present case. It was pointed out by the Supreme Court in that case that the prohibition against assignment or attachment of provident fund in the Provident Funds Act was based on the grounds of public policy, and the interdiction imposed by the statute was absolute and, therefore, the judgment debtor cannot be permitted to get the provident fund indirectly by means of appointment of a Receiver. In our opinion the present case is governed by the principle laid down by the Full Bench of the Lahore High Court in Sardarni Datar Kaur vs Ram Rattan and others. It was held by the Full Bench in that case that the Civil Court in execution of a decree can order a temporary alienation of the land of a judgment-debtor who is a member of an agricultural tribe, because Sec.16 of the Punjab Alienation of Land Act prohibited only a sale and not a temporary alienation of such land.

For these reasons we hold that the Civil Court gas properly appointed a Receiver in the present case by way of equitable execution of a decree; but in view of Sec.46 of the Chota Nagpur Tenancy Act the Civil Court cannot appoint a Receiver for a period exceeding seven years which is the period beyond which the raiyat is unable to enter into a mortgage by virtue of that Section."

18. In the case of Ramdayal Sahu Vs Hari Shankar Lal Sahu & Ors [(1967) BLJR 78], a Full Bench of the Patna High Court considered the following the question of law:
(1) Whether the restrictive provision in clause © of the second proviso to Sec.46(1) of the Chota nagpur Tenancy Act to the effect that a transfer of his occupancy holding by a raiyat of a class other than schedule tribes, Scheduled castes or backward classes can be made only to a resident within the local limits of the district in which the holding is situate is valid and legal in view of Art.19(1)(f) of the Constitution?

(2) If Sec. 46(1)(c) is struck down as invalid to the above extent whether Sec.47 can stand as valid in general terms relating also to the occupancy raiyati interest of persons who are other than members of scheduled Tribes, scheduled castes or backward classes?

The Full Bench after discussing in details the provisions of Section 46 and 47 of the Act answered as under:

"Question no.1- Section 46(1) (c) of the Act in so far as it restricts the sale of a raiyati holding belonging to a person of a class other than scheduled tribes, scheduled castes and backward classes to the resident within the district in which the holding is situate must be held to be invalid as also of the purchaser under Art.19(1)(f) of the Constitution.

"Question no.2- This question also must be answered against the respondents and it must be held that Sec.47 of the Act, in so far as it puts a general restriction upon the power of a Court to put to auction sale in execution of a decree even the agricultural land of persons belonging to classes other than the scheduled Tribes, scheduled castes and backward classes, is invalid as this law has now become incompatible, in the form it stands, with Art.19(1)(f) of the Constitution and must be declared to be ultra vires to the extent indicated above.

19. In the case of "Sasthi Pado Sekhar and Anr.v s.Anandi Chaudhary and Ors"(1967) AIR Patna-25, a Division Bench of the Patna High Court while hearing the appeal considered a question raised at the Bar. It was urged that after commencement of the Constitution of India the provisions of S.46 of the Chota Nagpur Tenancy Act, 1908, hereinafter referred to as 'the Act' or, in any event proviso (c) to sub-Section (1) of S.46 of the Act was ultra vires provisions of the Constitution in so far as it was inconsistent with the fundamental right to property enshrined in Art.19 (1)(f) of the Constitution and the restriction on the right of transfer imposed under the said proviso not being in the interests of the general public was not saved by Art.19(5) of the Constitution and was thus liable to be struck down, and, therefore, even if it were assumed that the plaintiff was not a resident of any place within the local limits of the district of Hazaribagh on the date when Ex.1 was executed in his favour, yet the sale deed conferred good title on him and his suit should have been decreed.

Answering the question, their Lordship observed:

"9. Before examining the reasonableness or otherwise of the restriction imposed on the right of transfer under proviso (c) to sub-Section (1) of Section 46 of the Act, it may be pointed out that the expression “interests of the general public” in Cl.(5) of Art. 19 is very wide, and the State is always competent to impose restrictions under Cl.(5) on grounds of social and economic policy. The right to freedom of citizens to acquire, hold and dispose of properties may thus be circumscribed on such grounds as well. It may further be clarified that the mere fact that the impugned provision does not directly affect the citizens of other States of the Republic of India or even on the other divisions of the State of Bihar itself does not, in any opinion, necessarily imply that the restrictions imposed thereunder are not in the interests of the general public. Legislation affecting a particular class or a particular area would, quite
obviously, directly affect the members of that particular class or the inhabitants of that particular area only, but if the object of the legislation was the protection and safeguarding of the interest of a particular class or of persons residing in a particular area, or, the object was the removal of some serious abuse or grievance or discontent of that particular class or particular area, it must be held that such a legislation indirectly affects the public in general. It can hardly be disputed that a legislation for securing one or another of the objects referred to in Clauses (b) and (c) of Article 39 of the Constitution must be held to be a legislation in the interests of the general public.

(9A) Now, one of the objects behind the impugned provision and the restriction contend therein appears to be to shut out and eliminate absentee or outside owners of agricultural lands situate in Chota Nagpur. Such persons, not being residents of the district within the local limits of which the holding concerned was situate, are extremely unlikely to take the optimum interest necessary for the agricultural development of those lands. Once, however, they become residents of the district or of contiguous police stations, it may be presumed that they have thrown in their lot with the other permanent agricultural tenants of the area concerned and will be as much interested in the development or Conservation of those lands as the other residents. This is quite clearly in the interests of the general public. Further, it is common knowledge that the rich mineral resources of Chota Nagpur, particularly its Mica and Coal deposits, have attracted a large number of persons with ample resources from different parts of India with the primary object of exploiting those minerals. Such persons are generally equipped with greater resources than the indigenous population; and in order to protect the comparatively weaker Section, namely, the indigenous population, from the stronger, namely, the persons who have come in Chota Nagpur with large resources, a restriction of the type laid down in the impugned proviso serves, in my opinion, to a large extent to prevent the latter Section of the people from grabbing the agricultural lands of the area by taking advantage of the comparative poverty of the indigenous Section and thus in the result reducing the agricultural occupancy raiyats into a mass of landless labourers. From this point of view as well, the restriction imposed and challenged in the present case must be held to be in the interest of the general public.

After all, it cannot be denied that the Constitution, after recognizing the rights as to property in sub-clauses (f) and (g) of Article 19 thereof, proceeds to make it perfectly clear that these rights are not absolute and cannot be treated as ends in themselves. The Constitution itself envisages those rights being correlated with certain inevitable obligations imposed on all the citizens of India in the interest of achieving socio-economic justice, and, if a certain legislative provision, as indicated above, seeks to promote and safeguard the interests of the agricultural community, comparatively weaker than the numerous persons surrounding them or living with them temporarily, as effectively as it may, by preventing the former from loosing their agricultural lands to the latter and thus becoming landless labourers, it must be held that the provisions is in the interests of the general public. I am, accordingly, satisfied that the impugned proviso, namely, proviso(c) to sub-sections (1) of Section 46 of the Act is not ultra vires the Constitution and is fully saved under Article 19(5) of the Constitution.”

20. In the case of **Lakhia Singh Patra & Others Vs Jotilal Aditya Deo and others** [(AIR) 1968 Patna 160], a Division Bench of the Patna High Court while discussing the object and purpose of enactment of Section 46 of the Chota Nagpur Tenancy Act, held as under:
“10. Several decisions were cited in support of the respective contentions. In Barie Santhal. 
Vs. Fakir Santhal, AIR 1924 Pat 793 (2) Bucknill, J. held that it was open to a tenant under 
the Chota Nagpur Tenancy Act to surrender his holding for a pecuniary consideration to the 
landlord and, inasmuch as a surrender is not a transfer within the meaning of section 46, 
even where a third party had paid consideration to a tenant as a result of which the tenant 
had agreed with the landlord to surrender his holding while the landlord had agreed to 
re—settle the property with the person who had given the consideration to the outgoing 
tenant, this circuitous arrangement could not in law be regarded as definitely illegal. This 
decision was considered by Kanhaiya Singh J. in Golap Gaddi v. Rampariksha, AIR 1958 
Pat. 553 , and his Lordship took a different view. It was held by his Lordship that a surrender 
under section 72 of the Act was lawful and that, after having accepted the surrender, the 
landlord is perfectly at liberty to re-settle the holding with some other person or take the 
land into cultivation himself. But his Lordship further observed that in the case where both 
the surrender and the subsequent settlement of the land amount to one transaction, the 
main object of which was to by-pass the statutory provisions of section 46, the transaction 
becomes intrinsically Invalid, although considered separately the surrender and the 
settlement may have the appearance of legality.

In this connection, his Lordship relied on the decision of the Judicial Committee in Moti 
Chand v. Ikram Ullah Khan, AIR 1916 P.C. 59. In that case, the defendants had sold certain 
zamindari to the plaintiffs and in the sale deed the defendants contracted to relinquish 
their sir and khudkasht lands and give possession thereof to the plaintiffs or in default the 
defendants would be liable to damages. In pursuance of the agreement contained in the 
sale deed, the defendants executed a deed of relinquishment in favour of the plaintiffs of 
their claim and right in all their sir lands in the mauzas conveyed. They, however, refused to 
file the deed of relinquishment in the Revenue Court and refused to quit possession of the 
sir lands of which they continued in possession as x-proprietary tenants. Hence, a suit for 
damages and breach of the contract was brought. The main question before their Lordship 
of the Judicial Committee was whether the agreement to relinquish and surrender their 
sir lands was lawful. Sub section (1) of section 10 of U. P. Act II of 1901 provided that, on 
transfer of the proprietary rights by sale, the ex-proprietor shall become a tenant with a right 
of occupancy in his sir lands and in the land which he had cultivated continuously for twelve 
years at the date of the transfer and shall be entitled to hold the same at a rent determined 
in the manner laid down therein. By sub-section (4) of section 10, such a tenant was called 
an “ex—proprietary tenant. Section 20 of the Act prohibited transfer of the interest of an 
exproprietary tenant in execution of a decree of a Civil or Revenue Court or otherwise than 
by voluntary transfer between persons in favour of whom as co-sharers in the tenancy such 
right originally arose or who have become by succession co-sharers therein. Section 83 of 
the said Act conferred upon the tenant a right to surrender his holding to the landlord at 
the end of an agricultural year. Sub section (3) of section 83 provided that nothing in that 
section shall affect any arrangement by which a tenant and his landlord might agree to the 
surrender of the whole or any portion of the holding. On these facts their Lordships of the 
Privy Council observed inter alia:

‘The policy of the Act is not to be defeated by any ingenious device, arrangements or 
agreements between a vendor and a vendee for the relinquishment by the vendor of his ‘sir 
land or land which he has cultivated continuously for twelve years at the date of the transfer

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for a reduction of purchase money on the vendors failing of refusing to relinquish such land. All such devices, arrangements and agreements, are in contravention of the policy of the Act and are contrary to law and are illegal and void, and cannot be enforced by the vendee in any civil court or in any court of revenue”. Kanhaiya Singh, J observed therefore that the policy of the Legislature in enacting section 46 of the Chota Nagpur Tenancy Act was, more or less, the same, namely to secure to the tenants inhabiting the area to which the Act applied their rights in their occupancy holding and to protect them from the avaricious money-lenders: and with due respect we agree with him.”

21. From the discussions made herein above, we have no hesitation in holding that a raiyat belonging to a member of scheduled caste or scheduled tribe can mortgage his raiyati right in his holding by way of mortgage for a limited period as prescribed under the proviso to Section 46(1) of the Act for securing loan from the nationalized banks for the purpose of constructing their houses in order to live with dignity.

22. In the aforesaid premises, the impugned circular issued by the respondents putting an absolute bar thereby depriving the members of scheduled caste and scheduled tribe taking loan from the nationalized banks for the purpose of constructing their living house is wholly arbitrary and unjustified.

23. This Court shall take judicial notice of the fact that because of absolute restriction of alienation of land by the occupancy raiyat of the aforementioned community under the aforementioned provisions, the members of that community who have their land in the developed town and city in the State of Jharkhand are still residing in small huts and kutch houses standing on the raiyati lands because of financial constrain. If the peoples of these communities are not allowed to lead a dignified life in a proper constructed house by taking financial assistance from the banks against creating mortgage for a limited period, they shall be deprived of their right to enjoy their property.

24. Robson in his book ‘Welfare State and Welfare Society’ has stated at p.11:

“The ideas underlying the welfare State are derived from many different sources. From the French Revolution came notions of liberty, equality and fraternity. From the utilitarian philosophy of Bentham and his disciples came the idea of the greatest number. From Bismarck and Beveridge came the concepts of social insurance and social security. From the Fabian Socialists came the principles of the public ownership of basic industries and essential services. From Tawney came a renewed emphasis on equality and rejection of avarice as the mainspring of social activity. From Webbs came proposals for abolishing the causes of poverty and cleaning up the base of society.”

Robson stated at p. 192:

“The basic aims of the welfare State are the attainment of a substantial degree of social, economic and political equalities and to achieve self-expression in his work as a citizen, leisure and social justice.”

According to George Watson, quoted by Robson, “welfare State implies a redistribution of incomes for the achievement of basic standard of living for all.” M.P. Hall in his The Social Services of Modern England, 1952 Edn., has stated at p. 303 that:

“The distinguishing characteristic of the welfare State is that the assumption by the
Community, acting through the State, of the responsibility for providing the means whereby all its members can reach minimum standard of health, economic security and civilised living and can share according to their capacity in its social and cultural heritage."

25. The Universal Declaration of Human Rights, 1948, assures in Article 1 that: "All human beings are born free and equal in dignity and rights." Article 3 assures that: "Everyone has the right to life, liberty and security of person." Article 17 declares that: "Everyone has the right to own property alone as well as in association with others." Article 22 envisages that: "Everyone, as a member of society, has the right to social security and is entitled to realization, through national effort ... and resources of each State ... of the economic, social and cultural rights indispensable for his dignity and the free development of his personality." Article 25 assures that: "Everyone has the right to a standard of living adequate for the health and well-being of himself and of his family including food, clothing, housing and medical care and necessary social services, and the right to security in the event of unemployment, sickness, disability, widowhood, old age or other lack of livelihood in circumstances beyond his control." Similarly are the social, civil, economic and cultural rights given in European Convention.

26. The Declaration on the Right to Development to which India is a signatory recognising that development is a comprehensive economic, social, cultural and political process, which aims at the constant improvement of the well-being of the entire population and of all individuals on the basis of their active, free and meaningful participation in development and in the fair distribution of benefits resulting therefrom. Article 1 assures that “The right to development is an inalienable human right by virtue of which every human person and all peoples are entitled to participate in, contribute to, and enjoy economic, social, cultural and political development, in which all human rights and fundamental freedoms can be fully realized.” Article 2 assures right to active participation and benefit of his right to development. Article 3 enjoins the State as its duty to formulate proper national development policies that aim at the constant improvement of the well-being of the entire population and of all individuals, on the basis of their active, free and meaningful participation in development and in the fair distribution of the benefits resulting therefrom. Article 3(1) states that it is a primary responsibility of the State to create conditions favourable to the realisation of the right to development. In particular, Article 4(1) directs the State as its duty to take steps individually and collectively for providing facilities for full realisation of right to development. Article 8(1) enjoins that the State should undertake necessary measures for the realisation of the right to development. Article 10 says that steps should be taken to ensure the full exercise and progressive enhancement of the right to development, including the formulation, adoption and implementation of policy, legislative and other measures for legislative and executive measures.

27. Illiot Dodds in his book 'Liberty and Welfare' 1957 Edn. at p. 17 stated that "welfare is actually a form of liberty inasmuch as it liberates men from social conditions which narrow their choices and brighten their self development”. Article 46 of the Constitution mandates the State “to promote with special care the educational and economic interests of the weaker sections of the people, and, in particular, of the Scheduled Castes and the Scheduled Tribes, and shall protect them from social injustice and all forms of exploitation.” Dr B.R. Ambedkar, while winding up the debates on the Draft Constitution, stated on the floor of the Constituent Assembly that the real reason and justification for inclusion of the directive principles in
the Constitution is that the party in power, in disregard of its political ideologies, will not sway away by its ideological influence but "should have due regard to the ideal of economic democracy which is the foundation and the aspiration of the Constitution".

28. Article 21 of the Constitution assures right to life. To make right to life meaningful and effective, this Court put up expansive interpretation and brought within its ambit right to education, health, speedy trial, equal wages for equal work as fundamental rights. Articles 14, 15 and 16 prohibit discrimination and accord equality. The Preamble to the Constitution as a socialist republic visualises to remove economic inequalities and to provide facilities and opportunities for decent standard of living and to protect the economic interest of the weaker segments of the society, in particular, Scheduled Castes i.e. Dalits and the Scheduled Tribes i.e. Tribes and to protect them from "all forms of exploitations". Many a day have come and gone after 26-1-1950 but no leaf is turned in the lives of the poor and the gap between the rich and the poor is gradually widening on the brink of being unbridgeable.

29. Economic empowerment to the poor, Dalits and Tribes, is an integral constitutional scheme of socio-economic democracy and a way of life of political democracy. Economic empowerment is, therefore, a basic human right and a fundamental right as part of right to live, equality and of status and dignity to the poor, weaker sections, Dalits and Tribes. The State has evolved, by its legislative and executive action, the policy to allot lands to the Dalits and Tribes and other weaker sections for their economic empowerment. The Government evolved two-pronged economic policies to render economic justice to the poor. The Planning Commission evolved policies like DRDL for economic empowerment of the weaker sections of the society; the Dalits and Tribes in particular. There should be short-term policy for immediate sustenance and longterm policy for stable and permanent economic empowerment. All the State Governments also evolved assignment of its lands or the lands acquired under the ceiling laws to them. Appropriate legislative enactments are brought on statute books to prevent alienation of the assigned lands or the property had under the planned schemes, and imposed prohibition thereunder of alienation, declaring any conveyance in contravention thereof as void or illegal and inoperative not to bind the State or the assignee. In case the assignee was disqualified or not available, on resumption of such land, the authorities are enjoined to resume the property and assign to an heir or others eligible among the Dalits and Tribes or weaker sections in terms of the policy. The prohibition is to effectuate the constitutional policy of economic empowerment under Articles 14, 21, 38, 39 and 46 read with the Preamble to the Constitution. Even in respect of private sales of the lands belonging to tribes, statutes prohibit alienation without prior sanction of the competent authority.

30. Having regard to the discussions made herein above, we have no hesitation in holding that the provision of Section 46 does not restrict or prohibits the members of scheduled caste and scheduled tribe from getting financial assistance from the banks for the purpose of construction of their residential houses by creating mortgage of their raiyati holding sought to be used for residential purposes so that they may avail their right to standard, meaningful and effective living.

31. The second and the last question that falls for consideration is as to whether the impugned circular restricting the members of scheduled caste and scheduled tribe from mortgaging their lands with the bank for securing education loan is justified?
32. In this regard the Ministry of Tribal Affairs was constituted in October, 1999 with the objective of providing more focused attention on the integrated socio-economic development of the most under privileged Sections of the scheduled tribes. The Ministry of Tribal Affairs undertakes activities that flow from the subjects allocated under the Government of India (Allocation of Business) Rules, 1961. These include (1) social security and social insurance to the scheduled tribes (2) tribal welfare planning, project formulation, research, training etc. (3) promotion and development of voluntary efforts on tribal welfare for scheduled tribes, including scholarship to students belonging to such tribes.

33. The National Scheduled Tribes Finance and Development Corporation has been set up in April, 2001 as a Government Company under Section 25 of the Companies Act, 1956, a fully Government of India owned undertaking under Ministry of Tribal Affairs for the purpose of providing financial assistance for the economic development of Scheduled Tribes. The objectives of the Corporation, inter alia are identification of economic activities of importance to the Scheduled Tribes so as to generate employment and raise their level of income, up gradation of skills and processes used by the Scheduled Tribes for providing job training, providing financial support for undertaking procurement and marketing of minor forests produce etc. These benefits are available to the members of scheduled tribes whose income should not exceed double the poverty line i.e Rs.39500/- per annum for the rural areas and Rs.54500/- for the urban areas.

34. The Ministry of Tribal Affairs, which is nodal Ministry for the overall policy, planning and coordination of programmes for the development of scheduled tribes. Various Central Sector and Centrally Sponsored Schemes have been undertaken which includes educational development in order to improve their educational status. For example Post Matric Scholarship is a sponsored scheme to promote higher education among scheduled tribes, establishing hostels for scheduled tribes boys and girls, scheme of Ashram schools which aims at extending educational facilities, scheme of vocational training, grant-in-aid to voluntarily organizations.

35. Following the recommendations of Saikia Committee, the government has introduced 83rd Constitutional Amendment Bill in Parliament in 1997 to make right to education from 6-14 years a fundamental right. The Supreme Court in its judgment in Unnikrishnan's case (1993) has already held that citizens of India have a fundamental right to education up to 14 years of age. “— Undeniably this right remains largely unimplemented. There is a debate going on across the states, whether the proposed constitutional amendments is necessary.

36. The national level organization viz the National Scheduled Tribes Finance and Development Corporation (NSTFDC) continued to function as a catalytic agent for financing, facilitating and mobilizing funds for promoting economic developmental activities of STs. A National workshop of State Governments and the State Channelising Agencies (SCAs) of NSTFDC was held on 17.12.2007. In the workshop, various issues relating to the difficulties faced by the SCAs in implementing the schemes of NSTFDC including improvement in delivery mechanism were discussed. NSTFDC has sanctioned projects/schemes during the year with a contribution of Rs.73.12 crore (as on 30.11.2007).

37. It is well settled now that imparting of education is a sovereign function of the State. Article 21-A of the Constitution envisages that children of age group of 6 to 14 have a fundamental right of education. Clause 3 of the Article 15 of the Constitution envisages special protection
and affirmative action for women and children. In the case of State of Bihar and others Vs. Project Uchcha Vidya, Sikshak Sangh & Others [(2006) 2 SCC 545], the Supreme Court observed:

"39. The State framed the Scheme in question having the constitutional goal in mind. Imparting education is the primary duty of the State. Although establishment of High Schools may not be a constitutional function in the sense that citizens of India above 14 years might not have any fundamental right in relation thereto but education as a part of human development, indisputably is a human right. The framers while providing for the equality clause under the constitutional scheme had in their mind that women and children require special treatment and only in that view of the matter, protective discrimination and affirmative action were contemplated in terms of clause (3) of Article 15 of the Constitution."

38. Similarly, in the case of Election Commission of India Vs. St. Mary’s School and Others [(2008) 2 SCC 390], the Supreme Court observed: -

"30. The Human Rights Conventions have imposed a duty on the contracting States to set up institutions of higher education which would lead to the conclusion that the citizens thereof should be afforded an effective right of access to them. In a democratic society, a right to education is indispensable in the interpretation of right to development as a human right. Thus, right to development is also considered to be a basic human right."

39. In the leading case of on reservation policy, the Supreme Court in the case of Ashok Kumar Thakur Vs. Union of India and others [(2008) 6 SCC 1], observed that ultimate object of reservation is to bring those who are disadvantaged to a level where they no longer continue to be disadvantaged. The ultimate objective is to bring people to a particular level so that there can be equality of opportunity.

40. With reference to ‘education’, the Supreme Court noticed the Parliament’s statement of Objects and Reasons for Article 21-A and observed as under:-

"489. Article 21-A’s reference to “education” must mean something. This conclusion is bolstered by Parliament’s Statement of Objects and Reasons for Article 21-A:

“The Constitution of India in a directive principle contained in Article 45, has made a provision for free and compulsory education for all children up to the age of fourteen years within ten years of promulgation of the Constitution. We could not achieve this goal even after 50 years of adoption of this provision. The task of providing education to all children in this age group gained momentum after the National Policy of Education (NPE) was announced in 1986. The Government of India, in partnership with the State Governments, has made strenuous efforts to fulfil this mandate and, though significant improvements were seen in various educational indicators, the ultimate goal of providing universal and quality education still remains unfulfilled. In order to fulfil this goal, it is felt that an explicit provision should be made in the part relating to fundamental rights of the Constitution.

2. With a view to making right to free and compulsory education a fundamental right, the Constitution (Eighty-third Amendment) Bill, 1997 was introduced in the Parliament to insert a new article, namely, Article 21-A conferring on all children in the age group of 6 to 14 years the right to free and compulsory education. The said Bill was scrutinised by the
Parliament Standing Committee on Human Resource Development and the subject was also dealt with in its 165th Report by the Law Commission of India.

3. After taking into consideration the report of the Law Commission of India and the recommendations of the Standing Committee of the Parliament, the proposed amendments in Part III, Part IV and Part IV-A of the Constitution are being made which are as follows:

4. The Bill seeks to achieve the above objects.

490. The article seeks to usher in “the ultimate goal of providing universal and quality education”. (emphasis supplied) Implied within “education” is the idea that it will be quality in nature. Current performance indicates that much improvement needs to be made before we qualify “education” with “quality”. Of course, for children who are out of school, even the best education would be irrelevant. It goes without saying that all children aged six to fourteen must attend school and education must be quality in nature. Only upon accomplishing both of these goals, can we say that we have achieved total compliance with Article 21-A.”

41. Besides the above, persons having sufficient means have been availing education loan under the schemes floated by the nationalized banks and other financial institutions. Those banks and financial institutions are giving education loan to the candidates for their higher studies in different institutions in India and abroad by taking collateral security of land and the personal guarantee of parents. In our opinion, those persons belonging to the members of scheduled caste or scheduled tribe are also entitled to such financial assistance for higher education. If any restriction is put like the impugned circular restraining the members of scheduled caste and scheduled tribe from availing education loan from the banks, that will amount to depriving them from their legal right to bring them and their children at the level of others who, by reason of higher education, have developed their standard of living. Such restriction, therefore, shall be wholly unreasonable and unjustified.

42. Having regard to the discussions made herein above, we hold that the impugned circular does contravene the provisions of Section 46 of the Chotanagpur Tenancy Act and the same is wholly unjustified and without jurisdiction. This writ application is accordingly allowed.


Application allowed.
THE STATE OF JHARKHAND VS. TAURIAN INFRASTRUCTURE
[2014 (1) J C R 342 (Jhr)]

The State of Jharkhand & Ors. (In All Cases) ... Appellant
Versus
Taurian Infrastructure Pvt. Ltd. (In All Cases) ... Respondent

R. BANUMATHI, CJ AND APARESH KUMARI SINGH, J.
L.P.A No. 103 WITH L.P.A No. 104 AND 105 OF 2013 DECIDED ON DECEMBER 2, 2013

(A) Tenancy—Mutation—Order with regard to mutation—Can be passed on basis of possession only—Circle Officer/LRDC/Deputy Commissioner not supposed to determine title and proprietary right in the immovable property—Mutation proceedings not judicial proceedings.
[Paras 21 and 22]

(B) Chota Nagpur Tenancy Act, 1908, Section 46(1)(b) Proviso (a) and (b)—Transfer of land by a member of Scheduled Tribe in favour of non-tribal not to be registered—Transfer made in contravention of Section 46(1)—Not to be recognized as valid by any Court of law—Prior permission of the Deputy Commissioner necessary—Transfer of law of tribal in favour of non-tribal prohibited in law—possession of land by non-tribal on basis of illegal transfer cannot be recognized.
[Para 29]

Case-laws.—2005 (1) JLJR 1—Relied on; AIR 1996 SC 2306—Referred.

(C) Chota Nagpur Tenancy Act, 1908, Section 46(1)(b) Proviso (b)—Transfer of land—Occupancy raiyati being a member of Scheduled Tribe/backward class—Can transfer land to another person who is Scheduled Tribe/backward class and resident of same police station within which the holding is situated with prior permission of the Deputy Commissioner—Restriction applicable to Scheduled Tribe equally applicable to a member of Backward Class.
[Para 34]

Law laid down:
C.N.T., 1908, Sec. 46(1)(b)]—Transfer of land of a tribal in favour of non-tribal is prohibited in law consequently possession by a non-tribal on basis of illegal transfer cannot be recognized.

Counsel:
V.K. Prasad, SC (L&C), for the petitioners.
JUDGMENT

R.Banumathi, CJ.—These L.P.As are preferred against the order of the learned Single Judge passed in writ petitions nos,934/2011, 946/2011 and 940/2011, setting aside the order passed by the Deputy Commissioner, Ranchi, in Mutation Revision Nos.63, 64 and 65R15/2009-10 dated 16.11.2010.

2. Since all L.P.As arise out a common judgment, they have been heard together and are being disposed of by this common judgment.

3. The case of the respondent-writ petitioner:- One Lal Harak Nath Shahdeo, ex-landlord, was holding different pieces of land comprising of Mouza – Hazam, Thana No.281 and Mouza – Kharsidag, Thana No.326. The ex-landlord, Lal Harak Nath Shahdeo, through his grandson and duly constituted power of attorney holder, namely, Kisto Kali Nath Shahdeo, granted permanent raiyati settlement in favour of one Dr. Shiv Shankar Sahay Srivastava by registered deed of permanent settlement dated 9.9.1947. On the basis of the aforesaid settlement, the said Dr. Shiv Shankar Sahay Srivastava came in possession of the land and paid rent to the ex-landlord against the grant of rent receipts and there was family partition in the family of Dr. Shiv Shankar Sahay Srivastava by a partition deed dated 6.8.1971 and land settled in favour of Dr. Shiv Shankar Sahay Srivastava was partitioned amongst his seven sons, namely, (1) Gauri Shankar Sahay, (2) Ravi Shankar Sahay, (3) Tara Shankar Sahay, (4) Hari Shankar Sahay, (5) Vinay Shankar Sahay, (6) Prem Shankar Sahay and (7) Bipin Bihari Sahay.

4. As per the share allotted to the aforesaid seven sons, a Mutation Case No.52R27/1976-77b was filed and by the order dated 11.10.1976, the then Circle Officer allowed mutation in separate names showing mutation granted in favour of seven sons of Dr. Shiv Shankar Sahay Srivastava. Out of the seven sons, Gauri Shankar Sahay, Tara Shankar Sahay and Vinay Shankar Sahay sold 13.72 acres of land to one Sharad Kumar Modi by terms of registered sale deed dated 28.6.1995. Thereafter Sharad Kumar Modi applied for mutation, which was allowed by the order dated 20.3.2003. The writ petitioner purchased the lands, which are the subject-matter in issue, by three sale deeds dated 3.1.2008. The writ petitioner-respondent filed three applications for mutation and by the order dated 31.3.2008, the Circle Officer allowed mutation application with respect to the land under Khata No.48 and rejected mutation application in respect of the land under Khata Nos. 45,75 and 85.

5. Aggrieved by the order passed by the Circle Officer, the writ petitioner-respondent filed Mutation Appeals before the Land Reforms Deputy Collector, Ranchi, (hereinafter called as LRDC). By the order dated 1.7.2008, the LRDC set aside the order passed by the Circle Officer and mutation was allowed in favour of the respondent with respect to the Khata Nos.75, 85 and 45, i.e. with respect to 41 acres of land aforesaid.

6. During the course of enquiry conducted with respect to mutation of 41 acres of land in favour of the respondent, various illegalities and irregularities came to light and the Circle Officer filed Mutation Revision Nos.63, 64 and 65R15/2009-10 before the Deputy Commissioner, Ranchi. By the order dated 17.2.2010, the Deputy Commissioner admitted the revision applications, staying the order of LRDC dated 1.7.2008. Challenging the order passed by the Deputy Commissioner, the writ petitioner-respondent filed WP (C) Nos.2693, 2715 and 2713/2010. The said writ petitions were disposed of directing the Deputy Commissioner to dispose of the revision applications of the respondent at an early date. Thereafter the
The appellant-State of Jharkhand filed counter affidavit and supplementary counter-affidavit contending that the writ petitions filed by the respondent involved disputed questions of facts which could not be adjudicated under Article 226 of the Constitution. According to the appellant-State of Jharkhand, since the original settlement was granted on 9.9.1947, the said transfer had been made to defeat the provisions of the Bihar Land Reforms Act, 1950, causing loss to the Government or to obtain higher compensation since the settlement was made after the cut-off date i.e. 1.1.1946 and therefore, it was a fit case for initiation of a proceeding under section 4(h) of the Bihar Land Reforms Act, 1950 for annulment of the settlement. It was also contended that purchase of land by the respondent by sale deeds dated 3.1.2008 was made to grab the lands of Khata No.45 and Khata No.85, which were Gair Mazuruwa Malik land and also the lands of Khata No.75 which was Kaimi in name. It was averred that the respondent did not bring on record any document as to how the respondent claimed the Kaimi land measuring 3.91 acres, which was recorded in the name of Budhan Lohar. According to the appellant-State, the transfer of land belonging to the Scheduled Tribe is hit by section 46 of the Chota Nagpur Tenancy Act, 1908.

8. Upon consideration of rival contentions, learned Single Judge, by the common order dated 10.4.2012, held that the LRDC had taken into consideration all relevant facts and came to the conclusion that LRDC rightly ordered mutation proceedings in the name of the respondent. The learned Single Judge held that the mutation court has a very limited jurisdiction and has only to see that the semblance of title and possession of the property and ignoring the scope of mutation proceedings, the Deputy Commissioner has delved into the question of title and possession and on those findings, the learned Single Judge set aside the order passed by the Deputy Commissioner and restored the order passed by the LRDC in Mutation Appeal Nos.31,32 and 33R15/2008-09.

9. Challenging the order of the writ court, learned counsel for the appellant-State mainly raised the following four contentions:-

— The settlement in the year 1947 being beyond 1.1.1946 is hit by section 4(h) of the Bihar Land Reforms Act, 1950 and the same cannot be made.

— Out of 41 acres, 1.34 acres of land are Bakast in nature, 36.01 acres of land are Gair Mazurwa in nature and 3.91 acres of land are Kaimi in nature and under section 46 of the Chota Nagpur Tenancy Act, 1908, there is complete bar for Schedule Tribe/ backward classes to transfer the lands to non-tribal/non-backward class.

— The mutation application filed by the respondent was not at all maintainable under the provisions of the Bihar Tenants Holding (Maintenance of Records) Act, 1973.

— The purpose of mutation is only for alteration in the entries in the continuous Khatian and for collection of revenue and not for resolving the dispute, rival claims like adverse claim to the recorded person.

10. Learned Senior Counsel appearing for the respondent contended that the respondent purchased the property from the sons of Dr. Shiv Shankar Sahay Srivastava and mutation
was effected earlier in the name of ex-landlord. Learned senior counsel appellant-State to contend that the lands under Khata Nos. 75, 85 and 45 are Kaimi lands and that mutation cannot be effected.

11. We have considered the submissions of the learned counsel for the appellant and learned Senior Counsel for the respondent.

12. The respondent contends that they purchased the property from Suresh Kumar Sarawgi, Raj Kumar Tiberwal and Sharad Kumar Modi. The details of various sale deeds under which respondent purchased the property in dispute are as under:-

Registered Sale Deed No.91 dated 3.1.2008.

<table>
<thead>
<tr>
<th>Village</th>
<th>Khata No.</th>
<th>P.S. No.</th>
<th>Plot No.</th>
<th>Area</th>
</tr>
</thead>
<tbody>
<tr>
<td>Hazam</td>
<td>75</td>
<td>281</td>
<td>26</td>
<td>1.46 acres</td>
</tr>
<tr>
<td>Hazam</td>
<td>75</td>
<td>281</td>
<td>29</td>
<td>2.45 acres</td>
</tr>
<tr>
<td>Total</td>
<td></td>
<td></td>
<td></td>
<td>3.91 acres</td>
</tr>
</tbody>
</table>


<table>
<thead>
<tr>
<th>Village</th>
<th>Khata No.</th>
<th>P.S. No.</th>
<th>Plot No.</th>
<th>Area</th>
<th>Nature of Land</th>
</tr>
</thead>
<tbody>
<tr>
<td>Hazam</td>
<td>85</td>
<td>281</td>
<td>1</td>
<td>2.63 acres</td>
<td>Gairmazrua Malik</td>
</tr>
<tr>
<td>Hazam</td>
<td>85</td>
<td>281</td>
<td>30</td>
<td>3.11 acres</td>
<td>Gairmazrua Malik</td>
</tr>
<tr>
<td>Hazam</td>
<td>85</td>
<td>281</td>
<td>3</td>
<td>1.34 acres</td>
<td>Gairmazrua Malik</td>
</tr>
<tr>
<td>Hazam</td>
<td>85</td>
<td>281</td>
<td>551</td>
<td>6.64 acres</td>
<td>Gairmazrua Malik</td>
</tr>
<tr>
<td>Total</td>
<td></td>
<td></td>
<td></td>
<td>13.72 acres</td>
<td></td>
</tr>
</tbody>
</table>


<table>
<thead>
<tr>
<th>Village</th>
<th>Khata No.</th>
<th>P.S. No.</th>
<th>Plot No.</th>
<th>Area</th>
</tr>
</thead>
<tbody>
<tr>
<td>Hazam</td>
<td>45</td>
<td>281</td>
<td>49</td>
<td>1.00 acres</td>
</tr>
<tr>
<td>Hazam</td>
<td>45</td>
<td>281</td>
<td>551</td>
<td>2.45 acres</td>
</tr>
<tr>
<td>Total</td>
<td></td>
<td></td>
<td></td>
<td>3.45 acres</td>
</tr>
</tbody>
</table>

13. The respondent mainly traced their title and possession to the settlement deed dated 9.9.1947 in favour of one Dr. Shiv Shankar Sahay Srivastava. The contention of the appellant-State is that the said settlement deed dated 9.9.1947 made in favour of Dr. Shiv Shankar Sahay Srivastava was hit by the provision of section 4(h) of the Bihar Land Reforms Act,
1950, since the settlement was made to defeat the object of the Bihar Land Reforms Act, 1950.

14. The object of the Bihar Land Reforms Act, 1950 is intended to provide for the transference to the State of the interests of proprietors and tenure-holders in land of the mortgagees and lessees of such interests as indicated in the preamble of the Act. As per Section 4(a), such tenure including the interest of the proprietor or tenure holder in any building or part of a building comprised in such estate or tenure shall vest absolutely in the State free from all encumbrances. Any transfer made after 1.1.1946 is not valid.

15. In terms of section 4(h) of the Act of 1950, the Collector shall have power to make enquiries in respect of any transfer including the settlement or lease of any land comprised in such estate or tenure as any transfer or settlement made after 1.1.1946 is not a valid transaction. The Collector shall have power to make enquiries in respect of any transfer including settlement or lease of any land comprised in such estate.

16. The settlement deed relied upon by the respondent is dated 9.9.1947. According to the appellant-State, the original settlement deed dated 9.9.1947 has been made to defeat the provision of the Bihar Land Reforms Act, 1950 and therefore, it was a fit case for initiation of a proceeding under section 4(h) of the Bihar Land Reforms Act, 1950 for annulment of the settlement and the respondent has not produced any document to show that under Khata Nos.75, 85 and 45, there was raiyati settlement.

17. In the revisional order, the Deputy Commissioner, Ranchi, observed that the subject is related to Section 4(h) of the Bihar Land Reforms Act, 1950 and the settlement deed dated 9.9.1947 cannot be taken to be a valid document to effect mutation. The Deputy Commissioner had also made certain observations regarding the settlement under the Power of Attorney of the grand son of Lal Harak Nath Shahdeo.

18. The questions are whether the land settlement deed dated 9.9.1947, which is subsequent to cut-off date 1.1.1946, is a valid transaction and whether the said land has become raiyati settlement are the disputed questions of fact and these disputed questions of fact cannot be decided in mutation proceedings and without considering the nature of possession, mutation cannot be effected.

19. Learned Single Judge held that the mutation court has very limited scope of going into the details of title and has only to see the semblance of title and possession of the property. Learned Single Judge further held that without being aware of the true import and the provisions of the law relevant to the context, the Deputy Commissioner has made several observations with regard to the title and possession and therefore, learned Single Judge set aside the order passed by the Deputy Commissioner.

20. Learned Senior Counsel for the respondent submitted that the mutation proceeding is only for the purpose of collection of revenue and the Deputy Commissioner was not right in going into the question of title and therefore, the learned Single Judge rightly set aside the order passed by the Deputy Commissioner.

21. It is not in dispute that the order with regard to mutation has to be passed on the basis of possession only inasmuch as the authority concerned cannot decide any such dispute and complicated question of title. We are also of the view that in mutation proceeding, the
Circle Officer/LRDC/Deputy Commissioner are not supposed to determine the title and proprietary right in the immovable property for the reason that the mutation proceedings are merely in the nature of fiscal enquiries, instituted in the interest of the State for the purpose of ascertaining that each of the several claimants is in occupation and for the purpose of collection of revenue.

22. Of course, the Deputy Commissioner, Ranchi, made certain observations regarding the documents produced by the respondent. There is no dispute with regard to the legal proposition that mutation proceeding is not a judicial proceeding and the right, title and interest cannot be determined in such a proceeding. It is a fiscal enquiry only for the purpose of collection of revenue.

23. At the same time, the Circle Officer and Deputy Commissioner are not precluded from considering the evidence on the basis of which the appellant is claiming possession, vide 2005(1) JLJR 1 (State of Jharkhand & Ors. Vs. Arjun Das). Lest the benevolent object of the Acts of the Chota Nagpur Tenancy Act, 1908 and the Bihar Land Reforms Act, 1950 would be defeated.

24. As pointed out earlier, the respondent traced the title through the settlement deed dated 9.9.1947, the partition in the family of Dr. Shiv Shankar Sahay Srivastava, and other documents. Orders of mutation of the heirs of Dr. Sahay and one Mr. Sarawgi, respectively, show that they do not show the valid orders of the devolution of title on Dr. Shiv Shankar Sahay said to have devolved on the basis of the settlement made on 9.9.1947, made through the alleged Power of Attorney Holder of Harak Narayan Sahadeo.

25. Perusal of written submission made by the writ petitioner in the Mutation Revision Case at page 68 (iii) to (v) also fails to disclose any documents in support of the contention that the title passed in favour of Dr. Shiv Shankar Sahay. As to when Dr. Sahay became a statutory tenant. In the absence of any documents, it cannot be contended that the Deputy Commissioner exceeded the jurisdiction in making certain observations regarding lack of title.

26. The order of the Deputy Commissioner impugned in the writ petition also takes into account that the LRDC did not issue any notice upon the State before annulling the order of the Circle Officer whereunder the mutation in respect of the three plots bearing Plot Nos. 45, 75 and 85 respectively were refused. It also takes notice of the fact that no proof of return of erstwhile Jamindar of such permanent settlement made in favour of Dr. Sahay has been made. In the writ petition also, no such document has been adduced. While so, the learned Single Judge was not right in setting aside the orders of the Deputy Commissioner.

27. According to the respondent, the lands were originally in the name of ex-landlord, Lal Harak Nath Shahdeo. As pointed out earlier, the respondent failed to disclose any documents in support of its contention that the title passed in favour of Dr. Shiv Shankar Sahay. According to the appellant-State, the total land involved in three mutation applications is 41 acres, out of which 1.34 acres of land are Bakast in nature, 36.01 acres of land are Gair Mazurwa in nature and 3.91 acres of land are Kaimi in nature, which are standing in the name of Budhan Lohar.

28. Learned counsel for the appellant contended that section 46 of the Chota Nagpur Tenancy Act, 1908 prohibits a transfer of land by the Scheduled Tribe to a non-tribal and therefore,
The respondent cannot seek for mutation proceedings. Section 46(3) of the Tenancy Act, 1908 reads as under:

“No transfer of contravention of sub-section (1), shall be registered or shall be, in any way recognized as valid by any Court, whatever in exercise of civil, criminal or revenue jurisdiction.”

29. Sub-section (3) of section 46 of the Chota Nagpur Tenancy Act, 1908 clearly provides that no transfer of land by a member of Scheduled Tribe in favour of non-tribal shall be registered and even if such a transfer is made in contravention of section 46(1) of the Chato Nagpur Tenancy Act, 1908, the same shall not be recognized as valid by any court of law. In terms of section 46(1)(b), proviso (a) and (b), for transfer of land by a occupancy-raiyati to another person, who is a scheduled tribe and resident of the area of the same police station within which the holding is situated, prior permission of the Deputy Commissioner is necessary and when transfer of land of a tribal in favour of a non-tribal is prohibited in law, then possession of land by non-tribal on the basis of illegal transfer cannot be recognized. Considering the question of mutation proceeding in respect of the transaction by a member of scheduled tribe in favour of non-tribal in violation of provisions of section 46 of the Tenancy Act, 1908, the Division Bench of this Court in the case of State of Jharkhand & ors. v s. Arjun Das reported in 2005(1) JLJR 1 held as under:

“21. Coming back to the instant case, as noticed above, mutation was refused by the Circle Officer, on the ground that the petitioner purchased the land from a member of Scheduled Tribe in violation of the provisions of Section 46 of the C.N.T Act. If that is so, transfer of land by a member of Scheduled Tribe in favour of the petitioner in violation of the provisions of the Act is itself illegal, null and void and the purchaser has not acquired right, title and interest over the said land. In such circumstances even if the purchaser came in possession of the tribal land by virtue of transfer by a member of Scheduled Tribes in contravention of the provisions of C.N.T. Act, possession of such transferee cannot be recognized by any Court of law. The Circle Officer can, therefore, refuse to enter the name of the purchaser by deleting the name of the tribal from the revenue records or from register-II maintained by the office of the Circle Officer.”

30. According to the appellant, land under Khata nos.75 and 85 are Gair Mazurwa land and 45 as indicated in Survey Khatiyan are Kaimi land, which was recorded in the name of Langra Lohar, a member of Scheduled Tribe and any transfer by occupancy-raiyati, who is a Scheduled Tribe, to a non-Scheduled Tribe is hit by section 46(3) of the Chota Nagpur Tenancy Act, 1908. According to the appellant, Khata No.75 of disputed land is Kaimi land. The contention of the appellant is that there are no documents to show that duly constituted power of attorney holder, namely, Kisto Kali Nath Shahdeo, was granted permanent rayati settlement.

31. In his order, the Deputy Commissioner has made certain observations that the Bakast land held by the ex-zamindar is only 1.34 acres out of 41 acres, whereas the total Government Gair Mazurwa land in the whole of the case was 36.01 acres and 3.91 acres of land is tribal land and that the settlement deed is only an attempt to grab the Gair Mazurwa land and also the tribal land. Those observations of the Deputy Commissioner is only in the context of considering the documents for the purpose of examining the correctness of the order of the LRDC. In our considered view, those observations would not amount to deciding the
32. When transfer of land of a tribal in favour of a non-tribal is prohibited in law, then possession by a non-tribal on the basis of illegal transfer cannot be recognized and the ratio laid down in the decision reported in 2005(1) JLJR 1 (supra) squarely applies.

33. Placing reliance upon AIR 1996 SC 2306 (Nityanand Sharma & Ano. Vs. State of Bihar & Ors.), learned Senior Counsel submitted that Lohars are ‘other backward class’ and are not scheduled tribe and therefore, the original transaction in favour of the ex-landlord, Lal Harak Nath Shahdeo, is not hit by section 46 (3) of the Chota Nagpur Tenancy Act, 1908.

34. By a careful reading of section 46(1)(b) proviso (b) of the Chota Nagpur Tenancy Act, 1908, it is seen that occupancy-raiyati, who is a member of scheduled tribe/backward class, can transfer land to another person who is a scheduled tribe/backward class and a resident of the same police station within which the holding is situated, only with the prior permission of the Deputy Commissioner. The restriction that is applicable to a member of the scheduled tribe is equally applicable to a member of backward class. Therefore, the contention of the learned Senior Counsel for the respondent does not advance the case of the respondent.

35. The questions whether the alleged settlement deed dated 9.9.1947 in favour of Dr. Shiv Shankar Sahay Srivastava is hit by Section 4(h) of the Bihar Land Reforms Act, 1950 and also hit by Section 46(3) of the Chota Nagpur Tenancy Act, 1908 and whether the alleged possession on the basis of such illegal transfer can be recognized, are serious questions to be decided by the appropriate forum where parties can adduce oral and documentary evidence. When any transaction is challenged as invalid and hit under the provisions of Section 4(h) of the Bihar Land Reforms Act, 1950 and Section 46(3) of the Chota Nagpur Tenancy Act, mutation cannot be effected.

36. Having regard to the nature of contentious issues raised by the appellant-State, the Deputy Commissioner, Ranchi, rightly set aside the order of LRDC and restored the order of the Circle Officer. The contentious issues raised by the appellant-State both in the counter-affidavit and supplementary counter-affidavit were not considered by the learned Single Judge and the learned Single Judge was not right in interfering with the order of the Deputy Commissioner, Ranchi and the impugned order dated 10.4.2012 passed by the learned Single Judge is liable to be set aside.

37. The order dated 10.4.2012 passed in WP (C) Nos., 934/2011, 946/2011 and 940/2011 is set aside and these L.P.As are allowed. The order of the Deputy Commissioner, Ranchi, confirming the order of the Circle Officer dated 31.3.2008 is restored.

L.P.A allowed.
MAHADEO ORAON VS. STATE OF BIHAR & ORS.

[2009] 0 Supreme(Jhar) 10161/ [2009] 4 JLJR 106

Mahadeo Oraon ... Petitioner
vs.
State of Bihar & Ors. - Respondents

AJIT KR. SINHA, J.
CWJC NO. 2383 OF 1999(R) DECIDED ON : 1.5.2009

Chota Nagpur Tenancy Act, 1908—Sections 7 A and 48(4)—restoration of land—order of restoration reversed by Revisional Authority on the ground of limitation—Revisional Authority erred in coming to such conclusion because the period of limitation was 30 years as the land was Bakast Bhuinhari land —.Moreover, unregistered Hukumnama is not admissible and can not be considered as a deed of gift — application allowed.(Paras 5 to 9)

CHOTA NAGPUR TENANCY ACT : S.48(4). S.71(a)
Cases Referred : 1992(2) PLJR 986-Referred upon.

Order

In the instant writ petition the petitioner prays for issuance of a writ in the nature of certiorari or any other writ, order or direction for quashing the order dated 18.5.1999 passed by respondent No.2, Commissioner, South Chota Nagpur Division, in S.A.R. Revision No. 120/1991, allowing the said revision and setting aside the orders of land restoration passed by the respondent Nos. 3 and 4 respectively in favour of the petitioner in the purported exercise of his revisional powers under Section 217 of the Chota Nagpur Tenancy Act as the Respondent No. 2 has completely misdirected himself in law by misconstruing the limitation period as provided under Section 48(4) of the Chota Nagpur Tenancy Act and in not applying the limitation of 30 years as applicable in cases of land restoration under Section 71 A of the Chota Nagpur Tenancy Act.

2. The facts, in brief, are set out as under:-

The petitioner had preferred an application under Section 71A of the C.N.T. Act for restoration of land of 45 decimals under R.S. Plot No. 319, Khata No. 179 at Village-Madhukam, P.S.-Sukhdeo Nagar, District-Ranchi and the same was registered as S.A.R. Case No. 169 of 1993-94. The learned Special Officer, Ranchi, respondent No. 4 herein, allowed the petition for restoration vide its order dated 13.12.1996 and S.A.R. Appeal No. 570R 15/97 was preferred under the provisions of Section 48(4) of C.N.T. Act. It was also dismissed on 15.7.1998. Thereafter S.A.R. Revision No 120 of 1998 was filed before the Commissioner who is respondent No. 2 herein, and vide its impugned order dated 18.5.1999 he was pleased to
allow the revision reversing the order of the authorities below and the same is sought to be
challenged by the petitioner in the present writ petition.

3. The main contention raised by the learned counsel for the petitioner is that respondent
No. 2 revisional authority has clearly erred and misdirected itself while interpreting the
provisions of Section 48(4) of the C.N.T. Act in passing the impugned order which relates to
restriction on the transfer of Bhuinhari land. The second contention raised by the learned
counsel for the petitioner is that the exercise of jurisdiction by respondent No. 2 without
applying the deadline of 30 years of amended rule of limitation as provided by the Amending
Act No. 1 of 1986, which came into effect from 1.9.1986 by terms whereof Bhuinhari lands
were also brought within the sweep of Section 71 A of the C.N.T. Act was illegal. In the instant
case the restoration application was filed in the year 1993 i.e. much before 30 years. It has
also been contended that respondent No. 2, revisional authority himself after holding that the
Sada Hukunnama had been concocted in the year 1974 by Abdul Rahman for transferring
the land in question to one Ram Janam Sharma, the vendor of private respondent Nos. 5 to
14 in the year 1974-75-76 and 1991 ought to have further held that the transfer in favour
of Ram Janam Sharma as also in favour of private respondent was of no consequence and it
has not conferred any title on the private respondent Nos. 5 to 14. The learned counsel for
the petitioner further submits that transfer in favour of private respondent Nos. 5 to 14 was
not made by any member of Bhuinhari family but admittedly by Abdul Rahman and Ram
Janam Sharma who were not member of the Bhuinhari family and sub-section 3 of Section
48 clearly provides that such a transfer shall not be valid. It has also been submitted that
the petitioner being Oraon is a member of scheduled tribe and is entitled to the protection
and enforcement of its right relating to the property as secured under Section 300-A
of the Constitution of India and though being agnate relation of the recorded tenant had
accordingly filed the application under Section 71 A of the C.N.T. Act claiming restoration of
the land in question.

4. The learned counsel for the respondents in reply submits that the Land being Bakast petition
for restoration would be after the expiry 91 years from the date of transfer or dispossession
and thus the claim of the petitioner had already extinguished by limitation that the land
in question was settled TrTCftapparbandi right In the year 1948 by the recorded tenants
Chotka Mahadeo Oraon in favour of one Abdul Rahman and said Abdul Rahman subsequently
transferred the land in question by registered document to Ram Janam Sharma on 3.4.1974
and said Ram Janam Sharma in his turn has transferred portions of the land in question to
the present respondents by means of registered document. It has also been submitted that
building has been constructed long before the enforcement of Scheduled Area Regulation
Act, 1969 and the limitation up to 12 years, as provided in Section 48(4) of the C.N.T. Act
prior to coming into force of Amending Act, 1986 was applicable in the present case. It has
also been contended that respondent Nos. 5 to 14 along with their vendor have remained in
possession for a period of more than 12 years when the Amending Act, 1986 came into force
and therefore they have acquired title by adverse possession.

5. In the instant case the Revisional Authority vide its order dated 18.5.99 which is sought
to be challenged/set aside the order passed by the learned authority below and allowed
the revision. There is no dispute about the fact that the restoration application was filed
as S.A.R. Case No. 169 of 1993-94 in the land being Bakast Bhuinhari. The land which
was owned and possessed by one Chotka Mahadeo Oraon was orally settled in favour of
Abdul Rahman coupled with grant of rent receipt and delivery of possession followed by customary Hukumnama dated 3.2.1948 and he had constructed boundary wall after taking settlement of land and a house in a portion of the land and later on sold a portion of the land to Ram Janam Sharma through Registered Sale Deed in the year 1974 in which son of Chotka Mahadeo Oraon namely Mangru Oraon figured as a witness. The said Ram Janam Sharma sold the land acquired by him through registered deed of sale in the year 1974 75 to the petitioner and other respective purchaser who came into possession of the respective land alongwith house standing thereon. They have also got their name mutated in the Ranchi Municipal Corporation and are paying taxes. The land is Chapparbandi and homestead and as such the provision of Section 71 A of the C.N.T. Act are not attracted.

6. It will be relevant to quote Section 71A of the Chotanagpur Tenancy Act along with the first proviso in which there was an amendment by way of Bihar Regulation No. 1 of 1986 extending the period of limitation of 30 years from the date of transfer with reference to Section 48(4) of the Act:-

"71 A. Power to restore possession to member of the Scheduled Tribes over land unlawfully transferred.-If at any time, it comes to the notice of the Deputy Commissioner, that transfer of land belonging to a raiyat [or a Mundari Khunt Kattidar or a Bhuinhari] who is a member of the Scheduled Tribes has taken place in contravention of Section 46 [or Section 48 or Section 240] or any other provision of this Act! or by any fraudulent method, [including decree obtained in suit by fraud and collusion] he may, after giving reasonable opportunity to the transfer, who is proposed to be evicted, to show cause and after making necessary enquiry in the matter, evict the transferee from such land without payment of compensation and restore it to the transferor or his heir, or, in case the transferor or his heir is not available or is not willing to agree to such restoration, re-settle it with another raiyat belonging to Scheduled Tribes according to the village custom for the disposal of an abandoned holding:

Provided that if the transferee has within 30 years from the date of transfer, constructed any building or structure on such holding or portion thereof, the Deputy Commissioner shall, if the transferor is not willing to pay the value of the same, order the transferee to remove the same within a period of six months from the date of the order, or within such extended time not exceeding two years from the date of the order as the Deputy Commissioner may allow, failing which the Deputy Commissioner may get such building or structure removed:"

7. In the instant case there is no dispute about the fact that the land in question which was Bhuinhari land was transferred on 30.3.1974 and the petition for restoration was filed in the year 1993 and thus, in view of the amendment of the first proviso to Section 71 A of the Act the limitation period to file the restoration petition under Section 71 A is 30 years from the date of transfer. The fact remains that the limitation period prescribed under Section 48(4) of the Act was 12 years before amendment which stood amended by Amendment Act No. 1 of 1986 and the same was published in the Bihar Gazette on 1.9.1986 extending the limitation period to 30 years.

8. In 1992(2) PLJR pg. 986 this Court while considering a similar issue held that the Bhuinhari tenures came within the purview of Section 71 A from 1986 alone and the period of limitation would be deemed to have been extended to 30 years.

9. In the aforesaid background, the revisional authority has clearly erred in allowing the
Revision petition and setting aside the order passed by the authority below solely on the ground that the petition for restoration was filed in the year 1993 and the limitation under Section 48(4) of the Chotanagpur Tenancy Act is 12 years. The revisional authority further erred in holding that the amended Act No. 1 of 1986 was published in the Bihar Gazette on 1.9.1986 and therefore, the petitioner along with their vendors have remained in possession for a period of more than 22 years when the amended Act No. 1 of 1986 came into force and thus, they acquired title by adverse possession.

The fact remains that period of 30 years has to be counted from the date of transfer in view of the amendment brought about in the first proviso to Section 71 A of the Act and thus, the interpretation given by the revisional authority is on the face of it erroneous and illegal. The language of the first proviso as well as Section 48(4) of the Act is that 30 years has to be computed from the date of transfer. It is well settled that transfer of land cannot be done by virtue of only a Sada Hukumnama and an unregistered Hukumnama is not admissible and cannot be considered as a deed of title more so, when the settlement was also oral.

10. Considering the aforesaid facts and circumstances of the case, this writ petition is allowed and the impugned order dated 18.5.1999 passed by revisional authority i.e. Commissioner, South Chotanagpur Division is quashed.

11. There shall be no order as to costs.

2. The facts in brief, as submitted by the petitioner, are set out as under:

The land, in dispute, pertains to R.S. Khata No. 268, Plot No. 2983, comprising a total area of 1.08 Acres of Village-Argora, Police Station-Arogra, Thana No. 207. A proceeding being Misc. Case No. 27 of 1996-97 was initiated by the Sub-Divisional Officer, Ranchi, on the direction of Additional Collector, since the plot, in question, was recorded as Gairmazarua Malik Parti Kadim in the revisional survey records of right.

3. In the show cause, filed by the petitioner, it was submitted that the land, in question, was settled by the Ex. Landlord Maharaja of Ratugharha by way of grant of Hukumnama, dated 22.3.1942 on receipt of Salami of Rs. 549/- only from the settlee, namely, Samu Sahu son of Jago Sahu. It has further been submitted that after settlement, the Ex. Landlord was granted receipt, which was duly accepted and acknowledged. The settlee paid rent of Rs. 14/- only as fixed in the document of settlement and that is how he came in possession and acquired valid right, title and interest over the land. It is further submitted that the landlord after vesting of estate with the State of Bihar submitted return of the land, showing the said Samu Sahu as raiyat of the land, in question. The petitioner further submits that after the death of the settlee, his son Chandan Sahu inherited the lands, in question, and paid rent in respect thereof. Chandan Sahu being the sole owner of the lands as per the satisfaction of his necessity sold the lands, in question, in favour of the petitioner vide, registered deed of sale dated 30.3.1989 on receipt of valuable consideration amount of Rs. 1,50,000/- only and that is how the petitioner acquired a valid and perfect title over the lands, in question. The petitioner’s name was thereafter mutated in the Anchal office and the rents were paid. The petitioner further contends that no proceeding under Section 4(h) of the Bihar Land
Reforms Act, 1950 was ever initiated by the State with respect to the lands, in question, for annulment of the settlement and, thus, the Sub-Divisional Officer has clearly erred in coming to the conclusion and has illegally vide its order dated 6.4.1997 cancelled the settlement of the petitioner. Being aggrieved with the order dated 6.4.1997, the petitioner preferred Misc. Appeal No. 254 of 1998 before the Deputy Commissioner, Ranchi, which was also dismissed. It appears that the petitioner, thereafter, preferred Mutation Revision No. 56 of 1999 before the learned Commissioner, who also vide its order dated 7.5.2002 rejected it on the ground that second revision was not maintainable. Accordingly, the present writ petition has been preferred, challenging the orders dated 6.4.1997 and 13.1.1999.

4. The respondents in the counter affidavit have submitted that the disputed land was recorded as Gairmazarua Malik Parti Kadim in the revisional survey records of right and in view of the claim/demand for an area of 49 Decimals of the land, in question, a proceeding was initiated by the Sub-Divisional Officer, Sadar, Ranchi vide Misc. Case No. 27 of 1996-97 to examine the genuineness of the demand in respect of the land, in question, created in the name of said person in Register-II of Circle Officer, Town Anchal, Ranchi. The respondents submit that the land, in question is gairmazarua Malik land of the Government and the demand of the land, in question, was created to grab the valuable land in collusion of the Government officials and under the above mentioned facts and circumstances the demand of the disputed land, recorded in the name of the petitioner in Register-II of the Circle Officer, Ranchi, was cancelled by the learned Sub-Divisional Officer, Sadar, Ranchi vide is impugned order dated 6.4.1997. It has further been submitted that five Revenue Appeals were preferred before the Deputy Commissioner and the facts, involved in all the appeals, were same and the learned Deputy Commissioner after hearing all the aforesaid appeals together passed a common order dated 13.1.1999, rejecting the appeals. The appellant authority specifically held that the land, in question, in Gairmazarua Malik land as recorded in the records of right and after vesting of Jamindari, the entire Gairmazarua land vested in the State Government under Sections 3 and 4 of the Bihar Land Reforms Act, 1950 and the State Government is deemed to be in possession by way of its statutory right and no one had the legal or vested right to settle this land after vesting of Jamindari. It is further submitted that in case the land of Gairmazarua Khata have been settled prior to 1956 then the Ex. Landlord would have submitted the return of the land to the State Government, in which the name of the settlee would have been recorded as raiyat in respect of the land and after vesting of Jamindari, the State Government would have entered the name of said raiyat in Register-II and granted rent receipt thereof to the raiyat and the name of the raiyat would have been recorded in the Tenants Khatiyan and Tenants Ledger Register, prepared according to Section 3 of the Bihar Tenants Holding (Maintenance of Rent) Act, which is not the case herein. It has also been submitted that the vendors of the petitioner as raiyat have neither filed copy of the return (M-Form) nor the rent receipt from 1956 to 1983 to prove their claim. The respondents have further submitted that the Jamabandi, produced by the petitioner was examined and found to be fake and forged.

5. In the supplementary counter affidavit, filed by the respondents, it has been specifically stated that the present land, in question, has been enlisted in the land scam of Ranchi District being Complaint No. 2 of Village-Argora and a criminal case regarding manipulation and forgery of documents along with the interference with the Government records in connivance with the revenue officials has been lodged against the writ petitioner Mahabir Kansi being R.C. Case
No. 20 of 2000, which is sub-judice before the vigilance Court, Ranchi. It is further submitted by the respondents that a criminal case has also been lodged against the delinquent revenue officials, which has been registered as Vigilance P.S. Case No. 33 of 2002, and the same is sub-judice before the Court of Vigilance and the charges against the delinquent revenue officials have already been framed for initiation of departmental proceedings against them and the same has been sent to competent authority.

6. I have considered the pleadings and submissions of the rival parties. It appears that the illegal Jamabandi of Gairmazarua Khas land is the valuable property of the State Government, which stood vested in the State under the Bihar Land Reforms Act, 1950 and was rightly annulled by the Sub-Divisional Officer, Sadar, Ranchi. It is further clear that the contention of the petitioner about the Ex. Landlord having submitted its return to the State Government at the time of vesting of Jamindari and the contention that the State Government had accepted the vendors of the petitioner raiyats is on the face of its false and erroneous for the sole reason that no rent receipt from 1956 of 1983 was produced by the petitioner to prove his claim. Even the photo copy of the Jamabandi as produced by the petitioner examination was found to be forged and fake and held to be procured in collusion with some of the revenue officials. The fact remains that both criminal and departmental proceedings have already been against the delinquent officials and charge-sheet has also been submitted. The contention of the petitioner that Sada Hukumnama and Jamindari, receipts were produced also cannot be relied upon for the sole reason that the same can always be manufactured and in any case, no original document was filed by the petitioner and the Xerox copy cannot be relied upon. The fact remains that criminal cases have already been lodged against the petitioner also in the land scam case with regard to manipulation of forged documents and interference with the Government records in connivance and collusion with the revenue officials for which vigilance case has already been initiated and is pending as R.C. Case No. 20 of 2000 and further departmental proceedings have also been initiated wherein charge sheet has been filed. It will be apparent on perusal of Registrar-II that the Jamabandi, of the said disputed lands was created in Register-II based on forged Sada Hukumnama, in the year 1970-71 in the name of Samu Sao in collusion with the Revenue Officers of the State Government, who were neither authorized nor competent. In any case, the entry in Register-II was without any order of the competent authority and against the statutory law and circulars of the Government and the entire action of the petitioner was by way of fraud and collusion and, thus, he is not entitled to any equitable relief. The contention of the petitioner that no action under Section 4(h) of the Bihar Land Reforms Act was initiated is also unsustainable for the sole reason that the transfer itself was illegal, fraudulent and by way of collusion and, thus, not tenable and in any case, the land, in question, vested in the State and that is how it came into possession and the State is the statutory owner of the land.

7. In the aforesaid background, the illegal Jamabandi, based on forged Soda Hukumnama in collusion with the Government officials without obtaining the order of the competent authority was rightly cancelled by both the authorities i.e., the Sub-Divisional Officer and the Deputy Commissioner by a concurrent findings of facts and law. This writ petition, thus, being devoid of any merit, is, accordingly, dismissed, but without any order as to costs.

Petition dismissed.
Dineshwar Prasad Vs. State of Jharkhand

DINESHWAR PRASAD VS. STATE OF JHARKHAND
2008 (3) JCR 639 (Jhar.)

Dineshwar Prasad ... Petitioner
Versus
State of Jharkhand & Ors. ... Respondents

NARENDRA NATH TIWARI. J.

WP (C) NO. 2900 OF 2007, DECIDED ON JUNE 17, 2008

(A) Bihar Land Reforms Act, 1950, Section 4(h)—Cancellation of jamabandi—Jamabandi in respect of the land running in the name of petitioner’s predecessor in interest since 1955-56—Petitioner purchased part of the land—His name was mutated—He has been paying rent and having continuous peaceful possession as owner—State accepted the right by accepting the rent from the predecessor in interest of the petitioner—Cancellation of long running jamabandi arbitrary and illegal—Cannot be cancelled unless there is decree/Order of a competent Court or when it is established that it was created by playing fraud by the raiyat or it was vitiated in law. (Paras 16 and 17)

(B) Chhotanagpur Tenancy Act, 1908, Section 22—Right of tenancy—A statutory right—Cannot be taken away except by procedure prescribed by law—Raiyati right cannot be denied and petitioner cannot be evicted from occupancy holding except in execution decree passed in terms of Section 22 of the Act. [Para 18]

Law laid down:

[B.L.R. Act, 1950, Sec. 4(h)]—Long running jamabardi cannot be cancelled except by a decree/order of a competent Court or when it is established that jamabandi was created by playing fraud.

Counsel:
M. Prasad. SC (L&C) and Manoj Kumar, for the respondents.

JUDGMENT

By the Court.—In this writ petition the petitioner has prayed for quashing the State of Jharkhand & Ors. Respondents orders dated 3.9.2006 (Annexure-5), 10.9.2002 (Annexure-3) and 5.12.2000 (Annexure-2).

2. The petitioner claims to be the raiyat of the land appertaining to R.S. Khata No. 194, plot
Dineshwar Prasad Vs. State of Jharkhand

No. 3683, measuring an area of 41.99 Decimals of Village-Simalia, Thana No. 739, District-Ranchi (hereinafter called as ‘the said land’).

3. According to the petitioner, the said land was recorded as Gair Mazarua Khas of the landlord Thakur Mahendra Nath Shahdeo in the Revisional Survey Records of Right.

4. The ex-landlord Thakur Mahendra Nath Shahdeo had settled 12 acres of the said land in favour of one Rang Nath Sahu, son of the late Raghunandan Sahu of Village-Tikra Toli as far back as on 9.6.1942.

5. Rang Nath Sahu sold an area of 20 Decimals of the said land to the petitioner by virtue of the registered sale deed No. 4313 dated 4.5.1992.

6. Rang Nath Sahu further sold an area of 20 Decimals of the said land to the petitioner’s wife Smt. Chanchala Devi by virtue of the registered sale deed dated 7.7.1992. The petitioner came in physical possession of the said land and has been in continuous peaceful possession thereof.

7. Since after the settlement of the said land, the settlee Rang Nath Sahu had been in continuous possession of the said land and rent was assessed by the ex-landlord and he had been paying rent to the ex-landlord. After coming into force of the Bihar Land Reforms Act, 1956, rent was assessed in the name of Rang Nath Sahu in Case No. A-29/1955-56 and jamabandi No. 194/624 was created in the name of Rang Nath Sahu.

8. After purchasing the land, the petitioner applied for mutation in his name in Mutation Case No. 183R27/93-94, before the Circle Officer, town Anchal. The same was allowed and the name of the petitioner was mutated in respect of the said land. The petitioner claims to be in continuous peaceful possession of the said land having right of ownership and possession.

9. Suddenly on 5.9.1997, a notice was issued to the petitioner from the Office of the Circle Officer, Kanke, Ranchi in a proceeding initiated for cancellation of the long running jamabandi running in the name of the petitioner’s predecessor-in-interest, Rang Nath Sahu. The petitioner appeared and filed his reply stating all the facts regarding his possession over the said land, mutation of the said land in his name and acceptance of rent by the State-respondents, accepting him as raiyat and others grounds”. But the respondent No. 4 without considering the petitioner’s reply, made recommendation for cancellation of the petitioner’s jamabandi by his order dated 5.12.2000 and forwarded the record to the Land Reforms Deputy Collector, Ranchi-respondent No. 3. On receipt of the record, the Land Reforms Deputy Collector issued notice to the petitioner. The petitioner appeared and filed his reply stating the entire facts. But despite the same, the respondent No. 3 recommended to the Deputy Commissioner for cancellation of the petitioner’s jamabandi and directed the respondent No. 4 to prevent sale or purchase or construction over the land in question.

10. The Deputy Commissioner also issued a notice to the petitioner in which the petitioner appeared and stated all the facts. The case was heard at length on 14.1.2004. After hearing, the Deputy Commissioner kept the order reserved for al time.

11. Aggrieved by the long pendency, the petitioner preferred writ petition before this Court being WP (C) No. 1464/2005. The said petition was disposed of by order dated 31.3.2005 directing the Deputy Commissioner to dispose of the case preferably within three months, if the same has not already been disposed of.
12. The Deputy Commissioner an purported compliance of the said direction passed the order dated 3.9.2006 whereby he has remanded the case with another case to the Circle Officer, Kanke, Ranchi observing that in view of the order passed in Misc. Case No. 17/1997-98, that jamabandi opened in the name of Rang Nath Sahu be cancelled.

13. The grievance of the petitioner is that he is the purchaser of a portion of the said land from Rang Nath Sahu. Though jamabandi running in his name has not been cancelled by the said order, the cancellation of jamabandi running in the name of his predecessor-in-interest. Rang Nath Sahu, shall directly and adversely affect the petitioner.

14. It has been submitted that there is no valid ground for assailing or cancelling the long running jamabandi running in favour of Rang Nath Sahu and the impugned order of the Deputy Commissioner is wholly illegal and without jurisdiction.

15. A counter-affidavit has been filed by the State-respondents contesting the writ petition. It has been stated, inter alia, that originally the said land was recorded as GairMazarua Malik land in the Revisional Survey Records of Right. It was found from the Register-II, Vol. III of Mouza-Simalia that a demand in respect of 64.27 acres of the said land was opened in the name of Rang Nath Sahu. But no original document was produced in support of the said entry in the name of Rang Nath Sahu. It has been stated that the jamabandi of the land .in question has been created with the object of defeating the provisions of the Bihar Land Reforms Act. The Deputy Commissioner, Ranchi has passed the impugned order for annulment of the demand running in respect of the land in question in exercise of power conferred under Section 4(h) of the Bihar Land Reforms Act, 1950. A proceeding under Section 4(h) of the Bihar Land Reforms Act for annulment of the demand running in the name of the petitioner was initiated in the Court of the Land Reforms Deputy Collector, Sadar Ranchi being Misc. Case No. 225/1997-98/27/2000. The jamabandi opened in respect of Gair Mazraua Malik land is not legal and proper and as such the impugned orders are legal and justified.

16. I have heard learned counsel for the parties and considered the facts and materials on record. It is an admitted position that though the land in question has been originally recorded as Gair Mazarua Malik in the Revisional Survey Records of Right, finally framed and published in the year 1930-35, jamabandi in respect of the said land has been running in the name of Rang Nath Sahu since the date of vesting in the year 1955-56. On the basis of the said jamabandi and the continuous Register-II. the respondents all along accepted rent and recognized Rang Nath Sahu as raiyat in respect of the said land for more than five decades. The petitioner is a purchaser of a portion of the said land. After purchasing the said land, he applied for mutation in his name before the Circle Officer. After due enquiry, mutation was allowed in his favour in Mutation Case No. 183R27/93-94 by the order of the Circle Officer, Kanke. He has been also paying rent in respect of the land purchased by him/his wile. The cancellation of long running jamabandi is, thus, wholly arbitrary, illegal and without any basis. The revenue authorities have no jurisdiction to pass orders for cancellation of the settlement under the provision of Section 4(h) of the Bihar Land Reforms Act, without following the prescribed procedure/provision of law. Though the land is recorded as Gair Mazarua Malik or Gair Abad Malik in the Revisional Survey Records of Right, the State has recognized the tenancy right of Rangnath Sahu by accepting rent over a period of several decades. His name had been running in the Tenant’s Ledger/Register-II maintained by the Anchal Office for such a long time without any objection from any quarter.
17. It has been repeatedly held that a long running jamabandi cannot be cancelled, unless there is any such decree/order of a competent Court or it is established in any legal proceeding that the jamabandi was created by playing fraud by the raiyat or the creation of such jamabandi was vitiated in law.

18. The right of tenancy is a statutory right and the same cannot be taken away except by the procedure prescribed by law. Under the provisions of the Chota Nagpur Tenancy Act, the raiyati right cannot be denied and the petitioner cannot be evicted from his occupancy holding except in execution of the decree passed in terms of Section 22 of the Chota Nagpur Tenancy Act.

19. The respondents have not brought any document on record to show that there is any such decree/order of the competent Court or there was any established fraud in obtaining the jamabandi either by the predecessor-in-interest or by the petitioner.

20. In view of the above, the impugned orders as contained in Annexures-2, 3 and 5 do not sustain in law and the same are, hereby, quashed. This writ petition is allowed.

21. No orders as to cost.

Petition allowed.
JAGDEO MAHTO VS. COMMISSIONER, NORTH CHOTANAGPUR
2009 (2) JCR 153 (Jhar.)

Jagdeo Mahto ... APPELLANT
VERSUS
The Commissioner, North Chotanagpur Division, Hazaribagh and others ... RESPONDENTS

R.R. PRASAD, JJ.
LPA NO. 425 OF 2006 DECIDED ON FEBRUARY 10, 2009

(A) Revenue Laws—Mutation proceedings—Decided by the Revenue Authority—While deciding mutation proceeding Revenue Authority is not a Court of law—Mutation proceedings—Mutation proceedings are the administrative proceedings. [Para 19]

Case-laws.—2003 (4) JCR 41 (Jhr); 2003 (2) SCC 464; 1993 (2) PLJR 118—Relied on.

(B) Civil Procedure Code, 1908, Section 11—Applicability of—Not applicable to the proceeding which is not a judicial proceeding—Not applicable to order passed by a revenue authority since the order passed by such authority is not an order passed by a Court of law. [Para 19]

(C) Jamabandi—Cancellation of—Orders for cancellation was passed when the revenue authorities found the same was opened by a karmachari without any valid order from the competent authority—Order for creating Jamabandi was passed by a person who was not authorised under the law and as such the same was without jurisdiction—An order passed without jurisdiction can be cancelled by a competent authority after giving proper notice and opportunity of hearing to the party—who would be adversely affected.[Para 21]

Case-laws.—2005 (1) JCR 329 (Jhr)—Distinguished; 2003 (4) JCR 41 (Jhr) : 2003 (3) JLJR 793; 2004 (1) JCR 497 (Jhr) : 2004 (1) JLJR 718—Referred; 2007 (2) SCC 355—Relied on.

(D) Jamabandi—Running or standing in the name of any particular person—No bar under law in cancelling the same. [Para 21]

Case-laws.—2001 (3) JCR 206 (Jhr) : 2001 (1) JLJR 75; 2003 (4) JCR 41 (Jhr) : 2003 (3) JLJR 793; 2004 (1) JCR 497 (Jhr) : 2004 (1) JLJR 718—Not approved.

(E) Revenue Laws—Revenue records—Entries in—Does not confer title on a person whose name appears in record of lights—Jamabandi—Creation of—Neither creates any right and title in favour of one or the other nor cancellation of, extinguish right and title of actual owner—Title of the property can only be decided by a competent Civil Court. [Paras 24 and 25]
Case-laws.—1993 (2) PLJR 255; 2007 (6) SCC 186—Relied on.

Law laid down:

[Revenue Laws].—Jamabandi standing in the name of a particular person can be cancelled in appropriate cases when it is brought to the notice of the revenue authorities that the order for creating Jamabandi has been passed by an authority who has no authority of jurisdiction at all but after giving prior notice and an opportunity of hearing to the concerned person where interest would be adversely affected.

Counsel:

Indrajit Sinha and V.K. Prasad, for the appellant.
Ram Prakash Singh, JC to GP—II, for the State.
Anil Kumar Sinha, Sr. Adv. and Rahul Kumar, for the respondent No. 6.
Manjul Prasad, Praveen Kumar and D.K. Pathak, for the respondent No. 8.

JUDGMENT

Amareshwar Sahay, J.—In this appeal, the appellant has challenged the order dated 09.08.2006 passed in W.P.(C) No. 881 of 2002 by which the learned Single Judge, disposed of the writ petition without interfering with the orders which were challenged in the writ petition. The learned Single Judge by relying on a decision of the Patna High Court in the case of “Sitaram Choubey Vs. State of Bihar reported in 1993(2) PLJR 255” held that creation of Jamabandi neither creates any right and title in favour of one or other nor cancellation of Jamabandi extinguishes right and title of actual owner and, therefore, the impugned orders will not affect the right and title of actual owner and further that the disputed question of fact cannot be decided in the writ jurisdiction. It was observed that the aggrieved person may move the Court of competent jurisdiction for appropriate relief.

2. The facts in short are that the appellant/writ petitioner filed the aforesaid W.P.(C) No. 881 of 2002 before this Court challenging the order dated 08.07.2001 passed by the Land Reforms Deputy Commissioner, Ramgarh as well as the Order dated 24.04.2001 passed by the Additional Collector, Hazaribagh as also the Order dated 18.12.2001 passed by the Commissioner, North Chhotanagpur Division, Hazaribagh whereby, Jamabandi running in the name of the petitioner with respect to Plot No. 122 under Khata No. 69 situated in Village – Murramkalan, measuring 1.04 Acres, was ordered to be cancelled and Jamabandi was ordered to be opened in the name of Babulal Mahato, the original Respondent No. 5, who is now dead.

3. The case of the writ petitioner/appellant are that the lands of Khata No. 69 and 52 of Mouza Murrakmlan were auction sold in execution of a rent decree against the recorded tenants, namely Sadhu Mahto and Bhairo Mahto and were purchased by the Ex-landlord Umraon Singh and others. Subsequently, the grand father of the appellant, namely, Guna Ram Koiri had been granted settlement of various lands on 13.11.1919 under Khata No. 69 comprised within Plot Nos. 122, 183, 184, 285 and 286, having total area of 2.01 Acres and Khata No. 52, comprised within Plot no. 162 measuring an area of 1.76 Acres in Mouza Murrakmlan by the Ex-landlord Umraon Singh and others.

Pursuant to such settlement, the grand father of the appellant, who became the raiyat of
the lands settled in his favour, paid rent to the ex-landlord. Subsequently, the Chhotanagpur Banking Association, by virtue of an auction sale, had purchased the proprietary interests of the ex-landlord and became the landlord so far as the grandfather of the appellant is concerned and thus, realised rent from him and on receipt of which executed rent receipts in favour of Guna Ram Koiri.

After coming into force of the Bihar Land Reforms Act, the Chhotanagpur Banking Association had filed a return under the Bihar Land Reforms Act showing Guna Ram Koiri as its raiyat. After the vesting of the lands with the State Government, a Jamabandi was created in favour of Guna Ram Koiri and his name was entered in Register II and rent was realised from the said Raiyat by the erstwhile State of Bihar.

In the year 1956–57, Plot Nos. 285 and 286, Khata No. 69, measuring 69 decimals, were acquired for construction of Ramgarh Block. In exercise of their raiyati rights, the heirs of late Guna Ram Koiri had also sold Plot No. 182 and 183 of Khata No. 69 to one Inder Singh and others through a registered Sale Deed dated 11.02.1965, they got their names mutated and entered in Register-II.

Sometime in the year 1990, on the basis of a report of the Circle Amin, a proceeding being Misc. Case No. 2/1990 – 91 was initiated in respect of Khata No. 69 and 52 had been initiated which included the land in dispute. In the said proceeding notices were issued to the original respondent no. 5 namely Babulal Mahato (since deceased) pursuant to which he appeared and filed his objection and similarly, the appellant also appeared and the matter was contested, interalia, with regard to the land in question also.

The Circle Officer, by an order dated 06.10.1990 held that the Jamabandi opened and running in the name of the appellant did not require any reconsideration and thus, ordered that the same should be continued and consequently, directed the matter to be placed before the Land Reforms Deputy Collector, who in terms of order dated 12.03.1991 dropped the proceedings of Misc. Case No. 2/1990 – 91. The orders passed in aforesaid Misc. Case No. 2/1990 – 91 were never challenged and, thus, the same attained finality.

After a lapse of almost 10 years, the original respondent no. 5 Babulal Mahato (since deceased), filed an application on 25.05.2000 before the Circle Officer, Ramgarh praying for assessment of rent in respect of the disputed lands referred to hereinbefore, which was registered as Rent Assessment Case No. 3/2000 – 01.

Upon notice, the appellant appeared and filed his show cause reiterating as to how he has acquired the right and title over the disputed lands.

4. According to the appellant, the Circle officer, vide an order dated 26.06.2000, without considering the objection of the appellant in its proper perspective as well as the orders passed in Misc. Case No. 2/1990 – 91, recommended cancellation of the jamabandi running in the name of the appellant, interalia, on the ground that the Jamabandi opened and running in the name of the appellant was doubtful. The Circle Officer further directed that the Jamabandi be opened in the name of original respondent No. 5 and rent be realised from him and consequently forwarded the same to the Land Reforms Deputy Collector. The Land Reforms Deputy Collector, Hazaribagh, upon receipt of the records from the Circle Officer, vide an order dated 08.07.2000, ordered cancellation of the appellant’s Jamabandi and entering the name of original respondent No. 5 in the Register-II.
5. Being aggrieved by and dissatisfied with the aforesaid order dated 08.07.2000, the appellant preferred an appeal before the Additional Collector, Hazaribagh, being Misc. Case No. 12 of 2000, which was dismissed in terms of order dated 24.04.2001.

6. Against the aforesaid order dated 24.04.2001, a revision was preferred before the Commissioner, North Chhotanagpur Division, Hazaribagh being Jamabandi Revision No. 48/2001 which was also dismissed by order dated 18.12.2001.

7. Thereafter, the writ petitioner/appellant, by filing W.P.(C) No. 881 of 2002, challenged the aforesaid order passed by the Circle Officer, Land Reforms Deputy Collector as well as of the Commissioner. As already noticed above, the writ petition was disposed of by the impugned Order dated 09.08.2006, which is under challenge in this appeal at the instance of the writ petitioner.

8. It is relevant to mention here that during the pendency of the writ petition, the original Respondent No. 5 – Babulal Mahato died and thereafter, the present Respondent Nos. 5 to 8 were substituted in his place who happened to be the transferees of the disputed land.

9. Mr. Indrajit Sinha, learned counsel appearing for the appellant firstly submitted that the proceeding of Rent Assessment Case No. 3/2000 – 01 was barred by principle of res judicata and hence, it was not maintainable. Elaborating his arguments, he submitted that since the issue as to whether Jamabandi in the name of the tenant should be allowed to be continued, was already decided earlier in Misc. Case No. 2/1990 – 91, therefore, the same could not have been allowed to be reagitated and reconsidered in a subsequent proceeding in view of the fact that Babulal Mahato had appeared and contested the earlier case being Misc. Case No. 2/1990 – 91 and therefore, the application filed by him for assessment of rent was not maintainable.

Mr. Indrajit Sinha next contended that it is not disputed that Jamabandi in favour of the appellant and his predecessor in interest had been running since vesting of the land under Bihar Land Reforms Act with the erstwhile State of Bihar and therefore, this long standing Jamabandi could not have been cancelled by the authorities concerned. In this regard, reliance has been placed by learned counsel in the cases reported in 2001(1) JLJR 75, 2003(3) JLJR 793, 2004(1) JLJR 718 and 2005(1) JCR 329.

10. On the other hand, Mr. Anil Kumar Sinha, learned Senior Counsel appearing on behalf of the Respondent No. 6 submitted that the arguments of the appellant that the order passed in Misc. Case No. 2/ 1990 – 91 has reached its finality since it was never challenged and hence, the proceeding was barred by principles of res-judicata, is not at all tenable and correct. As a matter of fact, the subject matter of Misc. Case No. 2/1990 – 91 was with respect to part of lands of Khata No. 69 bearing Plot Nos. 183 and 182 having an area of 0.31 and 0.11 Acres respectively and the whole dispute in that case was as to whether the existing entry in respect of the three Plot of Khata No. 69 and 94 were correctly made or not and at no point of time, Misc. Case No. 2/1990 – 91 was initiated in respect of the lands of Khata No. 52.

He further submitted that Misc. Case No. 2/1990 – 91 was not initiated on the basis of any application made by any person. The said proceeding was not for cancellation of existing Jamabandi nor it has for creation of Jamabandi rather it was a proceeding initiated at the instance of Karamchari itself and the order passed in the said proceeding was not appellable. It was next contended that Babulal Mahato, the original Respondent No. 5, filed an
application before the Circle Officer, Ramgarh for assessment of rent vide Rent Assessment Case No. 3/2000 – 01 in which the writ petitioner appeared and filed its show-cause and in that proceeding, he did not raise the plea of res-judicata. Therefore, the plea of res-judicata cannot be raised by the appellant at the appellate stage as has been held in the case of “V. Rajeshwari” reported in (2004) 1 SCC 551.

It is also submitted that since there is concurrent findings on facts by three revenue authorities and therefore, those findings on facts were not disturbed by the learned Single Judge in exercise of the writ jurisdiction. According to him, the original Respondent No. 5 Babulal Mahato executed registered sale deed in favour of respondent no. 6 in whose name also Jamabandi has been opened.

11. According to the learned Senior Counsel, the authorities, while adjudicating Jamabandi, do not exercise judicial or quasi-judicial function. The authorities while passing orders in Mutation proceedings can not be termed as Courts nor the proceedings before them are the judicial proceedings as has been held in the case of Depta Tiwari and Ors reported in 1987 PLJR 1037 and in the case of “Shanti Devi- versus- State of Bihar & Others, reported in 1993 (2) PLJR, 118”.

In this view of the matter, Section 11 of C.P.C. applies to a proceeding with respect to a Court, cannot be applied in the present case and it will not operate as a bar. He submitted that the Hon’ble Supreme Court, in the case of Mahila Bajrangi Vs. Badri Bai reported in (2003) 2 SCC 464 has held that Mutation proceeding before Revenue Authorities are not judicial proceeding.

12. In view of the facts stated hereinabove and the points raised by the respective parties, which have been noticed in the forgoing paragraphs, let us examine the law on the point raised by the parties.

13. So far as the first question with regard to res-judicata as raised by the parties, let us examine the provisions of Section 11 of the Code of Civil Procedure, which speaks about res-judicata, which reads as under:-

"11. Res-judicata – No Court shall try any suit or issue in which the matter directly and substantially in issue has been directly and substantially in issue in a former suit between the same parties, or between parties under whom they or any of them claim, litigating under the same title, in a Court competent to try such subsequent suit or the suit in which such issue has been subsequently raised, and has been heard and finally decided by such Court.”

14. In order to apply Section 11 C.P.C. in a particular case the following conditions are required to be fulfilled;

(i) The identity of the matter in issue.

(ii) The identity of party.

(iii) The parties in the subsequent suit must have litigated under the same title in the former suit.

(iv) The Court, which decided the former suit, must have been competent to try the subsequent suit or the suit in which the issue has been subsequently raised.
The matter directly and substantially in issue in the subsequent suit must have been heard and finally decided in the former suit.

Apart from the above conditions, the foremost condition is that the suit or the matter in issue should have been decided by a competent Court of law.

In the present case, admittedly, the order of Jamabandi has been passed in a mutation proceeding. A mutation proceeding is decided by the Revenue Authority.

The Supreme Court in the case of “Mahila Bajrangi Vs. Badri Bai reported in (2003) 2 SCC 464” has clearly held that the mutation proceedings before the Revenue Authorities are not judicial proceedings in a court of law and it does not decide question of title to immovable properties.

The Division Bench of Patna High Court in the case of “Shanti Devi- versus- State of Bihar & Others, reported in 1993 (2) PLJR, 118” after relying on its earlier decision, held that the mutation proceedings are the administrative proceedings and not judicial proceedings and, therefore, the officers acting under the provisions of Mutation Manual are not Courts nor the proceeding before them are judicial proceedings.

Since the Revenue Authorities while deciding a mutation proceeding have been held to be not a court of law and the mutation proceedings before them are held not judicial proceedings by the Supreme Court, therefore Section 11 of the Code of Civil Procedure cannot be applied to a proceeding which is not a judicial proceeding and it cannot be applied to an order passed by a revenue authority since the order passed by such authority is not an order passed by a Court of law. Therefore, the provision of Section 11 C.P.C., i.e. of res-judicata would not be applicable to such proceeding.

The second submission of Mr. Sinha, the learned counsel appearing for the appellant that the Jamabandi running and standing since long in the name of the appellant can not have been cancelled in view of the decision of the Single Bench of this Court in the case of “Dilip Kumar Mahto-versus- The State of Bihar & Others, reported in 2001 (1) JLJR 75, “Smt. Gulbasi Devi & Others-versus- State of Bihar & Others, reported in 2003 (3) JLJR 793”, “Jitan Mahto & Another-versus- State of Bihar & 5 Others, reported in 2004 (1) JLJR 718” and of the Division Bench in the case of “State of Jharkhand-versus- Mithila Sahkari Grah Nirman Sahyog Samiti & Others, reported in 2005 (1) JCR 329 (Jhr).”

In the case reported in 2001 (1) JLJR 75, the Single Bench of this Court has held that Jamabandi running in the name of a particular person for several years cannot be cancelled at the instance of the claimant in a summary proceeding. Proper course for the claimant is to move the Civil Court of competent jurisdiction for proper relief.

In the case reported in 2003 (3) JLJR 793 it has been held that once Jamabandi is opened in favour of a person and that continued for a number of years it can be cancelled only by initiating a proceeding by the Collector under Section 4 (h) of the Bihar Land Reforms Act. The same view was taken in the case reported in 2004 (1) JLJR 718.

The judgment in the case of “State of Jharkhand-versus- Mithila Sahkari Grah Nirman Sahyog Samiti & Others, reported in 2005 (1) JCR 329 (Jhr)” relied by the appellant is not exactly on the said point. From the said judgment it appears that the Division Bench was dealing with a
case in which Jamabandi was cancelled not with respect to the entire land of particular plot but a portion thereof and that also without any notice to the affected persons.

21. In the present case we find from the orders passed by the revenue authorities, which was challenged by the writ petitioner in the writ petition, that in fact, Jamabandi was earlier opened by a Karamchari and that also without any order of a competent authority. The Commissioner in his order has given finding that the writ petitioner’s claim was based on sada ‘Hukumnama’ in respect of raiyati land whose veracity could not be adjudged. It was further held by him that the petitioner could not submit a chit of paper with regard to his acquisition of land in auction sale.

Therefore, we find the revenue authorities passed their orders for cancellation of Jamabandi after they found the same was opened by a Karamchari without any valid order from the competent authority. In other words, the order for creating Jamabandi was passed by a person who was not authorised under the law and as such the same was without jurisdiction.

22. According to us if an order is found to have been passed by an authority having no jurisdiction or when such order is found to be absolutely illegal based on the apparent error on law or facts or when it is found to be perverse not based on record then certainly in such cases Jamabandi running or standing in the name of a particular person can be cancelled by a competent authority but of course after giving proper notice and opportunity of hearing to the party who would be adversely affected.

23. It is a settled law that any order passed without jurisdiction is a nullity. Reference in this regard may be made to the decision of the Supreme Court in the case of “Hasham Abbas Sayyad- versus- Usman Abbas Sayyad & Others, reported in (2007) 2 SCC 355” in which it has been held as under:-

“The core question is as to whether an order passed by a person lacking inherent jurisdiction would be a nullity. It will be so. The principles of estoppel, waiver and acquiescence or even res-judicata which are procedural in nature would have no application in a case where an order has been passed by the tribunal/court which has no authority in that behalf. Any order passed by a court without jurisdiction would be coram non judice, being a nullity, the same ordinarily should not be given effect to.”

It has not been pointed out to us that there is any bar under the law in cancelling the Jamabandi running or standing in the name of any particular person.

In the aforesaid three judgments of the learned Single Judge in the cases of “Dilip Kumar Mahto-versus- The State of Bihar & Others, reported in 2001 (1) JLJR 75, “Smt. Gulbasi Devi & Others- versus- State of Bihar & Others, reported in 2003 (3) JLJR 793”, “Jitan Mahto & Another-versus- State of Bihar & 5 Others, reported in 2004 (1) JLJR 718, we find that no reason has been assigned in those judgments as to why the Jamabandi running or standing in the name of particular person in an appropriate case, cannot be cancelled. Therefore, we do not approve the view expressed in the aforesaid three judgments of this court referred in this para.

24. In view of the discussions above, we hold that Jamabandi standing in the name of a particular person can be cancelled in appropriate cases such as when it is brought to the notice of the revenue authorities that the order for creating Jamabandi has been passed by an authority
who has no authority or jurisdiction at all or where the same is found to be based on the apparent error of record/facts or on law but of course, after giving prior notice and an opportunity of hearing to the concerned person, whose interest would be adversely affected.

25. This Court in the case of "Sitaram Choubey & Ors. - versus- State of Bihar & Ors., reported in 1993 (2) PLJR 255" as well as the Supreme Court in the case of of "Suraj Bhan & Ors.- versus-Financial Commissioner & Others, reported in (2007) 6 SCC 186" have held that entries in the revenue records does not confer title on a person whose name appears in record-of- rights. The creation of Jamabandi neither creates any right and title in favour of one or the other nor cancellation of Jamabandi extinguishes right and title of actual owner. The entries in the revenue records or jamabandi have only “fiscal purpose” and no ownership is conferred on the basis of such entries. The title of the property can only be decided by a competent civil court.

In our view, the learned Single Judge rightly refused to interfere with the impugned orders passed by the revenue authorities by observing that the aggrieved person may move before a court of competent jurisdiction for appropriate relief.

26. In view of the discussions and findings above, we do not find any merit in this letters patent appeal. Accordingly, the same is hereby dismissed. However, in the facts and circumstances of the case, there shall be no order as to cost.


LPA dismissed.
JAGJIVAN SINGH VS. STATE OF BIHAR
2013 (4) JCR 692

Jagjiwan Singh ... Petitioner
Versus
1. The State of Bihar (Now Jharkhand) & Ors. ... Respondents

P.P. BHATT, J.
C.W.J.C. NO. 3106 OF 1998, DECIDED ON JULY 18, 2013

Chotanagpur Tenancy Act, 1908, Sections 71-A and 46—Restoration of land—Recorded tenant surrendered the land in question to ex-landlord by registered deed of surrender dated 18.5.1942—Previous sanction of Deputy. Commissioner not required at that time—Settlement made in favour of mother of the petitioner subsequent thereto in 1943—She continued to pay rent to ex-landlord—Proceedings under Section 71-A of the Act initiated after expiry of 30 years—Hopelessly barred by limitation—Respondent Nos. 2 and 4 had no jurisdiction to pass the order of restoration of lands—Impugned order not being in consonance with law quashed. [Para 8]

Case-laws.—1987 BLT (Ref) 303; 2004 (4) JCR 211 (SC); (2004) 4 JLJR 109 (SC); (2009) 2 JCR 517 (Jhr); 1993 (1) BLJR 328; AIR 2000 SC 2276; 2004 (1) JCR 107 (Jhr); 2008 (2) JCR 1 (SC)—Relied on.

Law laid down:

[CNT Act, 1908, Sees. 71-A and 46].—Merely because a settlement is made with one year of surrender, it would not necessarily mean that surrender and settlement would form part of the same transaction.

Counsel:

Amar Kr. Sinha, Md. Abdul Wahab and Kundan Kumar Ambastha, for the petitioner.

Ram Prakash Singh, J.C. to GP II, for the Respondent-State.

JUDGMENT

By Court.—The petitioner, by way of filing the present writ petition under Article 226 of the Constitution of India, has prayed for quashing and setting aside the order dated 22.4.1986 (Annexure-3 to this petition) passed by respondent No. 4 in S.A.R. Case No. 201 of 1979-80 by which, the land measuring an area of 1.07 acres out of plot No. 71 of Khata No. 29 situated at village- Hesway, P.S.- Senha, District- Lohardaga has been ordered to be restored in favour of the mother of the respondent No. 5 under the provisions contained in Section 71A of the Chotanagpur Tenancy Act. It is further prayed for quashing the order dated 27.9.96 passed by the Commissioner,
Jagjivan Singh Vs. State of Bihar

South Chotanagpur Division, Ranchi in Lohardaga Revenue Revision No. 116 of 1989 allowing the revision filed by respondent No. 5 and setting aside the order of the Addl. Collector, Lohardaga passed in SAR Appeal No. 68 R 15/81-82 and confirming the order of the S.D.O. Lohardaga.

2. Heard the learned counsel for the petitioner as well as the learned counsel for the respondents and perused the order impugned as well as materials placed on record.

3. The facts giving rise to the present petition are as under;

That the land of Plot No. 71 of Khata No. 29 situated at Village Hesway, P.S. Senha, District- Lohardaga was recorded in the name of Mahabir Kherwar son of Labnu Kherwar in the Revisional Survey Record of Rights. It is the case of the petitioner that the recorded tenant namely Mahabir Kherwar being in urgent need of money surrendered the lands measuring an area of 1.67 decimals out of plot No. 71 of Khata No. 29 situated at Village Hesway, P.S. Senha, District- Lohardaga to the Ex-landlord on 18.5.1942 by virtue of a registered deed of surrender for a consideration of Rs. 80/- and the surrender was made prior to 1947 and therefore, there was no need for taking previous sanction of the Deputy Commissioner and as such surrender of the land to the Ex-landlord was just and proper. It is further case of the petitioner that the aforementioned land was settled in the year 1943 in the name of mother of the petitioner's namely Jugalmani Devi and so long the petitioner's mother was alive she remained in possession of the lands. The petitioner's mother went on making payment of rent to the Ex-landlord and after vesting of Jamindari return was filed in the name of the mother of the petitioner and she paid rent regularly to the State of Bihar and the petitioner's mother was recognized as a raiyat by the State of Bihar. After the death of petitioner's mother the petitioner inherited the aforesaid lands and came into possession of the same. Thereafter, Masomat Deo Kuwar Kherwarin mother of the respondent No. 5 filed SAR Case No. 201/1979-80 in the court of the SDO, Lohardaga against the petitioner claiming restoration of the lands measuring an area of 1.07 acres out of Plot No. 71 of Khata No. 29 situated at Village Hesway, P.S. Senha, District- Lohardaga. Thereafter, the petitioner appeared and filed show cause stating inter alia that the land was surrendered by the Khatriya raiyat on 18.5.1942 by virtue of a registered deed of surrender and thereafter settlement was made in favour of the petitioner's mother in the year 1943 and she went on paying rent to the Ex-landlord and after vesting of estate return was filed in the name of the mother of the petitioner and she went on making payment of rent regularly to the State of Bihar. According to petitioner, he produced registered deed of surrender, rent receipts and other relevant documents. It is pertinent to note that during the pendency of the SAR Case the mother of the respondent No. 5 Deo Kuwar Kherwarin died and her legal heir was not substituted and brought on the record. Thereafter the matter was heard and the learned SDO by terms of the order dated 22.4.1986 passed the order for restoration of the land in favour of the mother of the respondent No. 5, who was not alive at the time of passing of the order.

4. Being aggrieved and dissatisfied with the said order, the petitioner preferred SAR Appeal being SAR Appeal No. 68R 15/1981-82 before the Additional Collector, Lohardaga impleading the respondent No. 5 the only legal heir of Masomat ost. Deo Kuwar and the said appeal was allowed by terms of the order dated 27.6.1987 and the order dated 22.4.1986 passed by the SDO, Lohardaga for restoration of the land was set aside. Thereafter, respondent No. 5, being aggrieved by the said order, filed Lohardaga Revision No. 116/89 before the
Commissioner, South Chotanagpur Division, Ranchi which was allowed by terms of the order dated 27.9.1996 and the order passed by the Additional Collector was set aside and the order passed by the SDO for restoration of the land was confirmed.

5. The learned counsel for the petitioner submitted that the orders passed by respondent Nos. 2 and 4 are ab initio, illegal, void and without jurisdiction. It is further submitted that the proceeding under Section 71A CNT Act is hopelessly barred by limitation as the case was initiated much after the expiry of 30 years. It is further submitted that the land under proceeding was surrendered voluntarily by the recorded tenant in favour of the Ex-landlord on 18.5.1942 by virtue of registered deed of surrender i.e. much before the coming into force of CNT Amendment Act (Act XXV of 1947) and at that time permission was not required and as such, there is no contravention of either Section 46 or any other provisos of the CNT Act. It is further submitted that it is settled principle of law that elements of fraud are required to be pleaded and proved by cogent evidence and the respondent No. 5 has failed to prove the same by cogent evidence. It is further submitted that in view of the fact that the surrender of the land was made in the year 1942 and the petition for restoration of land was filed in the year 1979-80, the respondent Nos. 2 and 4 have no jurisdiction to pass order for restoration of the lands under proceeding and the same is against the mandate of law, and therefore, the orders passed by respondent Nos. 2 and 4 as contained in Annexures- 3 and 5 are liable to be quashed.

Learned counsel for the petitioner further submitted that the settlement made within a period of one month from the date of surrender does not necessarily mean that the surrender and the settlement would form part of the same transaction. The question as to whether a surrender and subsequent settlement would form part of the same transaction or not, would depend upon the facts and circumstances of each case and has got to be decided on the basis of materials on record. In this context, the learned counsel for the petitioner has referred to and relied upon the decision reported in 1987 BLT(Rep.) 303 (Bishram Sahu Vs. Bhairo Oraon and Ors.). Learned counsel for the petitioner has also referred to and relied upon the decisions reported in (2004)4 JLJR 109 SC(Situ Sahu and Ors. Vs. State of Jharkhand and Ors.) and 2009(2) JCR 517 (Kameshwar Narayan Singh and Anr. Vs. State of Jharkhand and Ors.) on the point of limitation to show that for exercise of power under Section 71A of restoration of land held that the lapse of 30 years is certainly not a reasonable time for exercise of power and the same was declared to be barred by limitation. The learned counsel for the petitioner in support of his submission has also referred to and relied upon decision given in the case of Jhalku Ahir Vs. State of Bihar and Ors. reported in 1993 (1) BLJR 328, Jai Mangal Oraon Vs. Smt. Mira Nayak and Ors. with Jai Mangal Oraon Vs. Rita Sinha and Ors. reported in AIR 2000 SC 2276, Bibi Makhoo and Ors. Vs. State of Bihar and Ors reported in 2004(1) JCR 107 and Fulchand Munda Vs. State of Bihar & Ors. reported in 2008 (2) JCR 1 SC.

6. As against this, the learned counsel appearing for the respondent- State Government by referring counter affidavit filed on behalf of respondent Nos. 1 to 4 submitted that the matter relates to the registered deed of surrender. The petitioner himself admits that the surrender was made on payment of a consideration money of Rs. 80/- on 18.5.1942. It is further submitted that at the relevant period of 1942, there was no restriction for transfer of lands by way of sale between schedule tribe to schedule tribe, despite of this the procedure of surrender was adopted on payment of consideration money. It is also submitted that the
registered deed of surrender was made just to transfer the lands in favour of the person belonging to non-tribal and, therefore, there is contravention of Section 46 CNT Act. It is further submitted that the deed of surrender is a fraudulent one. It is also submitted that the petitioner did not produce any cogent evidence of his possession over the land in dispute since the year 1943 despite several adjournments granted by the authorities. It is also submitted that the settlement made within one year from the date of surrender shall form part of same transaction and it amounts to transfer in contravention of Section 46 CNT Act and therefore, Section 71A CNT Act is attracted in the present case. It is also submitted that the petitioner was Opp. Party before the SAR Court in SAR Case No. 201/1979-80 but he did not produce any documentary evidence of death of the party though the onus to bring such fact was on him. It is further submitted that the petitioner has not adduce any evidence of his possession since the year 1943 and therefore, limitation of 30 years as fixed by this Hon’ble Court in 1992 judgment is not attracted at all. It is also submitted that the deed of surrender made on payment of consideration money for Rs. 80/- cannot be said voluntarily and the said surrender is in contravention of provision of Sections 72 and 46 of the CNT Act and therefore, Section 71(A) CNT Act is also attracted in the present case. It is lastly submitted that the orders passed by respondent Nos. 2 and 4 are just and in accordance with the provision of law and therefore, the present writ petition may be dismissed.

7. Considering the rival submissions of the parties and from perusal of impugned orders as well as materials placed on record, it appears that the land in question was settled by virtue of the registered deed of surrender on 18.5.1942 meaning thereby, the said transaction was made prior to 1947 and therefore at the relevant point of time, there was no need for obtaining prior permission as per Section 46 of the CNT Act, which came into force on 5.1.1948. It also appears that the application for restoration was also filed by the mother of the respondent No. 5 after lapse of 37 years and therefore, as per settled proposition of law, the said application was hopelessly time barred as it emerge from the material on record. Now the above mentioned facts are required to be analyzed in view of the settled position of law as cited by the learned counsel for the petitioner, which appears to be relevant for the purpose of deciding the present case. Para 2 of the judgment reported in 1987 BLT(Rep.) 303 (Bishram Sahu Vs. Bhairo Oraon and Ors.) reads as under;

"2. In this case, the facts are short and not in dispute. On 14.2.1995 the father of respondent No. 1 surrendered the aforementioned lands in favour of landlords and thereafter, a fresh settlement was granted by the landlord in favour of petitioner. Respondent Nos. 3 and 4 while passing orders as contained in Annexures 2 and 3 to the writ petition held that the settlement having been made within a period of one month from the date of surrender, the surrender and settlement is part of same transaction and as such, the same being a transfer having been made in contravention of the provisions of Section 46 of the Chotanagpur Tenancy Act, respondent No. 1 was entitled to get lands restored in his favour in terms of the provisions of Section 71-A thereof. However, as this writ petition is being disposed of on a short question, I need not consider the question as to whether surrender made on 14.2.1945 and the subsequent settlement dated 10.3.1945 was a part of the same transaction or not. Suffice it to say that
only because a settlement is made after one month or even after a few days of the surrender, it does not necessarily mean that the surrender and the settlement would form part of the same transaction. The question as to whether a surrender and subsequent settlement would form part of the same transaction or not, would depend upon the facts and circumstances of each case and has got to be decided on the basis of materials on record. However, in the instant case, it appears that respondent No. 4 refused to entertain the revision only on the ground that there were concurrent finding of fact by the courts below.

Paragraph 8 of the judgment reported in (1993) (1) BLJR 328 (Jhalku Ahir Vs. State of Bihar and Ors.) reads as under;

“8. It is now well settled that prior to coming into force of Chotanagpur Tenancy (Amendment) Act, 1947, the recorded tenants were not required to obtain prior permission of the Deputy Commissioner before effecting surrender of their raiyati holdings. It is also not a case where respondent No. 5 has contended that the surrender made by the recorded tenants to the ex-landlord and the consequent settlement made by the ex-landlord in favour of grand father of the petitioner being part of the same transaction, the same contravenes provision of Section 46 of the Chotanagpur Tenancy Act.”

Paragraph 15 of the judgment reported in AIR 2000 SC 2276 (Jai Mangal Oraon Vs. Smt. Mira Nayak and Ors. with Jai Mangal Oraon Vs. Rita Sinha and Ors.) reads as under;

“15. No doubt, the understanding of the High Court about the scope of Section 71-A as interpreted by the earlier decisions of that court noticed therein may not be good or correct in view of the later declaration of law by this court but, the High Court did not proceed to rest its conclusion to uphold the claims of the contesting respondents who were writ petitioners before the High Court, only on that ground. The High Court has considered, at length the further question as to whether Section 71-A, introduced in 1969, was attracted to this case of surrender effected by a registered deed, on 15.1.1942, in the light of the then existing statutory provisions contained in Sections 46 and 72 of the CNT Act. The nature of consideration and the other reasons assigned in support of the order made in CWJC No. 118 of 1986-R makes it clear that the statutory provisions as they stood in force on 15.1.1942 neither envisaged the obtaining of prior sanction of the Deputy Commissioner before a surrender by a tenant could be made of his interest in favour of the landlord nor could such surrender be held bad merely because it was not at the end of the Agricultural Year but immediately before. Those issues seem to have been considered and decided, even dehors the controversy raised with reference to the character of the land, proceeding on an assumption on the basis that it involved, a surrender of raiyati interest. We find nothing illegal or wrong in the said reasoning and the conclusions arrived at by the learned judges in the High Court appear to be well merited and quite in accordance with the statutory provisions of force, at the relevant point. Therefore, in our view, no interference is called for with the orders of the High Court, in this regard.”

Paragraph 12 of the judgment reported in AIR 2004(1) JCR 107 (Bibi Makho and Ors. Vs. State of Bihar and Ors.) reads as under;

“12. In the present case, the surrender of the land by registered deed was made in the year 1935 whereas the provision for taking prior permission of the Deputy Commissioner was enacted by Amendment Act in the year 1947. The said amendment was prospective and
not retrospective and, therefore, it cannot be said that any prior permission of the Deputy Commissioner was required to be taken for surrender of the land by any raiyat prior to 1947 i.e. before the Amendment Act came into force and, therefore, the finding of the learned Additional Collector and the Commissioner in their orders as contained in Annexures 4 and 5 are absolutely illegal. This point has also been settled by the Supreme Court in the case of Mai Mangal Oraon (Supra), wherein it has been held that provision of Sections 46 and 72 as amended and Section 71-A as inserted by the amendment Act, are not applicable in case of surrender; appointment made prior to 1947."

Paragraphs 13 and 14 of the judgment reported in 2004(4) ILJR 109(SC) (Situ Sahu and Ors. Vs. State of Jharkhand and Ors.) read as under;

"13. We will assume that the surrender of tenancy on 7.2.1938 and the settlement of the lands on the present appellant on 25.2.1938 were in quick succession and could be viewed as parts of the same transaction within the meaning of the term 'transfer' as contemplated by the Act. Nonetheless, it has not been established before us that the transfer was contrary to any other provisions of the Act."

"14. We shall now examine the last argument of Shri Narasimha that transfer was fraudulent. Even on this, we are afraid that the appellants are entitled to succeed. We need not go into the details of the transaction for we may even assume that the transfer was fraudulent. Even then, as held in Ibrahimpatnam (Supra), the power under Section 71A could have been exercised only within a reasonable time. Looking to the facts and circumstances of the present appeal, we are not satisfied that the Special Officer exercised his powers under Section 71A within a reasonable period of time. The lapse of 40 years is certainly not a reasonable time for exercise of power, even if it is not hedged in by a period of limitation. We derive support to our view from the observations made by this Court in Jai Mangal Oraon case (Supra), which was also a case which arose under the very same provision of law. There this Court took the view that Section 46(4)(a), which envisaged a prior sanction of the Deputy Commissioner before effecting the transfer in any of the modes stated therein, was introduced only in the year 1947 (with effect from 5.1.1948) and no such provision existed during the relevant point of time when the surrender was made in that case (15.1.1942). Obviously, therefore, no such provision existed in 1938, and the same reasoning applies."

Paragraph 5 of the judgment reported in 2008 (2) JCR 1 SC (Fulchand Munda Vs. State of Bihar & Ors.) reads as under;

"5. As per Section 46 of the CNT Act, 1908, as it stood in 1922, no transfer by a raiyat of his right in his holding or any portion thereof by mortgage or lease for any period expressed or implied would be effected which exceeds or might in any possible event exceed five years. It further restricted transfer by way of sale, gift or any other contract or agreement and such transfer shall not be valid to any extent. The suit of the appellant's predecessors for possession on the basis of oral mortgage was culminated into a decision by the High Court in second appeal (AFAD No. 1909/1948) where a clear-cut finding was recorded that there could not have been an oral usufructuary mortgage of immovable property for value of more than Rs. 100/- under Section 59 of the Transfer of Property Act, the same being bad in law. Thus, the predecessors of the respondents could not be treated to be in possession under the mortgage. Under the the CNT Act as it stood in the year 1922, the transfer could have been challenged as it contravenes Section 46 of the CNT Act, being a contract or agreement of transfer. That plea having not been

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Jagjivan Singh Vs. State of Bihar
taken by the appellant's predecessors, the appellant and his predecessors were not entitled to raise the question of transfer being invalid under Section 46 of the CNT Act as it stood in 1922 on the principle of constructive res judicata. Section 46 of the CNT Act, by virtue of its amendment with effect from 5.1.1948, restricts and prohibits transfer by a raiyat of his right in his holding or any portion thereof by mortgage or lease for any period expressed or implied, which exceeds or might in any possible event exceed five years. It further restricts transfer by a raiyat of his right in his holding or any portion thereof, apart from mortgage etc., by way of sale, gift or any other contract or agreement and if such transfer is effected it shall be invalid. Section 71-A of the CNT Act authorizes the Deputy Commissioner to evict the transferee from such land and to restore possession to the raiyat if the transfer is being effected in contravention of Section 46 or any other provision of the CNT Act. Thus, if there is contravention of Section 46, the Deputy Commissioner is authorized to evict the transferee from such land and restore it to the transferor under Section 71-A of the CNT Act. The predecessors of the respondents could not be treated to be in possession in contravention of Section 46 as possession of land by them has been upheld by the High Court in its decision. The decision of the High Court can not be reopened by taking advantage of amendment in Section 46 which came into force with effect from 5.1.1948. Section 71-A of the CNT Act would be attracted only in case the Deputy Commissioner finds that the impugned transfer was made in contravention of Section 46 or any other provision of the CNT Act. The decision of the High Court comes in the way of the Deputy Commissioner in arriving at any such findings. The possession having been denied to the appellant's predecessors holding that there was no contravention of Section 46 as it stood in 1922, the appellant cannot be permitted to take advantage under Section 46 on same having been amended by an Act of 1947. That apart, although there is no period of limitation prescribed for exercising the power under Section 71A by the Deputy Commissioner, the party affected is called upon to approach the appropriate authority or the power has to be exercised by the Deputy Commissioner within a reasonable period of time. The gap of more than 50 years for challenging the transaction of 1922 cannot be said to be a reasonable time for exercising the power even if it is not hedged in by a period of limitation.”

Paragraphs 6 and 7 of the judgment reported in 2009(2) JCR 517 (Kameshwar Narayay Singh and Anr. Vs. State of Jharkhand and Ors.) reads as under:

“6. The Hon’ble Supreme Court in 2004(4) JCR 211(SC) : 2004(4) JLJ(R) (SC) 109 (Situ Sahu Vs. State of Jharkhand) while considering Article 65 of the Limitation Act, 1963 for exercise of power under Section 71A for restoration held that lapse of 40 years is certainly not a reasonable time for exercise of power even if it is not hedge in by a period of limitation and the same was declared to be barred by limitation. In the aforesaid background the Hon’ble Supreme Court held that the special Officer ought not have exercised his power under Section 71A of the Act after such a unreasonable period of time. It is further relevant to refer the judgment reported in 2000(5) SCC 141 (Jai Mangal Oraon Vs. Mira Nayak) wherein both the issues of time limit and the necessity of obtaining the previous sanction of the Deputy Commissioner for effecting surrenders was considered and the Hon’ble Supreme Court held that the CNT (Amendment) Act, 1947 amended sections 46 and 72 and made it prospective with effect from 5.1.48 and it was specifically held that under Section 46(4-A) the mandatory requirement of prior sanction of the Deputy Commissioner before effecting transfer was introduced only by the amendment Act, 1947, with effect from 5.1.1948 and no such provision existed prior to that date and thus it cannot apply retrospectively. In this
judgment it was also considered that merely because Section 71-A commences with the words, if at any time, it cannot be taken to mean that the power can be exercised at any time without any point of time limit.

7. In the instant case, the settlement took place by virtue of customary hukumnama in the year 1941 itself and the application for restoration was filed in the year 1995 i.e. after lapse of almost 54 years which cannot be termed as reasonable and thus it was even otherwise barred by the limitation. The Revisional Authority has committed serious legal error by holding that in absence of the permission of the Dy. Commissioner, the transfer of the raiyati land in question of the Zamindar was illegal. The amendment came into effect only on 5.1.48 which made it mandatory to seek permission of the Dy. Commissioner whereas the transfer in the instant case the ex landlord made raiyati settlement in the year 1941 itself and at that time there was no requirement for seeking prior permission of the Deputy Commissioner.”

8. In view of the facts and circumstances of the present case and also in view of the proposition of law discussed above it becomes very clear that only because a settlement is made within one year of surrender, it does not necessarily mean that the surrender and the settlement would form part of the same transaction. The question as to whether a surrender and subsequent settlement would form part of the same transaction or not, would depend upon the facts and circumstances of each case and has got to be decided on the basis of the materials on record. In the instant case, it appears that the land was settled on 18.5.1942 by virtue of registered deed of surrender and thereafter, the settlement was made in favour of the petitioner’s mother in the year 1943 and she went of paying rent to the Ex-landlord. It further appears that the return was filed after vesting of Estate and return was filed in the name of the mother of the petitioner and she went of making payment of land regularly to the State of Bihar. It further appears that the petitioner produced registered deed of surrender, rent receipt and other relevant documents before the authorities concerned. In the instant case, it appears that the proceedings under Section 71A CNT Act is hopelessly barred by limitation as the same was initiated after the expiry of 30 years. It also appears that the lands under proceeding was surrendered voluntarily by recorded tenant in favour of the Ex-landlord on 18.5.1942 by virtue of registered deed of surrender i.e. much before coming into force of CNT Amendment Act (Act XXV of 1947) and at that time permission was not required and as such, there is no contravention of either Section 46 or any other provisions of the CNT Act. Moreover, as per the settled principle of law, elements of fraud are required to be pleaded and proved by cogent evidence but in the instant case, the respondent No. 5 has failed to prove the same by cogent evidence. In the present case the surrender of the land was made in the year 1942 and the petition for restoration of land was filed in the year 1979-80 and, therefore, respondent Nos. 2 and 4 have no jurisdiction to pass the order of restoration of lands as the same is contrary to the position of law discussed above. Therefore, this court is of the view that the impugned orders dated 22.4.1986 and 27.9.1996 passed by the learned SDO, Lohardaga and the Commissioner, South Chotanagpur Division, Ranchi, respectively are not in consonance with the provision of law and the same are required to be quashed and set aside.

9. Accordingly, orders dated 22.4.1986 (Annexure-3) and 27.9.1996 (Annexure-5) are ordered to be quashed and set aside. This writ petition stands allowed, accordingly.

Petition allowed.
FULCHAND MUNDA VS. STATE OF BIHAR
2008 (14) SCC 774

FULCHAND MUNDA ... Appellant
Versus
STATE OF BIHAR AND OTHERS ... Respondents.

(BEFORE P.P. NAOLEKAR AND DALVEER BHANDARI, JJ.)
CIVIL APPEAL NO. 3267 OF 2001’ DECIDED ON JANUARY 24, 2008

Tenancy and Land Laws — Chota Nagpur Tenancy Act, 1908 (6 of 1908)—Ss. 71-A and 46 — Application under — Constructive res judicata and limitation — Applicability — Suit filed by predecessor-in-interest of appellant for declaration of title and recovery of possession of land claimed to have been transferred to predecessor-in-interest of respondent on the basis of oral usufructuary mortgage as mentioned in record-of-rights in the year 1922 — Suit dismissed by trial court and first appeal thereagainst also dismissed — But second appeal allowed by High Court in 1951 on the finding that the suit was not maintainable as there could not have been an oral usufructuary mortgage of immovable property for value of more than Rs 100 under S. 59, TP Act and hence it was bad in law and that predecessor-in-interest of appellant neither redeemed the mortgage nor came in possession of the land — After commencement of Bihar Scheduled Areas Regulation in 1969, successive applications under S. 71-A for restoration of the land were filed in 1976, 1977 and 1983 by predecessor-in-interest of appellant but the same were dismissed by Special Officer, Scheduled Areas Regulation holding that predecessor of respondent had perfected their title and application for restoration was barred by limitation—About more than 50 years of the alleged transaction of 1922, fresh application under S. 71-A moved by appellant on ground that transfer of land to predecessor of respondent was invalid being in contravention of S. 46 as it stood in 1922 — Held, application barred by principle of constructive res judicata and limitation — Plea that the transfer being invalid under S. 46 as it stood in 1922 having not been taken by appellant’s predecessors, appellant not entitled to raise the same again — Possession of predecessors of respondents having already been upheld by High Court, that decision of High Court cannot be reopened by taking advantage of amendment of S. 46 in 1948 — Although no limitation period is prescribed for exercising power under S. 71-A, same must be exercised within a reasonable time — Civil Procedure Code, 1908 — S. 11 — Limitation — Reasonable period, in absence of prescription of any specific period in statute — Bihar Scheduled Areas Regulation, 1969 (1 of 1969)

* From the Final Order dated 19-1-2000 of the High Court of Judicature at Patna, Ranchi Bench in LPA No. 145 of 1999 R.
Section 71-A of the CNT Act authorises the Deputy Commissioner to evict the transferee from such land and to restore possession to the raiyat if the transfer is being effected in contravention of Section 46 or any other provision of the CNT Act. Under the CNT Act as it stood in the year 1922, the transfer could have been challenged as it contravenes Section 46 of the CNT Act, being a contract or agreement of transfer. That plea having not been taken by the appellant’s predecessors, the appellant and his predecessors were not entitled to raise the question of transfer being invalid under Section 46 of the CNT Act as it stood in 1922 on the principle of constructive res judicata. The predecessors of the respondents could not be treated to be in possession in contravention of Section 46 as possession of land by them has been upheld by the High Court in its decision. The decision of the High Court cannot be reopened by taking advantage of amendment in Section 46 which came into force with effect from 5-1-1948. Section 71-A of the CNT Act would be attracted only in case the Deputy Commissioner finds that the impugned transfer was made in contravention of Section 46 or any other provision of the CNT Act. The decision of the High Court comes in the way of the Deputy Commissioner in arriving at any such findings. The possession having been denied to the appellant’s predecessors holding that there was no contravention of Section 46 as it stood in 1922, the appellant cannot be permitted to take advantage under Section 46 on same having been amended by an Act of 1947. That apart, although there is no period of limitation prescribed for exercising the power under Section 71-A by the Deputy Commissioner, the party affected is called upon to approach the appropriate authority or the power has to be exercised by the Deputy Commissioner within a reasonable period of time. The gap of more than 50 years for challenging the transaction of 1922 cannot be said to be a reasonable time for exercising the power even if it is not hedged in by a period of limitation.

Appeal dismissed

Advocates who appeared in this case:

S.B. Upadhyay, Senior Advocate (Kumud L. Das, Shiv Mangal Sharma, Rajesh R.Dubey, Ms Santosh Mishra, Pawan Upadhyay and Ms Sharmila Upadhyay, Advocates) for the Appellant;

Sunil Kumar, Senior Advocate (Manish Mohan, Ms Anit Kanuga, Ms Mridula Ray Bhardwaj, Ashok Mathur, Ajit Kr. Sinha and Nitish Masey, Advocates) for the Respondents.

The Judgment of the Court was delivered by

P.P. NAOLEKAR, J.— The brief facts of the case necessary for deciding the questions involved are that the land of Plots Nos. 1695, 517 and 802 under Khata No. 288 within Khewat No. 6/1 of Village Hocher, PS Kanke, District Ranchi was recorded in the record-of-rights as bakast bhuinhari land in the name of Chamtu Pahan and others as landlords. In the record-of-rights in the remarks column, these lands were shown in possession of Kolha Kumhar and others, the predecessors-in-interest of the private respondents herein as beyayani bakbaje. The recorded bhumidar Chamtu Pahan and others filed a title suit against Kolha Kumhar and others for relief of declaration of title and recovery of possession. The said suit was decreed by the trial court and the appeal preferred by the predecessors-in-interest of the respondents herein was dismissed. A second appeal being appeal from Appellate Decree No. 1909 of 1948 filed by the defendants in the original suit was allowed by the High Court on 20-9-1951 and the judgment and decree passed by the trial court and that of the first appellate court was set aside. The Court came to the finding that the appellant’s predecessors neither redeemed mortgage nor came in possession of the land and that the suit for
recovery of possession was not maintainable. The Court recorded the finding that there was an oral usufructuary mortgage as not yet been repaid and that mortgage, under Section 59 of the Transfer of Property Act, is bad in law and as such the defendants’ possession as mortgagees must be ignored.

2. After commencement of the Bihar Scheduled Areas Regulation, 1969 (Regulation 1 of 1969), successive applications were filed under Section 71-A of the Chota Nagpur Tenancy Act, 1908 (for short “the CNT Act”) by the predecessors-in-interest of Chamtu Pahan bearing SARs Nos. 65 of 1976, 82 of 1977 and 543 of 1983. All these applications were ultimately rejected by the Special Officer, Scheduled Areas Regulation, in terms of the orders dated 16-9-1976, 7-7-1977 and 31-12-1983 respectively holding that the predecessors-in-interest of the respondents had perfected their title and the applications for restoration were barred by limitation.

3. Despite rejection of the suit and the applications moved under Section 71-A of the CNT Act, a fresh application was moved by the appellant claiming himself to be the heir of Chamtu Pahan alleging therein that he by caste is Munda and is a member of the Scheduled Tribes and is the priest (Pahan) of his village and the land in question measuring a total area of 6.38 acres is bakast bhuinhari pahani land recorded in the name of his grandfather Chamtu Munda/Pahan and others in the record-of-rights. It was alleged that the land in question is community land, the usufruct of which is used for the community feast at the time of Sarna Puja or Bhut Puja held by the community members on several occasions of the agricultural year and the said land cannot be transferred to a person other than the members of a bhuinhari family as provided under Section 48 of the CNT Act. It was further alleged that although such land is non-alienable, the ancestors of the respondents by playing fraud on the grandfather of the appellant, namely, Chamtu Munda, took the same on oral zerpesgi (mortgage) for Rs 154 for a period of 20 years as mentioned in the record-of-rights in the year 1922 and, thus, the transfer being in contravention of Section 46 of the CNT Act, possession of the land be restored.

4. The application moved by the appellant was allowed vide order dated 21-12-1987 by the Special Officer, Scheduled Areas Regulation, who directed restoration of possession of the land in favour of the appellant. The private respondents herein thereupon preferred an appeal before the Additional Collector, Ranchi which was allowed by him. Considering the judgment and order passed in the second appeal by the High Court as also the orders passed on successive applications under Section 71-A of the CNT Act, he came to the conclusion that fresh application under Section 71-A was not maintainable. Consequently, the order of restoration of possession was set aside.

5. The appellant preferred a revision before the Divisional Commissioner under Section 217 of the CNT Act, which was allowed and restoration of possession order was restored. That was challenged by the respondents by filing a writ petition in the High Court. Learned Single Judge of the High Court while allowing the writ petition held that the revisional authority committed an error in ignoring the findings arrived at by the High Court in the second appeal and also the successive orders passed by the Special Officer earlier rejecting the applications for restoration filed by the predecessors-in-interest of the appellant. The Court also held that the Commissioner totally ignored the effect of Section 27 of the Limitation Act and failed to see that the application for restoration was barred by limitation as also by the
principle of res judicata. The order of the learned Single Judge was upheld by the Division Bench in letters patent appeal. That is how the matter has come before us.

6. It is contended by Mr S.B. Upadhyay, learned Senior Counsel for the appellant that the orders of the High Court are contrary to the provisions, intendment, letter and spirit of the Bihar Scheduled Areas Regulation, 1969 (Regulation 1 of 1969) which is a welfare legislation concerning the members of the Scheduled Tribes, which is mainly intended, by insertion of Section 71-A in the CNT Act, for restoration of their lands transferred in favour of non-tribals fraudulently or in contravention of Sections 46 and 48 and other provisions of the CNT Act.

7. It is further urged by the learned Senior Counsel that there is no limitation prescribed for resorting to the provision of Section 71-A of the CNT Act; and that the earlier decision of the High Court will not operate as res judicata. Whereas, it is contended by Mr Sunil Kumar, learned Senior Counsel for the private respondents that when successive applications under Section 71-A of the CNT Act moved by the predecessors-in-interest of the appellant have been rejected, the Special Officer committed an error in entertaining the fresh application moved by the appellant.

8. It is further urged that the earlier decision of the High Court operates as res judicata and in any case the principle of constructive res judicata would be applicable as all the questions available with the appellant to be agitated before the Court shall be deemed to have been adjudicated against him.

9. To better appreciate the arguments advanced by the counsel on both sides, it would be pertinent to note the relevant provisions of the Chola Nagpur Tenancy Act, 1908 (the CNT Act).

10. The relevant provisions of Section 46(1) of the CNT Act as it stood in the 1908 Act and substituted by the Amendment Act of 1947 which came into force with effect from 5-1-1948 read as under:

"46. Restrictions on transfer of their rights by raiyats.—(1) No transfer by a raiyat of his right in his holding or any portion thereof—

(a) by mortgage or lease, for any period, expressed or implied, which exceeds or might in any possible event exceed five years, or

(b) by sale, gift or any other contract or agreement, shall be valid to any extent:"

11. In the CNT Act, Section 71-A was inserted by the Bihar Scheduled Areas Regulation, 1969 (Regulation 1 of 1969). Later on, by the Bihar Scheduled Areas (Amendment) Regulation, 1985 (Regulation 1 of 1985), after the word "raiyat", the words "or a Mundari Khunt Kattidar or a Bhuinhar" were inserted. Section 71-A, as amended by the Bihar Scheduled Areas (Amendment) Regulation, 1985, reads as under:

"71-A. Power to restore possession to member of the Scheduled Tribes over land unlawfully transferred.—If at any time it comes to the notice of the Deputy Commissioner that transfer of land belonging to a raiyat or a Mundari Khunt Kattidar or a Bhuinhar who is a member of the Scheduled Tribes has taken place in contravention of Section 46 or any other provision of this Act or by any fraudulent method, including decrees obtained in suit by fraud and collusion he may, after giving reasonable opportunity to the transferee, who is proposed
to be evicted, to show cause and after making necessary enquiry in the matter, evict the transferee from such land without payment of compensation and restore it to the transferor or his heir; or, in case the transferor or his heir is not available or is not willing to agree to such restoration, resettle it with another raiyat belonging to the Scheduled Tribes according to the village custom for the disposal of an abandoned holding:"

12. As per Section 46 of the CNT Act, 1908, as it stood in 1922, no transfer by a raiyat of his right in his holding or any portion thereof by mortgage or lease for any period expressed or implied would be effected which exceeds or might in any possible event exceed five years. It further restricted transfer by way of sale, gift or any other contract or agreement and such transfer shall not be valid to any extent. The suit of the appellant's predecessors for possession on the basis of oral mortgage was culminated into a decision by the High Court in second appeal (AFAD No. 1909 of 1948) where a clear-cut finding was recorded that there could not have been an oral usufructuary mortgage of immovable property for value of more than Rs 100 under Section 59 of the Transfer of Property Act, the same being bad in law. Thus, the predecessors of the respondents could not be treated to be in possession under the mortgage.

13. Under the CNT Act as it stood in the year 1922, the transfer could have been challenged as it contravenes Section 46 of the CNT Act, being a contract or agreement of transfer. That plea having not been taken by the appellant's predecessors, the appellant and his predecessors were not entitled to raise the question of transfer being invalid under Section 46 of the CNT Act as it stood in 1922 on the principle of constructive res judicata. Section 46 of the CNT Act, by virtue of its amendment with effect from 5-1-1948, restricts and prohibits transfer by a raiyat of his right in his holding or any portion thereof by mortgage or lease for any period expressed or implied, which exceeds or might in any possible event exceed five years. It further restricts transfer by a raiyat of his right in his holding or any portion thereof, apart from mortgage, etc. by way of sale, gift or any other contract or agreement and if such transfer is effected it shall be invalid.

14. Section 71-A of the CNT Act authorises the Deputy Commissioner to evict the transferee from such land and to restore possession to the raiyat if the transfer is being effected in contravention of Section 46 or any other provision of the CNT Act. Thus, if there is contravention of Section 46, the Deputy Commissioner is authorised to evict the transferee from such land and restore it to the transferor under Section 71-A of the CNT Act.

15. The predecessors of the respondents could not be treated to be in possession in contravention of Section 46 as possession of land by them has been upheld by the High Court in its decision. The decision of the High Court cannot be reopened by taking advantage of amendment in Section 46 which came into force with effect from 5-1-1948. Section 71-A of the CNT Act would be attracted only in case the Deputy Commissioner finds the impugned transfer was made in contravention of Section 46 or any other provision of the CNT Act. The decision of the High Court comes in the way of the Deputy Commissioner in arriving at any such findings. The possession having been denied to the appellant’s predecessors holding that there was no contravention of Section 46 as it stood in 1922, the appellant cannot be permitted to take advantage under Section 46 on same having been amended by an Act of 1947. That apart, although there is no period of limitation prescribed for exercising the power under Section 71-A by the Deputy Commissioner, the party affected is called upon to approach the
appropriate authority or the power has to be exercised by the Deputy Commissioner within a reasonable period of time. The gap of more than 50 years for challenging the transaction of 1922 cannot be said to be a reasonable time for exercising the power even if it is not hedged in by a period of limitation.

16. For the aforesaid reasons, the appeal is without substance and is dismissed.
BHEEM SINGH MUNDA VS. STATE OF JHARKHAND AND ORS.
2013 (2) JCR 691 (Jhar.)

Bhim Singh Munda ... Appellant
Vs.
State of Jharkhand and others ... Respondents

PRAKASH TATIA, CJ AND MRS. JAYA ROY, J.

(A) Chotanagpur Tenency Act, 1908, Sections 3(xvi) and 8—Mundari Khunt—Kattidari right—Acquisition of—Scope of—Explained—Mundari Khunt—Kattidari tenency gives certain rights to the person who are known as Khewat-dars which have been given in Chapter XVIII of CNT Act. [Para 6]

(B) Chotanagpur Tenency Act, 1908, Section 87, Scope of—With respect to the correction in entry a suit can be entertained by the Revenue Officer only. [Para 7]

(C) Chotanagpur Tenency Act, 1908. Section 251, Scope of—Bars any suit under Section 87—Says no suit shall be entertained under Section 87 of the Act for decision of any dispute regarding any entry relating tp a Mundari Khunt—Kattidari tenancy in a record of rights. [Para 7]

(D) Chotanagpur Tenency Act, 1908, Sections 87, 245 and 251—Civil suit with respect to the entry relating to the Mundari Khunt—Kattidari tenancy right in record of rights is barred—If in the course of any proceedings "under Section 244 any question of title is raised, which could in the opinion of the Deputy Commissioner, more properly be determined by a civil Court, the Deputy Commissioner shall refer such question to the principal civil Court for determination—If there is a bona fide dispute between the~iwo" claimants "involving question of title, then civil Court can:examine the issue only on reference—Instead of referring the dispute, directing the parties to get their title decided through civil Court—Writ Court has rightly quashed the order passed by the Circle Officer—Matter remanded back before the Recenue Officer for consideration in accordance with law—Appeal partly allowed. [Paras 7 to 9]

Counsel :
Manjul Prasad, for the appellant.
Rabindra Prasad, for the respondents.

JUDGMENT

By Court.—Appellant is aggrieved against the order of learned Single Judge dated 15.04.2004

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passed in W.P.(C) No.229 of 2002 by which the learned Single Judge set aside the order dated 07.07.1995, (Annexure-3) passed by the Circle Officer, Sonahatu in Uttaradhikary Case No. 121 of 1995-96 on the ground that the Circle Officer, Sonahatu had no jurisdiction in the matter to decide the question of title in respect of the claim of Jamindari of Khewat i.e., Mundari Khunt-kattidari.

2. It appears from the facts of the case that, in the matter of Mundari Khunt-kattidari tenancy, which is a special right created by the Chotanagpur Tenancy Act, 1908 and for which special provision with respect to the Mundari Khunt-kattidars have been provided in the Chapter XVIII of the Act of 1908. There was dispute between the petitioner Madhu Sudan Munda (now deceased) and the present appellant Bhim Singh Munda with respect to particular Mundari Khunt-kattidari tenancy for Khewat No. 4/1.

3. It appears that Circle Officer passed one order on 07.07.1995 in Uttaradhikary Case No. 121 of 1995-96 and decided the said question of title in favour of Madho Singh Munda and Madhusudan Singh Munda, respondent nos. 4 and 5, declaring them to be Jamindar of said Khewat No. 4/1. However, Sub-Divisional Officer, Khunti on 12.10.2001 entertained an application under Section 242 of the C.N.T. Act, 1908 filed by Bhim Singh Munda (respondent no. 5 of the writ petition) wherein Sub-Divisional Officer held that for declaration of their title and the right, the proper forum is to approach the Civil Court in view of the dispute between the parties with regard to the title and, therefore, the Sub-Divisional Officer, Khunti refused to decide the dispute. Madhusudan Singh Munda, petitioner, approached this Court by filing a writ petition No. 229 of 2002, wherein learned Single Judge held that since the Circle Officer had no jurisdiction to pass the order dated 07.07.1995, therefore, that order is without jurisdiction and consequentially set aside. Appellant aggrieved against the judgement of the learned Single Judge dated 15.04.2002, has, therefore, preferred this appeal.

4. Nobody appeared on behalf of the respondents-legal representatives of the original petitioner.

5. Heard learned counsel for the appellant.

It appears from the provisions in the C.N.T. Act, 1908 that Mundari Khunt-kattidari has been defined in Clause (xvi) of Section 3 of the Act of 1908 which is as under :—

(xvi) “mundari khunt-kattidari tenancy” means the interest of a Mundari Khunt-kattidari.

6. What is the right of Mundari Khunt-kattidari is given in Section 8 of the Act of 1908, which is as under :—

"Mundari-khunt-kattidari means a Mundari, who has acquired a right to hold jungle land for the purpose of bringing sitable portions thereof under cultivation by himself or by male members of his family, and includes,—

(a) the heir male in the male line of any such Mundari when they are in possession of such land or have any subsisting title thereto, and

(b) as regards any portions of such land which has remained continuously in the possession of any such Mundari and his descendants in the male line, such descendants.”

Therefore, the Mundari Khunt-kattidari right can be acquired which allows one to hold jungle land for the purpose of bringing suitable portions thereof under cultivation by
himself or by male members of his family and includes the male heirs of said Mundari Khunt-kattidar and which appears to be a hereditary right in view of Clause (b) of Section 8 which says that a Mundari Khunt-kattidar right as regard to any portion of such land which has remained continuously in possession of any such Mundari Khunt-kattidari and his descendants in the main line, such descendants, also are Mundari Khunt-kattidar. There are certain restrictions on transfer of Mundari Khunt-kattidari tenancy as has been provided in Section 240. But Section 241 provides and allows certain transfers. If, any person encroached upon the Mundari Khunt-kattidari tenancy or portion thereof, such person can be evicted under Section 242 of the Act of 1908. Mundari Khunt-kattidari tenancy gives certain rights to the persons who are known as Khewatdars which have been given in Chapter XVIII of the C.N.T. Act, 1908. Section 245 provides for reference of question of title to Civil Court which may arise in the course of proceeding under Section 244 and if the Deputy Commissioner holds an opinion that for proper determination, the matter is required to be referred to the Civil Court, the Deputy Commissioner can refer such question to Principal Civil Court in the district for determination.

7. As per Section 87 of the C.N.T. Act, 1908, where a dispute arises involving a question relating to title in land or in interest in land, in between the parties, the suit can be instituted before the Revenue Officer under Section 87, but it appears that this can be a suit in relation to the proceedings under Chapter XII only which Chapter deals with the records of right and settlement of rent and Section 81(b) includes the particulars which are required to be recorded like the Mundari Khunt-kattidar. Therefore, with respect to the correction in entry, a suit can be entertained by the Revenue Officer only. As per Clause (viii) of Section 3, Revenue Officer under Act of 1908 means, any officer whom the State Government may appoint to discharge any of the functions of the Deputy Commissioner. Section 251 of the C.N.T. Act, 1908 bars any suit under Section 87 and says that no suit shall be entertained under Section 87 for the decision of any dispute regarding any entry relating to a 'Mundari Khunt-kattidari' tenancy in a record-of-rights.

Therefore, complete reading of above provisions makes it clear that civil suit with respect to the entry relating to the Mundari Khunt-kattidari tenancy right in record-of-rights is barred. In Annexure-4, dated 11.10.2001, the Sub-Divisional Officer, Khunti held that in view of the dispute of title, the parties should go to the Civil Court for declaration of their title and the right which could not have been done in view of Section 251 of the Act of 1908. However, at this place, it will be relevant to mention that Section 245 of the C.N.T. Act, 1908 itself provide that if in the course of any proceedings under Section 244, any question of title is raised, which could, in the opinion of the Deputy Commissioner, more properly be determined by a Civil Court, the Deputy Commissioner shall refer such question to the Principal Civil Court in the district for determination. Therefore, firstly, it is the duty of the Revenue Officer to decide with respect to the issue relating to the entry in the record-of-rights of the Mundari Khunt-kattidari tenancy and if, he finds a bonafide dispute between the two claimants involving question of title, then upon his reference only the Civil Court can examine the issue of the above right. In this case, so far as Annexure-3, dated 07.07.1995, passed by the Circle Officer, Sonahatu is concerned, that was wholly without jurisdiction whereas the learned Revenue Officer should also or could have referred the dispute to the Civil Court under Section 245 of the C.N.T. Act, 1908. But instead of doing so, he directed the parties to get their title decided through Civil Court. Learned counsel for the appellant submitted that, in fact, the Revenue
Officer has already on 23.12.2003 in favour of the appellant and, therefore, in view of the said order dated 23.12.2003, now there is no need to send the matter either to Revenue Officer or there is no need of referring the matter to Civil Court for adjudication.

8. In view of the above reasons, we are of the considered opinion that learned Single Judge has rightly quashed and set aside the order dated 07.07.1995, annexure-3, passed by the Circle Officer, Sonahatu in Uttradhikariy Case No. 121 of 1995-96. We are also of the considered view that Sub-Divisional Officer also could have referred the matter to Civil Court for adjudication if he found that there is a bonafide dispute of title between the parties and that has not been done. In this L.P.A., one order has been placed on record by the appellant passed by the Revenue Officer, dated 23.12.2003 and that order was not before the learned Single Judge and, therefore, so far as this order is concerned, we are of the considered opinion that the matter can be sent back to the Revenue Officer for consideration after giving notice to the respondents-the legal representative of the petitioner and the Revenue Officer may also consider the order dated 23.12.2003 and may decide the matter in accordance with law and may also, if finds the order, Annexure-1, dated 23.12.2003, to be a valid order, may proceed accordingly.

9. This appeal is partly allowed accordingly.

10. A copy of this order may be produced before the concerned Revenue Officer by the appellant.

Appeal partly allowed.
BALESHWAR IWARI VS. SHEO JATAN TIWARI
1997 (5) SCC 112

Baleshwar Tewari (Dead) by LRS. and Others ... Appellants;
Versus
Sheo Jatan Tiwary and Others ... Respondents.

(BEFORE K. RAMASWAMY AND S. SAGHIR AHMAD, JJ.)
CIVIL APPEAL NO. 2533 OF 1980*, DECIDED ON MARCH 20, 1997

Tenancy and Land Laws — Bihar Land Reforms Act, 1950 (30 of 1950) — Ss. 6(1) & 2(k) — 'Khas possession' of intermediary — Means actual possession and not mere bare right to possession — Though land may be leased out on yearly basis but possession must always be retained by the intermediary and lessee should never have any security of his tenancy right — Burden of proof on intermediary — Entries in revenue records not sufficient evidence — Even if enquiry held under R. 7-E of Bihar Land Reforms Rules and S. 35 of the Act wherein it was found that the intermediary retained the actual possession and land was leased to appellant on year to year basis but in absence of any notice and opportunity to the appellant to adduce evidence to establish his right, finding in the enquiry would not be binding on him — When appellant continuously remained in possession for long years and possession could be taken by respondent only in execution of decree of trial court, possession of respondent cannot be held to be khas possession — Revenue records — Entries in — Value of

Held:

Though the definition of "intermediary right" as used in Section 6(1)(a) of the Act, is inclusive of the yearly cultivation and intermediary becomes owner of such land subject to payment of rent determined, the intendment of khas possession is referable to the intermediary who must be in actual possession, i.e., one foot on the land, and the other on the plough in the field and hands in the soil; although hired labour is also contemplated. The emphasis is on the point that the possession is actual possession and admits of no dilution except to the extent specified under Section 6, i.e., itself by an inclusive process, permits and the animation of retention of possession always must be manifested. It must also be read with Bihar Tenancy Act wherein "khas possession" has been dealt with.

(Para 12)


* From the Judgment and Order dated 27-4-1979 of the Patna High Court in S.A. No. 326 of 1978.
It is true that the inclusive definition in Section 6(l)(a) would also include yearly lease but it indicates that the possession should always be retained by the intermediary and the tenant must have no security of his tenancy right. But when in this case the tenant remained continuously in possession of the land well over years, right from 1925 as found by the trial court and the possession was taken in execution of the decree in 1979, the necessary animus possidendi was absent. The tenant remained in possession in his own right as a raiyat though he was paying rent to the intermediary prior to the abolition. His possession is only of a raiyat possession. It is the duty of the respondent to establish by unequivocal evidence that the intermediary retained his intermediary right in the land and that proof has not been established by adducing any evidence. It is true that there is a finding by the Subordinate Judge that an enquiry under Rule 7-E(ni) was held but there is no finding recorded by the Subordinate Judge that the enquiry was conducted after issuing notice to the appellant. Unless the appellant is given notice and an opportunity to adduce the evidence to establish his right in the enquiry made, the finding generally does not bind him. Entries in revenue records is the paradise of the patwari and the tiller of the soil is rarely concerned with the same. So long as his possession and enjoyment is not interdicted by due process and course of law, he is least concerned with entries. It is common knowledge in rural India that a raiyat always regards the land he ploughs as his dominion and generally obeys, with moral fibre the command of the intermediary so long as his possession is not disturbed. Therefore, creation of records is a camouflage to defeat just and legal right or claim and interest of the raiyat, the tiller of the soil on whom the Act confers title to the land he tills. (Paras 13 to 15)

Appeal allowed

**Suggested Case Finder Search Text** *(inter alia):*

(khas near possession)

May search again and add:

(intermediary)

Advocates who appeared in this case:

Ranjit Kumar and Ms Binu Tamta, Advocates, for the Appellants; B.B. Singh, Advocate, for the Respondents.

**Chronological list of cases cited**

2. 1994 Supp (3) SCC 725, Labanya Bala Devi v. State of Bihar Patna Secretariat
3. (1979) 4 SCC 27, Ramesh Bejoy Sharma v. Pashupah Rai

**ORDER**

1. This appeal by special leave arises from the judgment of the single judgment of the single
judge of the High Court of Patna, made on April 27, 1979 made in S.A. No. 326/1978 dismissing the appeal in limine.

2. The respondent-plaintiff laid the suit for declaration of title to 3 bighas and six kathas of land bearing Plot No. 235 and 243 in Khata No. 952 situated in Mauza Nainijore Pachhim Diara, Police Station Brahmpore, District Bhojpur.

3. The admitted position is that the respondent had purchased the land on May 23, 1957 for a sum of Rs. 82.2 annas from the Raja Dumraon Raj. Proceedings under Section 145 or Cr.P.C. were initiated in which it was held that the appellant was found in possession of the land. Consequent thereto, the above declaratory suit came to be filed by the respondent. It is the case of the appellant that he has been in possession of the land as a leasee since the year 1925. The trial Court accepted his contention and recorded a finding as under:

"These own documents of the Dumraon Raj clearly show that the defendant has been in possession over the suit land as a raiyat since 1925. The defendant has also filed the original Khatiswani of the year 1350 fasli prepared by Dumraon Raj which also finds the name of defendant's ancestor over the suit land. Ex. C is the jamabandi Register of the Dumraon Raj which also has the name of defendant's ancestor over the suit Khata No. 91. Thus, the above documents of the defendant clearly prove that the suit land was never the proprietor's Zeerat land and was never in Khas possession of Dumraon Raj. Rather these documents show that the Defendant has been in possession of the suit land as a raiyat."

4. On that basis, the suit was dismissed. On appeal, the Subordinate Judge held that the entries for the year 1952-69 show that the respondent was in possession of the land and therefore, Raja Dumraon Raj had leased out the land to the appellant on year to year basis and thereby in the enquiry under Rule 7 - E(iii) of the Bihar Land Reforms Act [for short, the "Act"] no suit could be brought in any civil Court in respect of the order passed thereunder. Thereby, it is seen that at page 21, he recorded thus:

"Since the suit land was given on lease from year to year being proprietor's private land, it was not necessary to prove that the Dumraon Raj was in Khas possession over the suit land. It is important to add here that the plaintiff has been able to show by production of Chitha that Dukhi Tiwari and other persons were recorded in several years of Chitha in respect of the suit land. This fact also establish the fact that the suit land were given on lease from year to year by the Dumraon Raj and the defendant or other person in different years clearly do not confer any right of occupancy of title over the suit land of those persons recorded in the chitha."

At page 22, it is further recorded that "

"The possession of different persons of the suit land on the basis of lease does not change the character of private land nor it can confer a title to those persons not perfect title by adverse possession."

Thus, he concluded that the respondent had the title of the property. Accordingly, he declared that the respondent had valid title to the property. It is also evidenced that in 1979, in execution of the decree, the respondent came into possession of the land.

5. From these facts, the question that arises for consideration is: whether the respondent's
prodecessor-intitle, Dumraon Raj was in Khas possession of the land and thereby the respondent acquired title of the property under the sale deed?

6. Shri Ranjit Kumar, learned counsel for the appellants, contends that the finding recorded by the subordinate judge is clearly incorrect in view of the law laid down by this Court. Shri B.B. Singh, learned counsel for the respondents, contends in view of the provisions of section 6(1) and the order passed under Rule 7-E(iii), the land is the private land of the Dumraon Raj and the appellant had not acquired any raiyat right under the Bihar Land Reforms Act. The estate was abolished in 1951. thereafter, the appellant was not recognised as a raiyat. Therefore no evidence that he was recognised as owner of the land. Therefore, the respondent has proved that he is the owner of the land. The declaration of title is vitiated by error of law.

7. In view of the respective contentions, the question for consideration is: whether the view taken by the Subordinate Judge is correct in law? Section 6(1) of the Act states that on and from the date of vesting, all lands used for agricultural or horticultural purposes, which were in "khas" possession of an intermediary on the date of such vesting, including proprietor’s private lands let out under a lease for a term of years of under a lease from year to year, referred to in Section 116 of the Bihar Tenancy Act, 1885...Shall, subject to be settled by the State which such intermediary and he shall be entitled to retain possession thereof and hold them as a raiyat under the State having occupancy rights in respect of such lands subject to the payment of such fair and equitable rent as may be determined by the Collector in the prescribed manner. Sub-section (2) postulates that if the claim of an intermediary, as to his khas possession over the lands referred to sub-section (1) or as to the extent of such lands, is disputed by any person prior to the determination of the rent of such lands under the said sub-section, the Collector shall on application, made such inquiry into the matter as he deems fit and pass such order as may appear to him to be just and proper. Khas Possession has been defined in Section 2(K) of the Act which reads as under:

"2(K) Khas possession with reference to the possession of a proprietor or tenure-holder of any land used for agricultural or horticultural purposes means the possession of such proprietor or tenure-holder by cultivating such lands or carrying on horticultural operations thereon himself with his own stock or by his own servants or by hired labour or with hired stock."

This controversy relating to Khas possession is no longer re integra.

8. This Court in Gurcharan Singh Vs. Kamla Singh & Ors. [(1976) 2 SCC 152 at 162 in paragraph 20 and 21] had dealt with this aspect and a three judge Bench held as under:

"There is no case that the subclauses (a), (b) and (c) of Section 6(1) apply. Counsel's contention is that he comes within the ambit of the main paragraph, being allegedly in Khas possession. To appreciate the further discussion, it is useful to recapitulate that the appellant has averred in his plaint that he had been dispossessed as early as 1954 by a brazen act or trespass by the contesting respondents who were holding adversely to him. Undaunted by this fatal fact Counsel claimed to be in possession and argued still. The focus was turned by him on the concept of Khas possession defined in Section 2(K). He presented a historical perspective and suggested that the genesis of khas possession could be traced to be Bengal Tenancy Act, 1885. May be, the draftsman might have drawn upon those earlier
land tenure laws for facility, but we must understand right at the outset that the Constitution of India has inaugurated a new jurisprudence as it were, guided by Part VI and reflected in Part III. When there has been a determined break with traditional jurisprudence and a big endeavour has been made to overturn a feudal land system and substitute what may be called a transformation of agrarian relations, we cannot hark back to the bygone jura or hold a new legislation captive within the conﬁners of vanishing tenurial though. De hors the historical links - a breakaway from the past in the socio-legal system is not accomplished by worship of the manes of the law - khas possession means of the law - Khas possession means what the definition, in plain English, says. The definition clause is ordinarily a statutory dictionary, and viewed that was, we have in the early part of this judgment explained how it means actual, cultivatory possession - nothing less, nothing else. Off course, Section 6(1) makes a special addition by 'including' other demised lands by express enumeration.

Section 6 does not stop with merely saving lands in khas possession of the intermediary (erstwhile proprietor) but proceeds to include certain lands outstanding on temporary leases or mortgages with other, as earlier indicated. These are private lands as known to the Bihar Tenancy Act, privileged lands as known to the Chota Nagpur Tenancy Act, lands outstanding with mortgagees pending redemption and lands which are actually being cultivated by the proprietor himself. Ordinarily what is outstanding with lessees and mortgagees may not fail within khas possession. The legislature, however, though that while the permanent tiller's rights should be protected and, therefore raiyats and under-raiyats should have rights directly under the State eliminating the private proprietors, the zamindar or proprietor also should be allowed to hold under the State, on payment of fair rent, such lands as have been in his cultivatory possession and other lands which were really enjoyed as private or privileged lands or mortgaged with possession by him. With this end in view, Section 6(1) enlarged its scope by including the special categories. The word 'include' is generally used in interpretation clauses in order to enlarge the meaning of the words or phrases occurring in the body of the stature. It is obvious that Section 6(1) uses the word 'including' to permit enlargement of the meaning of khas possession for the limited purpose of that section, emphasising thereby that, put for such enlargement, the expression khas possession excludes lands outstanding even with temporary lessees. It is perfectly plan, therefore, that khas possession has been used in the restricted sense of actual possession and to the small extent it had to be enlarged for giving relief to proprietors in respect of 'private', 'Privileged' and mortgaged lands inclusive expressions had to be employed. Khas possession is actual possession, that is a foothold on the land, an actual entry, a possession in fact, a standing upon it, and occupation of it, as a real, administrative act done Constructive possession or possession in law is what is covered by the sub-clause of Section 6(1). Even so, it is impossible to conceive, although Shri Misra wanted us to accept, that possession is so wide as to include a mere right to possess, when the actual dominion over the property is held by one in hostility to the former Possession, correctly understood, means effective, physical control or occupation:

'The word possession is sometimes used inaccurately as synonymous with the right to possess. (Words and Phrases, 2nd Edn., John B. Sounders, p.151).

In the Dictionary of English Law (Earl Jowitt) 1959 at p. 1367 "possession" is defined as follows:

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"Possession, the visible possibility or exercising physical control over a thing, coupled with the intention of doing so, either against all the world, or against all the world except certain persons, there are, therefore, three requisite of possession. First three requisite of possession. First there must be actual or potential physical control. Secondly physical control is not possession, unless accompanies by intention: hence, if a thing is put into the hand of a sleeping person he has not possession of it. Thirdly, the possibility and intention must be visible or evidenced by external sings, for if the thing shows no sign of being under the shows no signs of being under the control of anyone, it is not possessed; ...

In the end of all, however, the meaning of "possession' must depend on the context, (ibid p. 153)

Maybe, in certain situations, possession may cover right to possess. it is thus clear that in Anglo-American jurisprudence also, possession is actual possession and in a limited set of cases, may included constructive possession but when there is a bare right to possess bereft of any dominion or factum or control, it will be a owner is in possession merely because he has a right to possess when a rival, in the teeth of owner's opposition, is actually holding dominion and control over the land admittedly, in the present case, the possession of the plaintiff had ceased totally at least two years before the vesting under Section 4 took place. This situation excludes khas possession."

9. This was reiterated by a Bench of two Judges in Ramesh Bejoy Sharma vs. Pashupati Rai & Ors. [(1979) 4 SCC 27 at 37 in paragraph 28] held as under:

"The word used in Section 6 is not 'possession' but it is qualified by the adjective 'Khas possession its equivalent being 'actual possession' as the word is understood in contradistinction to the word 'constructive possession'. Frankly speaking the law has still not provides clear and unambiguous definition of the jurisprudential concept of possession. Number of angular approaches to the problem of possession can be referred to with confidence. Here we are concerned with what is called "Khas possession' in statue for ushering agrarian reforms and, therefore, the purpose and object behind the legislation must inform the interpretation must till in favour of the actual cultivator, the tiller of the soil, Dealing with this expressions this Court in Gurucharn Singh vs. Kamla Singh has observed as under :

"There are, therefore, three requisites of possession, First there must be actual or potential physical control. Secondly physical control is not possession, unless accompanies by intention; hence, if a thing is put into the hand of a sleeping person he has not possession of it. Thirdly, the possibility an intention must be visible or evidenced by external signs. Under the control of anyone, it is not possessed:....." In the end of all, however, the meaning of 'possession' must depend on the context, end of ll, however, the meaning of 'possession' must depend on the context, (ibid p. 153) Maybe, in certain situations, possession may cover right to possess. It is thus clear that in Anglo-American jurisprudence also, possession is actual possession and in a limited st of cases, may include constructive constructive possession but when there is a bare right to possess bereft of any dominion or facturm of control, it will be a strange legal travesty to assert that an owner is in possession merely because he has a right to possess when a rival, in the teeth of owner's opposition, is actually holding dominion and control over the land adversely, openly and continuously."
After thus observing this approved the ration extracted above in Surajnath Ahir case as also the ratio in Ram Ran Bijai Singh case."

10. In Labanya Bala Devi (Smt.) vs. State of Bihar, Patna Secretariat, Patna & Anr. [(1994) Supp. 3 SCC 725 at 727] after extracting the definition held thus:

"... The saving by Section 6(1)(b) is only of the lands actually used for agricultural purposes in a State or a tenure of a lessee or a temporary lessee and directly in his possession and cultivated by himself with his own stock or by his own raiyat rights has been confirmed statutorily subject to the terms contained therein."

11. In Brighu Nath Sahay Singh & Ors. vs. Md. Khalipur Rahman Ors. [(1995) 5 SCC 687] another Bench considered the definition of "Khas possession" in Section 2(K) and held as under:

"A reading of Section 2(K) read with Section 4 and 6 of the Act clearly envisages that the intermediary must, as on the date of vesting, be in possession of the land used for agricultural purpose or horticulture purpose as a tenure-holder by cultivating such land or carrying on horticulture operations thereon by himself with his own stock or by his own servants or by hired labour by his own servants or by hired labour or with hired stock."

12. Thus, it could be seen that though the definition of "intermediary right" as used in Section 6(1)(a) of the Act, is inclusive of the yearly cultivation and intermediary becomes owner of such land subject to payment of rent determined, the intendment of khas possession is referable to the intermediary who must be in actual possession, i.e., one foot on the land, and the other on the plough in the field and hands in the soil; although hired labour is also contemplated. The emphasis is on the point that the possession is actual possession and admits of no dilution except to the extent specified under Section 6, i.e., itself by an inclusive process, permits and the animation of retention of possession always must be manifested. It must also be read with Bihar read with Bihar Tenancy Act wherein "Khas possession" has been dealt with.

13. It is true that the inclusive definition in Section 6(1)(a) would also include yearly lease but it indicates that the possession should always be retained by the intermediary and the tenant must have no security of his tenancy right. But when the tenant remained continuously in possession of the land well over years, right from 1925 as found by the trial Court admittedly, the possession was taken in execution of the decree in 1979 and the necessary animus possidendi was absent.

14. The question that arises is: whether it will be a "khas possession" and the respondent is entitled to declaration that the intermediary remained in possession as khas possession. In view of the law laid down by this Court, as extracted earlier, and the factual position, the conclusion would be that the tenant remained in possession in his own right as a raiyat though he was paying rent to the intermediary prior to the abolition. His possession is only of a raiyat possession. It is the duty of the respondent to establish by unequivocal evidence that the intermediary retained his intermediary right in the land and that proof has not been established by adducing any evidence. It is true that there is a finding by the Subordinate Judge that an enquiry under Rule 7-E(iii) was held but there is no finding recorded by the Subordinate Judge that enquiry was conducted after issuing notice to the appellant.

15. Under these circumstances, even if any enquiry was conducted unless the appellant is given
notice and an opportunity to adduce the evidence to establish his right in the enquiry made, the finding generally does not binds him. Entries in revenue records is the paradise of the patwari and the tiller of the soil is rarely concerned with the same. So long as his possession and enjoyment is not interdicted by due process and course of law, he is not interdicted by due process and course of law, he is least concerned with entries. It is common knowledge in rural India that a raiyat always regards the land he ploughs, as his dominion and generally obeys, with moral fiber the command of the intermediary so long as his possession is not disturbed. Therefore, creation of records is a camouflage to defeat just and legal right of claim and interest of the raiyat, the tiller of the soil on whom the Act confers title to the land he tills.

16. Shri B.B. Singh, in these circumstances, seeks to contend that this question has no been canvassed in the courts below. Since the matter requires examination, it may be remanded to the High Court for consideration. We find that in view of the above findings recorded, the remittance of the matter would render little assistance.

17. Under these circumstance, we are constrained to allow the appeal and set aside the judgment of the High Court and also of the Subordinate Judge of confirming the decree of the trial Court dismissing the suit. In consequence, the respondent is directed to restitute the possession to the appellant within two months from the date of the receipt of this order. In case, he fails to do so, the appellant is at liberty to have it executed with police assistance and take possession. No costs.
STATE OF BIHAR VS. UMESH JHA
2002 (9) SC 50

State of Bihar and Another ... Appellants;
Versus
Umesh Jha ... Respondent.

JUSTICE J.L. KAPUR, JUSTICE K. SUBBA Rao, JUSTICE M. HIDAYATULLAH,
JUSTICE J.C. SHAH, JUSTICE RAGHUBAR DAYAL
CIVIL APPEAL NO. 425 OF 1957, DECIDED ON 3RD DAY OF MAY, 1961

For the Appellants : B.K. P. Sinha and D.P. Singh, Advocates.
For the Respondent : L.K. Jha, Senior Advocate (R.C. Prasad Advocate, with him).

The Judgment of the Court was delivered by

SUBBA Rao, J.—This appeal by certificate raises the question of the construction of s.
4(h) of the Bihar Land Reforms Act, 1950 (Act 30 of 1950) (hereinafter referred to as the Act), as
amended by the Bihar Land Reforms (Amendment) Act, 1959 (Bihar Act 16 of 1959) (hereinafter
called the Amending Act”).

2. The facts giving rise to the appeal lie in a small compass. Plots NOW. 383 and 1033 are
tanks in village Lakshimpur alias Tarauni in the District of Darbhanga. The respondent
claims to have taken settlement of the said plots in the year 1943 from the landlords of
Raghopur Estate of which the said plots formed a part. After the coming into force of the
Act, the said Estate vested in the State of Bihar. Thereafter, one Sheonandan Jha and some
other villagers of Lakshimpur filed a petition before the Collector alleging that the alleged
settlement was not true, and that in fact the settlement was nominally effected only after
January 1, 1946. The Additional Collector, Darbhanga, in exercise of the powers conferred on
him under s. 4(h) of the Act, held that the said settlement was actually made after January
1, 1946, and that it was only a paper transaction; having annulled the said settlement, the
Additional Collector, by his order dated January 18, 1955, called upon the respondent to
give up possession of the said plots by January 30, 1955. Aggrieved by the said order, the
respondent filed a petition in the High Court of Judicature at Patna under Art. 226 of the
Constitution for a rule in the nature of a writ of mandamus or any other appropriate writ
cancelling the order of the Additional Collector dated January 18, 1955, and res- training
the appellants from interfering with his possession of the said two plots. That petition came
to be decided by a division bench of the High Court; and the learned Judges by their order
dated February 21, 1956, held that the Additional Collector had no jurisdiction to entertain
and decide the question whether the settlement, which was prima facie shown to have been
made before January 1, 1946, was actually made after that date. On the basis of that finding, the order of the Additional Collector was set aside. The State of Bihar and the Additional Collector of Darbhanga have preferred the present appeal against the said order.

3. Learned counsel for the State contends that s. 4(h) of the Act has been amended with retrospective effect, that under the amended section the Collector has power to decide whether a transfer is made before 1946 or thereafter, and that, therefore, the order of the High Court can no longer be sustained.

4. Learned counsel for the respondent, while conceding the retroactivity of the amendment, relies upon the second proviso added by the amendment to s. 4(h) and contends that under the said proviso the order of the Collector cannot take effect nor possession taken thereunder, unless the said order has been confirmed by the State Government and that in the instant case there has not been any such confirmation. Further he questions the constitutional validity of the said section on the ground that it infringes the fundamental right of the respondent under Arts. 14, 19 and 31 of the Constitution and is not saved by Art. 31A thereof.

5. The second contention of learned counsel for the respondent may be disposed of first. Under Art. 31A of the Constitution, no-law providing for the acquisition by the State of any estate or of any rights therein or the extinguishment or modification of any such rights shall be deemed to be void on the ground that it is inconsistent with, or takes away or abridges any of the rights conferred by Art. 14, Art. 19 or Art. 31. The question is whether s. 4(h) of the Act is such a law as to be hit by Art. 31A of the Constitution. Section 4(h) of the Act confers power on a Collector, inter alia, to make inquiries in respect of any transfer of any land comprised in an estate and to cancel the same if he is satisfied that such transfer was made any time after January 1, 1946, with the object of defeating any provisions of the Act or causing loss to the State or obtaining compensation thereunder. It is said that the section ex proprio vigore does not provide for acquisition by the State of any estate or of any rights therein or for the extinguishment or modification of any such rights and therefore, is not protected by Art. 31A of the Constitution. This argument in effect disannexes s. 4(h) of the Act from the setting in which it appears and seeks to test its validity independently of its interaction on the other provisions of the Act. Section 4(h) of the Act is an integral part of the Act, and taken out of the Act it can only operate in vacuum. Indeed, the object of the section is to offset the anticipatory attempts made by landlords to defeat the provisions of the Act. Suppose the Collector cancels a transfer of land by the owner of an estate under the said section; the said land automatically vests in the State, with the result that the rights of the transferor and the transferee therein are extinguished. The said result accrues on the basis that the said land continued to be a part of the estate at the time the Act came into force. That apart, the section is a part of the Act designed to extinguish or modify the rights in an estate, and the power conferred on a Collector to cancel a transfer of any land in an estate is only to prevent fraud and to achieve effectively the object of the Act. This question was directly raised and answered by this Court in Thakur Raghubir Singh v. State of Ajmer (1). There, the constitutional validity of the Ajmer Abolition of Intermediaries and Land Reforms Act, 1955 (Ajmer III of 1955) and s. 8 thereof was attacked. Section 8 of the said Act conferred a power on the Collector to cancel a lease or contract, if he was satisfied that it was not made or entered into in the normal course of management, but in anticipation of legislation for
the abolition of intermediaries. Repelling the said contention, Wanchoo, J., speaking for the Court, observed thus:

"The provision is not an independent provision; it is merely ancillary in character enacted for carrying out the objects of the Act more effectively...... Such cancellation would sub-serve the purposes of the Act, and the provision for it therefore be an integral part of the Act, though ancillary to its main object, and would thus be protected under Art. 31A(1)(a) of the Constitution."

The same reasoning applies to s. 4(h) of the Act, and for the same reasons we hold that s. 4(h) of the Act is likewise protected by Art. 31A of the Constitution.

6. The first question turns upon the interpretation of the relevant provisions of the Amending Act. To appreciate the argument it would be convenient to read the material provisions of the said Act.

"Section 3. Amendment of section 4 of Bihar Act XXX of 1950.- In section 4 of the said Act,—

(iv) in clause (h)—

(a) the words, figures and commas "made at any time after the first day of January, 1946," shall be omitted and shall be deemed always to have been omitted;

(b) after the words "if he is satisfied that such transfer was made," the words, figures and commas "at any time after the first day of January, 1946," shall be inserted and shall be deemed always to have been inserted; and

(c) the words "and with the previous sanction of the State Government" shall be omitted;

(v) to clause (h) as amended above, the following provisos shall be added, namely:-

"Provided that an appeal against an order of the Collector under this clause, if preferred within sixty days of such order, shall lie to the proscribed authority not below the rank of the Collector of a district who shall dispose of the same according to the prescribed procedure:

Provided further that no order annulling a transfer shall take effect nor shall possession be taken in pursuance of it unless such an order has been confirmed by the State Government."

After the said amendment the relevant part of the section reads:

"The Collector shall have power to make inquiries in respect of any transfer including the settlement..... if he is satisfied that such transfer was made at any time after the first day of January, 1946, with the object of defeating any provisions of this Act or causing loss to the State or obtaining higher compensation thereunder, the Collector may, after giving reasonable notice to the parties concerned to appear and be heard and with the previous sanction of the State Government annul such transfer, dispossess the person claiming under it and take possession of such property on such terms as may appear to the Collector to be fair and equitable."

The main differences material to the present enquiry between the section as it was before the amendment and thereafter are that under the unmended section it was a moot point whether the Collector had the power to set aside a transfer, whether it was effected before or after January 1, 1946; whereas under the amended section such a power is clearly and expressly conferred on him; while under the original section, the Collector had to take the
previous sanction of the State Government before he made the order annulling a transfer and dispossessing the person claiming under it, under the amended section the order made by the Collector shall neither take effect nor can he take possession before his order is confirmed. The short question is whether the second proviso, added by the Amending Act, is retrospective in operation, that is, whether the order of the Collector made before the Amending Act, though made with the previous sanction of the State Government, would still require for its taking effect a subsequent confirmation by the State Government.

7. Learned Counsel for the State contends that the amendments made by s. 3(iv)(a) and (b) are retrospective, but the amendment made by s. 3(v) of the Amending Act is prospective. This contention appears to be sound, both in letter as well as in spirit. The different phraseology used in cls. (a) and (b) of subs. (iv) of s. 3 of the Amending Act in the matter of omissions supports it. While in cl. (a) the omission shall be deemed always to have been omitted, in cl. (c) the words mentioned therein shall only be omitted indicating by contrast that the omission in the former is expressly made retrospective while in the latter it is necessarily prospective. If that be the true construction, the condition of previous sanctions would continue to operate in respect of the Collector’s order made before the amendment came into force. If the proviso be given a retrospective operation, it directly comes into conflict with the result brought about by cl. (c) of sub-s. (iv) of s. 3 of the Amending Act. An order with the previous sanction of the Government may have been passed and possession also taken by the Collector, yet a further confirmation by the Government should be sought for to revalidate it. This construction would not only attribute to the Legislature redundancy but would also enable a party to seek for restoration of the land taken possession of by the Collector on the basis of a technicality. Even in a case where possession has not been taken by the Collector, the said anomaly would persist, for two sanctions would be required. The alternative construction makes the working of the section smooth and avoids the introduction of the said incongruity and, therefore, we prefer to accept it, particularly when it is consistent with the plain meaning of the words used in the section. The result is that in respect of an order already made by the Collector before the Amending Act, the previous sanction obtained would suffice, and in respect of an order made after the Amending Act, a subsequent confirmation by the State Government is required.

8. Even so, it is argued by learned counsel for the respondent that the High Court, presumably in view of its acceptance of the respondent’s preliminary point, did not consider the question whether the inquiry had been made by the Collector in strict compliance with the provisions of the section, and whether the previous sanction of the State Government was obtained before he made the said order. In the affidavit filed in support of the petition in the High Court there is no specific allegation that no such inquiry has been made or that no such sanction has been obtained. Nor did the counsel for the appellant raise the said question in the arguments before the High Court. In the circumstances we do not think that this Court is justified in allowing the respondent to raise the said question for the first time before us. We, therefore, reject this plea.

9. In the result we set aside the order of the High Court and allow the appeal. But, in the circumstances of this case, we direct the parties to bear their own costs here and in the High Court.

Appeal allowed.
STATE OF BIHAR VS. SHARDA PRASAD RAI
2002 (9) SCC 677

State of Bihar and Others ... Appellants;
Versus
Sharda Prasad Rai and Others ... Respondents.

(BEFORE SYED SHAH MOHAMMED QUADRI AND S.N. PHUKAN, JJ.)

CIVIL APPEAL NO. 1215 OF 1992, DECIDED ON NOVEMBER 1, 2000

Tenancy and Land Laws—Bihar Land Reforms Act, 1950 (30 of 1950) — S. 4(g) and (h) — State's right to direct possession of any property vesting in it under provisions of Act [S. 4(g)] and State's right to annul transfer of property carried out with object of defeating the provisions of Act [S. 4(h)] — Held, the import of clause (g) is completely different from that of clause (h) — Each deals with a different situation and operates in a different field — Action initiated under clause (h) does not operate to prevent State from subsequently taking action under clause (g) — High Court erred in allowing the respondent's writ petition and in quashing the appellant State's notice under S. 4 (g) — Matter remanded to original Revenue Authority

Appeal allowed

ORDER

1. This appeal by the State of Bihar & Others is from the judgment and order of the High Court of Patna in CWJC No. 2814 of 1982 dated May 20, 1983.

2. The question raised in this appeal is a short question, namely, whether proceedings initiated by the appellants under Section 4(h) of the Bihar Land Reforms Act, 1950, but subsequently dropped, would bar initiation of proceedings under Section 4(g) of the said Act.

3. The respondents are the legal heirs of the original lessee of an extent of 387 bighas 16 kathas and 8 dhurs of land situated in Mauza Hajipur Bishrampur, Parganas Teliagarhi, Sub Division Rajmahal, Thana Sahibganj, District Dumka, Bihar State, under Kabuliyat executed in favour of one F.H. Kurtis on January 24, 1919. After coming into force of the Bihar Land Reforms Act, 1950 (for short the Act), the Collector initiated proceeding under Section 4(h) of the Act in Miscellaneous Case No. 14 of 1954-55 which was dropped on December 13, 1955. Again proceeding under the same provision was initiated in Case No. 1 of 1963-64 but that was also dropped on April 17, 1965. The present litigation commenced with issuance of notice under Section 4(g) of the Act. After affording opportunity of being heard to the respondents, the Deputy Collector, in charge Land Reforms and Development, Sahib Ganj, eventually dropped the proceedings by order dated August 17, 1970. The appellants challenged the validity of
that order before the Deputy Commissioner, Santhal Parganas, Dumka, who held that the earlier initiation of proceedings under Section 4(h) of the Act did not debar the State from taking action under Section 4(g) of the Act and thus allowed the appeal of the appellants on 13.7.1982. The respondents assailed the validity of that order of the Deputy Commissioner before the High Court in Writ Petition No. 2814 of 1982 which was allowed and the order impugned in the writ petition was quashed. It is against the said order of the High Court that the State is in appeal before us, by special leave.

4. To appreciate the controversy, it will be useful to quote here Clauses (g) and (h) of Section 4 of the Act.

"4. Consequences of the vesting of an estate or tenure in the State—Notwithstanding anything contained in any other law for the time being in force or any contract and notwithstanding any noncompliance or irregular compliance of the provisions of Section 3, 3-A and 3-B except the provisions of Sub-section (1) of Section 3 and Sub-section (1) of Section 3-A on the publication of the notification under Sub-section (1) of Section 3 or Sub-section (1) or Sub-section (2) of Section 3-A, the following consequences shall ensure and shall be deemed always to have ensued, namely:

(a) to (f)                          *                          *                          *

(g) Where by reason of the vesting of any estate or tenure or any part thereof in the State under the provision of this Act, the Collector is of the opinion that the State is entitled to the direct possession of any property he shall, by an order in writing served in the prescribed manner on the person in possession of such property, require him to deliver possession thereof to the State or show cause, if any, against the order within a time to be specified therein and if such person fails to deliver possession or show cause or if the Collector rejects any cause shown by such person after giving him a reasonable opportunity of being heard, the Collector shall for reasons to be recorded, take or cause to be taken such steps or use or cause to be used such force as, in his opinion may be necessary for securing compliance with the order or preventing a breach of the peace:

Provided that if the order under Clause (g) is passed by an officer below the rank of the Collector of a district, an appeal shall if preferred within sixty days of the order, be to the Collector of the district and the Collector shall dispose of the appeal in accordance with the prescribed procedure.

(h) The Collector shall have power to make inquiries in respect of any transfer including the settlement or lease of any land comprised in such estate or tenure or the transfer of any kind of interest in any building used primarily as office or cutchery for the collection of rent of such estate or tenure or part thereof, and if he is satisfied that such transfer was made at any time after the first day of January, 1946, with the object of defeating any provisions of this Act or causing loss to the State or obtaining higher compensation thereunder, the Collector may, after giving reasonable notice to the parties concerned to appear and be heard annul such transfer, dispossess the person claiming it and take possession of such property on such terms as may appear to the Collector to be fair and equitable.

Provided that an appeal against an order of the Collector under this Clause if preferred within sixty days of such order, shall lie to the prescribed authority not below the rank of the Collector of a district who shall dispose of the same according to the prescribed procedure.
Provided further that no order annulling a transfer shall take effect nor shall possession be taken in pursuance of it unless such an order has been confirmed by the State Government.

5. A perusal of Clause (h) would show that it empowers the Collector to make inquiry in respect of any transfer including the settlement or lease of any land comprised in such estate or tenure or the transfer of any kind of interest in any building used primarily as office or cutchery for the collection of rent of such estate or tenure or part thereof. If on making enquiries the Collector is satisfied that such transfer was made at any time after the 1st day of January, 1946 with the object of defeating any provisions of the Act or causing loss to the State or obtaining higher compensation thereunder, he is required to give reasonable notice and opportunity of being heard to the parties concerned and is enabled to annul such transfer, dispossess the person claiming under such transfer and take possession of such property on such terms as may appear to him equitable.

6. The import of Clause (g) is entirely different. It says that where by reason of the vesting of the estate or tenure or any part thereof in the State under the provision of the Act, the Collector is of the opinion that the State is entitled to the direct possession of any property, he is enjoined to serve a written order in the prescribed manner on the person in possession of such property requiring him to deliver possession thereof to the State or to show cause, if any, against the order within the period specified therein. When such a person fails to deliver possession or show cause or when a cause has been shown, the Collector after giving such a person, a reasonable opportunity of being heard rejects the cause shown, for reasons to be recorded in writing, he can take or authorise taking of such steps including use of force as may be necessary for securing compliance with the order or preventing breach of peace. The proviso to Clause (g) is not relevant for our purpose.

7. Thus it is clear that these two Clauses contemplate two different situations and they operate in different fields and action under Clause (h) does not debar the State from taking action under the other Clause, namely, Clause (g) in this view of the matter and in view of the Act that the parties have not placed before the authorities their cases and the relevant material in support thereof, we consider it just and appropriate to remand the matter to the original authority, the Deputy Collector, in charge Land Reforms, Saheb Ganj, Santhal Parganas, (appellant No. 3). In the result, we set aside the order of the Deputy Collector, and the impugned order of the High Court and remand the case to the said original authority. The appeal is accordingly allowed but in the circumstances of the case we make no order as to costs.
MOST. BIBI SAYEEDA VS. STATE OF BIHAR
1985 (0) AIR (Pat.) 77

Mosemmat Bibi Sayeeda  
Versus  
State of Bihar  

S.K. JHA, S.K. CHOUDHARI AND UDAY SINHA, JJ.  
CIVIL WRIT JURISDICTION CASE NO. 45 OF 1968; 330 OF 1968; 387 OF 1968; 613 OF 1968;  
DECIDED ON NOVEMBER 16, 1984

Bihar Land Reforms Act, 1950-Sections 4(1)(a)-Vesting of Bazar held inside building let out to tenants for holding markets -Building not appertaining to a dwelling house or out house of an intermediary concerned building are also markets-Bazar and markets are synonymous terms-Realisation of toll is not an essential element for constitution of Bazar-Such Bazar and markers vest in the estate on the issue of notification under section 3-Patna Market, Gudri Bazar and Tilake Babu Ka Hatia are Bazar and vest in the estate. (C.W.J.C. 16 of 1973 dated 5-5-1975 over ruled (Relied on A.I.R. 1970 S.C. 1539. (Paras 6 to 12 and 15).  

Bihar Land Reforms Act, Section 4 & 5-Homesteads of an intermediary also vest but he is entitled to retain possession as lessee of the estate subject to payment of rent(Para 12)  

Bihar Land Reforms Act, Section 2(JJ)-Homesteads meaning of-In order to constitute a building a homestead it must be being used for a dwelling purpose at the time of vesting -A building used at anytime is not included. (Paras 14, 15 & 19.)

Cases Referred:  
Kanpur Sugar Works Ltd. V/s. State Of Bihar, AIR 1970 SC 1539

JUDGMENT

Uday Sinha, J.  

1. The common question of law falling for consideration in these four applications under Articles 226 and 227 of the Constitution is whether the markets of the petitioners located at Patna, Arrah, Bhagalpur and Piro vested in the State of Bihar consequent upon the vesting of their estates in terms of notification issued under Section 3 of the Bihar Land Reforms Act C. W.J.C. No. 613 of 1968 relates to Patna Market at Patna, C.W.J.C. No. 45 of 1968 relates to Gudari Bazar in the town of Arrah, C.W.J.C. No. 387 of 1968 relates to Hassan Bazar to Piro and C.W.J.C. No. 330 of 1968 relates to Bazar known as Tilak Babu Ka Hat' in the town of Bhagalpur.

2. The markets mentioned above are the main marketing centres in the towns where they are
located. By separate notices the proprietors were called upon to handover possession of the markets. The four writ applications will be disposed of by this common judgment. The vires of any provision of the Bihar Land Reforms Act (hereinafter referred to as 'the Act') has not been questioned. The contention urged on behalf of the petitioners shortly put is that the properties of which possession is sought to be taken over by the State are buildings and not Bazar and buildings did not vest. It is not disputed that Hat and Bazar vested upon the issuance of notification under Section 3 of the Act. But since there is no Bazar, but only buildings let out to several tenants, they did not vest. In C.W.J.C. No. 613 of 1968 which relates to Patna Market, the further plea is that it was a homestead at one point of time prior to the abolition of zamindari and, therefore, it was homestead on the day of issuance of notification. The submission is that being homestead, the properties must be deemed to have been settled back with the ex-proprietor in terms of Section 5 of the Act.

3. Before embarking upon consideration of the submissions urged at the Bar, it would be appropriate to set out the relevant provisions of the Statute. The long title of the Act reads as follows:

"An Act to provide for the transference to the State of the interests of proprietors and tenureholders in land and of the mortgagees and lessees of such interests including interests in trees, forests, fisheries, jalkars, ferries, hats, bazars, mines and minerals and to provide for the constitution of a Land Commission for the State of Bihar with powers to advise the State Government on the agrarian policy to be pursued by the State Government consequent upon such transference and for other matters connected therewith. Whereas it is expedient to provide for the transference to the State of the interests of proprietors and tenureholders in land and of the mortgagees and lessees of such interests including interests in trees, forests, fisheries, jalkars, ferries, hats, bazars, mines and minerals and to provide for the constitution of a Land Commission for the State of Bihar with powers to advise the State Government on the agrarian policy to be pursued by the State Government consequent upon such transference and for other matters connected therewith."

Section 3 of the Act lays down that the State Government may issue notification vesting estates or tenures in the State. Section 3(1) reads as follows:

"(1) The State Government may, from time to time, by notification, declare that the estates or tenures of a proprietor or tenure-holder, specified in the notification, have passed to and become vested in the State."

Section 4 lays down the consequences of the vesting of an estate or tenure in the State. The consequences are enumerated in Sub-sections (2) and (3). Sub-sections (2) and (3) of Section 4 read as follows:

"(a)(2) Such estate or tenure including the interests of the proprietor or tenure-holder in any building or part of a building comprised in such estate or tenure and used primarily as office or cutchery for the collection of rent of such estate or tenure, and his interests in trees, forests, fisheries, jalkars, hats, bazars, and mela and ferries and all other sairati interests as also his interest in all sub-soil including any rights in mines and minerals, whether discovered or undiscovered, or whether being worked or not, inclusive of such rights of a lessee of mines and minerals, comprised in such estate or tenure other than the interests of raiyats or under-raiyats shall, with effect from the date of vesting, vest absolutely in the
State free from all incumbrances and such proprietor or tenure-holder shall cease to have any interests in such estate or tenure, other than the interests expressly saved by or under the provisions of this Act.”

The other parts of Section 4 have no bearing on the question which falls for consideration before us. Section 5 of the Act lays down that all homesteads comprised in an estate or tenure of an intermediary and in his possession on the date of vesting shall be deemed to be settled by the State with the ex-intermediary subject of course to the provisions of Sections 7A and 7B. Section 5(1) of the Act reads as follows:

"(1) With effect from the date of vesting, all homesteads comprised in an estate or tenure, and being in the possession of an intermediary on the date of such vesting shall, subject to the provisions of Sections 7A and 7B be deemed to be settled by the State with such intermediary and he shall be entitled to retain possession of the land comprised in such homesteads and to hold it as a tenant under the State free of rent; Provided that such homesteads as are used by the intermediary for purposes of letting out on rent shall be subject to the payment of such fair and equitable ground-rent as may be determined by the Collector in the prescribed manner."

Section 6 of the Act gives some succour to the ex-proprietors by providing that lands used for agricultural or horticultural purposes, which were in khas possession of an intermediary on date of such vesting, the intermediary shall, subject to the provisions of Sections 7A and 7B, be deemed to be settled by the State with such intermediary and he shall be entitled to retain possession thereof and hold them as a raiyat subject to the payment of fair and equitable rent in terms of Section 7 buildings which were in possession of intermediaries and used as golas, factory or mills shall be retained by them on payment of rent. Section 7A of the Act which reads as follows cuts down some of the privileges extended to ex-proprietors by Section 5.

"7A. Lands on which hat or bazar was held not deemed to be settled with the intermediary Nothing in Section 5, Section 6 or Section 7 shall be deemed to confer any right on the intermediary in respect of any land on which at any time within one year prior to the date of vesting to the estate or tenure the intermediary was holding a hat a bazar.”

4. In order to appreciate the contention urged on behalf of the petitioners, it is also necessary to set out the definition of two other expressions, viz, 'estate' and 'homestead' defined in Section 2(i) and (j) respectively. They read as follows:

"(i) 'estate' means any land included under one entry in any of the general registers of revenuepaying lands and revenue-free lands, prepared and maintained under the law for the time being in force by the Collector of a district, and includes revenue-free land not entered in any register and a share in or of an estate.”

(j) 'homestead' means a dwelling house used by the proprietor or tenure-holder for the purpose of his own residence or for the purpose of letting out on rent together with any courtyard, compound, attached garden, orchard and out-buildings and includes any out-buildings used for purposes connected with agriculture or horticulture and any tank, library and place of worship appertaining to such dwelling house.

Explanation.-- In this clause, the expression 'dwelling house' or 'out-building' shall include
any hind on which there stood such dwelling house or out-building at any time before the
date of vesting."

We have now to consider the rival claims of the parties in the background of the provisions,
quoted above.

5. To repeat, the stand of the State is that the properties are Bazars and vested as such
consequent upon issuance of notification under Section 3 of the Act. The consequences of
vesting, I have already quoted earlier. The provisions of Section 4(2) lay down that the estate
including the interest of the proprietor in any building or part of a building, comprised in
such estate or tenure as office or cutchery for the collection of rent of such estate or tenure
and his interest in trees, forests fisheries, jalkars, hats, bazars, melas and ferries and all
other saraiti interests shall vest absolutely in the State free from all incumbrances. It is not
in controversy that Bazars vest in State of Bihar in terms of Section 4 of the Act. The only
question is whether the properties in question are Bazars. According to the petitioners, they
are not Bazars but are only buildings let out on rent to individuals.

6. It is not the stand of the petitioners that the Bihar Legislature was not competent to legislate
in regard to Bazars. Item 28 in List II of the 7th Schedule reads as 'Markets and Fairs'. It is
now well established that the items in the 7th Schedule must be liberally construed to cover
every conceivable legislation having a bearing on the subject. I have no reason to think that
the expression 'market' does not include 'Bazar'. The expression 'Bazar' used in Section 4
of the Bihar Land Reforms Act must, therefore, be equated with market. Section 4 of the Act
takes in its sweep hats, bazars and melas. There can be no doubt that hats and melas are
prima facie somewhat distinct from bazars. A hat generally is congregation of buyers and
sellers on specific days of the week, A 'mela' on the other hand, is held on special occasions
in the year. They are usually associated with some religious festivals. For example, melas are
held on Mondays in the month of Srawan (July) in the State of Bihar or on the occasion of Urs
and so on. A 'bazar' on the other hand, is a daily feature and is held day after day.

7. I have equated bazar with market The expression 'Bazar' is synonymous with 'Market'
and is so well known that it has been adopted in English Dictionary as well. The Chambers
Dictionary 1941 (Reprint) gives the meaning of 'Bazar' as "an Eastern market-place etc.-".
Webster's New World dictionary states it as "In oriental countries a market or street, of
shops etc." The glossary prepared and published by Ministry of Law, Government of India
on the recommendation of Official Law Languages Commission gives the meaning of 'Bazar'
as "a market". In Aiyer's Law Lexicon of British India a Bazar is "market, a daily market, a
market place as opposed to a Bazar where a hat is held only on certain days". In Shorter
Oxford English Dictionary, a Bazzar is an oriental market place or market usually consisting
of ranges of shops or stalls; a ferry, fair for the sale of useful and ornamented articles and a
'Market' is "the meeting together of people for the purchase and sale of provisions or live-
stock, publicly exposed, at fixed time and place, an open space or covered building in which
cattle, provisions etc. are exposed for sale; a market place, market house; a place or seat of
trade". In Webster's Seventh New Collegiate Dictionary 'Market' is stated as follows : "(i)
a meeting together of people for the purpose of trading by private purchase and sale and
usually not by auction; a public place where a market is held; a place where provisions are
sold at wholesale or retail". There can, therefore, be no manner of doubt that a Bazzar is
synonymous with market.
8. The petitioners in all the applications are exclusive owners of places where merchants congregate or have congegated for buying and selling. In the Patna Market subject matter of C. W. J. C. No. 613 of 1968, there are rows and rows of shops and nothing but shops. There can, therefore, be no difficulty in holding that 'Patna Market' is Bazar. In fact it is the most important marketing centre in this town of Patna. Similarly complex of shops at Bhagalpur which is subject matter of C. W. J. C. No. 330 of 1968 is famous as 'Tilak Babu Hatia'. A Hatia is nothing but a Bazzar. It is another matter that there is a restaurant too in that row of shops, but that does not and cannot conceal the essential character of the complex. The complex of shops which is subject matter of C. W. J. C. No. 387 of 1968 is known as "Hassan Bazzar". It was established by Late Hassan Imam, Bar-at-Law in village Piro. The names themselves are suggestive of their essential character. The entire complex consists of 180 shops, some of which are brick-built and some are Kacha. It is not the petitioners' case that the buildings are Golas. Undoubtedly, there is averment in paragraph 6 in C. W. J. C. No. 387 of 1968 that there is no incidence of any Hat or Bazzar on the lands or building. But there is no denial by the petitioners that all tenements are shops. Similarly the complex at Arrah (subject matter of C. W. J. C. No. 45 of 1968) is famous as "Gudari Katra Bazzar". The names in each case are rather suggestive of their essential character. All of them are famous as Bazzar or Market. In all of them the whole complex is row of shops. There may be a tenement or two which may be an office but that does not alter the essential character of the complex. Buying and selling operation is the main, rather only operation. It is thus obvious that the complexes which the petitioners are claiming as buildings or Homesteads are nothing but Bazzars. It is not the case of any of the petitioners that buying and selling activity does not take place at the places described as Bazzar. I have, therefore, no hesitation in holding that the petitioners were owners of a market which must be held to be equivalent to a Bazzar.

9. Mr. K.D. Chatterji contended that a Bazzar is not just a place where buying and selling activity is carried on, but it is a place where besides buying and selling activity, toll is realised by the persons holding the Bazzar. According to him, exaction or levy of some kind or the other by the persons holding the Bazzar is an essential feature of a Bazzar. It was submitted that it is nobody's case that toll is levied from the dealers. Therefore, it is not a Bazzar or Market. I regret, there is nothing to support the submission of Mr. Chatterji that realisation of toll is an essential feature to constitute Bazzar. Toll may or may not be realised, but if buyers and sellers congregate, the place must be held to be a market or Bazzar. The realisation of toll is nothing but the consideration for the right to sell at a place where buying and selling activity is carried on. That right may be granted on payment of toll, or in the form of rent. The rent may be per day, per week, or per month. I am, therefore, unable to hold that just because toll is not realised, the complexes are not Bazzars. In order to constitute Bazzar all that is necessary is a piece where buyers and sellers congregate to sell and buy. It will be difficult for me to accept that the complexes are not Bazzars within the meaning of Section 4(1)(a) of the Bihar Land Reforms Act. They being Bazzars of a proprietor or exintermediary, they must be held to have vested consequent upon issuance of the notifications under Section 3 of the Act. Counsel for the petitioners were at pains to show that the complexes in question were not Bazzars, but were merely buildings consisting sometimes of pucca buildings and, therefore, they did not vest. I regret, I have considerable difficulty in accepting this submission. I have mentioned earlier, the various meanings given to a 'Bazzar' in various dictionaries. According to those well known meanings the nature of the structure is entirely irrelevant.
In fact, the Shorter Oxford English Dictionary includes 'covered buildings' also within the meaning of the expression 'Market'. A big chain store may also be described as 'Market'. The fact that the structures in the complexes in question are pucca structures cannot lead me to hold that they are not Bazzars. They are certainly Bazzars in my view.

10. Counsel for the petitioners were at pains to establish that the complexes are buildings and buildings did not vest consequent upon the issuance of the notification under Section 3 of the Act. I regret, upon the concluded finding that the complexes in question are Market or Bazzar, the question of buildings vesting or not vesting does not arise. Further, if I may say so with respect, it is difficult for me to accept that complexes are mere buildings. Someone might also describe them not even as buildings but just bricks and still some others as mere earth. That will not be right approach. It cannot be denied that these are buildings. But if there are rows and rows of shops and nothing but shops and the only operation carried on there is of buying and selling, they cease to be mere buildings. The buildings become bazar, just as a man has hands, feet, ears etc. but a man is not merely those limbs, but something different from those limbs. A man is a man, not limbs alone. Similarly the buildings in question took the character of Bazzar. The entire submission advanced before us with great labour that buildings do not vest can be of no avail. They are not mere buildings. They are Bazzar (Market).

11. On the basis of my concluded finding that the subject matters of the Writ applications are Bazzars, it would not have been necessary to consider other aspects of the matter strenuously advanced before us, but out of deference to learned counsel, I must cover that pitch as well. Mr. Balbhadra Prasad Singh, learned counsel for the petitioners in C. W. J. C. No, 330 of 1968 contended that all that vests is the estate of the proprietor and nothing more. It was submitted that in terms of Section 4(1) (a) the estate or tenure of the proprietor vests free from all incumbrances. 'Estate' is defined as any land included under one entry in any of the general registers of revenuepaying lands and revenus-free lands. Buildings of the proprietor are not lands. Therefore, they did not vest. Section 4(1) (a) lays down that besides the estate or tenure of the proprietor buildings used primarily as office or cutchery for the collection of rent of such estate shall vest absolutely in the State. On the basis of this it was submitted that it is only building of one kind which vests, i.e. buildings used as cutchery for collection of rent. Buildings which were homesteads of the intermediary would be entitled to retention of possession. Section 7 also deals with right of exintermediary in regard to buildings of certain categories, but all the benefits conferred on the exintermediary will be subject to the provisions of Section 7A of the Act. That section, therefore, gives the underlying pattern that buildings apart from cutchery also vest in the State but in terms of the section the proprietor will be entitled to retain them as tenant. In terms of Section 7A nothing in Sections 5, 6, or 7 would be deemed to convey any right on the intermediary in respect of any land on which at any time within one year prior to the date of vesting of the estate the intermediary was holding a hat or bazzar. As I have already held earlier, the complexes are Bazzars. Sections 5 and 7 are, therefore, set at naught by Section 7A. In my view therefore, buildings of the category mentioned in Sections 5 and 7 would also vest, but the proprietor would be entitled to retain possession thereof subject to payment of mere rent, in some cases, and without payment in some cases. In my view, therefore, buildings of the proprietor also vested in the State of Bihar.

12. The homesteads do vest, but the proprietor is permitted to retain them in his possession
as lessee of the State. Cutchery, mills and golas also vest, but the proprietor is permitted by the Statute to retain their possession on payment of rent. It is a process of lease-back to the proprietor. For the present, it is not necessary to consider whether hospitals, schools, cinemas and private temples vested in the State of Bihar or not. The buildings, with which we are concerned do not fall in any of those categories.

13. Learned counsel for the petitioners also contended that the buildings now constituting Bazar were homesteads at the time of vesting. The proprietors were, therefore, entitled to retain them in terms of Section 5 of the Act. This point has relevance only to Patna Market case. The proprietor has claimed that the proprietor had his homestead on the lands on which Patna Market now exists. I have quoted earlier the definition of the expression 'homestead' in Section 2(j) of the Act. The expression 'homestead' means a dwelling house either used by the proprietor or let out on rent. The dominant idea is that it must be for the purpose of dwelling or be capable of being used as a dwelling house and not for any other purpose in order to constitute a building as homestead. A building which was used as dwelling house would be homestead and would include compound, orchard, outbuildings etc. The Supreme Court case Kanpur Sugar Works Ltd. v. State of Bihar, AIR 1970 SC 1539 laid down clearly that not only the dwelling house is homestead, but the garage, the kitchen, clubs, dispensary, office building, godown, water tank, cattle-shed, way bridge would be also a homestead. The decision of S. Sarwar AH, J. in C. W. J. C. No. 16 of 1973, decided on the 5th May, 1975 is also unacceptable. I shall not for a moment contend that in order to constitute homestead, the ex-intermediary must have been residing personally in all those buildings which may be claimed as homestead. The requirement of law would be fulfilled if the building is of such a character that it may be used for residential purpose, no matter whether the proprietor resided in it all the year round or at intervals. A proprietor would thus be, capable of owning any number of buildings. They all may be termed as 'homestead'. But the essential characteristic of residential use must be existent in order to claim the benefit of Section 6 of the Act. The central idea of the Statute is brought out explicitly by enactment of Section 7A (quoted earlier) that if at any time within one year prior to the vesting the building or the homestead was being used by the intermediary as hat or Bazzar, the intermediary would not be entitled to claim the benefit of Section 5 or Section 7 of the Act. In the instant applications, there is no dispute that from years prior to the date of vesting the Bazzars had come into existence and were in flourishing state. The buildings in question so far as C. W, J. C. Nos, 45,387 and 330 of 1968 are concerned, they had not been used as dwelling purpose at any point of time. There can be no question of their being claimed as homesteads.

14. So far as Patna Market is concerned (subject matter of C. W. J. C. No. 613 of 1968), the Bazzar came into being much before 1950. It was established certainly years prior to issue of the notification. It is thus obvious that within one year of the vesting none of them were homestead. They were nothing but Bazzars.

15. Learned counsel for the petitioners submitted that in terms of the Explanation to Section 2(j) if a building or house has been used as a dwelling house at any time before the date of vesting, it would constitute homestead which the ex-proprietor would be entitled to retain on payment of rent. I regret, that is not the expanse of the Explanation. It is possible to consider a situation where a parcel of land was homestead, but at the time of vesting dwelling house on those lands had crumbled and were in disuse; even those would constitute homestead. The Explanation does not mean that even if a hundred years before the vesting of the
zamindari the land was homestead, and its character has changed, yet it would be taken as such in 1955 when the notifications were issued. The properties, therefore, which are subject matter of these writ applications were not homestead on the date of vesting. From homestead it had changed into a Bazzar. The petitioners were holding Bazzars on the lands in question in terms of Section 7 A, therefore, the proprietors were not entitled to retain possession. Section 5 gives clear indication that homesteads also vested but they would be deemed to be settled back with the proprietors on terms. It is not correct exposition of law that homestead did not vest.

16. Learned counsel for the petitioners submitted that it is not only residential house which is covered by the definition of homestead. It also includes the expression "for the purpose of letting out on rent". In my view, the dominant idea of residence cannot be lost sight of. If a building was used for the purpose of letting out on rent, it would constitute homestead only if the letting out was for the residential purpose and not otherwise. Nothing has been brought to our notice to indicate that the leases were for anything but for holding shops. I am not going into the question whether the leases were registered bilateral leases in terms of the Transfer of Property Act or not, but certainly there is nothing before us to show that they were for residential purposes.

17. Learned counsel for the petitioners submitted that if the tenant of a building used it as a homestead, the use made by the tenant as a shop subsequently will not change the nature of the building and the proprietor would not be deprived of right under Section 5 of the Act. In my view, in every letting out the dwelling purpose will have to exist, if the provisions of Section 2(j) have to be given a meaning. It must be as letting out for residential purpose.

C. W. J. C. No. 387 of 1968:

18. In this application a special argument advanced at the Bar on behalf of the petitioner was that the proprietor built- Golas. No such claim has been made in the writ application. I am, therefore, unable to hold that 'Hasan Bazzar' is a Gola which the proprietor may retain in terms of Section 7 of the Act. No such claim having been put forth in the writ application, I am unable to consider the submission seriously. I would, however, leave this matter open for the authorities to decide whether 'Hassan Bazzar' is a Gola or not, if such a claim is made before the Revenue authorities. It was further submitted that the proprietor had built Golas and shops on some lands obtained from Raiyats by exchange. The shops being on raiyati lands, they would not vest. I regret, there is no substance in this submission as well. When the proprietor exchanged these lands with the lands of a raiyat, a merger of interest took place and the possession of the ex-proprietor became exproprietary and not as a raiyat. In my view, there is no merit in this contention as well.

19. My conclusions, therefore, are that the shops covered by the various writ applications constituted Bazzars. They were not mere buildings. They were not homestead. At no point of time were they homestead. So far Patna Market is concerned, it may have been homestead earlier; but it lost its character of a homestead when Bazzar was set up after demolishing the homes. I am, therefore, constrained to hold that the Bazzars covered by the four writ applications vested in the State of Bihar consequent upon the issuance of the notification under Section 3 of the Bihar Land Reforms Act.

20. Before parting with the judgment it must be made clear that the present application
C.W.J.C. 613 of 1968 in respect of Patna Market is directed against a notice calling upon the petitioner to surrender possession of Patna Market. The State claims vesting in it only of Patna Market. There is another bazar adjacent to it and which falls within the compound of the ex-proprietor Mr. Haider Imam. This is popularly known as Meena Bazar. The notification under Section 3 of the Bihar Land Reforms Act will result in vesting of Patna Market only not Meena Bazar. This Meena Bazar was established much after the vesting of the jamindaries in the State of Bihar. Learned Additional Advocate General frankly conceded that Meena Bazar cannot vest and has not vested in State of Bihar. We, therefore, categorically lay down that although Patna market has vested in State of Bihar, Meena Bazar has not vested.

21. For the reasons, stated above, I find no merit in any of the applications. They are dismissed accordingly. But in the special circumstances of the case, there shall be no order as to costs.

22. Mr. Lal Narayan Sinha conceded that it would not be fair for the State to claim mesne profits for the Bazars in question from 1955 till this day. He assured us that he will advise the State Government not to claim mesne profits. We hope the State Government will honour the advice.

S.K. Jha, J.

23. I agree.

S.K. Choudhuri, J.

24. I agree.
These two writ petitions have been filed against the common order dated 25.11.2002 passed by the Commissioner, South Chhotanagpur Division, Ranchi, in Ranchi SAR Revision No. 46/1997. This order of the Commissioner has been annexed as Annexure-7 in WPC No 6768/2002, Annexure-6 in WPC No.6729/2002, by which in exercise of the revisional power, the learned Commissioner has set aside the order dated 30.10.1996 passed by the Dy. Commissioner, Ranchi in SAR Appeal No. 18R, 15/94-95 and allowed the revision application, filed by Respondent No.5 Bandhan Oraon.

2. The relevant facts, in short, are that a proceeding under Section 71 A of the Chhotanagpur
The Tenancy Act, being SAR Case No. 26/89-90 was initiated on an application made by Bandhan Oraon, S/o Sanicharwa Oraon (Respondent No. 5 herein) against Smt Pratima Bakshi (Respondent No. 6) for restoration of the land appertaining to Plot No. 1589 within Khata No. 121 area 52 decimals. It was claimed on the ground that the applicant Bandhan Oraon was illegally dispossessed from the said land though he is the descendent of the recorded tenant, and a member of Scheduled Tribes. The writ petitioners Sarmistha Sinha and Meera Prasad were added as party respondents in the aforesaid proceeding before the S. A.R. Officer since they had purchased part of the disputed land by registered deeds of sale.

3. The Special Officer, SAR, by his order dated 30th November, 1994, contained in Annexure-3 to the writ petition, dismissed the application for restoration, mainly on the ground that on 22.11.1957 by a registered Kabuliat, the nature of the disputed land had been changed and it was made "Ghhaparband" with the permission of the landlord and therefore, Section 71 A of the Chhotanagpur Tenancy Act has no application in a case of ‘Ghhaparbandi’ lands.

4. Being aggrieved by the order passed by the Special Officer, S.A.R., Bandhan Oraon (Respondent No. 5) preferred an appeal before the Deputy Commissioner, Ranchi, which was registered as SAR Appeal No. 18R, 15/94-95. The Deputy Commissioner, by terms of the order contained in Annexure-4, dated 30.10.1996, dismissed the appeal after hearing the parties and confirmed the order passed by the Special Officer; SAR holding that Section 71 A of the Chhotanagpur Tenancy Act does not apply in the case of Ghhaparbandi land and that the application filed by the applicant for restoration of the land was barred by limitation since it was filed after a lapse of 40 years.

5. The respondent no. 5 thereafter, moved before the Commissioner, South Chhotanagpur Division, Ranchi, by filing a revision application against the orders passed by the Special Officer as well as against the order of the Deputy Commissioner which was registered as Ranchi SAR Revision No. 14/1997. The learned Commissioner by the impugned order dated 25.11.2002 contained in Annexure-7, has allowed the revision application and set aside the orders passed by the Special Officer as well as the order of the Deputy Commissioner, Ranchi, and directed for restoration of the land in question in favour of Respondent No. 5 Bandhan Oraon. It is this order, which has been challenged by both the writ petitioners in these two writ petitions.

6. The petitioners of both the writ petitions namely, Sarmistha Sinha and Meera Prasad, are the purchasers of part of the lands in question. The petitioner Sarmistha Sinha has claimed to have purchased 6.25 kathas of land from Smt. Pratima Bakshi by a registered sale deed on 24.8.1990, whereas the petitioner Meera Prasad of WPC No. 6729/2002 has claimed to have purchased 8 kathas of the lands out of the plot in question from Smt. Sibani Mukerjee by a registered sale deed dated 31.4.1984 and the said Smt. Sibani Mukherjee, i.e. her vendor had purchased the said land from Smt. Pratima Bakshi by a registered sale deed dated 8.4.1976.

7. The case of the petitioners is that the lands in question, i.e. plot no 1589, under Khata No. 121 measuring an area of 152 acres was originally recorded in the name of Sanicharwa Oraon and Somra Oraon, both sons of Soma Oraon. By a registered deed of settlement dated 22.11.1951, (Annexure-1) the nature of the land of plot no. 1589 was changed and it was converted into a 'Ghhaparbandi' by the recorded tenant with the permission of the ex-landlord Narmdeshwar Pd. Singh. After the lands in question become 'Ghhaparbandi', the recorded tenant Soma Oraon sold and transferred part of his ‘Ghhaparbandi’ land, measuring
21 kathas 12 chhatak out of the total area of 152 acres, to Smt. Pratima Bakshi (Respondent No.6) by a registered deed of sale dated 6.12.1951. Further case of the petitioners is that Smt. Pratima Bakshi constructed a house and other structure over the land purchased by her and she also got her name mutated in the office of the Ranchi Municipal Corporation and paid holding tax in her name. She also filed return under the provision of Urban Land Ceiling Act and claimed that the lands were chhaparbandi and she did not possess excess land. Accordingly the proceeding under the Urban Land Ceiling Act initiated against her, was dropped. Thereafter, Smt Pratima Bakshi transferred 6.25 kathas of the said ‘Ghhaparbandi’ land of plot no. 1589 to the writ petitioner Sarmistha Sinha by a registered sale deed dated 24.8.1990. After purchasing the land alongwith building, the petitioner Sarmistha Sinha, renovated the old house and constructed a 'Pucca' building and also got her name mutated in Ranchi Municipal Corporation within holding no. 2026(A)/11.


9. Mr. Amar Kumar Sinha as well as Mr. Ayush Aditya, learned counsel appearing on behalf of the petitioners, submitted that it is a settled law that in a case of land, the nature of which is ‘Ghhaparbandi’ and is within the area of Municipal Corporation, an application Under Section 71 A of the Chhotanagpur Tenancy Act is not maintainable since Section 71 A of the said Act has got no application so far as the ‘Ghhaparbandi’ land is concerned. They further submitted that the application for restoration filed by the respondent no. 5 was also hopelessly barred by limitation, since it was filed after about a gap of 38 years.

Mr. Ayush Aditya, learned counsel appearing for the petitioner in WPC No. 6729/2002 further submitted that earlier also the respondent no. 5 had filed an application for restoration under Section 71A of the Chhotanagpur Tenancy Act against the writ petitioner Meera Prasad being S.A.R. Case No. 26/89-90, which was already dismissed on 30.11.1994 and the appeal against the said dismissal order was also dismissed by the appellate court and, therefore, the second application for restoration filed by the Respondent No. 5 for the same cause of action against Meera Prasad is barred by res judicata.

In support of their contentions, they have placed reliance in the case of Situ Sahu and others vs. State of Jharkhand and Others reported in 2004(4) JJLR 109; Fulchand Munda vs. State of Bihar and Others reported in 2008(2) JCR 1 (SC) : 2008(1) JJLR (SC) 309 Jai Mangal Oraon vs. Mira Nayak (Smt.) and Others and analogous cases reported in (200015 SCC 141: Ashwini Kumar Roy VS. State of Bihar reported in 1987 BL T Page 332(Pat.)(RB); Anupama Roy vs. The State of Bihar and Others reported in 2003(31 JLJR 626: and Jaitu Oraon and Another vs. The State of Jharkhand and Others reported in 2004(21 JLJR 253: and Munni Devi & Ors. vs. Special Officer, Scheduled Areas Regulation reported in 1989 BLT (Reports) 407 [ : 1990(2) PJJR 332].

10. On the other hand, Ms. Shubha Jha, learned counsel appearing for the respondent no. 5, by referring to the statements made in the counter affidavit filed on behalf of Respondent No. 5 submitted that the land in question was never converted into Chhaparbandi and Sanicharwa
Oraon, i.e. the father of the Respondent No. 5 never surrendered his raiyat land in favour of the landlord. The transfer of the land in question in favour of the petitioners or their vendor have been made in contravention of the provisions of Chhotanagpur Tenancy Act and, therefore, the learned Commissioner has rightly set aside the order passed by the Special Officer as well as the order of the Deputy Commissioner passed in appeal.

11. From the impugned order passed by the learned Commissioner contained in Annexure-7 in WPC No. 6768/2002 equivalent to Annexure-6 in WPC No. 6729/2002, it appears that the learned Commissioner has based her orders on the ground that Sanicharwa Oraon could not have executed the Kabuliyat alone because the lands were jointly held by Sanicharwa Oraon and his brother.

12. There is no dispute of the fact that the total area of plot no. 1589 was 1.52 acres and even if it is accepted that the entire area was held and possessed by Sanicharwa Oraon and his brother even then Sanicharwa Oraon was definitely entitled to sell half of the area of the entire plot no 1589 whereas Sanicharwa Oraon has sold only 36 decimals of lands to Smt. Pratima Bakshi after conversion of the land by registered deed dated 22.11.1951. Therefore, the finding by the learned Commissioner that Sanicharwa Oraon alone had no authority to transfer the land cannot be sustained.

13. In the present case, I find that the land in question was allowed to be converted into 'Chhaparbandi' by registered deed in the year 1951 itself and after conversion of the land into 'Chhaparbandi', the same was sold by the father of the respondent no. 5 to Smt. Pratima Bakshi by a registered Sale Deed dated 22.11.1951 and she also paid holding tax and 'Chhaparbandi' rent etc. therefore it appears that the land in question was validly converted into 'Chhaparbandi' land by the recorded tenant with permission of the landlord by a registered deed and subsequently, the said land was sold by registered deed of sale in favour of Smt. Pratima Bakshi on 22.11.1951 by a registered document.

14. In the case of Ashwini Kumar Roy vs. State of Bihar reported in 1987 BLT Page 332 (Pat)(RB), the Division Bench of the Patna High Court, has clearly held that no proceeding under Section 71A of the Chhotanagpur Tenancy Act can be initiated for restoration of 'Chhaparbandi' land. If the land is 'Chhaparbandi' then it will be governed by Transfer of Property Act and not by the Chhotanagpur Tenancy Act. In the case of Anupama Roy vs. The State of Bihar and Others reported in 2003(31 JLJR 626. a Single Bench of this Court also quashed the order of restoration passed by the Courts below on the ground that the land in question was a 'Chhaparbandi' land.

15. In this view of the matter, as per the decision of the Division Bench in the case of Ashwini Kumar Roy vs. State of Bihar reported in 1987 BL T Page 332(Pat.)(RB); Anupama Roy vs. The State of Bihar and Others reported in 2003(31 JLJR 626. I hold that the application under Section 71 A of the Chhotanagpur Tenancy Act filed by the respondent no. 5 for restoration of the land in question, was not maintainable in view of the reasons stated hereinabove.

16. Now coming to the question of limitation. I find that in the case of Jai Mangal Oraon vs. Mira Nayak (Smt.) and Others and analogous cases reported in (200015 SCC 141, the Supreme Court has held as follows:-

"Merely because Section 71 A commences with the word "at any time it cannot be taken to
mean that those powers can be exercised without any point of time limit as in this case, after nearly about 40 years, rights of the parties acquired in the meantime under ordinary law and the law of limitation.”

In the case of Situ Sahu and Others vs. State of Jharkhand and Others reported in 2004 (4) JLJR 109, the Supreme Court held that the test is not whether the period of limitation prescribed in 1963 Act has expired but whether the power under Section 71 A of the Chhotanagpur Tenancy Act was sought to be exercised after unreasonable delay and the lapse of 40 years is certainly not a reasonable time for exercise of power.

In the case of Fulchand Munda vs. State of Bihar and Others reported in 2008(21 JCR 1 (SC) [: 2008(1) JLJR (SC) 309], it has been held that power under Section 71 A of the Chhotanagpur Tenancy Act can be exercised by the deputy Commissioner within a reasonable period of time. Gap of more than 50 years for challenging the transfer cannot be said to be the reasonable time.

17. In the present case, admittedly, the land in question was transferred in the year 1951 whereas, the application for restoration was filed in the year 1990 and the order for restoration has been passed by the Commissioner on 25.11.2002. Therefore, it is apparent that the application for restoration was filed after about 38 years whereas, the power under Section 71 A has been exercised after a gap of 51 years. Therefore, it can be said that the power for restoration was exercised after a long lapse of time which was not reasonable therefore it is held that the application for restoration filed by the respondent no. 5 was barred by limitation.

18. It appears that the assertion of the petitioner Meera Prasad that earlier also an application under Section 71 A of the Chhotanagpur Tenancy Act was filed against her by respondent no. 5 Bandhan Oraon being SAR Case No. 26/89-90 and the same was dismissed by the Special Officer as well as by the Appellate Authority. This point has already been settled by a number of judgments of this Court wherein it has been held that if on earlier occasions the application for restoration has been rejected and it has become final then subsequent application for restoration for the same would be hit by principles of res judicata. Reference in this regard may be made to the decisions in the case of “Gadia Oraon & Ors. vs. State of Jharkhand and Ors., reported in 2004(1) JCR 237 (Jhr.), and "Bibi Makho vs. State of Bihar, reported in 2004(11 JLJR 515: 2004(21 JCR 107(Jhr.1: and "Ram Chandra Sahu vs. State of Bihar, reported in 1990(1) PLJR 604; and "Smt. Satyawati Devi vs. State of Bihar, reported in 1996(2) PLJR 719”.

19. It would not be out of place to mention here that though Mrs. Shubha Jha, learned counsel has very vehemently argued on behalf of the respondent no. 5 and cited several decision such as reported in Pandey Oraonvs. Ram Chander Sahu and Others reported in AIR 1992 SC 195 [: 1992(1) PLJR (SC)89]; Jageshwar Sikhar and Others vs. Yubrajin Srimati Baideli Kuer & Anr. reported in 1970 PLJR 139; Dcotu Ohdar vs. State of Bihar reported in 1988 PLJR 211; State of Jharkhand and Others vs. Arjun Das reported in 2004(41 JCR 535)[Jhr.1 [: 2005(11 JLJR 1j: Sakhya Kumari vs. State of Bihar reported in 2006(31 JCR 204[Jhr.1[: 2006(2) JLJR 585]; Sitlal Baitha @ Ram & Ors. vs. Rudi Chamar & Ors. reported in 2003(4) JCR 233 (Jhr.) [: 2003(41 JLJR 286]; Jainath Sahi vs. State of Bihar and Others reported in 2007(11 JCR 137(Jhr.) and Ajay Metachem Ltd. vs. Commissioner, South Chhotanagpur Division and
Others reported in 2001 (11 JLJR 165. but not a single decision cited by her is relevant for the points in issue in this case. Therefore, I have not discussed those decisions.

20. In view of the discussions and findings above, these two writ petitions are allowed. The orders dated 25.11.2002 passed by the Commissioner, South Chhotanagpur Division, Ranchi, in Ranchi SAR Revision No. 46/1997 which has been annexed as Annexure-7 in WPC No. 6768/2002 and. Annexure-6 in WPC No. 6729/2002, are hereby set aside. Consequently, the order dated 30.10.1996 passed by the Dy. Commissioner, Ranchi in SAR Appeal No. 18R, 15/94-95 is hereby affirmed. However, in the facts and circumstances of the case, there shall be no order as to cost.
KORIN @ ETWARI DEVI VS. INDIA CABLE COMPANY LTD.
1978 (0) AIR SC 312

Korin .. Appellant
Versus
Indian Cables Co. Ltd. and Others .. Respondents

M.H. BEG, C.J.I., A.C. GUPTA AND P.S. KAILASAM, JJ.
CIVIL APPEAL NO. 2068 OF 1968 DATED ON 18-11-1977

Advocates appeared : Mr. S.C. Agarwal and Mr. A.P. Gupta, Advocates, for Appellant; Mr. Sachin Chowdhary, Sr. Advocate (M/s. P.K. Mukherjee and D.N. Gupta, Advocates with him) (for No. 1) and Mr. R. C. Prasad, Advocate (for No. 4), for Respondents.

Cases Referred :
approved : Joy Chand v. Bhutnath Khan
Secretary of State v. Babu Bern Prasad

JUDGMENT

A.C. Gupta, J.—This appeal by special leave is by a defendant in a suit for declaration of title and recovery of possession. The property in dispute consists of two survey plots, 2677/5782 measuring Order, 18 acres and 2677/5783 measuring Order 10 acres, the total area being Order 20 acres, in Tetanga Basti, House Sahchi, Police Station Colmuri in Pargana Dhalbhum, District Singhbhum. The suit was dismissed by the trial court, concerned by the first appellate court, and the Patna High Court on second appeal affirmed the decision of the lower appellate court decreeing the suit. The relevant facts are as follows: The fourth respondent Tata Iron and Steel Co. Limited (hereinafter referred to as TISCO) were the proprietors of the disputed plots of land which formed part of the area acquired under the Land Acquisition Act by the local government for TISCO. In 1924 these two plots of land along with other lands were leased out by TISCO to the plaintiff, the Indian Cable Co. Limited (hereinafter referred to as the plaintiff Co.). TISCO also settled another area measuring about 5 bighas 17 kathas with one Rajdeo, predecessor in interest of the present appellant. There is some dispute as to whether this settlement was in 1924 or 1928 but that is not of any great importance in the present controversy between the parties. According to the plaintiff Co. Rajdeo trespassed into the two disputed plots of land in November 1932. It appears that in a proceeding under Section 87 of the Chhota Nagpur Tenancy Act, 1908 (referred to hereinafter as the Act) initiated by Rajdeo it was held that the disputed plots were outside the area settled out by TISCO with Rajdeo and were part of the land leased out by TISCO to the plaintiff Co.. It was further held that Rajdeo had been in forcible possession of the plots for about five years since 1932 from which he could be removed only by legal process. There after the plaintiff Co. instituted title suit No. 116 of 1938 in the Court of the Munsif at Jamshedpur for Rajdeo’s eviction from the land on
which he had trespassed which was roughly 1.70 acres in area and included the two disputed plots. It was again found in that suit that the disputed plots were not part of the 5 bighas and 17 kathas of land settled by TISCO with Rajdeo has it was held that Rajdeo had required 'kathas rights in the portion of the disputed plots in his occupation and therefore he was protected against eviction in view of the provisions of Section 78 of the Act. That suit was accordingly dismissed.

2. Later, on March 25, 1945, TISCO recovered under Section 50 of the Act prosecution of the entire holding of 5 Bighas 17 kathas settled by them with Rajdeo. The plaintiff Co. on July 27, 1954 filed title suit No. 280 of 1954 out of which their appeal arises for Rajdeo's eviction from the two disputed plots in the court of the Munsif at Jamshedpur. The Munsif held that Rajdeo was not disposses from the entire holding under Section 50 of the Act, but retained possession of 1,1/2 bighas, that Rajdeo was a nonejectable 'korkar' riayat in respect of his holding under TISCO and was therefore protected from eviction under Section 78 of the Act in respect of his homestead that he built on the disputed plots. It was further held that in view of the Bihar Land Reforms Act, 1950 the intermediary rights of both TISCO and their lessees, the plaintiff Co., had vested in the State of Bihar and it was the State of Bihar alone that could maintain an action for ejectment against Rajdeo. The trial court was also of opinion that the findings recorded in the earlier suit, title suit No. 116 of 1938, were res judicate in the present suit and therefore Rajdeo's character as a korkar riayat in respect of his homestead on the disputed plots could not be reopened. It may be stated here that Rajdeo died during the pendency of the suit and was substituted by his heirs and legal representatives.

3. On appeal by the plaintiff Co., the first appellate court reversed the Munsif's decision and dismissed the suit. The appellate court found that the entire agricultural land held by Rajdeo under TISCO had been taken away from him under Section 50 and consequently he ceased to be a raiyat in respect of the portion of land on which his homestead stood and thus lost the protection given by Section 78 of the Act. The appellate court held that the findings recorded in title suit No. 116 of 1938 could not be res judicate because of the changed circumstances that now the question of Rajdeo's title to the two disputed plots on which his homestead stood was to be considered independently from whatever his interest in the said plots was when they formed part of the agricultural land from which he had been dispossessed under Section 50. It is however a little difficult to understand the relevance of the proceeding under Section 50 to which the trial court and the first appellate court both referred. It that proceeding related to a holding under a different landlord, and was not part of the land belonging to the plaintiff now in dispute, Rajdeo's dispossession under Section 50 could possibly have no bearing on the nature of his interest in the disputed plots. However, as it appears that all the courts including the High Court as well as the parties to the litigation proceeded on the footing as if the homestead plots and the agricultural land constituted one holding, we do not propose to pursue the matter further.

4. The High Court in second appeal preferred by the defendants affirmed the decision of the first appellate court. The High Court also held that the findings in title suit No. 116 of 1938 were not res judicatas, that the protection of Section 79 of the Act was not available to the defendants after they were dispossessed from the agricultural lands under Section 50 and consequently Rajdeo's homestead become subject to the ordinary incidents of a tenancy governed by the Transfer of Property Act. On the point that after the Bihar Land Reforms Act, 1950 came into force the plaintiff Co. and their lessor TISCO ceased to have any interest in the disputed land therefore this suit for recovery of possession at their instance was not maintainable, the High Court was
of opinion that as the tenancy of the two disputed plots was governed by the provisions of the Transfer of Property Act and not the Chhota Nagpur Tenancy Act, the vesting of estates under the Bihar Land Reforms Act had "nothing to do with the present suit for eviction of the defendant".

5. As regards res judicata, if the nature of the defendants' interest in the disputed plots changed after TISCO recovered possession of Rajdeo's agricultural lands under Section 50 of the Act, the reason given by the first appellate court why the Rule of res judicata should not apply would be sound calling for no inference. A test to find out if the right that the defendants had in the disputed plots had undergone a change consequent on their dispossession from the agricultural lands is whether the protection of Section 78 was still available to them. Section 78 reads:

"Homesteads, when a raiyat holds his homestead otherwise than as part of his holding as a raiyat, the incidents of his tenancy of the homestead shall be regulated by local customs or usage, and, subject to local customs or usage by the provisions of this Act applicable to land held by a raiyat."

Mr. S. Chaudhury appearing for the first respondent, the plaintiff Co., referred to two decisions of the Patna High Court on Section 78. In Joy Chand Vs. Bhutnath Khan, (1) a Division Bench of the High Court held that Section 78 will apply so long as the tenant of the homestead continues to be a raiyat in respect of the other land but no longer. In Secretary of State vs Babu Ben Prasad. (2) another Division bench held that Section 78 "was enacted as a protection to the cultivating tenant, so that he may not be turned out of his homestead as long as he holds his raiyati land. If he parishes with the raiyati land, his tenancy of the homestead becomes subject to the ordinary incidence and does not suffice to keep up his status as "raiyat" This appears to be the consistent view taken by the Patna High Court on the point, and we find no reason, at last none has been pointed out, inducing us to take a different view.

6. It follows therefore that the defendants' tenancy is governed by the provisions of the Transfer of Property Act, and, on the facts found, the plaintiff Co. would be entitled to a decree for recovery of possession unless, consequent on the vesting of the estates and tenures under the Bihar Land Reforms Act, 1950 it ceased to have any interest in the subject matter of the suit. The trial court held that the land had vested in the State, the first appellate court did not advert to the question, and the High Court thought it was not relevant. The High Court apparently failed to see that the question was relevant in order to find out if the suit was maintainable at the instance of the plaintiff Co. We, therefore, send the matter back to the High Court. The High Court will record a finding as to whether the land forming the subject matter of the suit had vested in the State and the plaintiff Co. ceased to have any interest in the land consequent on the vesting. If the High Court finds that the land had vested and the plaintiff Co. had no subsisting interest therein, it will dismiss the suit. If however the High Court finds that the land had not vested or that the plaintiff Co. retained an interest in the land in spite of vesting, it will affirm the decree of ejectment passed by the first appellate court. As it may be possible to decide the question no affidavits and as this is a very old case, the High Court will try to dispose of the matter expeditiously, if possible within three months from the date when it receives back the record of the case.

7. The appeal is allowed to the extent and in the manner indicated above. There will be no order as to costs to this appeal. Order accordingly.
Paritosh Maity and etc ... Appellants  
Versus  
Ghasiram Maity and another ... Respondents.  

S. S. SANDHAWALIA, C.J., SATYESHWAR ROY AND R. C. P. SINHA, JJ. 

S.A. Nos. 36 AND 149(R) of 1977, D/- 11-12 -1986.* 

Chota Nagpur Tenancy Act (6 of 1908) (as amended by Chhotanagpur Tenancy (Amendment) Act, 1920 -Bihar and Orissa Act (6 of 1920), S.84, S.87, S.92, S.139A and S.258 - Civil suit for declaration of title confirmation of possession challenging entries in revenue records - Maintainable notwithstanding insertion of Cl.(ee) in S.87(I) by Amendment Act (Civil P.C. (1908), S.9).  


A civil suit for declaration of title and confirmation of possession and, inter alia, challenging the entries in the revenue record would still be maintainable even after the insertion of Cl.(ee) in S.87(I), Chota Nagpur Tenancy Act, 1908. AIR 1936 Pat 611 Affirmed. F.A. 215 of 1977(R), D/-2-3-1984 (Pat) Overruled. F.A. 43 of 1968 (R), D/-11-7-1979 (Pat) Distinguished. (Para 21)  

S.87 (1) undoubtedly permits a suit to be instituted before a Revenue Officer within the narrow period of limitation of three months from the date of the certificate of final publication of the record of rights, for deciding any dispute regarding any entry which a Revenue Officer has made or omitted from such records. The provision further clarifies that such a suit would lie whether such dispute be with regard to the wide ranging matters specified in els. (a) to (f) and including the newly inserted Cl.(ee). What, however, is very significant and first meets the eye is the fact that though S.87 provides for a suit of the aforesaid nature, it does not even remotely say that a suit for declaration of title and confirmation of possession or recovery of possession cannot be entertained by any Civil Court. It is manifest that there is no express bar whatsoever and indeed not even a hint of an implied bar against the jurisdiction of the Civil Courts in S.87. It is a settled principle of law that even where there is a provision in the statute regarding exclusion of jurisdiction of civil courts, it has to be strictly construed. Herein, apart from strict construction, there is manifestly nothing in S.87 which could even remotely hint at any express bar or one by necessary implication. By now, because of settled judicial precedent, the legislatures are well aware of the language and terminology to be employed where the jurisdiction of the civil or other courts is to be completely ousted. Case law discussed.  

(Paras 12, 13, 14)  

Cases Referred:

AIR 1985 Pat 352:19R5 Pat LJR 732
AIR 1981 SC 2016
(1979) First Appeal No. 43 of 1968(R) D/-11-7-1979 (Pat), Sahodri Kuer v. Lai Barjeshwar Nath Sahdeo (Distinguished)
AIR 1977 SC 5
AIR 1971 SC 681
AIR 1971 SC 2320
AIR 1969 SC 439
AIR 1969 SC 560
AIR 1966 SC 1718
AIR 1964 SC 1126
AIR 1963 SC 361
AIR 1963 SC 605
AIR 1961 SC 149
AIR 1961 Pat 142 (FB)


JUDGMENT

S.S. Sandhawalia, C.J. :- Whether a civil suit for declaration of title and confirmation of possession, challenging, inter alia, the entries in the revenue records would still be maintainable after the insertion of Clause (ee) in Section 87(1), Chotanagpur Tenancy Act, 1908, by the Chotanagpur Tenancy (Amendment) Act, 1920 (Bihar and Orissa Act VI of 1920), is the significant common question in these two connected Second Appeals, referred to the Full Bench for an authoritative decision.

2. The representative matrix of facts for the decision of the pristinely legal question above may be noticed briefly from Second Appeal No. 36 of 1977(R) (Paritosh Maity v. Ghasiram Maity). The plaintiff-respondent had instituted a suit for declaration of title and confirmation of possession and for a permanent injunction with respect to a portion of land in Revenue Khata No. 105, Plots Nos. 347 and 361, which had been recorded in the recent survey Plot No. 1153, the area being 0.25 acre and 0.17 acre, respectively, in Mouza Chalunia, Police Station Chakulia, District Singhbhum. It was the claim that the entries in the revenue records with regard to the aforesaid plots had been wrongly recorded in the Anand Khata of Bihar Sarkar, though the State of Bihar had no manner of title and interest therein, and, as a matter of fact, these plots belonged to the plaintiff, as he was in peaceful possession thereof.
The suit was contested on behalf of the defendants, and, on the pleadings of the parties, as many as 8 issues were framed, including Issue No. 1 with regard to the very maintainability of the suit as framed. It would appear that, during the course of trial, Issue No. 1 was not seriously pressed and no patent defect with regard to the frame of the suit was pointed out by the defendants and the same was decided in favour of the plaintiff. On the other issues as well the findings went in favour of the plaintiff and the suit was decreed with regard to declaration of title in favour of the plaintiff and confirmation of his possession, restraining the defendants, from interfering therewith. On appeal by the defendants, the learned First Additional Subordinate Judge, Jamshedpur, in a detailed judgment, confirmed the findings of the trial court, and discovering no merit in the appeal, dismissed the same with costs.

3. In the present second appeal, the defendant-appellant primarily pressed the point that the very suit was not maintainable in view of the insertion of Clause (ee) in Section 87(1), Chotanagpur Tenancy Act (hereinafter referred to as the Act), and, further the courts below had failed to draw the presumption of correctness attaching to the entries in the record of rights. Reliance was placed on the unreported judgment in Mosowar Khan v. Sk. Alim (First Appeal No. 215 of 1977(R), decided on the 2nd March, 1984). The learned single Judge, considering the significance of the question, referred the appeal to the Division Bench.

4. Before the Division Bench, hearing both the connected second appeals (Second Appeals 36 and 149 of 1977(R)) a conflict of precedent within the Court was noticed with an earlier Division Bench decision reported in AIR 1936 Pat 611 (Gobardhan Sahu v. Lal Mohan Kharwar). The matter was, therefore, referred to be heard by a larger Bench. That is how it is before us.

5. Learned Counsel for the defendant-appellant in Second Appeal No. 36 of 1977(R) vehemently contended that the very suit preferred by the plaintiff-respondent was not at all maintainable, after the insertion of Clause (ee) in Section 87(1), Chotanagpur Tenancy Act (hereinafter referred to as the Act), and, further the courts below had failed to draw the presumption of correctness attaching to the entries in the record of rights. Reliance was placed on the decision in Mosowar Khan v. Shaikh Alim (supra) wherein it has been observed as under:--

"Since a forum has been created under the Act for deciding such disputes, the plaintiff, if aggrieved by the entry in the record of rights, as appears from Ext. E, ought to have filed a suit under Section 87(1)(ee) of the Act. In our opinion, the suit, therefore, was not maintainable."

6. On behalf of the plaintiff-respondent challenge is laid to both the correctness of the stand and the decision relied upon. Particular reliance on his behalf was placed on the earlier Division Bench decision in Gobardhan Sahu v. Lal Mohan Kharwar, (AIR 1936 Pat 611) (supra).

7. Inevitably, the meaningful issue herein turns on the relevant statutory provisions and more pointedly on the changes brought about in the Act by the Chotanagpur Tenancy (Amendment) Act, 1920 (Bihar and Orissa Act 6 of 1920). It is, therefore, not only necessary to refer to the Act, but indeed it is apt to notice the relevant part of the provisions in extenso at the very outset, for facility of reference.
"84. Presumptions as to final publication and correctness of record-of-rights:

(1) XXX XX

(2) The State Government may by notification, declare, with regard to any specified area, that a record-of-rights has been finally published for every village included in that area; and such notification shall be conclusive evidence of such publication.

(3) Every entry in a record-of-rights so published shall be evidence of the matter referred to in such entry, and shall be presumed to be correct until it is proved, by evidence, to be incorrect."

"87. Institution of suits before Revenue Officer:

(1) In proceedings under this Chapter, a suit may be instituted before a Revenue Officer, at any time within three months from the date of the certificate of the final publication of the record-of-rights under Sub-section (2) of Section 83, for the decision of any dispute regarding any entry which a Revenue Officer has made in, or any omission which he has made from, the record, except an entry of a fair rent settled under the provisions of Section 85 before the final publication of the record-of-rights, whether such dispute be-

XXX XXX XXX

(ee) as to any question relating to the title in land or to any interest in land as between the parties to the suit; or,

(f) as to any other matter;

and the Revenue-Officer shall hear and decide the dispute:

Provided that the Revenue Officer may, subject to such rules as may be made in this behalf under Section 264, transfer any particular case or class of cases to a competent Civil Court for trial:

XXX XXX XXX

(2) An appeal shall lie, in the prescribed manner and to the prescribed officer, from decisions passed under Sub-section (1) and a second appeal to the High Court shall "lie from any decision on appeal of such officer as if such decision were an appellate decree passed by the Judicial Commissioner under Chapter XVI."

92. Bar to jurisdiction of Courts in matters relating to record-of-rights:

No suit shall be brought in any Court in respect of any order directing the preparation of a record-of-rights under this Chapter, or in respect of the framing, publication, signing or attestation of such a record or of any part of it."

"139A: Exclusive jurisdiction of Deputy Commissioner in certain cases:

Subject to the provisions of Chapter XII, no Court shall entertain any suit concerning any matter in respect of which an application is cognizable by the Deputy Commissioner under Section 139, and the decision of the Deputy Commissioner on any such application shall, subject to the provisions of this Act relating to appeal, be final."

"258. Bar to suits in certain cases.-- Save as expressly provided in this Act, no suit shall be entertained in any Court to vary, modify or set aside either directly or indirectly, any decision,
order or decree of any Deputy Commissioner or Revenue Officer in any suit, application, or proceeding under Section 29, Section 32, Section 42, Section 46 Sub-section (4), Section 49, Section 50, Section 54, Section 61, Section 63, Section 65, Section 73, Section 74-A, Section 75, Section 85, Section 86, Section 8J, Section 89 or Section 91 (proviso), or under Chap. XIII, XIV, XV, XVI or XVIII, except on the ground of fraud or want of jurisdiction, and every such decision, order or decree shall have the force and effect of a decree of a Civil Court in a suit between the parties and subject to the provisions of this Act relating to appeal shall be final."

8. It appears to me that the true, construction of the aforesaid provisions is rooted in the legislative history and can be well construed in that perspective background. The larger purpose and import of the Act has been very elaborately discussed in the recent Full Bench decision in Bina Rani Ghosh v. Commr., South Chotanagpur Division, 1985 Pat LJR 732 : (AIR 1985 Pat 352). It is unnecessary to traverse the same ground again and it would, perhaps, suffice to recall that the true perspective of the Act is against the backdrop of the primordial backwardness of the scheduled tribes interspersed in the deeply wooded and semi-tropical forests of the Chotanagpur Division and the adjoining district of Santhal Parganas. What calls for notice with particularity is the larger purpose of the insertion of Clause (ee) in Section 87(1) of the Act, not merely in isolation but equally in the perspective of other complementary changes brought about by the amending Act in a number of other provisions as well. Chapter XII of the Act as its very heading indicates, contains Sections 80 to 100 pertaining to entries in the record-of-rights and settlement of rent. It is, perhaps, unnecessary to advert to individual sections thereof or elaborate the scheme of this Chapter at any great length. Indeed, it is manifest that the same is intended to provide in some detail the procedure for the purpose of making entries in the revenue records and the adjudication of any dispute regarding such entries before a Revenue Officer. It is somewhat common ground that prior to 1920, despite the existence of these provisions, litigations in the Civil Courts continued with regard to questions relating to title in land or to any interest in land as betwixt the parties to the suit. Indeed, it would appear that on the earlier provisions precedent consistently held that a suit for declaration of title or recovery of possession and injunction would not lie before Revenue Officer and inevitably had to be brought in a Civil Court on the existing provisions of Section 87. Apparently to change the situation and to bring even questions of title relating to land or other interest therein within the ambit of Section 87, Clause (ee) was inserted in Sub-section (1) thereof by the Bihar and Orissa Amending Act VI of 1920. As is being indicated hereinafter, substantive changes were brought in the other provisions of the Act as well by the aforesaid Amending Act of 1920.

9. The corresponding change brought about in Sub-section (2) of Section 87 may be first noticed. Apparently because questions of title in land or any interest in land had been brought within the sweep of a suit under Section 87 (and otherwise also with regard to Clauses to (f)) a second appeal to the High court from any decision in the first appeal by a Revenue Officer was provided as if such decision was an appellate decree passed by the Judicial Commissioner under Chap. XVI. This was indeed a significant provision which brought the Revenue Officers and the Courts directly under the aegis and adjudication of the High Court itself in second appeal. Reference is again called for to Section 258 and what meets the eye is the fact that it does not place a blanket bar on the jurisdiction of the Civil Court but, as its title indicates, merely puts a bar to suits in certain cases. The Amending Act broadened the base of Section 258 by extending it to any decision of any Deputy Commissioner or Revenue
10. Against the aforesaid legislative background, one may now revert to the wholly well known provisions of Section 9, Civil P.C., the relevant part thereof may be quoted for facility of reference:

"The Courts shall (subject to the provisions herein contained) have jurisdiction to try all suits of a civil nature excepting suits of which their cognizance is either expressly or impliedly barred."

There cannot be any dispute that questions relating to title in land or any interest in land are matters of a civil nature. Both generally and specifically the suits involved in this set of appeals are suits of a civil nature and jurisdiction of the Civil Court can only be barred if firstly, it is expressly excluded or secondly, if it is so done by necessary implication. Indeed, in this context some basic propositions are so well established by judicial pronouncements that they need to be only recapitulated, viz.:

(i) A litigant having a grievance of a civil nature has, independently of any statute, a right to institute a suit in Civil Court unless its cognizance is either expressly or impliedly barred and there is a strong presumption in favour of the jurisdiction of a Civil Court (see (1) AIR 1964 SC 1126 (V. R. Sadacope Naidu v. Bakthavatsalam), (2) AIR 1961 SC 149 (Brij Raj Singh v. Lj Singh v. Laxman Singh), and (3) AIR 1961 Patna 142 (FB) (Patna Municipal Corporation v. Ram Bachan Lal).:

(ii) The exclusion of jurisdiction of Civil Court is not to be readily inferred. A statute ousting jurisdiction of the Civil Court must do so either in express terms or by use of such language as would necessarily lead to such an inference (see AIR 1969 SC 439 (Musamia Imam Haider Bax Razvi v. Rabari Govindbhai Ratnabhai and AIR 1969 SC 560 (Dewaji v. Ganpatlal)).

(iii) The onus is on the party who seeks to oust the jurisdiction of the Civil Court to establish its stand. Further, a statute ousting the jurisdiction of the Civil Court must be strictly construed (see AIR 1966 SC 1718 (Abdul Waheed Khan v. Bhawani)).

(iv) Even if the jurisdiction of the Civil Court is excluded by statute, in case where the provisions of such statute have not been complied with, or a statutory tribunal has not acted in conformity with the fundamental principles of judicial procedure, the Civil Courts would still have jurisdiction to examine such cases (see AIR 1966 SC 1718: Abdul Waheed Khan v. Bhawani).

11. It is in the light of the aforesaid well established principles of law that the question regarding the exclusion of the jurisdiction of the Civil Court in the present case has to be examined with reference to the provisions of the Act.

12. Inevitably one must first turn to Section 87 which is the most relevant provision of law for the decision of the question involved. Sub-section (1) thereof undoubtedly permits a suit to be instituted before a Revenue Officer within the narrow period of limitation of three months from the date of the certificate of final publication of the record of rights, for deciding any dispute regarding any entry which a Revenue Officer has made or omitted from
such records. The provision further clarifies that such a suit would lie whether such dispute be with regard to the wide ranging matters specified in Clauses (a) to (f) and including the newly inserted Clause (ee). What, however, is very significant and first meets the eye is the fact that though S, 87 provides for a suit of the aforesaid nature, it does not even remotely say that a suit for declaration of title and confirmation of possession or recovery of possession cannot be entertained by any Civil Court. It is manifest that there is no express bar whatsoever and indeed not even a hint of an implied bar against the jurisdiction of the Civil Courts in Section 87. As mentioned above, it is a settled principle of law that even where there is a provision in the statute regarding exclusion of jurisdiction of civil courts, it has to be strictly construed. Herein, apart from strict construction, there is manifestly nothing in Section 87 which could even remotely hint at any express bar or one by necessary implication. By now, because of settled judicial precedent, the legislatures are well aware of the language and terminology to be employed where the jurisdiction of the civil or other courts is to be completely ousted. A salient and typical example may be noticed from Section 57 Bihar and Orissa Cooperative Societies Act, where it is provided as under :-

"57. Bar of jurisdiction of Courts.-- (1) Save in so far as expressly provided in this Act, no Civil or Revenue Court shall have any jurisdiction in respect of any matter concerned with the winding up or dissolution of a registered society under this Act, or of any dispute required by Section 48 to be referred to the Registrar or of any proceedings under Chap. VI1-A.

(2) X X XX

(3) XX XX X"

13. What, therefore, deserves highlighting herein is the fact that neither Section 87 nor Section 258 (to which detailed reference would follow) uses the aforesaid terminology and not even any which could remotely indicate an unequivocal exclusion of the jurisdiction of the Civil Courts. Apart from analogy, a reference may be made to Sections 92 and 139-A of this very Act, the latter one having been inserted by the amending Act of 1920, which are in the terms following :-

"92. Bar to jurisdiction of Courts in matters relating to record-of-rights. -- No suit shall be brought in any court in respect of any order directing the preparation of a record-of-rights under this Chapter, or in respect of the framing, publication, signing or attestation of such a record or of any part of it."

"139-A. Exclusive jurisdiction of Deputy Commissioner in certain cases.-- Subject to the provisions of Chap. XII, no Court shall entertain any suit concerning any matter in respect of which an application cognizable by the Deputy Commissioner under Section 139, and the decision of the Deputy Commissioner on any such application shall, subject to the provisions of this Act relating to appeal, be final."

It will be somewhat plain from the aforequoted provision that the Legislature in this very statute was well aware of the language to be employed where its intent was to exclude the jurisdiction of other Courts. No such language has been even remotely used in Section 87. Without labouring the point any further it can, perhaps, be unhesitatingly said that Section 87 which is the material provision for consideration does not spell out any express or implied bar of the jurisdiction of the Civil Court.
14. The matter may also be viewed from another refreshing angle. It is common ground that prior to the Amending Act of 1920, Section 87(1) existed with Clauses (a) to (f) thereof. The provision thus permitted a suit before the Revenue Officers disputing the entry or the omission thereof even though such a dispute fell within the wide ranging ambit of the aforesaid clauses. However, no authority was cited before us that under the unamended provision a suit in the Civil Court would have been barred in this wide ranging field even though no suit before the Revenue Officer was preferred within the limitation of three months from the date of the certificate of the final publication of the record of rights. Thus, the jurisdiction of the Civil Courts has not been held to be barred with regard to Clauses (a) to (f). The insertion of Clause (ee) in 1920, therefore, does no more than putting the questions relating to title in land or any interest in land as betwixt the parties to the suit on the same pedestal as the matters contained in the earlier Clauses (a) to (f). Therefore, a civil suit was not barred with regard to Clauses (a) to (f) a fortiori such a civil suit is equally not barred with regard to Clause (ee) pertaining to questions of title in land or any interest therein.

14A. Yet again the very short period of limitation prescribed by Section 87 for bringing a suit before a Revenue Officer is not without significance either. As noticed earlier, this has been fixed within three months from the date of the certificate of the final publication of the record of rights. Both the terminus a quo and the limited time are in a way a pointer to and indicative of the fact that the larger and the basic remedy by way of a civil suit was not to be abrogated. The lis for a suit for the declaration of title and recovery of possession may well arise long after the final publication of the record of rights. That terminus, therefore, would have little relevance to such a suit and it would be anomalous to hold that the same cannot be brought beyond three months from the date even where the lis may have actually arisen thereafter, even otherwise it looks somewhat inconceivable that valuable rights pertaining to title in law and recovery of possession thereof would become barred within three months from the date of the certificate of the final publication of the record of rights, merely because they have some connection with the entries in the record of rights and thus will be rendered unenforceable.

15. The stage is now set for a consideration of Section 258 which bars suits in certain cases. What, however, deserves notice at the very outset is that even this section is not creating an absolute bar of jurisdiction against the Civil Courts, but only a conditional bar applicable in certain cases specified therein. If one may say so, it is a limited bar which would be elaborated hereinafter. What deserves pinpointing herein is that this section does not employ the unequivocal phraseology noticed earlier in Section 57 of the Bihar and Orissa Co-operative Societies Act, or of Section 139-A of this very Act itself. It is true that it bars the jurisdiction of any other Court including a Civil Court, to entertain a suit but such a prohibition is limited only to a suit either to vary, modify or set aside directly or indirectly any decision, order or decree of any Deputy Commissioner or Revenue Officer in a suit or application or proceeding under the sections mentioned therein including Section 87. Thus, the precondition for the applicability of Section 258 is the existence of an earlier order or decree of a Revenue Officer or Deputy Commissioner in a prior proceeding. From a perusal of this section it is manifest that if earlier any decision has been made by a Revenue Court in any suit under Section 87, then only the other Courts or the Civil Court have no jurisdiction to entertain any suit either to vary, modify or set aside the decision, It also makes it clear
that the aforesaid decision or order will have the force or effect of a decree of a Civil Court in a suit between the parties. However, if there is no order or decision under the sections specified in Section 258 including therein Section 87, the jurisdiction of the Civil Court will not be barred and specially so in a suit for declaration of title and confirmation or possession or recovery of possession. What further calls for notice is the fact that even where Section 258 would be attracted, the bar is not absolute, and if the orders, decision or decree are challenged on the ground of fraud or want of jurisdiction, such a suit can still be entertained by the Civil Court. It would thus be manifest that the sine qua non for the applicability of Section 258 in the present context would be the existence of an order or decree in a previous suit under Section 87. If there has been no previous suit for the same lis, no question of any varying, modifying or setting aside the same either directly or indirectly can arise. Thus, in the absence of an earlier suit under Section 87 in this context, the provisions of Section 258 would not be applicable or attracted at all.

16. The true legal effect of a harmonious reading of Sections 87 and 258 may, therefore, be noticed. Chapter XII provides for the record of rights and Section 83 therein deals with the preliminary publication, the amendment and the final publication of the record of rights, whilst Section 84 creates certain rebuttable presumptions in favour of the correctness of the entries in the record of rights. However, Section 87 provides a remedy by way of a suit before the Revenue Officer for resolving any dispute with regard to such an entry in the record of rights or an omission therefrom. In essence, such a suit is thus directed as a challenge to the entry or omission in such a record, but Section 87 further provides that this can be raised even where such a dispute be with regard to matters specified in Clauses (a) to (f) of Section 87. In a way, therefore, Section 87 provides a special and additional remedy pertaining to entries in the revenue records as soon as they are finally published and certified. That is why the Legislature has chosen to provide a narrow limitation of three months from the date of the certificate of the final publication of the record of rights for bringing such a suit. To my mind, this remedy is not in any way in derogation of the civil rights of the parties, but indeed is a special and additional remedy which may be availed of within a limited period of three months, if a party feels aggrieved by any of the entries in the record of rights. However, if such a remedy is availed of by the parties then the statute now provides an appeal and even a second appeal to the High Court itself in the very forum of Sub-section (2), Section 87 which inevitably would achieve finality. Thus, if actual resort has been made to a suit under Section 87 then for an identical lis Section 258 would bar a further resort to the Civil Courts except on the grounds of fraud or want of jurisdiction. Obviously enough, to bring in even this limited bar, the lis would have to be identical. However, as already noticed and it bears repetition that if no resort has been earlier made to a suit under Section 87 by the parties, the very precondition for the application of Section 258 would be absent and it cannot come into play in such a situation.


18. On the other hand, primal reliance by the learned counsel advocating the bar to the
civil jurisdiction was placed on AIR 1971 SC 2320, (Haiti v. Sundar Singh). Therein on a
construction of the provisions of the Delhi Land Reforms Act, it was held that the jurisdiction
of the Civil Courts was ousted. However, what fell for consideration by their Lordships in the
said case was Section 185(1), Delhi Land Reforms Act, which is in the following terms:-

"Except as provided by or under this Act, no Court other than a Court mentioned in Col. 7 of
Schedule I shall, notwithstanding anything contained in the Code of Civil Procedure, 1908,
take cognizance of any suit, application or proceedings mentioned in Col. 3 thereof."

Now, plainly enough, the aforesaid section in unequivocal terms bars the jurisdiction of any
other Court including a Civil Court in spite of Section 9, Civil P.C. There is no provision even
remotely similar to the aforesaid one in the present Act. Consequently, it is inapt to invoke
the ratio of the said case in the context of the provisions of the Chotanagpur Tenancy Act,
which have been discussed in detail earlier.

19. Within this jurisdiction, reliance was sought to be placed on the observations of the learned
single Judge in Sahodri Kuer v. Lal Barjeshwar Nath Sahdeo, (First Appeal No. 43 of 1968(R)
decided on the 11th July, 1979). However, a close perusal of the said judgment would indicate
that the observations therein in no way spell out a bar or advance the proposition that a civil
suit would not be maintainable. Therein the import of Sections 84 and 87 was discussed and
it was observed that the provisions in Chapter XII envisage a machinery for the adjudication
of disputes with regard to the correctness of the entries in the record of rights or with regard
to the title in land or any interest in the same. However, those observations, to my mind, are
no warrant for elongating them to the holding of an inflexible bar to the jurisdiction of the
Civil Court. The case is thus distinguishable. This, however, cannot the said of Mosowar Khan
Bench observed as follows:-

".....Section 87 of the Act provides for institution of a suit before the Revenue Officer at any
time within three months from the date of the certificate of the final publication of record
of rights for the decision of any dispute regarding any entry when such dispute, inter alia,
be as to the question relating to the title in land or to any interest in land as between the
parties to the suit. The dispute between the parties, therefore, was a question relating to the
title in land. Since a forum has been created under the Act for deciding such disputes, the
plaintiffs, if aggrieved by the entry in the record of rights as appears from Ext. E, ought to
have filed a suit under Section 87(1)(ee) of the Act. In our opinion, the suit, therefore, was
not maintainable."

20. A close perusal of the judgment would indicate that the counsel were somewhat remiss
in not bringing to the notice of the Bench all the relevant provisions of the Act. Equally
the earlier Division Bench judgment in Gobardhan Sahu v. Lal Mohan Kharwar, (AIR 1936
Pat 611) (supra) was not cited. Even otherwise the issue does not seem to have been well
debated and the various considerations discussed in the earlier part of the judgment were
apparently not canvassed. With the deepest deference to the learned Judges, it seems to me,
the conclusion with regard to the nonmaintainability of the suit was not correctly arrived at
and the judgment has consequently to be overruled. The earlier view in Gobardhan Sahu v.
Lal Mohan Kharwar, AIR 1936 Pat 611 is hereby affirmed.

21. To finally conclude, the answer to the question posed at the outset is rendered in the
affirmative both on principle and precedent. It is held that a civil suit for declaration of
title and confirmation of possession and, inter alia, challenging the entries in the revenue
record would still be maintainable even after the insertion of Clause (ee) in Section 87(1),
Chotanagpur Tenancy Act, 1908.

22. In the light of the above, it has necessarily to be held in Paritosh Maity v. Ghasiram, Second
Appeal No. 36 of 1977(R) that the civil suit preferred by the plaintiff respondent was
perfectly maintainable in law. The appeal is otherwise without merit and is consequently
dismissed though the parties are left to bear their own costs.

23. In Second Appeal No. 149 of 1977(R), (Shri Radhagobinda Jew v. Panu Mahto) the suit
preferred before the Civil Court is held to be maintainable. However, the appeal stands
concluded by concurrent findings of fact which do not call for any interference by this Court
and the same is consequently dismissed. There will be no order as to cost.


25. R.C.P Sinha, J. :- I agree.

Appeal dismissed.
GURU CHARAN SINGH VS. KAMLA SINGH
1976 (2) SCC 152

Gurucharan Singh ... Appellant;
Versus
Kamla Singh and Others ... Respondents.

(BEFORE V.R. KRISHNA IYER, A.C. GUPTA AND S. MURTAZA FAZAL ALI, JJ.)
CIVIL APPEAL NO. 7816 OF 1968*, DECIDED ON SEPTEMBER 9, 1975

Tenancy and Land Laws — Bihar Land Reforms Act, 1950 — Sections 2k and 6 — Relative scope — Khas possession — Meaning and scope — Mere right to possess if also included — Scheme of the Act — Party having right to possess, held, cannot benefit from Section 6 if actual possession held by a trespasser — Right of possession vests in the State — Party however entitled to mesne profits till date of vesting — Duty of State under Section 4(g) and Rule 7-H to take possession of such lands

Words and Phrases — "Possession" and "khas possession" — Meaning of

The plaintiff, appellant herein, and defendant, second party were co-owners of certain lands. By a partition deed dated October 30, 1952 the suit lands fell to the exclusive share of the plaintiff-appellant. But the defendant, second party sold the suit lands to defendants first party, respondents herein, alleging an oral partition sometime before August 1952 and committed trespass. Proceedings under Section 145, Cr. P. C. ensued and defendants first party got their possession upheld by Magistrate's order dated April 5, 1954. The appellant brought the present suit in April 1955 for a declaration of his title, for possession and mesne profits on the score that his exclusive possession was by force taken away in July-August 1954 by defendants, first party. The latter put forward the plea of prior oral partition and exclusive hostile possession, tracing their claim through defendant, second party. The courts of fact found against the defendants and decreed the suit as prayed for, but in Letters Patent appeal, the present contesting respondents, i.e., the defendants, first party, urged with success that the plaintiff bad lost his title due to the operation of Sections 3 and 4 of the Act and could not salvage any interest under Section 6 thereof. The defeated plaintiff appealed to the Supreme Court.

Held:

Section 3 in its total sweep, transfers all the interests in all lands to the State, the exception being lesser interests under the State set out in detail in Sections 5, 6 and 7. So much so, any person who claims full title after the date of vesting notified under Section 4 has no longer any

such proprietorship. AH the same, he may have a lesser right if he falls within the saving provisions viz., Sections 5, 6 and 7. (Para 19)

Khas possession under Section 2(k) means actual cultivatory possession. Section 6(1) makes a special addition by including other demised lands by express enumeration. Section 6(1) uses the word ‘including’ to permit enlargement of the meaning of khas possession for the limited purpose of that section, emphasising thereby that, but for such enlargement the expression khas possession excludes lands outstanding even with temporary lessees. Khas possession has been used in the restricted sense of actual possession and to the small extent it had to be enlarged for giving relief to proprietors in respect of ‘private’, ‘privileged’ and mortgaged lands inclusive expressions had to be employed. Khas possession is actual possession, that is, a foothold on the land, an actual entry, a possession in fact, a standing upon it, an occupation of it, as a real, administrative act done. Constructive possession or possession in law is what is covered by the sub-clauses of Section 6(1). Even so it is not so wide as to include a mere right to possess, when the actual dominion over the property is held by one in hostility to the former. (Para 21)

Possession, correctly understood, means effective, physical control or occupation. The word possession is sometimes used inaccurately as synonymous with the right to possess. So possession is actual possession and in a limited set of cases, may include constructive possession, but when there is a bare right to possess bereft of any dominion or factum of control, it will be a strange legal travesty to assert that an owner is in possession merely because he has a right to possess when a rival, in the teeth of owner’s opposition, is actually holding dominion and control over the land adversely, openly and continuously. (Para 21)

Hence the possession of a trespasser, by no stretch of imagination, can be deemed to be khas possession or even constructive possession of the owner. Here the possession of the plaintiff had ceased totally at least two years before the vesting under Section 4 took place. This situation excludes khas possession. Therefore without title he could not maintain the action for recovery of possession. (Paras 22, 21 and 23)


Brij Soudan Singh v. Jamuna Prasad, AIR 1058 Pat 589 (FB) : ILR 37 Pat 339 and Sukhdeo Das v Kashi Prasad, AIR 1’1J8 Pat 630 (FB) : ILR 37 Pat 918, held already overruled

However the appellant is certainly entitled to mesne profits from the defendants, first party, until the date of vesting, i.e., January 1, 1956. (Para 23)

Also on facts the contesting defendants admitted that they had no possession of or connection with some of the plots mentioned in Schedule B to the plaint and set out therein. Since neither of the defendants is in possession, the presumption that the owner is in possession holds good and he is entitled to that possession being restored to him. However the rights of the State, as against the plaintiff, in regard to these items will not be affected. Likewise, if some third party is in possession of those items unclaimed by the defendants, first party, their possession, if any, also will not be prejudiced. (Para 23)

Moreover the Collector under Section 4(g) and Rule 7-H has a public duty to take charge of lands vested in the State. In this case, defendants, first party, are trespassers and the plaintiff being out of the pale of Section 6, the State is entitled to the direct possession of the suit lands. (Para 24)
Civil Procedure Code, 1908 — Sections 100-101 and 109 — New plea of law — Can be raised even at appellate stage — New plea of law rightly permitted at Letters Patent stage by High Court

Held:

A pure question of law going to the root of the case and based on undisputed or proven facts could be raised even before the court of last resort, provided the opposite side was not taken by surprise or otherwise unfairly prejudiced. (Para 11)

*Connection Fire Insurance Co v. Kavanagh, 1892 AC 473, 480, relied on.*

Criminal Procedure Code, 1898 — Section 145 — Proceedings under taken np where title disputed — Order under declaring actual possession later set aside — Held, such circumstance could not deprive a party of the benefit of his possession and of the dispossession of the other party under a statutory provision (Para 12)

Tenancy and Land Laws — Exclusion of civil courts by special statute on land reforms — Held, jurisdiction of the civil court not excluded where the suit was a title suit and the title was disclaimed by the provisions of the special statute — Civil Court can grant consequential relief of possession — Bihar Land Reforms Act, 1950, Sections 6 and 35 — C.P.C., 1908, Section 9 (Para 13)

Estates Partition Act, 1897 — Scope of — Held, requirements of the Act are meant only for protection of land revenue and do not affect title — Do not affect parties’ power to partition voluntarily or courts’ power to decree partition (Para 15)

*Mahanth Ram Bhushan Das v. Ramrati Kuer, 1965 Bihar LJ 119, explained*

Interpretation of Statutes — Socio-economic legislation — Interpretation should further the object and purpose of — Legislative history becomes irrelevant when the Act seeks to usher a new order (Paras 17 and 20)

Appeal dismissed M/2641/C

Advocates who appeared in this case:

S. C. Mishra, Senior Advocate (U. P. Singh, Advocate, with him), for the Appellant;


The Judgment of the Court was delivered by

KrisHa Iyer, J.—This appeal, by special leave, turns substantially on the application of Section 6 of the Bihar Land Reforms Act, 1950 (hereinafter called, the Act), to the case situation the facts having been decided concurrently and finally in favour of the appellant. Still he lost at the stage of the Letters Patent Appeal, because 3 Division Bench of the High Court held that he had been robbed of his right to sue by Section 6 of the Act.

2. We may set out the relevant facts briefly. Although a number of items of immovable property were involved in the suit, which was for ejectment on title, the lands now in dispute are bakasht lands in the 'B' Schedule to the plaint, for easy reference called suit lands. Regarding the rest the plaintiff’s suit has been decreed. several items of property were gifted by one
Ram Badan Singh to his two wives whose names were duly mutated in the revenue register. The further course of the proprietary history takes us to the creation of a wakf and the office of mutawalli which are not relevant to the controversy before us but are interesting when we remember that the donees were Hindus and yet they had executed a wakf and constituted themselves as mutawallis. This shows how community life absorbs and blends jural concepts, overriding religion in the creation of an interlaced legal culture. This is by the way.

3. We may now take up the thread at the point where by further Gift deeds and transfers the lands covered be the original gift deeds case to vest in the plaintiff and defendants, second party. They divided them as per a partition deed Exhibit 4 'a' dated (October 30, 1952 whereby the suit lands fell to the exclusive share of the plaintiff, along with some other items while other properties were similarly allotted to defendants 2nd party. Undaunted by this fact defendants, second ;3 party, sold the suit lands to the defendants first party alleging an oral partition sometime before August 1952 and under cover of that case, committed trespass. Thereupon, a scramble for possession these properties and a proceeding under s. 145 Cr.P.C. ensued in which the defendants, first party, got their possession upheld by the Magistrate's order dated 5.4.1954. Inevitably the plaintiff brought the present suit in April 1955 for a declaration of his title, for possession and mesne profits on the score that his exclusive possession was by force taken away in July-August 1954 by defendants, first party. The latter put forward the plea of prior oral partition and exclusive hostile possession, tracing their claim through defendants-second party. The courts of fact found against the defendants and decreed the suit as prayed for, but in Letters Patent Appeal, the present contesting respondents, i.e., the defendants 1st party, urged with success that the plaintiff had lost his title thanks to the operation of ss. 3 and 4 of the Act and could not salvage any interest under s. 6 thereof. The defeated plaintiff has come up to this Court, as appellant, assailing the findings of the High Court mainly on three grounds: According to Shri S. C. Misra, learned counsel for the appellant s. 6 of the Act applied to his case and so there was no vesting of title in the State of the suit lands. He further pressed that, any way, this case, resting on the Act, which had been on the statute block for several years had not been set up at the earlier stages of the litigation and should not have been permitted at the Letters Patent Appeal stage in the High Court for the first time. His third contention was that the deed of partition Exhibit 4/a was not legally divestative of rights in view of the provisions of the Estates Partition Act, 1897 which, in his submission, empowered the Collector alone to partition the properties, which not having been done, the lands remained in co ownership wherefore the possession of the defendants, first party, was that of co sharers. If that were so, the possession of one co-sharer was constructive possession of the other co-sharer and the plaintiff was thus in khas possession under s. 2k of the Act and, on that basis, s. 6 of the Act saved the disputed properties from vesting in the State. All these three-fold contentions were sought to be repelled by counsel for the respondent and we proceed to examine them.

4. We may as well mention here, but dilate on it later, that certain items out of the B-Schedule bakasht lands are, on the showing of defendants second party, not in their possession, although the plaintiff has averred., in his pleading, dispossession of all the B-Schedule lands. The legal impact of this circumstance on s. 4(a) and the schemes of the Act has to be gauged, in the context of the relief claimed by the plaintiff and the eligibility of possessory benefits of the contesting defendants.
5. The central issue obviously is the resolution of the competition between vesting of the suit lands in the State by virtue of ss. 3 and 4 and their exemption from such deprivation by the saving provision in s. 6 in favour of the plaintiff.

6. A close-up of the profile of the land reform law would help us appreciate the purpose and programme of the statute and the meaning of the provision under construction. The project, as highlighted in the Preamble in grandiose and in keeping with Part IV of thus Constitution, but ill actual implementation drags its feet. Indeed, counsel on both sides were readily agreed only on one point, viz., that neither his Act nor the law setting a ceiling on land ownership slumbering the statute book since 1962, has been seriously enforced. The Ninth Schedule to the Constitution can immunise a legislation from forensic challenge but what schedule can invigorate a half-inert Administration into quick implementation of welfare-oriented, urgently needed, radical legislation now lying mummified in the books? If the assertion of non-implementation of land reforms laws made at the bar were true, the Bihar State Government has much to answer for to 'We the People of India' and to the stultified legislature whose 'reform' exercise remains in suspended animation. In this very case, before the High Court, the Advocate General has appeared for the plaintiff/landowner and yet the State has not bestirred itself to appear and claim the suit lands. We are left in obscurity on the vital point, neither counsel nor the records throwing any light on whether the State has been given notice in the case in the High Court. The social transformation cherished by the Constitution involved re-ordering of the land system and a vigilant administration would have intervened in this 20-year-old litigation long ago and extinguished the private contest to the advantage of the State. The feudal will may, not unoften, furtively hide, in strategic positions may, be.

7. We may begin consideration of the merits of the rival cases by a broad projection of the Act. Its basic object is to extinguish the proprietary rights and transfer absolutely, and free from all private interests, such ownership to the State. The tillers are not to be up rooted and so, they i.e., the raiyats and under-raiyats are to be settled on terms of fair rent. The Act, making; a simplistic dischotomy sufficient for our study, thus absolutely vests in the State all lands, freed from all private rights (sec. 3) as from a date notified under s. 4, but carves out of this land mass and leaves untouched, apart from raiyati holdings, the bakasht lands in the khas possession of the 'intermediary' i.e., the prior full owner (sec. 6). Lands not falling within the saved category will be directly managed by the State (sec. 13), if need be, by ejecting trespassers if they are found ill illegal occupation [sec. 4(g)]. 'rh valuable rights attached to or imbedded in lands, like trees, fisheries, minerals also go to the State. A seemingly bold legislation stroke of substantial land nationalisation will be reduced to pathetic futility if the flood-gates of evasion are kept ajar by plausible but diluted interpretation of s. 6 as urged by the landlords. The Court must suppress the mischief and advance the remedy. Indeed, if we may anticipate our conclusion, the pronouncements of this Court in Surajnath Ahir v. Prithinath Singh¹ and Ram Ran Bijai Singh & Ors v. Behari Singh @ Bagandha Singh,† bar and bolt the, door of escape in a big way and counsel for the appellant has striven to impress on us the need to reconsider and distinguish that view because it is inconsistent with vintage jurisprudence and Anglo-American concepts bearing on possession of an owner.

8. Let us get down to an openheart surgery in a limited way to check upon the soundness

† [1964] 3 S.C.R. 363
of this cardinal submission. The consternation expressed by appellant’s counsel that the High Court’s interpretation of sec. 6 will create rights in rank trespassers and distort and defeat the right to possess enjoyed by Zamindars does not, by itself, disturb us. We are in a juridical province of agrarian reform. The creative legal ideas needed to effectuate this developmental plan are conceptually alien to the old land law and ‘rural’ jurisprudence, wearing as they do radical contenance. The Court, in the process of construction must help the chariot of land reform move forward and sections 3 and 6 are the vital wheels.

9. Having regard to the significance of the State’s presence even in private litigation bearing on eviction and the like, s. 4(ee) provides for notice to the State in certain classes of cases but the present suit and later proceedings are not covered by the term of s. 4(ee) and counsel on either side, when we enquired, did not show interest in taking steps to implead the State or otherwise to give notice to it in the present appeal. We have to Leave it at that. The consequence of non-impleader or absence of notice to the State will naturally be visited on the parties, in the sense that the State will not be bound by this adjudication and its rights vis-a-vis the plaintiff and the defendants, first party will remain unaffected. So also of other third parties on the suit lands.

10. We have already adverted to the skeletal scheme of the Act, of vesting the lands in the State and saving in the hands of proprietors such lands as are in their khas possession, including certain categories spelt out in s.6 by settling them on fair rents under the State. So, the crucial concept of khas possession calls for judicial scrutiny rather closely so i-has loopholes for escape through the meshes of s.6 may not frustrate the land reform law itself. But what is legitimately due by way of legislative justice to erstwhile proprietors should not be denied. With this and in view, the Legislature has defined khas possession in s.2k which reads thus:

"2. Definitions-In this Act, unless there is anything repugnant in the subject or context,—

(k) 'khas possession' used with reference to the possession of a proprietor or tenure-holder of any land used for agricultural or horticultural purposes means the possession of such proprietor or tenure-holder by cultivating such land or carrying on horticultural operations thereon himself with his own stock or by his own servants or by hired labour or with hired stock;

Explanation :-"Land used for horticultural purposes” means lands used for the purpose of growing fruits, flowers or vegetables.”

He who runs and read will readily make out that what is meant is actual possession with one’s feet on the land, plough in the field and hands in the soil, although hired labour is also contemplated. The emphatic point is that possession is actual possession and admits of no dilution except to the extent s.6 itself, by an inclusive process permits. This basic idea banishes the importation of the right to possess as tantamount to khas possession. It would be a perversion of definition to equate the two. Of course, Shri S. C. Misra, appearing for the appellant, has preset before us that jurisprudentially even the right to possess should be regarded as possession. Indeed, this Court has had occasion to consider and construe the relevant provision in Surajnath Ahir and Ram Ran Bijai Singh (supra) and our task is largely to explain and adopt.

11. Before we examine this quintessential aspect presented before us will complex scholarship by Shri S. C. Misra we Had better make. short shrift of certain other questions raised by him.
He has desired ‘us, by way of preliminary objection, not to give quarter to the plea, founded on s. 6 of the Act, to non-suit his client, since it was a point raised be nova at Letters Patent state. The High Court have thought to this objection but overruled it, if we may say so rightly. The Court narrated the twists and turns of factual and legal circumstances which served lo extenuate the omission to urge the point earlier but hit the nail on the head when it held that it was well-settled that a pure question of law going to the root of the case and based on undisputed or proven facts could be raised even before the Court of last resort, provided the opposite side was not taken by surprise or otherwise unfairly prejudiced. Lord Watson, in Connecticut Fire Insurance Company v. Kavanach,* stated the law thus:

When a question of law is raised for the first time in a Court of last resort upon the construction of a document or upon facts either admitted or proved beyond controversy, it is not only competent but expedient in the interest of justice to entertain the plea. The expediency of adopting that course may be doubted when the plea cannot be disposed of without deciding nice questions of fact in considering which the Court of ultimate review is placed in a much less advantageous position than the courts below. But their Lordships have no hesitation in holding that the course ought not any case to be followed unless the Court is satisfied that the evidence upon which they are asked to decide establishes beyond doubt that the facts if fully investigated would have supported the new plea.

We agree with the High Court that the new plea springs from the common case of the parties, and nothing which may work injustice by allowance of this contention at the late stage of the Letters Patent Appeal has been made out to our satisfaction. Therefore, we proceed to consider the impact and applicability of s.6 of the Act to the circumstances of the present case.

12. Counsel for the appellant, in his turn, in this Court went a step further to raise two new points not urged in the prior state of the litigation. We have heard him but arc not persuaded to, agree with him. According to him, the defendants, first party, had stated in their written statement that their possession of the disputed items as based on the order of the Magistrate under s.145 Cr. P.C.'. That order having been found erroneous, no benefit could accrue to the defendants. So stated, it is a little obscure and indeed the point itself is obscure. There was a proceeding under s.145 Cr. P.C. before the criminal court in view of the dispute regarding the claims of actual possession. In the order of the Magistrate, the oral partition relied on by the defendants was held proved and the subsequent deed of partition relied on by the plaintiff held not been acted upon. Counsel says that this led to the occupation by trespass of the suit properties. Since the Magistrate’s order had led to this prejudicial consequence it was not proper to permit the party to benefit by his own wrong founded on an ‘actus curiae’. We see no force at all in this contention. The Magistrate did not direct possession of the B-shedule properties to be handed over to the defendants, first parts, but declared their actual possession. He has done no wrong nor conferred any unjust advantage. There is no principle on which it could be held that these circumstance deprive a party of the benefit of his possession and d of the dispossession of the plaintiff flowing from s.6 of the Act; if any rights accrued from a statutory provision, it could not withheld for the reasons urged by counsel for the appellant.

13. The next new discovery in this Court turns on the absence of jurisdiction of the civil court to

* * [1892] A. C. 473, 480.
give relief when the substance the matter falls within the special jurisdiction of the revenue authorities. Counsel submitted that this new point occurred to him on reflection and was being pressed by him because it had force. The plaintiff’s prayer, for declaration of title and for possession was negatived by the High Court in the light of s.6 of the Act wherein it was held that he had no khas possession and his interests could not in any manner be saved by that provision. It was not a case of the defendant claiming or securing any relief regarding possession but the plaintiff’s title standing negatived. The suit itself was for ejectment on little and sans title, ejectment could not be granted. The title of the plaintiff was sought to be rested on s.6 at the letters patent Appeal level but on a construction of that Provision the Court held against him. In short the High Court did nothing to investigate into the possession of parties but on the admitted fact that the Defendants’ first party, were in possession by trespass-the plaint alleges this-the Court Dismissed the suit, since s. 6 of the Act divested the plaintiff of his quondam proprietorship. Moreover, there is nothing in s. 35 of the Act, relied on by counsel to substantiate his submission, depriving the civil court of its jurisdiction to decide questions of declaration of title and consequential relief of possession. Section 35 deals with different types of suits. Indeed, s.6(1) with which we are concerned, also contains no inhibition against the civil court’s power to decide the issue of title and right to possession of the plaintiff and, as a necessary corollary, the claim of actual possession set up by the defendants first party. Nor, can s. 6(2) inferentially interdict the plenary power of the civil court. In short, the plea of bar of the restriction is specious and fails.

14. Another peripheral issue invoked before the High Court and here to undo the defendant’s claim of exclusive possession and consequential absence of khas possession in the plaintiff was based on the provisions of the Estates Partition Act, 1897.

15. Shri Misra propounded what, unfortunately, strikes us as a fallacious proposition. He went to the extreme extent of maintaining that a partition of lands, to be valid, should be in terms of the Estates Partition Act, 1897 and, until then, a deed or decree effecting division by metes and bounds does not legally operate. If so, Ex.4/a remains an arrangement for separate enjoyment between co-owners, title continuing, joint. The follow-up of this reasoning is that the suit properties are in the possession of co-shares viz, defendants first party (derived from defendants, second party) and possession of one co-sharer is possession of the other. The plaintiff thus is in constrictive possession good enough to bring him into the rescue shelter provided by s.6 Of the Act. He relied on the ruling in Mahanth Ram Bhushan Das v. Ramrati Kuer and the various provisions of the Estates partition Act to Make out his thesis. The support derived from the decision is more apparent than real because, as noticed by the High Court, the suit there was not, unlike here, brought on the foot of a partition and the ruling laid down that any ‘amicable division’ among, co-sharer would not bind the Revenue until the partition was effected as visualised under the Estates Partition Act. Shri Misra’s study of the provisions of the said Act is free from confusion, save in one fundamental respect. That one point, missed by him, is that the whole statutory project is to protect the land revenue, not to affect title. The partition is valid, it divests title, it binds all; but, so far as land revenue liability is concerned, it relieves parties from the burden falling, on the other sharer’s land only if the exercise prescribed in the Estates Partition Act is gone through. The statute is a Protective fiscal armour not a mono- for division among co-owners to travel. Section 7 makes it clear. Not that Courts have lost power to decree partition nor that co-

* 1965 Bihar L. J. 119
owners have become impotent to separate their shares voluntarily but that land revenue shall not be prejudiced without the procedure under that Act being gone through. More clinching is the fact that the plaintiff has here come to Court on the sole case of partition by metes and bounds and has founded his relief not as co-sharer but as exclusive owner. Seeming legal ingenuity has small chance in a court and to miss the point and pertinence of a measure is to travel to a wrong destination.

16. Now we come to the master problem presented at learned length by Shri S. C. Misra and deferentially listened to by us to discover its substance and the solution. A 'blind understanding' has been the result, and as his argument concluded we 'came out by the same door, as in (we) went.' It behoves us to set out counsel's submission and the setting of the Act to explain why we do not agree with him and what we regard is the master-key to the construction of section 6.

17. We must first appreciate that it is a land reform law we are interpreting and not just an ordinary statute. The social-economic thrust of the law in this area should not be retarded by judicial construction but filliped by the legal process, without departing from the plain meaning and objective of the Act. We may delineate the content and contours of section 6 with which we are directly concerned in the present case. The preamble to the Act, which sheds skylight on the statute, reads:

An Act to provide for the transference to the State of the interests of proprietors and tenureholders in land and of the mortgages and lessees of such interests including in trees, forests, fishries, jalkars, ferries, hats bazaars. mines and minerals and to provide for the constitution of a land Commission for the State of Bihar with powers to advise the State Government on the agrarian policy to be pursued by the State Government consequent upon such transference and for other matters connected therewith.

From this it is fairly clear that the legislative goal is to liquidate all intermediary interests and vest the ultimate ownership on land in the State. In this sense, the import of the Act is a tepid measure of land nationalisation. Section 3 in unmistakable language vests the absolute proprietorship in all the lands in Bihar in the State, the succeeding sections spell out details.

18. We may here read sections 3, 4(g) and 6(1) of the Act:

3. Notification vesting an estate or tenure in the State—(1) The State Government may, from time to time, by notification declare that the estates or tenures of a proprietor or tenure-holder, specified in the notification, have passed to and become vested in the State.

(2) The notification referred to in sub-section (1) shall be published in the official Gazette. A copy of such notification shall be sent by registered post, with acknowledgement due, to the proprietor of the estate recorded in the general registers of revenue-paying or revenue-free lands maintained under the Land Registration Act, 1876 (Ben. Act 7 of 1876), or in case where the estate is not entered in any such registers and in the case of tenure-holders, to the proprietor of the estate or to the tenureholder of the tenure is the Collector is in possession of a list of such proprietors or tenure-holders together with their addresses, and such posting shall be deemed to be sufficient service of the notification on such proprietor or, where such notification is sent book post to the tenure-holder, on such tenure-holder for the purposes of this Act.
(3) The publication of such notification, in the Official Gazette shall be conclusive evidence of the notice of the declaration to such proprietors or tenure-holders whose interests are affected by the notification.

"4. Consequences of the vesting of an estate or tenure in the State—Notwithstanding anything contained in any other law for the time being in force or in any contract, on the publication of the notification under sub-section (1) of section 3 or sub-section (1) or (2) of section 3A the following consequences shall ensue, namely:

*                      *                      *                      *

(g) Where by reason of the vesting of any estate or tenure or any part thereof in the State under provision of this Act, the Collector is of opinion that the State is entitled to the direct possession of any property he shall, by an order in writing served in the prescribed manner on the person in possession of such property, require him to deliver possession thereof to the State or show cause, if any, against the order within a time to be specified therein and if such person fails to deliver possession or show cause or if the Collector rejects any cause shown by such person after giving him a reasonable opportunity of being heard, the Collector shall for reasons to be recorded" take or cause to be taken such steps or use or cause to be used such force as, in his opinion, may be necessary for securing compliance with the order or preventing a breach of the peace:

Provided that if the order under clause (g) is passed by an officer below the rank of the Collector of a district, an appeal shall, if preferred within sixty days of the order, lie to the Collector of the district and the Collector shall dispose of the appeal in accordance with the prescribed procedure.

"6. Certain other lands in khas possession of intermediaries to be retained by them on payment of rent as raiyats having occupancy rights—(1) on and from the date of vesting all lands used for agricultural or horticultural purposes, which were in khas possession of an intermediary on the date of such vesting, including—

(a) (1) proprietor's private lands let out under a lease for a term of years or under a lease from year to year, referred to in section 116 of the Bihar A Tenancy Act, 1885 (8 of 1885),

(ii) landlord’s privileged lands let out under a registered lease for a term exceeding one year or under a lease, written or oral" for a period of one year or less, referred to in section 43 of the Chota Nagpur Tenancy Act, 1908 (Ben. Act 6 of 1908),

(b) lands used for agricultural or horticultural purposes and held in the direct possession of a temporary lease of an estate or tenure and cultivated by himself with his own stock or by his own servants or by hired labour or with hired stock, and

(c) lands used for agricultural or horticultural purposes forming the subject matter of a subsisting mortgage on the redemption of which the intermediary is entitled to recover khas possession thereof;

shall, subject to the provisions of section 7A and 7B be deemed to be settled by the State with such intermediary and he shall be entitled to retain possession thereof and hold them as a raiyat under the State having occupancy rights in respect of such lands subject
to the payment of such fair and equitable rent as may be determined by the Collector in the prescribed manner:

Provided that nothing contained in this sub-section shall entitle an intermediary to retain possession of any naukarana land or any land recorded as chaukidari or goraiti jagir or mafi goraiti in the record-of-rights or any other land in respect of which occupancy right has already accrued to a raiyat before the date of vesting.

Explanation—For the purposes of this sub-section, ‘naukarana land’ means land held as a grant burdened with service in lieu of rent or held simply in lieu of wages for services to be rendered.”

19. Although there is a blanket vesting of proprietorship in all the lands in the State, the legislation is careful, in this initial state of agrarian reform, not to be too deprivatory of the cultivating possession of those who have been tilling the land for long. Therefore, while the consequence of the vesting is stated to be annihilation of all interests, encumbrances and the like in the land, certain special categories of rights are saved. Thus, raiyats and under-raiyats are not dispossessed and their rights are preserved. The full proprietor’s khas possession is if so not disturbed. Certainly, the large landholders, whose lands have for long been under tenancy, lose their lands to the State by virtue of the vesting operation (of course, compensation is provided for). Nevertheless, the reform law concedes the continuance of a limited species of interests in favour of those Zamindars. The three-fold class of lands is brought into the saving bucket by including them in the khas possession of the proprietors. They are legislatively included in khas possession by an extended itemisation in section 6(1). The purpose and the purport of the provision is to allow the large land holders to keep possession of small areas which may be designated as the private or privileged or mortgaged lands traditionally held directly and occasionally made-over to others, often servants or others in the shape of leases or mortgages. The crucial point to remember is that section 3 in its total sweep transfers all the interests in all lands to the State, the exception being lesser interests under the State set out in detail in sections 5, 6 and 7. So much so, any person who claims full title after the date of vesting notified under s. 4 has no longer any such proprietorship. All the same, he may have a lesser right if he falls within the saving provisions viz., sections 5, 6 and 7 Sections 5 and 7 do not apply here. The claim of the plaintiff is that he can sustain his right to recover possession in this suit, as coming within the oasis of section 6(1).

20. There is no case that the sub-clauses (a), (b) and (c) of section 1) 6(1) apply. Counsel’s contention is that he comes within the ambit of the main paragraph, being allegedly in khas possession. To appreciate the further discussion, it is useful to recapitulate that the appellant has averred in his plaint that he had been dispossessed as early as 1954 by a brazen act of trespass by the contesting respondents who were holding adversely to him. Undaunted by this fatal fact counsel claimed to be in possession and argued still. The focus was turned by him on the concept of khas possession defined in section 2(k). He presented a historical perspective and suggested that the genesis of khas possession could be traced to the Bengal Tenancy Act, 1885. May be, the draftsmen might have drawn upon those earlier land tenure laws for facility, but we must understand right at the outset that the Constitution of India has inaugurated a new jurisprudence as it were, guided by Part IV and reflected in Part II. When there has been a determined break with traditional jurisprudence and a big endeavour has been made to over-turn a feudal land system and substitute what may
be called transformation of agrarian relations, we cannot hark back to the bygone jura or hold a new legislation captive within the confines of vanishing tenurial thought. De hors the historical links—a break-away from the past in the socio-legal system is not accomplished by worship of the manes of the law-khas possession means what the definition, in plain English, says. The definition clause is ordinarily a statutory dictionary, and viewed that way, we have in the early part of this judgment explained how it means actual, cultivatory possession—nothing less nothing else. Of course, section 6(1) makes a special addition by ‘including’ other demised lands by express enumeration.

21. Section 6 does not stop with merely saving lands in khas possession of the intermediary (erstwhile proprietor) but proceeds to include certain lands outstanding on temporary leases or mortgages with others. as earlier indicated. These are private lands as known to the Bihar Tenancy Act, privileged lands as known to the Chota Nagpur Tenancy Act, land outstanding with mortgagees, pending redemption and lands which are actually being cultivated by the proprietor himself. Ordinarily what is outstanding with lessees and mortgagees may not fall within khas possession. The Legislature, however, thought that while: the permanent tiller’s rights should be protected and therefore, raiyats and under-rajyats should have rights directly under the state, eliminating the private proprietors, the Zamindar or proprietor also should be allowed to hold under the State., on payment of fair rent, such lands as have been in his cultivatory possession and other lands which were really enjoyed as private or privileged lands or mortgaged with possession by him. With this end in view, section 6(1) enlarged its scope by including the special categories. The word ‘include’ is generally used in interpretation clauses in order to enlarge the meaning of that words or phrases occurring in the body of the statute. It is obvious that section 6(1) uses the word ‘including’ to permit enlargement of the meaning of khas possession for the limited purpose of that section, emphasising thereby that, but for such enlargement, the expression khas possession excludes lands outstanding even with temporary lessees. It is perfectly plain, therefore, that khas possession has been used in the restricted sense of actual possession and to the small extent it had to be enlarged for giving relief to proprietors in respect of ’private’ ‘privileged’ and mortgaged lands inclusive expressions had to be employed. Khas possession is actual possession, that is “a foothold on the land, an actual entry, a possession in fact, a standing upon it, an occupation of it, as a real, administrative act done”(1). Constructive possession or possession in law is what is covered by the sub-clauses of section 6(1). Even so, it is impossible to conceive, although Shri Misra wanted us to accept, that possession is so wide as to include a mere right to possess, when the actual dominion over the property is held by one in hostility to the former. Possession, correctly understood, means effective, physical control or occupation.

The word possession is sometimes used inaccurately as synonymous with the right to possess”. (Words and Phrases, 2nd Edn., John B. Sounders., p.151).

In the Dictionary of English Law (Earl Jowitt) 1959 at p. l 367 "possession" is defined as follows:

Possession, the visible possibility of exercising physical control over a thing, coupled with the intention of doing so, either against all the world, or against all the world except certain persons. There are, therefore, three requisites of possession. First, there must be actual or potential physical control. Secondly, physical control is not possession, unless accompanied
by intention; hence, if a thing is put into the hand of a sleeping person, he has not possession of it. Thirdly, the possibility and intention must be visible or evidence by external signs for if the thing shows no signs of being under the control of anyone, it is not possessed;.

In the end of all, however the meaning of 'possession' must depend on the context." (ibid. p. 153).

May be, in certain situations, possession may cover right to possess. It is thus clear that in Anglo- American jurisprudence also, possession is actual possession and in a limited set of cases, may include constructive possession, but when (1) American Jurisprudence, Words & Phrases Vol. 33, p. 103. there is a bare right to possess bereft of any dominion or factum of control, it will be a strange legal travesty to assert that an owner is in possession merely because he has a right to possess when a rival, in the teeth of owner's opposition, is actually holding dominion and control over the land adversely, openly and continuously. Admittedly in the present case" the possession of the plaintiff had ceased totally at least two years before the vesting under section 4 took place. This situation excludes khas possession.

22. We have the uniform authority of this Court to hold that the possession of a trespasser, by no stretch of imagination, can be deemed to be khas possession or even constructive possession of the owner. In Surajnath Ahir (supra) this Court considered the definition of khas possession in the Act in the context of section and after adverting to Brij Nandan Singh v. Jamuna Prasad, on which Shri Misra placed massive reliance, observed:

"Reliance was placed by the High Court on the case reported as Brijnandan Singh v. Jamuna Prasad for the construction put on the expression 'khas possession' to include subsisting title to possession as well, and therefore for holding that any proprietor, whose right to get khas possession of the land is not barred by any provision of law, will have a right to recover possession and that the State of Bihar shall treat him as a raiyat with occupancy right and not as trespasser. We do not agree with this view when the definition of khas possession' means the possession of a proprietor or tenure-holder either by cultivating such land himself with his own stock or by his own servants or by hired labour or with hired stock. The mere fact that a proprietor has a subsisting title to possession over certain land on the date of vesting would not make that land under his 'khas possession' ». The attempt to distinguish this decision on the score that the observation is obiter does not appeal to us and the rule laid down there is in conformity with the principle as we have earlier expounded. The law has been indubitably laid down in Ram Ran Bijai Singh (supra) where a Bench of five Judges of this Court discussed khas possession in section 2k and the scope of section 6 of the Act. The same Full Bench(1) case earlier referred to was pressed before the learned Judges, and over-ruuling that case, Ayyangar, J. speaking for the Court stated the law in these unmincing words:

"Mr. Sarjoo Prasad however relied on certain observations in the judgment of the Full Bench of the Patna High Court in Sukdeo Das v. Kashi Prasad where the learned Judges appear to consider the possession even of a trespasser who has not perfected his title by adverse possession for the time requisite under the Indian Limitation Act as the khas possession of the true owner. We consider that this equation of the right to possession with 'khas possession' is not justified by principle or authority. Besides this is also inconsistent with the reasoning of the Full Bench by which constructive possession is treated as within the concept of khas possession.
The possession of the contesting defendants in the present case was in their own right and adverse to the plaintiff, even on the case with which the appellants themselves came into Court." .. In this context the plea made by the plaintiffs relevant to the character of the possession of the contesting defendants assumes crucial importance, for if they were admittedly trespassers then they could not be said to hold the property on behalf of the mortgagors and the entire basis of the argument as to the property being ill the khas possession of the plaintiffs would disappear. It was on the basis of their possession being wrongful that a claim was made against them for mesne profits and it was on the footing of their being trespassers that they were sued and possession sought to be recovered from them. In these circumstances we consider that it is not possible for the appellants to contend that these tenants were in possession of the property on behalf of the mortgagor and in the character of their rights being derived from the mortgagor.

The Court rejected the theory that the possession of a trespasser was that of the owner. Other decisions of the Patna High Court and this Court were referred to at the bar but the position having been made unmistakable by the two cases just mentioned, we do not wish to burden this judgment with case law any further.

23. The conclusion we, therefore, draw is that on the facts found-indeed, on the facts averred in the plaint-the plaintiff had no khas possession of the suit lands and cannot use section 6 as a rescue raft. His title was lost when section 4 was notified as applicable to the suit lands by section 3 in 1956. Without title he could not maintain the action for recovery of possession. But that is not the end of the matter. He is certainly entitled to mesne profits from the defendants, first party, until the date of vesting, i.e. January 1, 1956. We, grant him a decree in this behalf subject to the qualification mentioned below. Again, the contesting defendants, in paragraph 27 of their written statement, have admitted that they had no possession of or connection with some of the plots mentioned in Schedule to the plaint and set out therein. The High Court has dismissed the suit in entirety after noticing the admission of the contesting defendants that they have not been in possession of those items covered by paragraph 27 of the written statement. The plea in that paragraph is that these lands have been made over to the defendants, second party. It is undeniable that the plaintiff had title to the entire Schedule properties as against defendants, first party, and second party. If defendants, first party, were not in possession and defendants, second party, were in possession, the plaintiff would still be entitled to a decree for possession of the same. It neither is in possession the presumption that the owner is in possession holds good and he is entitled to that possession being restored to him. Therefore, a decree for possession of these items covered by paragraph 7 of the written statement filed on behalf of the contesting defendants, first party, is also granted. Here we must utter a word of caution and condition our decree accordingly. The State, by the vesting operation, has become the owner and very probably the plaintiff cannot sustain any claim to be in possession as against the State. While we do not investigate this aspect, we wish to make it perfectly plain that the rights of the State, as against the plaintiff, in regard to the items for which we are giving him a decree, will not in any manner be affected. Likewise, if some third party is in possession of those items unclaimed by the defendants, first party, their possession, if any, also will not be prejudiced. After all, the decree of this Court can bind and regulate the rights of the parties to the litigation and not others. Inevitably, the mesne profits which we have decreed will be confined to those items which are found to be in the possession of the defendants, first party.
24. There is a disturbing feature about this case. We have already indicated how there is an apparent indifference on the part of the State in securing its rights granted by the Act. Here is a case where the defendants, first party, are rank trespassers and have no evident equity in their favour. Section 4(f) declares that the Collector shall be deemed to have taken charge of the estates and interests vested in the State. This means he has a public duty to take charge of lands vested in the State. Surely, a responsible public officer like the Collector, charged with a duty of taking delivery of possession of lands which by virtue of the vesting the State is entitled to take direct possession of, will proceed to dispossess the trespasser. In this case, defendants first party, are trespassers and the plaintiff being out of the pale of section 6, the State is entitled to the direct possession of the suit lands. We expect the Collector to do his duty by section 4(g). Counsel for the respondents drew our attention to rule 7H:

7-H. How to deal with cases in which proprietor, etc., not found in possession on the date of vesting-If the Collector holds on the report of enquiry held under rule 7-E or 7-F that the outgoing proprietor or tenureholder, or his temporary lessee or mortgagee, was not in possession of the lands or buildings referred to in rule 7-G, he shall fix the fair rent or ground-rent thereof in the manner prescribed in these rules and the person who may be found to be in possession of such lands or buildings shall thereupon be liable to pay the rent or ground-rent so fixed to the State Government with effect from the date of vesting.

Although we need not elaborately study the implications of this provision, it is fairly clear that this rule does not confer any right or equity to be in possession in favour of trespasser. All that it does is to make the man in possession, be he trespasser or not, "liable to pay the rent or ground-rent so fixed to the State Government with effect from the date of vesting." It is the liability to pay rent that is created, not the equity to claim possession. After all, the land reform measure is intended to conserve as much land as is available in the hands of the State and any trespasser who distorts this claim and snatches possession, cannot benefit by his wrong. May be, there are special circumstances which may persuade the State to give possession of any land either to its erstwhile proprietor or to one who has been in long possession rightly or wrongly. We do not make any observation in that behalf but point out that prima facie section 4(f) and (g) and rule 7-H attract the jurisdiction of the State and its revenue authorities. The policy of the Act includes the State taking over and managing lands not saved by sections 5, 6 and 7 and are not found to be in possession of the proprietor so that the eventual distribution to the landless and the like may be worked out smoothly.

25. The appeal is dismissed in substantial measure except to the extent of the relief by way of mesne profits and possession in regard to a few items mentioned in paragraph 27 of the contestants' written statement. The parties will bear their costs throughout in the peculiar circumstances of the case. This judgment will not affect the rights, if any, either party may seek or has secured from the State.
JAMHIR ANSARI VS. KETNA ORGAN

[2003] 0 Supreme(Jhar) 3467

Jamhir Ansari ... Appellant
Versus
Ketna Organ ... Respondent

VISHNUDEO NARAYAN, J.

APPEAL FROM APPELLATE DECREE 76 OF 1988 DECIDED ON : 18 NOVEMBER, 2003

Chota Nagpur Tenancy Act, 1908 - Section 73- Status of an Adhbataidar- is that of a tenant and not of a hired labourer - dereliction of duty aggravated by voluntary departure from holding is a strong evidence of severance of relationship of landlord and tenant and landlord becomes entitled to resume the possession - instantly, defendant-respondent having remained in continuous cultivating possession over the suit part for several years beyond 12 years perfected his right and title in the suit property- plaintiff-appellant have not prayed for recovery of possession when she stood dispossessed rather have filed the suit for declaration of title simplicitor- appeal dismissed.

(Paras 11 and 12)

CHOTA NAGPUR TENANCY ACT: 5.73, S.73(2)

JUDGMENT

Vishnudeo Narayan, J.

1. This appeal at the instance of plaintiff-appellant is directed against the impugned judgment and decree dated 16.3.1988 and 30.3.1988 passed in Title Appeal No. 9 of 1983/14 of 1983 by Shri B.N. Singh, 1st Additional Judicial Commissioner, Ranchi whereby and whereunder the said appeal was dismissed affirming the judgment and decree dated 22.12.1982 and 10.1.1983 passed in Title Suit No. 202 of 1981/62 of 1982 by Shri Ram Nath, Additional Sub-Judge, Ranchi.

2. The original plaintiff-appellant has died during the pendency of this appeal and her heir and legal representative stands substituted in this case.

3. The plaintiff-appellant had filed the aforementioned suit for declaration of her title in respect of the suit plot detailed in the Schedule at the foot of the plaint.

4. The case of the original plaintiff-appellant, in brief, is that the suit plot aforesaid was recorded in the Revisional Survey Records of Right in the name of her father Sheikh Shohabat as RKaimi Adhbataidaunnder Most. Sushila Kuar, the landlord, under khata No. 104 of village Kharta and the said Sheikh Shohabat, being a Kaimi Adhbataidar is a tenant
with occupancy rights and is not liable to eviction and after the vesting of the estate, said Sheikh Shohabat became a full fledged raiyat of the said suit plot and he was in peaceful possession thereof since more than 50 years. It is alleged that Sheikh Shohabat died in the year 1936 leaving behind her only daughter, the original plaintiff-appellant, who inherited the suit plot and she came in possession thereof and continued as such since then. It is further alleged that the plaintiff-appellant lived in the house of her husband in another village and she is cultivating the suit plot through her own cousin Sheikh Bucha as her agent who is holding the suit plot on her behalf and the defendants-respondent without any rhyme or reason started creating disturbances in her peaceful possession over the suit plot on false pretext without any legal right, title or interest therein and he, being a stranger, intends to grab the suit plot taking advantage of her absence. It is also alleged that khata No. 104 consists of three plots including the suit plot and the defendants-respondent is advancing false and mala fide claim over the suit plot only which has cast a clog on her title and hence the necessity of the suit.

5. The case of the defendants-respondent, inter alia, is that Sheikh Shohabat died before 1941 leaving behind no legal heir and his tenancy in respect of the land of khata No. 104 of village Kharta extinguished and the then landlord came in khas possession of all the three plots including the suit" plot of khata No. 104 and the land of khata No. 104 became the "Bakast" land of the landlord Most. Sushila Kuar and she held and possessed the suit plot as a Bakast land during her life and after her death her descendents, namely, Nawal Kishore Dhar Dubey and others came in khas and exclusive possession of the land of khata No. 104 and in the year 1941 said Nawal Kishore Dhar Dubey and others settled the suit plot with Budhram Oraon, the uncle of the defendants-respondent by virtue of Hukumnama followed by rent receipts and after taking settlement Budhram Oraon came in khas and exclusive possession over the suit plot and he paid rent to the landlord before the vesting of the estate and, thereafter to the State of Bihar. The further case of the defendants-respondent is that Budhram Oraon died issueless and this defendant-respondent No. 1 being his nephew and nearest male agnate inherited the suit plot and came in khas; and exclusive cultivating possession over the same and he is in peaceful continuous possession over the suit plot openly and adversely to all the persons and he also stands mutated in respect thereof and he is paying rent to the State and in the present survey operation he has been recorded in the Survey Records of Right in respect thereof without any objection by the plaintiff-appellant. It is also alleged that the plaintiff-appellant is not the daughter of Sheikh Shohabat and she has not inherited the suit plot and she has never come in cultivating possession over the same and it is false to say that she has cultivated the land through Sheikh Bucha. The further case of the defendants-respondent is that khata No. 104 consists of three plots and none of the plots of the said khata is in possession of the plaintiff-appellant. It is alleged that the suit plot is in possession of this defendants-respondent and plot No. 1114 is in possession of Sheikh Amir and Sheikh Jambir which they have acquired by registered deed of sale executed by Nawal Kishore Dhar Dubey aforesaid and plot No. 160 of the said khata is in possession of the descendents of the ex-landlord. Lastly it has been contended that the suit of the plaintiff-appellant is barred by law of limitation and adverse possession and ouster as well as under Section 34 of the Specific Relief Act in view of the fact that the suit of the plaintiff-appellant is simpliciter a suit for declaration and no relief for recovery of possession has been sought for.
6. In view of the pleadings of the parties the trial Court framed the following issues for adjudication in this case:

(i) Is the suit maintainable as framed?
(ii) Has the plaintiff got any cause of action for the suit?
(iii) Is the suit barred by adverse possession, limitation and ouster?
(iv) Is the plaintiff daughter of the recorded tenant sk. Shohabat and rightful owner of the suit land?
(v) Is the plaintiff in possession of the suit land through her agent and relative late Buchas son within the statutory period?
(vi) Is the story of resumption by landlord true and made according to legal process and valid?
(vii) Are Nawal Kishore Dhar Dubey and others heir of ex-landlord Most. Sushila Kuar and the settlement of the land in favour of defendant No. 1 valid?
(viii) Is the plaintiff entitled to any relief or reliefs, if any?

7. In view of the oral and documentary evidence on the record the learned trial Court while deciding issue Nos. 4 and 5 has held that the original plaintiff-appellant Sahiman is the daughter of Sheikh Shohabat but she was not in possession over the suit land after the death of her father and the case of the plaintiff-appellant being in possession through her agnate or relative i.e. Sheikh Jambir was also found to be incorrect. The learned Court below has further held regarding issue Nos. 6 and 7 that after the death of Sheikh Shohabat the suit plot became vacant and was resumed by the then landlord who subsequently settled it to Budhram Oraon who came in cultivating possession of the same and subsequently it was inherited by the defendant-respondent No. 1 who is continuing in possession thereon. The learned trial Court also held that the suit is barred by adverse possession, ouster and limitation.

8. Aggrieved by the judgment and decree of the trial Court the plaintiff-appellant preferred Title Appeal No. 9 of 1983. The lower appellate Court on reappraisal and re-appreciation of the evidence, oral and documentary, on the record affirmed the judgment and decree of the trial Court and dismissed the appeal. The plaintiff-appellant preferred this appeal before this Court and while admitting the appeal for hearing this Court formulated the substantial question of law which runs thus:

"Whether in view of the fact that the owner of the property in question left behind a daughter, namely, the appellant who is a Class 1 heir under the Muslim law; in view of the provision as contained in Section 23 of the Chotanagpur Tenancy Act, the landlord had a right to make settlement of the self-same land."

9. Assailing the impugned judgment it has been submitted by the learned counsel for the appellant that the suit plot admittedly stands recorded as Kaimi Adhbataidar in the name of Sheikh Shohabat, the father of the original appellant under khata No. 104 of village Kharta in the Survey Records of Rights and Kaimi Adhbataidar is a tenant having occupancy rights and the status of the Adhbataidar is that of the tenant and not of a hired labourer and it is well settled that an Adhbataidar has to give to the landlord the half produce the land he
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cultivates as rent and there is a relationship of landlord and tenant between a landlord and his Adhbataidar and Adhbataidar is not liable to be evicted from his tenancy except in accordance with the provisions contained in Section 22 read with Section 73 of the Chotanagpur Tenancy Act (hereinafter referred to as the said Act). It has also been submitted that the original plaintiff-appellant having come in cultivating possession of the suit plot on the death of her father Sheikh Shohabat has not surrendered or abandoned the suit plot at any point of time and in this view of the matter, the case of resumption of the suit plot by the landlord as contended by the defendant-respondent without observing the provisions of Section 73 of the said Act has no leg to stand and further there is no chit of paper to establish the fact that the landlord before the resumption of the said land had sent a notice to the Deputy Commissioner in the prescribed manner stating therein that he has treated the holding as abandoned and the landlord shall not enter in holding unless and until the objection has been decided in his favour if no objection is preferred by the tenant or if no objection is preferred until the expiration of one month from the date of publication of the notice by the Deputy Commissioner and both the Courts below have committed error of law in respect thereof in dismissing the suit as well as the appeal of the plaintiff-appellant. It has further been contended that the case of perfecting title by adverse possession in respect of the suit plot as contended by the defendant-respondent is not tenable in this case in view of the fact that no specific date of taking possession of the suit plot by the landlord or his settlee Budhram Oraon adversely to the plaintiff-appellant has been disclosed in the written statement of the defendant and also no ingredients of perfecting title by adverse possession has been averred therein as mandated under the law and in support of his contention reliance has been placed on the ratio of the case of Parwatabai v. Sonabai and Ors., AIR 1997 SC 381. It has been contended that the original plaintiff-respondent is the daughter of Sheikh Shohabat, the recorded Kaimi Adhbataidar of the suit plot and Section 23 of the said Act mandates that if a raiyat died intestate in respect of a right of occupancy, it shall descend in the same manner as other immovable property subject to any local custom to the contrary. It has been contended that it is well settled that the High Courts while considering the matter in exercise of its jurisdiction in second Appeal or Civil Revision would not reverse the finding of fact as recorded by the Courts below. But it is not an absolute proposition. In a case where the finding is recorded without any legal evidence on the record, or on misreading of evidence or suffers from any legal infirmity, which materially prejudices the case of one of the parties or the finding is perverse, it would be open for the High Court to set aside such a finding and to take a different view. Lastly, it has been contended that the learned appellate Court below has committed an error of law in dismissing the said appeal and viewed thus, the impugned judgment is unsustainable.

10. Refuting the contention aforesaid it has been submitted by the learned counsel for the defendant-respondent that the learned Court below on proper appreciation and reappraisal of the evidence has affirmed the finding of the trial Court and there is concurrent finding of possession of the defendant-respondent on the suit plot and it has now become a conclusive fact and the defendant-respondent has acquired the suit plot by virtue of Hukumnama (Ext. D) executed by the ex-landlord who had resumed the suit plot being abandoned after the death of the recorded tenant Sheikh Shohabat and the settlement has been made by the said Hukumnama in the year 1941 and since then Budhram Oraon and
after him his nephew, the defendant-respondent were in possession over the same. It has also been contended that the right of appeal under Section 100 of the Code of Civil Procedure is neither a natural nor an inherent right attached to the litigation and it being a substantial statutory right it has to be recorded in accordance with law in force at the relevant time and the conditions mentioned under Section 100 of the CPC must be strictly fulfilled before a Second Appeal is maintained and no Court has the power to add to or enlarge those grounds and the Second Appeal cannot be decided on merely equitable grounds and it is not within the domain of the High Court to Investigate the grounds on which the findings were arrived at, by the last Court of fact, being the first appellate Court. It has also been contended that in a case where from a given set of circumstances two Inferences are possible, one drawn by the lower appellate Court is binding on the High Court in Second Appeal and adopting any other approach is not permissible and the High Court cannot substitute its opinion for the opinion of the first appellate Court unless it is found that the conclusions drawn by the lower appellate Court were erroneous being contrary to the mandatory provisions of law applicable or its settled position on the basis of pronouncements made by the Apex Court, or was based upon inadmissible evidence or arrived at without evidence. It has been contended that here in this case, the original plaintiff-appellant has admitted that her father had died in the year 1936 and two or three years thereafter the ex-landlord has resumed the suit plot and thereafter the ex-landlord has settled the suit plot by executing a Hukumnama in favour of Budhram Oraon and since then Budhram Oraon and after his death his nephew, the defendant-respondent is cultivating possession of the said suit plot and in view of the admission aforesaid of the plaintiff-appellant it has become an established fact that the ex-landlord was in possession of the land and thereafter Budhram Oraon and after him the defendant-respondent came in continuous cultivating possession over the same and this fact has been established by the concurrent finding of both the Courts below. It has been observed by this Court in case of Sumitra Devi and Ors. v. Par-bati Devi, 1996 (1) PLJR 294, that in second appeal the High Courts interference is not required where the Judgment and decree passed by the Courts below are concluded by finding of fact under the provisions of Section 100 of the Code of Civil Procedure. Further reliance has been placed on the ratio of the case of Kondiba Dagadu Kadam v. Savitribai Sopan Gujar and Ors., AIR 1999 SC 2213 and Satya Gupta (Smt.) @ Madhu Gutpa v. Brijesh Kumar, 1998 (6) SCC 423. It has also been submitted that Section 73 of the said Act is self-contained provision and if there is violation of the aforesaid provision, then the remedy is provided under Section 73 itself and prior permission of the Deputy Commissioner is not mandatory under the provisions of Section 73(2) of the said Act and it is well settled that no notice is necessary to enable the landlord to obtain khas possession of the holding of its being abandoned as it is not the notice which terminates the tenancy but the voluntary abandonment coupled with the acts on the part of the landlord indicating that he considers the tenancy at an end and it is for the Court in such case to determine whether the tenancy has terminated and the landlord is not bound to take any proceeding under Section 73 of the said Act whereas the landlord acquires a good title to the land by virtue of abandonment. In support of his contention reliance has been placed upon the ratio of the case of Safluddin v. Lawrence Somra Kerketta and Anr., AIR 1956 Pat 186. Further reference has been placed on the ratio of the case of Sk. Rahimuddin and Ors. v. Lakho Devi. 1998 (1) PLJR 593. Lastly, it has been contended that the plaintiff-appellant has got neither title nor she was ever in possession of the suit land at any time within twelve
years of the suit and the absence of the date of coming in possession by the ex-landlord after over the suit plot has no relevancy in this case and the only difference between the landlord who has taken recourse to the requisite proceedings and one who has not done so is that a landlord, who has taken proceedings before the Deputy Commissioner, will have an indefeasible right by virtue of abandonment from the date of order recorded by the Deputy Commissioner treating the land as abandoned. The landlord, however, who has not taken recourse to this proceeding cannot claim indefeasible title and he may be defeated by suit being started by the person entitled to the property within twelve years of the commencement of possession of the landlord and in the present case, however, the suit was filed beyond twelve years from taking over possession by the landlord of the abandoned land and learned Courts below has rightly held that the suit is barred by law of limitation and in this view of the matter, the ratio of the case of Parwatabai, (supra) has no application in this case.

11. It is an admitted case of the parties to the suit that plot No. 1089 of khata No. 104 of village Kharta which is the suit plot stands recorded in the Survey Records of Right in the name of Sheikh Shohabat, the father of the original plaintiff-appellant (since dead) besides two other plots as Kaimi Adhbataidar. Sheikh Shohabat as per the case of the plaintiff-appellant has died in the year 1936 leaving behind the plaintiff-appellant as his legal heir and prior to his death, the plaintiff-appellant stands married and she was living in her matrimonial home about eight miles away from village Kharta. It is well settled that an Adhbataidar has to give to the landlord, half of the produce of the land he cultivates as rent. The status of an Adhbataidar is that of a tenant and not that of a hired labourer and there is a relationship of landlord and tenant between the landlord and his Adhbataidar and Sheikh Shohabat as per entry in the Survey Records of Right is a Kaimi Adhbataidar and it means that he has occupancy right as Adhbataidar in respect of the suit plot and Sheikh Shohabat has died intestate having the right of occupancy in the suit plot which was inherited by the plaintiff-appellant as per provision of Section 23 of the said Act. The case of the plaintiff-appellant is that after her marriage she was getting the suit plot besides other plots cultivated through her cousin brother Sheikh Bhucha. As per the case of defendant-respondent, the suit plot besides other plots of Khata No. 104 was abandoned after the death of Sheikh Shohabat which was resumed by the then landlord, Shushila Kuar and the same was possessed by the then landlord as her Bakast land and thereafter her descendant settled the land with Budhram Oraon by executing a Hukumnama (Ext. D) followed by rent receipts and since Budhram Oraon and after his death his nephew, the defendant-respondent continued in cultivating possession thereon and had paid rent to the then landlord and after vesting of the estate of the State of Bihar. The Hukumnama (Ext. D) and rent receipts (Ext. C series) are referred to in this connection. In order to construe abandonment within the meaning of Section 73 of the said Act there must co-exist a voluntary abandonment of holding without a notice to the landlord, absence of arrangement for payment of rent and cessation of cultivation of the said holding. The cultivation of land and payment of rent are the two primary duties of tenant and the dereliction of such duties aggravated by voluntary departure from holding is strong evidence of the severance of the relationship of the landlord and tenant and in such a situation it is always open to the landlord to resume the possession of the said abandoned land. PW 1, the defendant-appellant in her evidence has admitted in the most clear and unequivocal terms that after the death of her father,
Sushila Kuar, the then landlord of her village resumed the possession of the suit plot and thereafter her descendant Nawal Kishore Dhar Dubey settled the same with Budhram Oraon, the uncle of the present defendant respondent and PW 3 has also deposed in para 5 of his cross-examination that after the death of Sheikh Shohabat, the ex-landlord came in possession of the disputed plot. There is also admission on the record as per their evidence read with the evidence of PW 4 that Budhram Oraon and after his death, the defendant-respondent has been coming in cultivating possession of the disputed plot. There is also no chit of paper on the record brought by the plaintiff-respondent to give an inkling of the fact that the rent of the suit plot was ever paid to the ex-landlord after the death of Sheikh Shohabat and after the vesting of the estate to the State, And to crown all, PW 8 Sheikh Jahir along with his two brothers has acquired plot No. 1114 of khata No. 104 aforesaid which was recorded as Kaimi Adhbataidari land of Sheikh Shohabat by virtue of sale deed dated 1.11.1961 (Ext. B) executed by Nawal Kishore Dhar Dubey, the descendant of the then landlord Shushila Kuar. PW 8 is the son of Sheikh Bucha, the cousin brother of the original plaintiff- appellant. Therefore, the finding of the learned Courts below cannot, be said to have been recorded without any legal evidence on the record or on misreading of evidence or the said findings suffers from any legal infirmity which materially prejudices the case of one of the parties and thus the finding recorded by both the Courts below cannot be said to be perverse.

12. For appreciating the rival contentions advanced by the learned counsels for the parties it is necessary to look into the provisions of Section 73 of the said Act, which reads thus :-

"73. Abandonment of land by raiyat.--(1) If a raiyat voluntarily abandons the land held or cultivated by him, without notice to the landlord and ceases either himself or through any other person to cultivate the land and to pay his rent as it falls due, the landlord may, at any time after the expiration of the agricultural year in which the raiyat so abandons and ceases to cultivate, enter on the holding and let it to another tenant or take into cultivation himself.

(2) Before a landlord enters under this section, he shall send a notice to the. Deputy Commissioner in the prescribed manner, stating that he has treated the holding as abandoned and is about to enter on it accordingly; and the Deputy Commissioner shall cause a notice of the fact to be published in the prescribed manner and if an objection is preferred to him within one month of the date of publication of the notice shall make a summary inquiry and shall whether the landlord is entitled under Sub-section (1) to enter on the holding. The landlord shall not enter on the holding unless and until much objection has been decided in his favour or if no objection is preferred, until the expiration of one month from the date of publication of the notice.

(3) When a landlord enters under this section, the raiyat shall be entitled to apply to the Deputy Commissioner for the recovery of possession of the land at any time not later than the expiration of three years in the case of an occupancy-raiyat, or in the case of a non-occupancy raiyat one year from the date of the publication of the notice; and thereupon the Deputy Commissioner may, on being satisfied that the raiyat did not voluntarily abandon his holding, restore him to possession in the prescribed manner on such terms (if any) with respect to compensation to person injured and payment of arrears of rent as to the Deputy Commissioner may seem just."

From reading of Section 73 of the said Act, it is manifest that the provision aforesaid
gives right to the landlord to take possession of abandoned holding without preferring a suit. However, it simply provides for certain steps to be taken by the landlord for his own protection against any subsequent action on the part of the tenant. The object of enactment of this provision has been dealt with in the book "The Chota Nagpur Tenancy, 1908 by J. Reid" giving reference to the decision in the case of Bhagaban Chandra Missir v. Bisseswari Debya, (3) CMN 46, which reads thus:

"Aboriginal raiyats in Chota Nagpur frequently desert their holdings in periods of stress, and emigrate to the labour districts, without making any arrangements for the cultivation of the lands comprised within their tenancies, or for the payment of rent. They sometimes return in a year or two, and not uncommonly assert that they have not abandoned their tenancies. The object of the section is to safeguard the legitimate interests of the landlord in these cases, and per contra to protect the raiyats against fraudulent resumption."

Section 73(1) of the said Act mandates that if the land is abandoned by the tenant without notice to the landlord and the tenant ceases to cultivate the said land and to pay rent, the landlord may enter on the holding and let it to another tenant or take into cultivating himself. It, therefore, appears that it is not at all necessary to send a notice to the Deputy Commissioner to enable the landlord to obtain khas possession of the holding abandoned by the tenant. It is not the notice which terminates the tenancy but the voluntary abandonment of the land by the tenant which terminates the tenancy. The said question arose for consideration in the case of Safiuddin, (supra) and it was observed that the landlord is not bound to take any proceeding under Section 73 of the said Act and the landlord acquires a good title to the land by virtue of abandonment. It has further been observed which runs thus:

The only difference between the landlord who has taken recourse to the requisite proceedings and one who has not done so is that a landlord, who has taken proceedings before the Deputy Commissioner, will have an indefeasible right by virtue of abandonment from the date of order recorded by the Deputy Commissioner treating the land as abandoned. The landlord, however, who has not taken recourse to this proceeding cannot claim indefeasible title and he may be defeated by suit being started by the person entitled to the property within twelve years of the commencement of possession of the landlord."

Section 73(3) of the said Act provides that when a landlord enters into the abandoned holding and resumed possession over it, the tenant has the right to apply to the Deputy Commissioner for the recovery of possession of the land at any time not later than the expiration of three years in the case of an occupancy raiyat, or in the case of a non-occupancy raiyat one year, and on such application being filed, the Deputy Commissioner may on being satisfied that the raiyat did not voluntarily abandon his holding, restore him to possession on such terms with respect to compensation to person Injured and payment of arrears of rent as to the Deputy Commissioner may seem just. It is, therefore, clear that if the landlord had entered into the land without following the procedure provided under Sub-section (2) of Section 73 of the said Act, the rule of law of limitation will apply for the tenant to get back the possession of the said land. It, therefore, appears that the provision contained in Section 73 of the said Act is self-contained in itself. Here in this case, as per the evidence on the record, the plaintiff-appellant was residing in her matrimonial home eight miles away from the suit plot and after the death of Sheikh Shohabat, the land
was abandoned and the landlord resumed its possession which came in his khas cultivating possession and thereafter in the year 1941, the landlord settled the land vide Ext. D with Budhram Oraon, the uncle of the defendant respondent followed by rent receipts and since then Budhram Oraon and thereafter his nephew, the defendant-respondent came in cultivating possession over the same and continued as such. It, therefore, appears that the defendant-respondent has perfected his right and title in the suit property by remaining in continuous cultivating possession of the suit plot for several years beyond twelve years. The plaintiff-appellant here in this case has filed the suit beyond twelve years from the date of landlords possession as well as also beyond twelve years from the settlement of the land by the landlord in favour of Budhram Oraon, the uncle of the defendant-respondent and as such the suit filed by the plaintiff-appellant is definitely barred by limitation. And last but not the least, the plaintiff-appellant has filed the suit simplicitor for declaration of title without any relief of recovery of possession when as per the evidence on the record she stands dispossessed of the suit plot and in this view of the matter also the suit filed by the plaintiff-appellant is equally not maintainable. Both the Courts below have properly construed the evidence on the record and the principle of law involved therein and there is no illegality in the impugned judgment requiring an interference therein.

13. There is no merit in this appeal and it fails. The impugned judgment of the learned Courts below is hereby affirmed. The appeal is hereby dismissed but without costs in the facts and circumstances of this case.
Mora Ho Vs. State of Bihar

MORA HO VS. STATE OF BIHAR


Mora Ho
Versus
State Of Bihar

R.A.SHRAMA, S.J.MUKHOPADHYA AND M.Y.EQBAL JJ.
CIVIL WRIT JURISDICTION CASE NO. 198 OF 1979 ; DECIDED ON : JANUARY 5, 2000

Per S.J. Mukhopadhaya , J.- Scheduled Districts Act, 1874-Section 7 with Section V of
Regulation XIII of 1833-Validity of Wilkinson& Rules-Under Regulation it was Governor
who was competent to prescribe rule, by an order in Council-No power was delegated to
the Agent-Though the original of the Wilkinson& Rules is not available and in the typed
copy, it was shown to have signed by captain Thomas Wilkinson-He having not delegated
with power to frame rules, the same cannot be held to be a rule framed under Section V of
Regulation XIII of 1833-Wilkinson's Rules cannot be stated to have been saved and
continued by virtue of Section 7 of Scheduled District Act-Thus the Wilkinson& Rules
cannot be stated to be statutory. (Paras 15 and 16)

AIR 1958 pat 366. AIR 1958 Pat. 603-Qverruled.

Per R.A. Sharma, J. (Concenting) Held-Wilkinson& Rules have not been framed by a
competent authority, therefore they back statutory force-But Wilkinson's Rules shall
continue to be followed in the administration of civil justice of Kolhan area till suitable
Rules/Regulations in place of those rules have been framed by the Government-Directed
the State Govt. to do the needful in this regard within a period of three months.(Majority
View) (Para 37)

Per M.Y. Eqbal, J.-Held-Wilkinson's Rule have been accepted as valid law and acted
upon by the Govt. officers and the people of Kolhan area for more than 150 years and still
the Civil Justice is administered under Wilkinson's Rule-Wilkinson& Rule was made
under Regulation XIII of 1833 read with Govt. of India Act, 1833 and it became the
substantive part of legislation -The said rule was saved by subsequent legislation and
recognised as valid piece of statute-Wilkinson& Rule cannot be declared ultra vires
merely because of some error or Irregularity In the matter of its publication.
(Paras 39 & 40)


Per S.J. Mukhopadhaya,J.-code of Civil Procedure, 1908-Section 1 (as amended by
Act 104 of 1976)-In view of 1976 Amendment sub-section (3) to Section 1, CPC was substituted and it holds field for the whole district of Singhbhum including Kolhan area. (Para 21)

Per R.A. Sharma, J. -Expressed no opinion on the question about applicability of CPC to Kolhan area. (Para 6)

Per M.Y. Eqbal, J. -Held-Even after the amendment made in Section 1 of CPC by virtue of Amendment Act of 1976 the Kolhan area remained excluded from the operation of CPC by virtue of Notification dated 26.8.1953. (Para 37)

SCHEDULED DISTRICTS ACT : 5.7

Cases Referred:


Judgment

R.A.SHRAMA, J.

1. I have gone through the two judgments prepared by my two learned brothers (S.J. Mukhopadhaya and M.Y. Eqbal, J.J) who along with me were the members of the Full Bench, which was constituted to answer the questions referred, which have been reproduced on the 2nd page of the judgment of Hon ble S.J. Mukhopadhaya, J.

2. Hon ble S.J. Mukhopadhaya, J. has held that Wilkinsons Rules have not been framed by the Governor General in the Council, who was the only competent authority at the relevant time to frame such Rules and, therefore, they lack statutory force and the law laid down by the Division Bench earlier in the case of Dulichand Khirwal, AIR 1958 pat 366 and Mahendra Singh case, AIR 1958 Patna 603, does not represent the correct legal position. Hon ble M.Y. Eqbal, J. on the other hand has taken a contrary view holding the said Rules to be statutory in nature. The decisions of the Division Bench of this Court in Dulichand Khirwal, AIR 1958 Patna 366 and Mahendra Singh case, AIR 1958 Patna 603 (supra) have, accordingly, been approved by him.

3. For the reasons given by Hon ble S.J. Mukhopadhaya, J. I agree with him that the Wilkinsons Rules have not been framed by a competent authority and, therefore, they lack statutory force.

4. Although these Rules have no statutory force but the admitted position is that they have been followed and acted upon in the Administration of Civil Justice in the Kolhan area of Singhbhum district for about 150 years. Even Hon ble S.J. Mukhopadhaya, J. in paragraph 16 of his judgment has held that "the Wilkinsons Rules thus cannot be stated to be statutory, though it can be held to be a general law, being followed for more than 1/2 century. Final report on the survey and settlement operation in the district of Ranchi (1910) and the final report on the re-settlement of the Kolhan Government Estate (1913-1918) have also recorded that the Rules framed by Captain Wilkinson though not sanctioned by the Government but have been followed in the Administration of Civil Justice. If these Rules are
made inapplicable, now, in the absence of any suitable substitute, it may cause hardship and confusion. Therefore, it is expedient that till the new Rules/ Regulations are framed by the Government in place of these Rules, these Rules should continue to hold the field.

5. It may further be mentioned that the Wilkinsons Rules are applicable to a small area of land known as "Kolhan Estate" in the district of Singhbhum. These Rules are not applicable to other Tribal areas, including the remaining part of the district of Singhbhum. Honble M.Y. Eqbal, J. in Paragraph 45 to 50 of his judgment has highlighted the deficiency in the Wilkinsons Rules to cope with the present system of life and litigation in Kolhan. The learned Judge has pointed out that these Rules were framed about 150 years ago in order to govern and regulate the litigations of the illiterate and ignorant tribals but by passage of time literacy and wisdom have progressively dawned on them on account of which these Rules have become inadequate to meet their requirements. In this connection the learned Judge has also observed that the large number of industries have been established in Kolhan area but these Rules do not lay down any procedure for resolving the dispute relating to dismissal, wrongful transfer of the workmen as well as the dispute between the landlord and the tenant. It is further pointed out that the decree passed by a Court under these Rules cannot be executed anywhere in the country excepting Kolhan itself. Even the Kolhan Enquiry Committee in its report dated 31st July, 1948 has highlighted some such deficiency and in this connection has observed as under:

"Cases are instituted by ordinary petitions. The Court-fees Act is nominally in force in the Kolhan and where a case is allowed to assume the form of a regular civil suit, it is valued according to the Court-fees Act. As regards procedure, the Civil Procedure Code is followed in a modified form, so that it is not inconsistent with RWilkinsons Rules; but great use is made of the ordinary village Panchayat as arbitrators. The majority of petitions, however, is treated as miscellaneous petitions and settled by the Kolhan Superintendent without being allowed to assume the form of a civil suit. Though this is the procedure still followed it appears that the results are not as happy as it was in the past. The Hos have advanced from their backward state; they have lost faith in their Mankis and Mundas and have also come under the influence of lawyers and touts. While recording the evidence of witnesses, it transpired that some Mundas act as touts for lawyers. So most of the miscellaneous petitions, do not end with the Kolhan Superintendent, Arbitration by Mankis is in many cases a failure these days. So ultimately by the Kolhan Superintendent has to allow most of these petitions to assume the form of civil suits. This is putting a strain on the existing staff and is perhaps not giving real satisfaction to the litigant Ho. In the past this system gave cheap and speedy justice to Ho. But now it is neither cheap nor speedy." The said Committee has, accordingly, recommended for framing of the Rules for the Kolhan Estate also on the line of Santal Civil Rules. In this connection, Brother M.Y. Eqbal, J. has noted the fact that the draft regulation was framed in 1983 in order to replace the Wilkinsons Rules but they have not been made final so far. It appears that there is inaction on the part of the Government in this regard. It is high time that the Government should act and provide better substitute.

6. For the reasons given above, I agree with Honble S. J. Mukhopadhaya, J. that the Wilkinsons Rules do not have statutory force and the questions referred to the Full Bench are answered in terms of his judgment. It is, however, not necessary for me to express any opinion on the question about the applicability of the Civil Procedure Code to the Kolhan area.
7. But for the reasons given hereinafter, the Wilkinsons Rules shall continue to be followed in the Administration of Civil Justice of Kolhan area till suitable Rules/Regulations in place of those Rules have been framed by the Government. The State Government shall do the needful in this regard within a period of three months from the date of receipt of the copy of this Judgment.

8. Let a copy of this judgment be sent to the Chief Secretary, Government of Bihar, for compliance at the earliest. S. J. Mukhopadhyaya, J.:

The case relates to right and title in respect of Plot No. 2075 under Khata No. 141 of village Konkoa, Thana No. 14, situated within Kolhan area (District- Singhbhum).

9. Initially, a Kolhan Title Suit No. 27/66 was preferred by petitioner, which was withdrawn, having filed before a Court having no jurisdiction, followed subsequently as Kolhan Title Suit No. 1/71, preferred the Additional Deputy Commissioner, Chaibasa. In terms with Rule 20 of the Wilkinsons Rules, it was referred to Panches, who on hearing the parties submitted award in favour of defendants. The suit was decreed, accordingly, in favour of defendants, against which the petitioner preferred Title Appeal No. 84/74 before the Commissioner South Chotanagpur Division Ranchi. The appeal having rejected, the present petition was preferred, wherein while challenging the award/decree, the petitioner raised the question of validity of Wilkinsons Rules.

10. The validity of Wilkinsons Rules was challenged, from time to time, but upheld by Division Bench of this Court in Dulichand Khirwal V/S. State of Bihar, AIR 1958 Pat 366, Chotanagpur Division, AIR 1958 Pat 603.

11. In the present case, taking into consideration the submission made on behalf of the petitioner and the Division Bench decisions in Dulichand Khirwal, AIR 1958 Patna 366 and Mahendra Singh, AIR 1958 Patna 603, the Court was of the view that the aforesaid cases need reconsideration by a larger Bench and referred the matter to determination the following questions:-

"(i) The authenticated copy of the Wilkinsons Rules is not available in the records nor is there any publication as to how Rules were purported to be framed or made under paragraph 5 of Regulation XIII of 1833. A typed copy of the Rules signed by Captain Thomas Wilkinson is available in the records. Captain Thomas Wilkinson was an Agent of the Governor General and the Rules framed or made under the signature of Captain Thomas Wilkinson cannot be said to be a Rule within the meaning of paragraph 5 of Regulation XIII of 1833.(ii) With the enactment of the Government of India Act, 1915, substantive part of the legislation by British Parliament of Chapter Act, 1833, was wholly repealed and Regulation XIII of 1833 made under the said Act also stood repealed and the Wilkinsons Rules, which are said to have been framed under the said Regulation also stood repealed, inasmuch as petitioner Sec. 130 of the Government of India Act, 1915, nor the 4th Schedule of the said Act saved Regulation XIII of 1833 or Wilkinsons Rules.(iii) By the Government of India (Adoption of Indian Laws) Order 1937, the Schedule District Act 1874 was not adopted. Consequently, the operation of the Scheduled District Act 1874, ceased to exist and the Wilkinsons Rules could no longer be saved under Sec. 7 of the Scheduled District Act XIV of 1874.(iv) After enactment of Schedule Areas (Part A State) Order, 1950, and amended Schedule Areas (State of Bihar, Gujarat, Madhya Pradesh and Orissa) Order, 1977, by the President of India.
in exercise of the power conferred under sub-paragraph 2 of the paragraph 6 of the Vth Schedule, the continuation of the Wilkinsons Rules is ultra vires."

12. The main question raised on behalf of the petitioner is that the Wilkinsons Rules is not a Rule framed under Section v of Regulation XIII of 1833, nor can be said to be a statutory rule having binding force.

13. To determine the aforesaid questions, it is necessary to trace out the history of Wilkinsons Rules, as also the Acts, Enactments; Rules and Regulations, as issued, from time to time, since 1833 in that regard.

14. The Kolhan, which was a Government estate is situated within the district of Singhbhumn which, forms south eastern portion of Chotanagpur Division. The Kolhan was divided into 26 Pirs. The whole estate is a non police tract, but for administrative convenience three of the north western Pirs, Kildiha, Kainua; and Gulkera, have been put in the jurisdiction of Chakradharpur Police Station, and Saranda and Rela Pirs in the south west in Manoharpur. The remaining 21 Pires constitute the Kolhan Thana. The larger Pirs are further subdivided into Maniks divisions or ilakas, each under a Manki or divisional headman. There are 75 such divisions. The number of village under one Manki varies from 3 to 33, and the area from 1,002 acres to 31,349 acres. In each village there is a Munda or village headman.

On the 12th August, 1765, the Dewani of Bengal, Bihar and Orissa was conferred upon East India Company by Emperor Shah Alam. The tract of Chota Nagpur was included in Suba Bihar and had several feudal lords. Their mutual rivalry gave the British opportunities to occupy the territories. The Military Collectorship of Ramgarh embraced the whole of the present district of Hazaribagh and Palamau and part of the districts of Gaya, Manbhum and Monghyr, as well as Chota Nagpur proper. This was formed in 1780 with headquarters at Sherghati in the Gaya district and at Chatra in the Hazaribagh district. The Raja was allowed a free hand in the internal administration of the country, though it was nominally included in the Military Collectorship of Ramgarh. The internal condition of the district during this Collectorship was marked by incessant rivalries among Jagirdars, incursions of the Marathas and occasional infiltration of the Larka Kole of Singhabhumi into Chota Nagpur, and above all the incompetence of the Raja to keep in subjugation the dependent Rajas and the turbulent elements. Therefore, in absence of peace and order, discontent among the masses increased, suggesting the failure of the Military Collectorship. Owing to the repeated rising of the Mundas and Oraons, Chota Nagpur, as part of the Ramgarh district was brought under the administration of the East India Company and the Maharaja was no longer a Tributary Chief. In 1819, a Political Agent to the Government of South Bihar was appointed. This Synchronised with a great drought in the Tamar Pargana, and the transfer of the police administration from the Raja to the British under the Superintendent of Police. The administration took an ultimately measure in imposing a tax on hanria (rice-beer) when a Munda rising in the pargana of Tamar, Rahe, and Silli was gaining ground. This added to the discontent among the aboriginals. The suppression of the revolt was followed by a number of administrative reforms. The insurrection brought home the necessity for a closer administration and more effective control by British officers on the spot. Accordingly, the whole system of administration was changed, and the South-West Frontier Agency was established in 1834, with headquarters at Kishanpur (Ranchi). The Agency included, Ramgarh, Kundu, the Jungle Mahals (except Bishenpur, Sainpahari and Sherghar) Pargana Dhalbhumi an the dependant tributary Mahals. Captain Thomas
Wilkinson was appointed the first Agent, and one of his Principal Assistant, Lieutenant Oseley, was placed in charge of the Lohardaga Division, which corresponded roughly to the present district of Palamau and Ranchi with headquarters at Lohardaga. (Quoted from the final report on the resettlement of the Kolhan Government Estate, published in 1920 (period 1913-1918) by A.D. Tuckey, I.C.C.).

15. Regulation XIII of 1833 was promulgated on 2nd Dec. 1833 for abolition of the Courts of Dewani Adalat of Zilase of Ramghur and Jungal Mahals and for providing special Rules for the superintendence of certain tracts as was included in the Zilase of Ramghur, Jungal Mahals and Midnapur. Section V therein stipulated, as follows:

"It shall be competent to the Government General by an order in Council to prescribe such rules as he may deem proper for the guidance of the Agent, all the officers subordinate to his control and authority, to determine what shall be exercised by the Agent and his Assistants respectively, also to determine, to what extent the decision of the Agent to Civil Suits shall be final and in what suits an appeal shall lie to the Sadar Dewani Adalat, and to define the authority to be exercised by the Agent in Criminal trials and what case he shall submit for the decision of the Nizamat Adalat." Section IV of this Regulation, which is also important, reads as follows: "The administration of civil and criminal justice, the collection of revenue, the Superintendence of the police, of the land revenue, customs akbarie, stamps, and every branch of Government within the tracts of country separated as prescribed in the foregoing section, shall be vested in an officer appointed by the Governor General in Council, to be denominated agent to the Government-General."

16. A Code of Rules was drawn by the Captain Wilkinson for the administration of Civil Justice (commonly known as Wilkinsons Rules). Admittedly, it is being acted upon since more than 150 years. For the time, in the case of Dulichand, AIR 1958 Patna 366, doubt was raised in respect of Wilkinsons Rules, when it was pleaded that there was no proof that Wilkinsons Rules were prescribed by the Governor General in the Council for the guidance of officers appointed within any of the schedule District. Similar plea taken in the case of Mahendra Singh AIR 1958 Patna 603, and in the present case, where specific plea taken that the Wilkinsons Rules were never published nor prescribed by the Governor General. There is no date of publication shown nor any signature put thereon, nor it was adopted by any subsequently Act Rule. The Division Bench in Dulichands case, AIR 1958 Patna 366, made the following observations:

"It is true that the typed copy of Wilkinsons Rules produced by the parties before us has been signed by Mr. Wilkinson as "Governor Generals Agent." But it is undisputed position that Wilkinsons Rules have been accepted as valid law and acted upon by the Government Officers and the people of Kolhan area for several decades. Decisions have been given, titles to property have passed and contracts have been made on the basis that Wilkinsons Rules continue to exist in Kolhan area. It is important to note that the Kolhan Inquiry Committee appointed by the State Government in 1948, has said in Chapter II of its report that civil justice is still administered under Wilkinsons Rules and that these rules are statutory rules framed under Regulation XIII of 1833, and are still in force by virtue of Sec. 7 of the Scheduled Districts Act. It was stated by learned counsel on behalf of the opposite party that the order in Council by which the Governor General prescribed the rules is not traceable. But in a case of this description, I think that the maxim omina presumntur..."
rite of solemniter ease acta donee profetur in contrarium is applicable."In the case of Mahendra Singh AIR 1958 Patna 603, while reiterating the aforesaid finding, the Division Bench further, held, as follows: "In view of the principle laid down in the above mentioned cases we must presume in the present case that Wilkinsons Rules were prescribed by the Governor-General by an order in Council under Section V of Regulation XIII of 1833 and that these rules have been continued by Act XIV of 1874 and succeeding statutes. I, therefore, reject the contention of learned Counsel for the petitioners on this point."

17. Though in both the cases, same conclusion drawn, contrary reasons given for coming to the conclusion. For example, the plea of petitioner that the Rule framed under Section IV of Regulation XIII of 1833 was rejected in the case of Dulichand Khirwal, AIR 1958 Patna 366 on the ground that it was not possible to answer the question from the typed copy of the Rules. In the case of Mahendra Singh, AIR 1958 Patna 603. On the basis of same set of typed copy, on mere presumption, it was held to be a Rule framed under Section V of Regulation XIII of 1833.

18. On the other hand, while reiterating the aforesaid observations, the Court in the case of Mahendra Singh, AIR 1958 Patna 603, held the Wilkinsons Rules made under Section V of Regulation XIII of 1833 on mere presumption, giving reference of one or other case.

19. It has not been made clear in the case of Dulichand Khirwal, AIR 1958 Patna 366 and Mahendra Singhs case AIR 1958 Patna 603, in absence of specific evidence whether the Governor General prescribed Wilkinsons Rules by an order in Council and in absence the date of publication as to how the Court gave finding on presumption that the Rule was framed under Section V of Regulation XIII of 1833.

20. It will be evident that in both the cases, the Courts took into consideration Chapter II of report submitted by Kolhan Inquiry Committee appointed by the State Government in 1948, where it was reported that the Civil Justice is still done under Wilkinsons Rules and that those rules are statutory rules framed under Regulation XIII of 1833 and are still in force by virtue of Sec. 7 of the Schedule District Act 1874. However, no doubt raised relating to such Kolhan Inquiry Committees report. Though, it was not brought on record whether the Governor General prescribed them by an order in Council nor the date of publication.

21. The letter No. 363 dated 17th Feb. 1834 issued from Judicial Department to Captain T. Wilkinson (the Agent who framed the Rules) shows that the said rule framed for Civil Justice was not prescribed by the Governor General by an order in Council, till said date, as it was suspended. The said letter reads, as follows: "I am directed by the Hon ble the Vice President in Council to acknowledge the receipt of a letter from you dated the 13th ultimo submitting arrangements made by you for the future management of the tract country placed under your authority by Regulation XIII, 1833 and the rules which you propose to prescribe for the guidance of your Assistants in the administration of Civil and Criminal Justice within the tracts placed under their respective jurisdiction.

2. His Honour in Council approves your having divided the districts into three Divisions to be denominated the Manbhum, Lohurdugga and Hazareebaugh Divisions, the first being placed under Ensign Neielson, the second under Lieutt. Ouseley and the third under Mr. Davidson. The general instructions which you have issued for the guidance
of those officers as well as the rules for the administration of Criminal Justice with the modification noted in the annexure paper are also approved.

3. It is considered proper to suspend the orders regarding the proposed Rules for Civil Justice till the regulation on that subject which is now prepared by Mr. Millet under the direction of Sudder Courts be passed. Many of the new rules will be applicable to your jurisdiction, and it will be easy to add any that may be specially applicable to that territory as well as to exclude from operation, those such as many be in applicable there.

4. The Assistants are authorised to provide themselves each with an office tent of the size of a Captain's Regulation Tent and to charge the expense in Contingent bills. The charge of carriage for the Kutchery tents when the Assistants may be marching will be included in the contingent charges of the office. Thereby, it is evident that the Wilkinson's Rules were not given seal under Section V of Regulation XIII of 1833, till 17th Feb. 1934. There is nothing on the record to suggest that it was prescribed by the Governor General, subsequent to the said date. On the other hand, the other reports show that it never received any sanction, as mentioned hereunder:

Final report on the survey and settlement operations in the district of Ranchi (1902-1910):

"A simple code of rules was also drawn up by Captain Wilkinson for the administration of Civil Justice, but it did not receive the sanction of Government, pending the promulgation of a Bill on the subject, which was under preparation at the time, but which was never passed. There was, therefore, no specific rules to guide the Courts in the administration of Civil Justice for some years, until the introduction of the Civil Procedure Code (Act VIII of 1859). The Courts, however, appear to have been guided by the general spirit of the rules framed by Captain Wilkinson and the Regulations. An appeal was allowed from the decision of the Munsiffs to the Assistant and from the decisions of the letter to the Agent."

Final report on the resettlement of the Kolhan Government Estate, published in 1920 (period 1913-1918) by A.D. Tuckey, I.C.S.:

"For the administration of Civil Justice, there were two Munsiffs, one at Lohardaga, and the other at Ranchi. The Principal Assistants tried some original civil suits and heard appeals from the decisions of the Munsiffs. For the guidance of the Courts, a simple Code of rules was drawn up by the Captain /Wilkinson which though not sanctioned by Government, appears to have been followed till the introduction of the Code of Civil Procedure (Act VII of 1859). Two salutary rules, drafted by Captain Wilkinson may be mentioned, one with the object of discouraging vedatious litigation, prohibited vakils from practising in any Courts and allowed suits to be conducted only through the agency of Mukhtears, or authorised agents the other declaring that no sale, mortgage or transfer of landed property was valid without the consent of the Agent was intended to prevent disputes over transferred property and to discourage the old landlords from running into debt. A rule prohibited the Munsifs from granting ex parte decree against Mundas, Manis, Kols, and other such ignorant people. The Principal Assistant, Dr. Davidson, first issued and enforced this rule in 1838, but this rule was later superseded by the Code of Civil Procedure resulting in numerous fraudulent
ex parte decrees against the Mundas which were one of the causes of the subsequent agrarian discontent."

22. Thus, in absence of an order prescribing them by Governor General in Council and in absence of date of promulgation, on mere presumption, it cannot be held to be a rule framed under Section V of Regulation XIII of 1833. Under Regulation V, it was the Governor General who was competent to prescribe rule, by an order in Council. Agents were to be guided by such rules. No power was delegated to the Agent. Though the original of the Wilkinsons Rules is not available and in the typed copy, which was produced before this Court in 1958, it was shown to have signed by Captain Thomas Wilkinson. He having not delegated with power to frame rules, the same cannot be held to be a rule framed under Section V of Regulation XIII of 1833. At best, it can be stated to be a draft rule, drafted by Captain Wilkinson, as shown in the final report published in 1920. There are five grounds on which a bye-law may be treated as ultra vires, as shown in "Craies on Statutes" (page 324). One of the ground is that they are not made, mentioned and published in the manner prescribed by the Statute which authorises the making of them. In absence of the original Rules, authority of Captain Wilkinson; date of publication, and the date on which the Governor General prescribed the same, one can hold the Wilkinson Rules as ultra vires. Doubt was raised in earlier cases as to whether the Wilkinsons Rules were in force after promulgation of Scheduled District Act, 1874 (Act 14 of 1874). In both the aforesaid cases of Dulichand Khirwal AIR 1958 Patna 366 and Mahendra Singh, AIR 1958 Patna 603, it was answered in affirmative in view of Sec. 7 of 1874 Act. To determine this question, it is necessary to quote relevant section of 1874 Act which reads, as follows:

"Sec. 7: Continuance of existing rules and officers. All the rules herebefore prescribed by the Governor General in Council or the Local Government for the guidance of officers appointed within any of the Scheduled Districts for all or any of the purposes mentioned in Section six and in force at the time of passing of this Act, shall continue to be in force unless and until the Governor General in Council or the Local Government, as the case may be, otherwise directs. All existing officers so appointed previous to the date on which this Act comes into force in such District, shall be deemed to have been appointed hereunder. RAdmittedly, there is nothing on the record to suggest that the Wilkinsons Rules was prescribed by the Governor General. Admittedly, it was not framed by the Local Government for the guidance of the officers. Thereby, the Wilkinsons Rules cannot be stated to have been saved and continued by virtue of Sec. 7 of the Scheduled District Act. This Court in the case of Dulichand Khirwala, AIR 1958 Patna 366 and Mahendra Singh, AIR 1958 Patna 603, placed reliance on maxim "omina preesumuntur rite et solenniter esse acta donee probatur in contrarium", it means "all things are presumed to have been done correctly, lawfully and with due formality until the contrary is proved.

23. Even if the aforesaid maxim is made applicable in respect of Wilkinsons Rules, though it can be presumed to have been done correctly, lawfully and with due formality, it cannot be presumed to have been done under Section IV of Regulation XIII of 1833. The Wilkinsons Rules thus cannot be stated to be statutory, though it can be held to be a general law, being followed for more than 11/2 century. In the aforesaid background, I do not subscribe to the findings given by the Division Bench in the cases of Dulichand Khirwala, AIR 1958 pat 366 and Mahendra Singh, AIR 1958 pat 603 to the extent above.
24. In view of aforesaid findings, while the first question is answered in positive i.e. in favour of petitioner and against the State, the same being not statutory rule or rule framed under Regulation XIII of 1833, the question of its repeal by one or other Act does not arise. Thereby, no further answer is required to be given in respect of Question Nos. 2, 3 and 4, as referred above.

25. It is not in dispute that the Wilkinsons Rules is a procedural law. One of the questions arises as to what will be the procedure to be followed in Kolhan area for administration of civil justice, if the said rule is not made applicable.

26. In the case of Dulichand Khirwal, AIR 1958 pat 366, one of the ground taken by the petitioner was that the procedure prescribed under Wilkinsons Rules was no longer in force in view of judgment of this Court in K K Sinha v/s. Basdeo Harjiwan Pathak, Misc. Judi. Case No. 392 of 1952, disposed of on 22nd Dec. 1952. The Court in that case, observed, as follows: "The first ground taken by learned Counsel on behalf of the petitioner is that the Deputy Commissioner of Singhbhum adopted a procedure prescribed by Wilkinsons Rules which are no longer in force and so the Commissioner of Chota Nagpur had no jurisdiction to hear the appeal. In support of this argument reference was made to a judgment of this Court in K.K. Sinha v/s. Basdeo Harjiwan Pathak, Misc. Judi. Case No. 392 of 1952, D/-22-12-1952 (A) where it was held that Act II of 1951, amended the Civil Procedure Code so as to extend its operation to the whole of India, including the so called sc heduled districts, with the exception of certain Tribal Areas in the State of Assam, in the State of Madras and in the State of Jammu and Kashmir and in the State of Manipur, Act II of 1951, received the assent of the President on 17-2-1951, and came into effect from that date, and so it was held by the High Court in that case that the Civil Procedure Code applied to the entire district of Singhbhum, including the scheduled area of Kolhan. But on behalf of the State of Bihar it was pointed out by learned Counsel that the effect of this judgment has been superseded by a subsequent notification of the State Government dated 26-8-1952, issued in exercise of the authority conferred on the State Government by sub-paragraph (1) of paragraph 5 of the Fifth Schedule to the Constitution of India. The notification of the State Government is in the following terms."

No. A/AB/303/53-3533J. :

In exercise of the powers conferred by sub-paragraph (1) of paragraph 5 of the Fifth Schedule to the Constitution of India, the Governor of Bihar is pleased to direct that the Code of Civil Procedure (Amendment) Act 1951 (II of 1951), shall not apply to the Sadr Subdivision of the district of Singhbhum except the areas comprised within the Chaibassa and Chakkradharhpur Municipalities.

This notification shall be deemed to have come into force on the 1st April, 1951 the date on which the said Act was brought into force by the Central Government. By order of the Governor of Bihar, R. Singh, Secy. In view of this Government I do not think that the ratio of the decision in Misc. Judi, Case No 392 of 1952, D/-22-2-1952 (Pat) (A) has any application to the present case and the argument of the learned Counsel on this point must fail. R The aforesaid view was reiterated in the case of Mahendra Singh, AIR 1958 Patna 603.

27. After the aforesaid decisions, now more than 30 years have passed, various amendments made in the meantime, in different laws, including amendment of CPC made in 1976, whereby Sub-sec. (3) was substituted by Code of Civil Procedure (Amendment) Act, 1976
Sub-section (3) of Sec.1 of C.P.C., 1908 :-

(3) It extends to the whole of India except - (a) the State of Jammu and Kashmir; (b) the State of Nagaland and the tribal areas. Provided that the State Government concerned may, by notification in the Official Gazette, extend the provisions of this Code or any of them to the whole or part of the State of Nagaland or such other tribal areas as the case may be with such, supplemental, incidental or consequential modifications, as may be specified in the notification. Explanation. - In this clause, "tribal areas" means the territories which, immediately, before the 21st day of January, 1972, were included in the tribal areas of Assam, as referred to, in Paragraph 20 of the sixth Schedule of the Constitution.

28. Thereby, even if the Bihar Governments Notification dated 26th August, 1953 is taken into consideration, whereby Code of Civil Procedure (Amendment) Act, 1951 was not made applicable to the district of Singhbhum, in view of 1976 amendment, whereby Sub-sec. (3) to Sec. 1 of C.P.C. was substituted, I hold that the C.P.C. holds field for the whole district of Singhbhum, including Kolhan area. The questions, thereby referred to Full Bench, are answered, accordingly, in favour of petitioner. However as this finding will come into effect from prospective date, any decision already rendered under Wilkinsons Rules cannot be automatically held to be illegal, till a decision otherwise given by any competent Court of law.

29. The present writ petition is remitted for decision on merit, to be placed before an appropriate Bench (of learned single Judge).

30. M. Y. EQBAL, J. :-

(Dissenting) I regret my inability to agree with my learned Brother S.J. Mukhopadhaya, J. that the Wilkinsons Rules cannot be said to be statutory and that the decisions of the Division Bench in the case of Dull Chand V/s. Bihar State, AIR 1958 Patna 366 and Mahendra Singh V/s. Commissioner of Chotanagpur Division, AIR 1958 Pat 603 are not correct. I also regret to agree with the view expressed by my learned Brother that the Code of Civil Procedure holds the field for the whole district of Singhbhum including Kolhan area.

31. Before discussing the main question with regard to the validity of Wilkinsons Rules, it would be useful to state in brief the background and the legislative history as to under what circumstances such rule was framed for the administration of civil and criminal justice amongst the Ho community in the tribal areas.

32. The learned authority on the Ho is the Ethnology of Bengal, in which Colonel Dalton has described their physique and intellect, their customs and manners, their morals and religion, their occupations and traits, individual and tribal, with great fulness and lucidity. The tradition of the Hos regarding their origin and that of the human race as given by Colonel Dalton, which is quoted hereinbelow :-

"Ote Boram and Singhonga were self-created; they made the earth with rocks and water; and they clothed it with grass and trees, and then created animals-first, those that man domesticates, and afterwards wild beasts. When all was thus prepared for the abode of man,
a boy and girl were created, and Singbonga placed them in a cave at the bottom of a great ravine, and finding them to be too innocent to give hope of progeny, he instructed them in the art of making illi (rice beer), which excites the passions, and thus the world became peopled. When the first parents had produced twelve boys and twelve girls, Singbonga prepared a feast of the flesh of buffaloes, bullocks, goats sheeps pigs, fowls and vegetables; and making the brothers and sisters pair off, told each pair to take what they most relished, and depart. Then the first and second pair took bullocks and buffaloes flesh and they originated the kola (Hos) and the Bhujij (Matkum); the next took of the vegetables only, and are the progenitors of the Brahmans and Kshattiyas; others took goats and fish and from them are the Sudras. One pair manki or divisional headman, while each village has its own Munda or headman. The latter are all subject to the authority of the Mankis, who are assisted by tahildars of village accountants (a port introduced in 1867) and by dakuas or constable appointed by the Mankis. Every Munda is responsible for the payment of the revenue, and for the detection and arrest of criminals in his village, to the Manki, who is in his tum responsible to Government. For acting as revenue collectors the manki receive a commission of 10 per cent and the mundas 16 per cent. of the revenue which passes through their hands. Besides these duties, the mankis and mundas, each in his degree, have certain informal powers to decide village disputes and questions of tribal usage.

33. It would also be useful to mention here the history and origin of land revenue administration in the Kolhan area:

"After the conquest of the Kolhan in 1821, the Hos acknowledged the suzerainty of the Singhbhum Chiefs and agreed to pay rent of 8 annas per hal (plough) i.e. practically per pair of bullocks to be increased to Re. 1 if circumstances admitted of it. Their submission was, however, nominal. The Chiefs were unable to exercise any effective control over them, and from 1830 to 1836 the Hos successfully resisted every attempt to realise rent, and waged war on their neighbours. In 1836 a strong force was sent against them, and after some bloodshed they were reduced. On the conclusion of the campaign, the British Government resolved to bring their territory under its direct rule. Accordingly, 23 Pirs over which the Rajas of Porahat, Saraikela and Kharaswan claimed suzerainty, were, with four other Pirs, taken from Mayurbhand, brought under direct management under the name of the Kolhan. The first settlement was carried out on 1837 when Major Wilkinson fixed the rental at 8 annas per plough of land, this being the sum assessed but not paid in 1821. The total assessment was Rs. 5,108 for 622 villages, and was realised without difficulty. At the same time, the old village system of the Hos was maintained by the recognition of the Mankis or village headman and of the mankis or headman of groups of villages. The former collected the rent of their own villagers and paid it to Government through the mankis. In 1855, without altering the principles of assessment, but by simply doubling the rate per plough, a net revenue of Rs. 17,448 was obtained, and a settlement for 12 years was concluded." Quoted from the book Bangal District Gazetteers SINGHBHUM, SARAIKELA AND KHARSAWAN, Written by L.S.O.s MALLEY.

34. From the aforesaid book it further appears that for the purpose of administration Kolkhan was divided into 73 local divisions, each comprising a group of 5 to 20 villages. Each division was under a Manki or Divisional headman, under whom again are the mundas or village headman the Tahsildars or village accounts, and the dakuas or village constables. The Mankis collect from the Mundas the village rents as fixed by the settlement and pays
them into the District Treasury according to the kists. It was his duty to prevent foreigners that are not already recorded as resident ryots from cultivating or holding lands in any village within his Pir without the written permission of the Deputy Commissioner. He was entitled, in consultation with his Munda, to settle the land, waste land with resident ryots and to assess such lands at rates not exceeding those established by settlement. He was also responsible for the protected forest contained in his Pir. The Manki was liable to fine and dismissal by the Deputy Commissioner for disobedience of the order or breach of the terms of his patta or of dismissal being subject to confirmation by the Commissioner of the Division. Similarly, the Munda was the village headman and his village was settled with him under the terms of patta. The rent was not liable to enhancement during the period of lease but the Government reserved the right to increase the rates for bera, bad and gora land at any future settlement. The Munda was responsible for payment of the village rent through the mankis of the Pir according to the kists. He was bound to collect rent according to village Jamabandi given to him. The author of the book further describes the Munda as the police officer of his village and, as such, is subordinate to the Manki who is the police officer of the Pir. He was bound to obey all legal orders he received from the Manki as well as superior authority.

35. Sir Herbert Risley, K.C.I.E. C.S.I. studied in detail about the culture of tribals in India. In his book "People of India" published in 1915, he has stated that the Hos of Singhbhum and the Mundas of the Chutia Nagpur Plateau have also exogamous septs of the same type as the Oraons and Santhal, with similar rules as to the totem being taboo to the members of the group. The lists given in the Tribes and Castes of Bengal contain the names of 323 Munda septs and 40 Ho septs. Six of the latter are found also among the Santhals. The other Ho septs appear to be mostly of the local or communal type, such as are in use among the Kandhs, but this is not quite certain, and the point needs looking into by some one well acquainted with the Ho dialect, who would probably find little difficulty in identifying the names, as the tribe is known to be in the habit of giving to places descriptive names having reference to their natural characteristics. Nearly all the Munda sept names are of the totem type, and the characteristic taboos appear to be recognised. The Tarwar or Talwar sept, for example, may not touch a sword, the Údbaru may not be the oil of a particular tree, the Sindur may not use vermilion, the begbela may not kill or eat a quail, and, strangest of all, rice is taboo to the Dhan sept. The members of which, though rice is grown all round them, must supply its place with gondli or millet. It is difficult not to be sceptical as to the rigid observance of this last prohibition.

36. Similarly, Sir T.S. Macpherson, in his book "Operation for the preparation of Records of Rights" in Pargana Porahat, district Singhbhum, has gone in detail with the earlier history of the tribes. According to the author, Pargana Porahat comprises all villages within the old Singhbhum Raj, which are situated outside the Government Kolhan, and the political states of Seraikela and Kharsawan, and in which the Zamindar of Porhahat is either rent receiver or has a reversionary interest whereby he may, according to Chotanagpur customs, resume tennbers. The term Pargana is occasionally applied to the subordinate estates and to the two sadant Pirs of Porahat (Chakradharpur and Porahat). Pir is probably the Mundari and Ho. Ko or Kolhan Pirs contain over 90 per cent of aboriginals, the so called sadant Pir omitting Chakradharpur town, also contain a slight majority of aboriginals, practically all Hos. The author further says that in 1908 the Porahat became tributaries. The porahat
family claims to be the Rathor (Kadambassi) Rajputs. In 1918 Raja Ghanshyam Singh, with the object of being recognised as paramount over Seraikela and Kharswan, regaining the family idol from Seraikela and receiving assistance to subjugate the aboriginals, became tributary to the British Government. In 1921, Major Roughsedge, commanding the Ramgarh Battalin, induced the Kols to agree to pay 8 annas per plough of oxen to the Chiefs of Porahat, Seraikela and Kharsawan, to be increased to one rupee after years but the money was never paid either by the Hos of the present Kolhan or by the Mundaris of the Kolhan, Pirs of the Porhat and from 1830 to 1836 the whole body of aboriginals resisted all attempts to realize rent and waged war on the claimants. In 1832 the Mundaris of Bandgaon also joined in the insurrection of Dasai Manki of Kochang, because of the attempt of the tenure holder to destroy Khuntkatti rights amongst them through the imposition of the plough tax and introduction of diku headman. The whole pargana, the Molhan and South Ranchi continued by Sonu Kandhapatar of Koraikela (and contrary to the wish of the Raja Porahat) by him delivered up to Major "Wilkinson, the Agent to the Governor General.

37. Now I shall give the brief history of the tribals of Chotanagpur as narrated by Edward Tuite Dalton C.S.I. in his book "Descriptive Ethnology of Bengal", published in 1872. According to the author the Mundaris say that they had no Raja when they first took up the country, now called Chutia Nagpur: They formed a congeries of small confederate states. Each village had its chief also called a Munda, literally a head and, as a village often consisted of one family, the inhabitants were all of Munda dignity, and hence it became a name for the whole tribe. In the Mabhum district the word Munda becomes Mura which has also the same meaning. As these kols have taken up the word Munda, the Santals have appropriated the term Manjhi and the Bhumij. The Mundari villages had each its staff of officers, and from the customs that still prevail in most old villages, the organisation that has descended from very primitive times, appears to have been very complete.

38. The author Sir Dalton, while describing the geographical distribution of the District of Singhbhum, has noted the following facts:

"The district of Singhbhum in which the Ho or Lakra Kola are located lies to the south east of Chutia Nagpur proper or between 22 and 23 of north latitude and 8653 and 85-2 of east longitude. It measures 124 miles in extreme length from east to west and 64 mile, in its greater breadth from north to south. The total area is by survey 4503 square miles, of this 1905 square miles constitute the exclusive Ho territory known as the Kolhan. The most fertile and highly cultivated portion of this tract surrounds the station of Chaibasa at a general level of seven hundred and fifty feet above the sea and here are massed about two thirds of the Kolhan population. To the south of this extending to the Baitarnriver the general level rises to upwards of 1000 feet and the kols of this plateau are less civilised and more turbulent than those of the lower steppe. The whole district is undulating, traversed by dykes of trap which rise in rugged masses of broken up rock and the views are on all sides bounded by ranges of hill, rising to 2900 feet. To the south west bordering on Chutia Nagpur is a mountainous tract of vast extent sparsely inhabited by the wildest of the Kols, this, however, appears to be the region from which they first descended into the Singhbhum plains. Saranda bordering on Gangpur at the extreme south west of the District is called "Saranda of the seven hundred hills". It is a mass of mountains which rise to the height of 3500 feet and contains, but a few poor hamlets nestled in deep valleys belonging for the most part to a very unreclaimed tribe of kols. The inhabitants of the western hills bordering
on Chutia Nagpur generally retain the name of Mundas and connect themselves rather with the people of Chutia Nagpur than with the Hos of Singbhum."

39. Chutia Nagpur, as part of Bihar, was ceded to the British Government in A.D. 1765; but the earliest arrangement with the Raja occurred in 1772, when it is stated that the chief appeared before Captain Camac commanding a force in Palamau, and after exchange of turbans with the Company's representatives, duly acknowledged himself a vassal of that great power, gave as Rs. 3,000 and agreed to do service against the Maharrattas. The oldest settlement deed is dated 1179 Fasli, by which Raja Dripnath Sahi of Khukhra, alias Nagpur, agreed to pay 12,000 rupees, viz. mal or rent 6,000 rupees, nazranah or tribute, 6,000. For some years after this, the Raja was allowed to administer the territory as the chief of a tributary mahal, but in 1816 or 1817, it was found necessary to deprive him of magisterial powers, the estate was placed under the Magistrate of Ramgarh, who held Court alternatively at Sherghati and Chatra. Natives of Bihar who were considered foreigners in Chutia Nagpur were sent into the country as Police officers, and occasionally the Nazir of the Ramgarh Magistrates Court was deputed with extraordinary powers to inspect and report on the administration. Up to A.D. 1831, when the most serious revolt of the Kols of Chutia Nagpur occurred, there can be no doubt that the changes of government which had taken place were not beneficial to them. They were neglected by their new masters, oppressed by aliens and deprived of the means they had formerly possessed of obtaining redress through their own chief. The Raja, by no means satisfied at this own loss of dignity and authority, gave but surely answers to complaints who came before him. The Darogahs (Native Police Officers), the highest resident officials under the British Government, declared it was not competent to them to decide on the grievances that then most harassed the Kols; these were complaints, that they had been dispossessed by foreigners, Muhammadans, Sikhs, and others, who had obtained from the sub-proprietors farms of the Kol villages over the heads of the Kol headman; but it often happened that the unfortunate Kol who with difficulty made his way to the far off station found the tables turned on him when he got there. A host of witnesses in the pay of the opposite party were already there prepared to prove "that he had not only no rights in the land, but was a turbulent rebel besides."

40. The author further described as under:

"The judicious office who was now Agent to the Governor General for the newly formed non-regulation province the south western Frontier the late Sir Thomas Wilinson at once recognised on the necessity of a thorough subjugation of the Kols and the impolicy and futility of forcing them to submit to the chiefs. He, therefore, proposed an occupation of Singhbum by an adequate force and when the people were thoroughly subdued to place them under the direct management of a British Officer to be stationed at Chaibasa in the heart of their country. These views were accepted by Government and in furtherance of them two regiments of Native Infantry a brigade of guns and the Ramgarh battalion the whole force commanded by Colones Richards entered Singhbum in Nov. 1836. Operations were immediately commenced against the refractory pirs, and by the end of February, following all the Mankis and Mundas had submitted. There appears to have been very little actual fighting during this campaign. All the most important parts of the Kolhan were visited by the Agent and his troops the men whom it appeared desirable to make examples of inconsequence of their having been leaders in the previous lawless proceedings were given up for captured, and the others readily acquiesced in the arrangements proposed."
41. In the Imperial Gazetteer of India, Vol XV of 1908, the geographical description of Kolhan area has been described as under :-

"Kolhan. - Government estate in Singhbhum District, Bengal, lying between 21° 58 and 22° 43 N. and as 85° 21 and as 86° 3 E., with an area of 1.955 square miles. The Kolhan is a low plateau, varying in elevation from 750 feet above sea level in the neighbourhood of Chaibasa to upward of 1,000 feet in the south. On the north, east, and south, the country is for the greater part open and gently undulating, it is covered with prosperous villages and is well cultivated, the depressions between the ridges being invariably sown with rice and some portion of the uplands with cereals, pulses, or oilseeds. In the southeast the surface is very rocky and covered with jungle; and in the west and south west are mountainous tracts thickly covered with jungle and very sparsely inhabited. The villages here are mere hamlets scattered on the bill slopes and an area of 529 square miles has been formed into forest Reserves."

42. Further, according to the Imperial Gazetteer, it appears that the British made use of the traditional village administrative structure for administration of the predominantly tribal area. Each village has its own Munda or headman, all of whom are subject to the authority of the Manki or Divisional headman. However, Munda is responsible for the payment of the revenue and for the detention and arrest of criminal in his village to the Manki who in his turn responsible to Government. It further appears that persons other than Hos were not allowed to settle in the estate without the permission of the Deputy Commissioner.

43. In the historical background of Kol insurrection in Chotanagpur during the period 1831 to 1833 Captain Thomas Wilkinson framed the aforesaid rule. The original copy of the said rule is not traceable and a typed copy of the said rule is available which is still followed in the Kolhan area. The said rule was framed under the Regulation XII of 1833 and within the meaning of Sec. 51 of the Government of India Act, 1833.


45. In Duli Chands case the validity of Wilkinsons Rules was challenged on the ground, inter alia, that Regulation XIII of 1833, in pursuance of which the agent to the Governor General made Wilkinsons Rules, having been repealed by Act XII of 1876, Wilkinsons Rules did not exist any longer and they had automatically been repealed with the repeal of Regulation XIII of 1833. This argument was negatived with reference to Sec. 7 Act XIV of 1875 i.e. Schedule District Act, 1874. This Court further rejected the contention of the petitioner that rules were not framed by the Governor General under Section V of Regulation XIII of 1833. The relevant portion of the judgment in Duli Chand case has been quoted in the judgment of Brother Mukhopadhaya, J. and I need not repeat the same. However, I must indicate here that in Duli Chand case this Court held that though the order in council by which Governor General prescribed the rules is not traceable. the maxim "omina praesumuntur rite et solennieter esse acta donea probetur in contrarium is applicable. In other words, their Lordships held that the principle of maxim "communis error facit jus" should be applied.
Similarly, in Mahendra Singh's case (AIR 1958 Patna 603) this Court came to the same conclusion and held that Wilkinson's Rules framed under Regulation XIII of 1833 continued by virtue of Sec. 7 of Act XIV of 1874 and the succeeding statute. Their Lordships further held that Wilkinson's Rules have been accepted as valid law and acted upon by the Government Officers and the people of Kolhan area for the several decades, even after passing of Act 1 of 1905. The principle of maxim "communis error facit jus" should be applied in this case.

In V. Ahya case (1970 BLJR 855) this Court followed the earlier two decisions referred to hereinabove and arrived at the same conclusion. Their Lordships held that it must be presumed that the rules were made by the authority of the Governor General.

Mr. P.K. Sinha, learned Sr. counsel appearing for the petitioners, has advanced a very exhaustive and elaborate argument after taking much pain by bringing before us the relevant materials with regard to the historical background of Kol insurrection in Chotanagpur during the period 1831 to 1833. The first attack on the validity of the Wilkinson's Rules by Mr. Sinha is that although under Regulation XIII of 1833 read with Sec. 51 of the Government of India Act, 1833, Governor General in Council was empowered to make rule for the purpose of superintendence and control of the whole civil and military Government but there is no evidence or material to show that Wilkinson's Rules framed under the aforesaid Regulation were ever approved by the Governor General in Council and was duly published in any official gazette. Learned counsel submitted that admittedly Thomas Wilkinson, who was the agent of the Governor General, framed rules, called Wilkinson's Rules for the purpose of administration of civil and criminal justice in Kolhan areas. According to the learned counsel any such rule framed by Thomas Wilkinson being the agent of the Governor General, cannot be said to be rule framed by the Governor General in Council under Regulation XIII of 1833 read with Sec. 31 of the Government of India Act, 1833. Learned counsel made alternative argument and submitted that the Government of India Act, 1833 vested its power to the Governor General in Council to make Regulation, who is a delegated authority and such delegated authority cannot redelegate legislative power to an authority to make rule/regulation. Learned counsel, therefore, submitted that on this ground also and also on the principle "delegates non protest delegate" Wilkinson's Rule is ultra vires. Mr. Sinha then submitted that on the commencement of Indian Council Act, 1861 attempt was made to constitute councils in India to govern people representation. Learned counsel submitted that Schedule District Act, 1874 was enacted and Governor General assent was given on 8-12-1874. Under the said Act the Kolhan in the district of Singhbhum was declared as Schedule area. According to the learned counsel Wilkinson's Rules was never saved by virtue of Sec. 7 of the Schedule District Act, 1874. Learned counsel also advanced his argument on the constitutional validity of the Wilkinson's Rules.

It has not been disputed that Thomas Wilkinson, the agent of Governor General in Council, framed a rule known as Wilkinson's Rules for the purpose of administration of civil and criminal justice. The original rule so drafted is not traceable. There is also no evidence to show that the draft rule in relation to administration of civil justice was approved by the Governor General in Council. This fact is evident from the letter issued from the Judicial Department dated 17th Feb. 1834 to Captain Thomas Wilkinson. That letter referred to the approval granted by the Governor General was rules for the administration of criminal justice. By the said letter it was directed to suspend to rule for civil justice till Regulation on
that subject, which was under conflict, be passed. Except that, it is said that there is nothing
to show that either the Wilkinsons Rules for administration of civil justice was approved by
the Governor General in Council or it was prescribed in the official gazette.

50. As noticed above, in all the earlier three judgments this Court proceeded on the basis that
Wilkinsons Rules framed under Regulation XIII of 1833 was saved and continued by virtue
of Sec. 7 of Act XIV of 1874 and by the succeeding statute. It is, therefore, worth to examine
the relevant provisions of Act, XIV of 1874.

51. The main thrust of Mr. P.K. Sinha is that the Wilkinsons Rules was never saved by Sec. 7
of the Act 1874 rather by virtue of Sec. 3 of the said Act various other enactments were
made applicable in Kolhan area. In this connection learned counsel drawn my attention to
a Notification No. 1401 dated 21-10-1881 which is available in Appendix X in the Reids
report of the year 1902 to 1910. Learned counsel submitted that various other enactments
shown in the notification were made applicable in the Kolhan area. According to the learned
counsel, therefore, no historical thread is found from the Reids report that Wilkinsons Rules
was in force.

52. I do not, find much force in the submission made by the learned counsel. In my view, learned
counsel has misconstrued the notification issued under the Schedule District Act, 1874,
which I shall deal with hereinafter.

53. Sec. 1 of the said Act defines the term "Schedule Districts" mean territories mentioned
in the first schedule hereto annex and from the date fixed in the resolution hereinafter
mentioned shall also include any other territory to which the Secretary of the State of India
by Resolution may declare the provisions of the 33rd of Victoria Chapter III. Sec. 3 of the said
Act provides that the local government with the previous sanction of the Governor General
in Council may from time to time by Notification in the Gazette of India and also in the
local Gazette (if any) can declare (a) what enactments are actually enforced in any of the
Schedule District or in any part of any such Districts (b) declare any enactment though it is
not actually enforced in any of the said Districts or in any part of any such districts.

54. Pursuant to the aforementioned Act, it was argued that various enactments were enforced
in the District of Chotanagpur Division by virtue of a Notification No. 1401 dated 21st Oct.
1881. This Notification is available in Appendix X in the Reids report of the year 1902 to
1910. It appears that various enactments have been shown in the Notification which were
made applicable in the Kolhan area. At this stage it is worth to quote the relevant paragraph
from the final report on the Survey and Settlement Operation namely, Reids Report, which
reads as under:-

"Paragraph 56 : - Civil justice - A simple Code of rules was also drawn up by Captain
Wilkinson for the administration of civil justice, but they did not receive the sanction of
Government, pending the promulgation of a will on the subject, which was under preparation
at the time, but which was never passed. There were, therefore, no specific rules to guide the
courts in the administration of civil justice for some years. The introduction of the Civil
Procedure Code (Act VIII of 1859). The Courts, however, appeared to have been guided by
the general spirit of the rules framed by Captain Wilkinson and by the Regulation. An appeal
was allowed from the decision of the Munsif to the assistant and from the decisions of the
latter to the agent."
Thus, from the Reids report it is evident that the Regulation and the Wilkinsons Rules became applicable and the same was being followed by the Courts and the authorities. The Notification No. 1401 dated 21st Oct. 1881, upon which learned counsel put heavy reliance, reads as under:

"APPENDIX XENACTMENTS IN FORCE IN THE DISTRICTS OF THE CHOTA NAGPUR DIVISION.
No. 1401, dated Simla, the 21st October, 1881
From -A MACKENZIE, Esq. Offg. Secretary to the Govt. of India Home Depts.
To - The Secy. To the Govt. of Bengal, Judicial, Political, and Appointment Depts.
I am directed to acknowledge the receipt of your letter No. Gazette of India, amended notification declaring the enactments in force in, and to be extended to, the districts in the Chota Nagpur Division.

2. In reply, I am to say that with the following modifications the notifications are approved and will be published in the Gazette of India of the 22nd instant.

3. Act XII of 1879 (amending the civil Procedure Code, the Registration Act, 1877, and the Limitation Act, 1877) which is inserted in the schedules to notifications C, D, E and F has been omitted, because as pointed out in paragraph 2 of the letter from this office, No. 727, dated the 28th May last, that Act, in so far as it amends the Civil Procedure Code, was extended to all the districts of the Chota Nagpur Division by Home, Revenue, and Agriculture Department notification, No. 1259, dated the 1st Dec. 1880, while in so far as it amends the Registration and Limitation Act, it is entered in the schedule to notification B. The attention of the local officers will doubtless be drawn by the Government of Bengal to any separate notification now in force extending Acts not included in these schedules.

4. With regard to notification A, I am to observe that in view of the provisions of Sec. 1 paragraph 2, and Sec. 3 of the Scheduled District Act, the correct procedure appears to be, first to declare the Act itself in force in a scheduled district, and then to declare any other enactments in force in such district, by a separate notification. Accordingly, the reference to Act XIV of 1859 in notification A has been omitted, and Sec. 15 of that Act has been declared in force in the Kolhan by a separate notification. Further, the second clause to this notification seems scarcely necessary, and has also been omitted. Such a clause is only inserted in a notification declaring a larger number of enactments in force in a district in order to remove any doubt which may possibly arise as to whether the list of enactments is intended to be an exhaustive list of all enactments in force in the place to which such notification relates.

5. As Bengal Act IX of 1879 (Court of Wards) and VII of 1878) (Excise Revenue), which are entered in the Schedule to notification B have been amended by Bengal Act III of 1881 (Court of Wards) and IV of 1881 (the Bengal Excise Amendment Act, 1881), these two latter Acts have also been entered in the schedule.

6. Lastly, I am of say that it is not understood why Acts V of 1881 (probate and Administration) and VI of 1881 (District Delegates Act), which were inserted in the schedule to the original notification submitted with your letter No. 1151 J. dated the 14th March last, have been omitted from the schedule to notification B. The omission is probably accidental, and the Act have accordingly been included in the schedule to the notification as issued.
7. A copy of the notifications, amended in accordance with the above remarks, is enclosed.

56. From perusal of the aforesaid notification No. 1401 it is manifest that the said notification was not finally given effect to rather another notification Nos. 1393 and 1394 dated 21st Oct. 1881 were issued in exercise of power conferred by Sec. 3 of the Act XIV of 1874, which are quoted hereinbelow:–

"No. 1393, dated Simla, the 21st Oct. 1881 Notification - By the Government of India, Home Dept. In exercise of the powers conferred by Sec. 3 of Act XIV of 1874 (the Scheduled District Act). His Honour the Lieutenant Governor of Bengal is pleased with the previous sanction of the Governor General in Council, to declare that the said Act is in force in the Kolhan, in the district of Singhbhum, in the Chota Nagpur Division. No. 1394 in exercise of the powers conferred by Sec. 3 of the Act XIV of 1874 (the Scheduled Districts Act), His Honour the Lieutenant Governor of Bengal is pleased with the previous sanction of the Governor-General in council, to declare that the enactments mentioned in the schedule hereto annexed are in force in the districts of Hazaribagh, Lohardugga, and Manbhoom and in pargunnah Dhubhoom and the Kolhan, in the district of Singhbhum, to the extent to which they are at present in force in any part of Bengal not included in any scheduled district force in the said portions of the Chota Nagpur Division, and not included in the said schedule."

57. From paragraph 2 of the aforesaid notification, it is manifestly clear that the Wilkinsons Rules which was admittedly in force in the Kolhan area was sufficiently saved and it was made clear that the notification will not affect the operation of any enactments in force in the said portions of Chota Nagpur Division and not included in the schedule.

58. The next submission of Mr. Sinha, learned counsel appearing for the petitioner, that the Wilkinsons Rules did not exist any more after Regulation XIII of 1833 was repealed by Government of India Act, 1915, also has no leg to stand. It is true that various acts including Government of India Act, 1833 specified in 4th Schedule were repealed by the Government of India Act, 1915 but even after repeal of the Act the validity, rule, resolution etc. were saved. For better apprehension, Sec. 130 of the Government of India Act, 1915 is quoted hereinbelow:–

"130. Repeal. - The Acts specified in the Fourth Schedule to this Act are hereby repealed, to the extent mentioned in the third column of that Schedule :Provided that this repeal shall not affect -(a) the validity of any law, charter, letters patent, Order in Council, warrant, proclamation, notification, rule, resolution, order, regulation, direction or contract made, or form prescribed, or table settled, under any enactment hereby repealed and in force at the commencement of this Act, or (b) the validity of any appointment, or any grant or appropriation of money or property made under any enactment hereby repealed, or (c) the tenure of office, conditions of service, terms of remuneration or right to pension of any officer appointed before the commencement of this Act.Any reference in any enactment, whether an Act of Parliament or made by any authority in British India, or in any rules, regulations or orders made under any such enactment, or in any letters patent or other document, to any enactment repealed by this Act, shall for all purposes be constructed as references to this Act, or to the corresponding provision thereof.Any reference in any enactment in force
in India, whether an Act or Parliament or made by any authority in British India, or in any rules, regulations or orders made under any such enactment or in any letters patent or other document, to any Indian legislative authority, shall for all purposes be construed as references to the corresponding authority constituted by this Act."

59. From bare reading of clause (a) of the proviso to Sec. 130, it is clear that even after repeal of Government of India Act, 1833 the regulation and the rule namely, Wilkinsons Rules, which was admittedly in force, has not been affected. This is the reason why even after the repeal of Government of India Act, 1833 the Wilkinsons Rules continuously remained in force in the Kolhan area till date. It is, therefore, incorrect to say that by the passage of time the Government of India Act, 1833 lost its force and the regulations and the rules framed thereunder have been repealed and have become non-existent.

60. At this stage, I must take notice of the fact that even after the commencement of Government of India Act, 1935 the Wilkinsons Rules, which was in force in the Kolhan area, has not been repealed by any specific enactment rather it was saved. For better appreciation See S. 292 and 293 of the Government of India Act, 1935 are worth to be quoted hereinbelow:-

"292. Existing law of India to continue in force -Notwithstanding the repeal by this Act of the Government of India Act, but subject to the other provisions of this Act, all the law in force in British India immediately, before th Commencement of Part III of this Act shall continue in force in British India until altered or repealed or amended by a competent Legislature or other competent authority.293. Adaption of existing India laws, etc. -His Majesty may by Order in Council to be made at any time after the passing of this Act provide that, as from such date as may be specified in the Order, any law in force in British India or in any part of British India shall, until repealed or amended by a competent Legislature or other competent authority have effect subject to such adaptations and modifications as appear to His Majesty to be necessary or expedient for bringing the provisions of that law into accord with the provisions of this Act and, in particular, into accord with the provisions thereof which reconstitute under different names governments and authorities in India and prescribe the distribution of legislative and executive powers between the Federation and the Provinces :Provided that no such law as aforesaid shall be made applicable to any Federated State by an Order in Council made under this section.In this section the expression "law" does not include an Act of Parliament, but includes any ordinance, order, bye law, rule or regulation having in British India the force of law."

61. Even under the provisions of the Government of India (Adaptation of Indian Laws) Order, 1937, the Schedule District Act, 1874 ceased to have effect but the continuing validity of any notification, appointment, regulation, direction or determination made thereunder, which was in force has been saved. I am, therefore, of the view that Wilkinsons Rules which was admittedly in force, has been saved by subsequent legislation.

62. So far application of Code of Civil Procedure is concerned, it has not been disputed that by virtue of Code of Civil Procedure (Amendment) Act, 1951 the operation of the Code was extended to the whole of India including the Schedule Districts, with the exception of certain tribal areas in the State of Assam, in the State of Madras and in the State of Jammu and Kashmir and in the State of Manipur. The State of Bihar then came with a Notification dated 26-8-1953, issued in exercise of power conferred on the State Government by sub-paragraph (1) of paragraph 5 of the Vth Schedule of the Constitution of India. By the
said notification the sadar sub-division of the District except the area comprised within
the Chaibasa and Chakradharpur Municipality have been excluded from the operation of
Code of Civil Procedure. This was obviously done because of the fact that in the Sadar Sub-
division of the District of Singhbhum i.e. in the Kolhan area the procedure provided under
the Wilkinsons Rules was applicable and was in force.

63. It appears that under the Wilkinsons Rules the suits were to be heard by the Munsiff
or Assistant to the Governor Generals Agent, but really they were heard by Kolhan
Superintendent or Deputy Commissioner of Singhbhum or an officer authorised by the
Deputy Commissioner. Realising that the hearing of the suits by the Kolhan Superintendent
or Deputy Commissioner or an officer authorised by him was irregular, the State Legislature
came with a validating Act namely, Kolhan Civil Justice (Regulating and Validating ) Act,
1966. By the said Act all actions of the officers exercised power under the Wilkinsons
Rules have been validated. This Act was published in the Bihar Gazette Extraordinary dated
20th March, 1967. This Act has only two sections, of which Sec. 2 reads as under:-

"2. Regulation and validation of certain past actions in the Kolhan with the exception
of Chaibassa Municipality in the Sadar Sub-Division of the district of Singhbhum.
Notwithstanding anything contained in any other law for the time being in force, or any
judgment, decree or order of any Court, the officers mentioned in Column I of the Schedule
shall, in regard to the trial of civil suit and proceeding arising within the local limits of the
Kolhan with the exception of the areas comprised within the municipality of Chaibassa in the
Sadar Sub Division of the district of Singhbhum and hearing of appeal, review or revision
arising therefrom, exercise the powers which the officers mentioned in the corresponding
entries in column 2 thereof exercised under the Wilkinsons Rules made under Regulation
XIII of 1833, and shall be deemed always to have validly exercised such powers and no
order, judgment or decree passed by them shall be deemed to be invalid or shall be called
in question in any Court or proceeding whatsoever merely on the ground that they were not
so empowered."

64. The State Legislature again in 1978 came with a similar Validating Act, namely, Kolhan
Civil Justice (Regulating and Validating) Act, 1978 after repealing the earlier Validating
Act, of 1966. It is, therefore, clear that the Legislature always recognised the vality
of Wilkinsons Rules which is in force in the Kolhan area for more than 150 years for the
purpose of administration of civil justice and all actions taken and power exercised by the
officers under the said Rule, has been validated. In this way the procedure provided under
the Code of Civil Procedure was not made applicable in the Kolhan area in the district of
Singhbhum where the Wilkinsons Rules has been in force for the administration of civil
justice.

65. In 1887, in order to consolidate the law relating to civil courts in Bengal, the North West
Provinces and Assam, the British Parliament enacted a law namely, the Bengal, Agra and
Assam Civil Courts Act, 1887. The operation of this Act was extended to the territories
then administered by the Lieutenant Governor of Bengal, the Lieutenant Governor of North
West Provinces and the Chief Commissioner of Assam. Learned counsel appearing for the
petitioner has not disputed that the operation of this Act has not been extended in the Kolhan
area in the district of Singhbhum.66. In 1976 a drastic amendment has been made in the
Code of Civil Procedure, 1908 on the basis of recommendation of Law Commission with the
sole object to expedite the disposal of civil suits and proceedings, so that justice may not be delayed. The other object was also to make the procedure not so complicated rather to make it simple to ensure fair deal to the poorer section of the community who do not have the means to engage a pleader to defend their case. 67. The question now falls for consideration is whether after the amendment introduced in the Code of Civil Procedure 1908 by virtue of Code of Civil Procedure (Amendment) Act, 1976, it has been made applicable in the Kolhan area in the district of Singhbhum. In this regard submission was made by the learned counsel that even if Wilksons Rule was in force in Kolhan area, after the amendment made in the Code of Civil Procedure in 1976 and particularly in view of Sub-sec. (3) of Sec. 1, the Code of Civil Procedure has been made applicable to the whole district of Singhbhum including the Kolhan area. In my opinion, the submission made by the learned counsel has no force at all. As noticed above, by Notification dated 26-8-1953 issued by the State of Bihar the Sadar Sub-division of district of Singhbhum except the area comprised within Chaibasa and Chakradharpur Municipality have been excluded from the operation of the Code of Civil Procedure. In my opinion, therefore, even after the amendment made in Sec. 1 of the Code of Civil Procedure by virtue of Amendment Act of 1976, the Kolhan area remained excluded from the operation of Code of Civil Procedure by virtue of Notification dated 26-8-1953. For better appreciation Sec. 157 of the Code of Civil Procedure is quoted hereinbelow:-

"157. Continuance of orders under repealed enactments.- Notifications published declarations and rules made places appointed, agreements filed, scales prescribed, forms framed, appointments made and powers conferred under Act 8 of 1859 or under any Code of Civil Procedure or any Act amending the same or under any other enactment hereby repealed shall, so far as they are consistent with this Code, have the same force and effect as if they had been respectively published, made, appointed, filed, prescribed, framed and conferred under this Code and by the authority empowered thereby in such behalf." 68. From perusal of the aforementioned provision, I have no doubt in my mind in holding that by virtue of Notification dated 26-8-1953 issued by the State of Bihar, the Sadar Sub-division of district of Singhbhum excluding Chaibasa and Chakradharpur Municipality shall remain excluded from the operation of Code of Civil Procedure and the said Notification shall have the same force. 69. Having regard to the entire facts and circumstances of the case and the relevant provisions of law discussed hereinabove, I am of the view that the Wilkinsons Rule was made under Regulation XIII of 1833 read with Government of India Act, 1833 and it became the substantive part of legislation. I further hold that Wilkinsons Rule, so made and still in force in the Kolhan area, was saved by virtue of Sec. 130 of the Government of India Act, 1833 and Regulation XIII of 1833 and further the said rule was saved by subsequent legislation and recognised as valid piece of statute. 70. Besides the above, I am in full agreement with the view expressed by this Court in Duli Chands case (AIR 1958 Patna 366) (supra) and Mahendras case (AIR 1958 Patna 603) (supra) and hold that Wilkinsons Rules have been accepted as valid law and acted upon by the Government officers and the people of Kolhan area for more than 150 years and still the Civil justice is administered under Wilkinsons Rule. This Court in aforementioned two judgments rightly held that Wilkinsons Rule cannot be declared ultra vires merely because of some error or irregularity in the matter of its publication rather the maxim "Omnia Praesumuntur rite et solenniter esse acta doneo probetur in contrarium" is applicable. Further the maxim "communis error facit jus" should be applied in this case. 71. I further agree with the ratio
decided by another Division Bench of this Court in the case of C. V. Ahya V/s. Deputy Commissioner of Singhbhum, 1970 BLJR 855. In that case their Lordships after considering the entire background of different legislation have held that it must be presumed that the rules were made by the authority of the Governor General although they purport to have been issued by the Agent to the Governor General. It was further held that the administration of justice in Sadar Sub-division of Singhbhum could not be governed by the Code of Civil Procedure but by Wilkinson's Rules which still hold the ground.72. Now I shall deal with the other aspect on the question of the validity of the Wilkinson's Rule. It is undisputed position that the Wilkinson's Rules have been accepted as valid law and acted upon by the Government officers and the people of Kolhan area for several decades. The Kolhan Inquiry Committee appointed by the State Government in 1948 has accepted that civil justice is still administered under Wilkinson's Rules and these Rules are statutory rules framed under Regulation XIII of 1833 and still in force by virtue of Sec. 7 of the Schedule District Act 1874. However, the Committee made the following recommendations/suggestions to the Government :- (i) The administration of Kolhan has to be developed progressively to approximate to the administration of the rest of the Chotanagpur which maintaining the essential features of the existing system prevailing in the Kolhan. (ii) In Kolhan suits the Deputy Commissioner and Kolhan Superintendent may allow appearance of lawyers in cases which they considered involve complicated question of law. (iii) The Wilkinson's Rules are out of date and Santhal Civil Rules with suitable modification to suit the Kolhan may be adopted. (iv) In Kolhan suits there should be a provision that the Deputy Commissioner and the Kolhan Superintendent should transfer cases to the civil Court if both contested parties make a joint prayer that their cases should be tried in a Civil Court. In cases so transferred, the Code of Civil Procedure should be made applicable.73. At this stage, it is worth to mention here some special features of the Wilkinson's Rules under which civil justice is being administered in the Kolhans. The original Court for cases for the value less than Rs. 300.00 is that of the Kolhan Superintendent with an appeal to the Deputy Commissioner and the original Court for cases of higher value is the Deputy Commissioner with an appeal to the Commissioner.74. Cases are instituted by ordinary petitions. Where the case is allowed to assume the form of a regular civil suit it is valued according to Court-fees Act. As regard procedure, normally the procedure provided under the Wilkinson's Rules and the procedure provided in the Code of Civil Procedure, not inconsistent with the Wilkinson's Rules, are valued. But all endeavours are made for adjudication of dispute by village Panchayat as arbitrators. The majority of petitions are however treated as miscellaneous petitions and settled by the Kolhan Superintendent without being allowed to assume the form of a civil suit. The method of administration of civil justice in this area are that the disputes be arbitrated in the village assembly and not heard by Secretary from such individual witnesses as may be produced in Court. The parties are entitled to apply to the Deputy Commissioner to have their cases decided in regular form of civil suit on payment of Court-fees but this is allowed only after all efforts are made first to settle the dispute in village assembly and the result of such proceeding is always placed on record before a formal suit is admitted. The Panches can be appointed at any time even after a formal suit has commenced, if the party agreed to abide by their decisions. The outstanding advantage of this system is that it is a cheap, speedy and efficient system of justice but in ordinary matters.75. There is a wrong notion about the Wilkinson's Rules among the general public specially the aboriginals of Kolhan who misconstrued it and thought it to be a law
protecting their general interest. They nourished an idea that Wilkinsons Rules would protect their right and give relief to all troubles after little knowing of it. They hardly know that it is almost a customary law for administering civil justice in Kolhan. The rules were framed in 1833 when the people of Kolhan were illiterate, ignorant, uncivilised and were living mostly in jungle. There are large deficiency in the said rule to cope with the present system of life in Kolhan. 76. Wilkinsons Rules give justice to the people with lesser expenditure but there has been a drastic change in the civilisation of the tribals and now a days the Kolhan aboriginals became literate and therefore, how the said rule which was originally meant to administer justice to illiterate and ignorant people shall continue when literacy and wisdom have progressively dawn in them. Moreover, the Wilkinsons Rule followed in a very pocketed portion of the Singhbhum District but in the rest portion of the district, such as Bandgaon etc. the rule is not followed though aboriginals reside there in majority. 77. There are other deficiency in the said rule also. For example, in Kolhan area there are at present factories, mines and offices of big companies like TISCO etc. have cropped up. If any dispute or grievance arises in Kolhan due to dismissal, wrongful transfer etc. then where the aggrieved party would seek his legal remedy. There is no Court for them and there is no remedy under the said rule inasmuch as the Kolhan Superintendent has no jurisdiction to try such suit. Similarly the Courts established under the Wilkinsons Rule lacks statutory jurisdiction to decide the dispute in between landlord and tenant. There are other anomalies also in the cases where the remedy lies under the Company law, Workmen Compensations Act, Industrial law, service matter etc. There are thousands of tribals who are employed in factories, mines and other big organisation in Kolhan and if any dispute arises regarding their dismissal and suspension from service or their transfer they have no Court to get justice, when other tribal of Chaibasa town or of Jamshedpur may get such remedy from their civil Court under the Code of Civil Procedure. There is no provision under the Wilkinsons Rule for grant of immediate and expeditious remedy in the matter of dismissal, suspension or transfer of the tribals by the employers. Likewise, if a dispute arises with regard to the quantum of compensation payable under the Land Acquisition Act, the matter has to be referred in accordance with the provisions of Land Acquisition Act. But for the land situated in Kolhan and if such disputes arisen after acquisition the aggrieved tribals cannot seek remedy under the Wilkinsons Rules for final settlement of the compensation. Similarly the Courts constituted under the Wilkinsons Rules have no jurisdiction to decide the question with regard to the grant of probate, letter of administration and succession certificate in the manner provided under the Indian Succession Act. A very interesting anomaly appears to be that a decree passed by a Court under the Wilkinsons Rules can be executed only in Kolhan and nowhere else. A decree passed by Kolhan Court cannot be executed in any other Courts in India. Unlike, a decree passed by a Civil Court can be executed in any Civil Court situated within the territory of India. 78. The Kolhan Enquiry Committee in his report dated 31st July, 1948 has recorded the following finding on the issue of administration of civil justice: :-"Cases are instituted by ordinary petitions. The Court-fees Act is nominally in force in the Kolhan and where a case is allowed to assume the form of a regular civil suit, it is valued according to the Court-fees Act. As regards procedure, the Civil Procedure Code is followed in a modified form, so that it is not inconsistent with "Wilkinsons Rules; but great use is made of the ordinary village Panchayat as arbitrators. The majority of petitions however, are treated as miscellaneous petitions and settled by the Kolhan Superintendent without being allowed to assume the
form of a civi suit. Though this is the procedure still followed, it appears that the results are not as happy as it was in the past. The Hos have advanced from their backward State; they have lost faith in their Mankis and Mundas and have also come under the influence of lawyers and touts. While recording the evidence of witnesses, it transpired that some Mundas Act as touts for lawyers. So most of the miscellaneous petitions do not end with the Kolhan Superintendent, Arbitration by Mankis is in many cases a failure these days. So ultimately the Kolhan Superintendent has to allow most of these petitions to assume the form of civil suits. This is putting a strain on the existing staff and is perhaps not giving real satisfaction to the litigant Ho. In the past this system gave cheap and speedy justice to Ho. But now it is neither cheap nor speedy."79. The Committee in his report has come to the following conclusion :-"The "Wilkinsons Rules" are out of date. It is suggested that the Santal Civil Rules might be adopted for the Kolhan. This will be a move in the right direction and in course of time the Civil Procedure Code can be brought in. If the new rules are brought into force a provision may be added providing for the transfer of such cases as is considered fit by the Deputy Commissioner to the regular Munsiff or Sub-Judges Court for disposal according to law. If both the contesting parties want to have their case tried in a Civil Court, then the Deputy Commissioner (including the Kolhan Superintendent) should have no discretion, but must transfer the case to the Court. When a case is thus transferred, the Civil Procedure Code should be made applicable. Wilkinsons Rules will no longer be applicable to them."80. All these deficiencies in the Wilkinsons Rules were also considered and discussed in a symposium on Wilkinsons Rules held in the district of Chaibasa. This symposium was organised by Mr. Barun Sen Gupta, the Protect Director of Free Legal Aid Committee and was presided by Mr. Bagun Sumbrai, M.P. in which many dignatories also participated. It appears that on the suggestion made by the enquiry committee for framing of a new set of rule on the line of Santal Pargana Civil Rules, an initiative was taken by the Government. It further appears that in 1983 a draft regulation namely, the Bihar Schedule Area (Wilkinsons Rule) Regulation, 1983 was prepared in order to amend and re-arrange the Wilkinsons Rule for its application to the entire Kolhan area. But, there is nothing to show that this draft regulation or any other rule or regulation has been enacted by the State Government in order to remove the deficiencies in the Wilkinsons Rule or to enforce any other rules or procedure in the Kolhan area. In my opinion, therefore, it is high time when immediate attention of the State Government is needed. A direction is, therefore, issued to the State of Bihar to comprehensively examine the question on the premise of our constitutional ethos and the need voiced to amend the rule. The State Government must comply the direction within a period of three months from today. Reference answered accordingly.
PUNE MUNICIPAL CORPORATION & ANR. VS. H.M. SOLANKI
2014 (3) SCC 183

Pune Municipal Corporation and Another ... Appellants;
Versus
Harakhchand Misirimal Solanki and Others ... Respondents.
(BEFORE R.M. LODHA, MADAN B. LOKUR AND KURIAN JOSEPH, JJ.)

A. Land Acquisition and Requisition — Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 — Ss. 24(1) & (2) — Lapse of acquisition proceedings initiated under 1894 Act, where "compensation has not been paid to landowners" and award was made 5 yrs or more prior to commencement of 2013 Act — Expression "compensation has not been paid" occurring in S. 24(2) — "Paid" — Import of — Deposit of compensation amount in Government treasury, held, not enough — Held, for purposes of S. 24(2) compensation shall be regarded as "paid" if compensation is actually tendered to landowners/interested persons, or, is offered to interested persons and on their refusal to accept the same such compensation is deposited in court

— Expression "paid" used in S. 24(2) includes deposit of compensation in court, and cannot be limited to mean "offered" or "tendered" to landowners/persons interested, and neither can receipt of compensation by landowners/persons interested be inferred as the only meaning thereof — If literal construction is given to expression "paid", then it would amount to ignoring the procedure, mode and manner of deposit of compensation in court as provided in S. 31(2) of 1894 Act when landowners/interested persons refuse to accept compensation

— In instant case, amount of compensation was deposited in Government treasury on 31-1-2008 which is not equivalent to "compensation paid to landowners/persons

* Arising out of SEP (C) No. 30283 of 2008. From the Judgment and Order dated 2440-2008 of the High Court of Bombay in WP No. 1296 of 2008
† Arising out of SEP (C) No. 30455 of 2008
‡ Arising out of SEP (C) No. 30470 of 2008
§ Arising out of SEP (C) No. 30467 of 2008
¶ Arising out of SLP (C) No. 30465 of 2008
** Arising out of SLP (C) No. 30469 of 2008
†† Arising out of SLP (C) No. 30543 of 2008
‡‡ Arising out of SLP (C) No. 30546 of 2008
§§ Arising out of SLP (C) No. 30548 of 2008
¶¶ Arising out of SLPs (C) Nos. 15847-55 of 2010
interested" and award had been made more than 5 yrs previously — Thus, subject land acquisition proceedings had lapsed — Land Acquisition Act, 1894 — Ss. 31 to 33 — Constitution of India — Arts. 300-A and 19(1)(f) — Human and Civil Rights — Right to property — Words and Phrases — "Paid" (Paras 12 to 20)


Harakhchand Misirimal Solanki v. Collector, WP No. 1296 of 2008, decided on 24-10-2008 (Bom), referred to

B. Interpretation of Statutes — Particular Statutes or Provisions — Expropriatory/ Land acquisition or use restriction statutes — Held, Land Acquisition Act, 1894 being an expropriatory legislation should be strictly followed — Collector while making payment of compensation, can only act in manner so provided, since where power is given to do certain thing in certain way, it should be done in that way or not at all — Other methods of performance are necessarily forbidden — Land Acquisition Act, 1894, Ss. 31 to 34, 11 and 12 (Para 18)


C. Land Acquisition and Requisition — Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 — Ss. 24(2) and 114 r/w S. 6, General Clauses Act, 1897 — Held, S. 114(2) of 2013 Act makes S. 6 of 1897 Act applicable with regard to effect of repeal which is subject to provisions of 2013 Act — Under S. 24(2), land acquisition proceedings initiated under the 1894 Act, by legal fiction, are deemed to have lapsed where award is made 5 yrs or more prior to commencement of 2013 Act and possession of land has not been taken or compensation not paid — In instant case, since compensation was not paid to persons interested where award had been made more than 5 yrs previously, subject land acquisition proceedings are deemed to have lapsed — General Clauses Act, 1897 — S. 6 — Constitution of India — Arts. 300-A and 19(l)(f) — Human and Civil Rights — Right to property (Para 21)

Appeals dismissed

Advocates who appeared in this case:


Chronological list of cases cited

2. WP No. 1296 of 2008, decided on 24-10-2008 (Bom), Harakchand Misirimal Solanki v. Collector


JUDGMENT


2. In these 18 appeals, by special leave, it is argued on behalf of the respondents-landowners that in view of Section 24(2) of The Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (for short, ‘2013 Act’) which has come into effect on 01.01.2014, the subject land acquisition proceedings initiated under the Land Acquisition Act, 1894 (for short, ‘1894 Act’) have lapsed.

3. The question for decision relates to true meaning of the expression “compensation has not been paid” occurring in Section 24(2) of the 2013 Act. It may not be necessary at all to go into the legality and correctness of the impugned judgment*, if the subject land acquisition proceedings are held to have lapsed. We, therefore, deal with this aspect first.

4. The brief facts necessary for consideration of the above question are these. On 06.08.2002, the proposal of the Municipal Commissioner, Pune Municipal Corporation (for short, “Corporation”) duly approved by the Standing Committee for acquisition of lands admeasuring 43.94 acres for development of “Forest Garden” was sent to the Collector, Pune. The Collector sanctioned the proposal and on 20.02.2003 forwarded the same to Special Land Acquisition Officer (15), Pune for further action. On 30.09.2004, the notification under Section 4 of the 1894 Act was published in the official gazette. Then notices under Section 4(1) were served upon the landowners/interested persons. On 26.12.2005, the declaration under Section 6 was published in the official gazette and on 02.02.2006, it was also published at the site and on the notice board of the Office of Talaltti. Following the notices under Section 9, on 31.01.2008 the Special Land Acquisition Officer made the award under Section 11 of the 1894 Act.

5. The landowners challenged the above acquisition proceedings before the Bombay High Court in 9 writ petitions. Of them, 2 were filed before making award and 7 after the award. The challenge to the acquisition proceedings and the validity of the award was laid on diverse grounds including (i) absence of resolution of the General Body of the Corporation; (ii) non-compliance with the provisions of Section 5A, (iii) noncompliance with the provisions of Section 7, and (iv) lapsing of acquisition proceedings under Section 11A. The High Court on consideration of the arguments advanced before it by the parties has held that the acquisition proceedings for the development of “Forest Garden” could not be initiated by the Commissioner with the mere approval of the Standing Committee without resolution of the General Body of the Corporation. The acquisition proceedings were also held bad in law for non-compliance of Section 7 and other statutory breaches. Inter alia, the High Court has quashed the acquisition proceedings and gave certain directions including restoration of possession.

6. It is argued on behalf of the landowners that by virtue of Section 24(2) of the 2013 Act, the

* Harakchand Misirimal Solanki v. Collector, WP No. 1296 of 2008, decided on 24-10-2008 (Bom)
subject acquisition shall be deemed to have been lapsed because the award under Section 11 of the 1894 Act is made more than five years prior to the commencement of 2013 Act and no compensation has been paid to the owners nor the amount of compensation has been deposited in the court by the Special Land Acquisition Officer.

7. On the other hand, on behalf of the Corporation and so also for the Collector, it is argued that the award was made by the Special Land Acquisition Officer on 31.01.2008 strictly in terms of 1894 Act and on the very day the landowners were informed regarding the quantum of compensation for their respective lands. Notices were also issued to the landowners to reach the office of the Special Land Acquisition Officer and receive the amount of compensation and since they neither received the compensation nor any request came from them to make reference to the District Court under Section 18, the compensation amounting to Rs.27 crores was deposited in the government treasury. It is, thus, submitted that there was no default on the part of the Special Land Acquisition Officer or the government and, hence, the acquisition proceedings have not lapsed. Moreover, reliance is also placed on Section 114 of the 2013 Act and it is argued that the concluded land acquisition proceedings are not at all affected by Section 24(2) and the only right that survives to the landowners is to receive compensation.

8. 2013 Act puts in place entirely new regime for compulsory acquisition of land and provides for new scheme for compensation, rehabilitation and resettlement to the affected families whose land has been acquired or proposed to be acquired or affected by such acquisition.

9. To turn, now, to the meaning of the expression "compensation has not been paid" in Section 24(2) of the 2013 Act and its effect on the subject acquisition, it is necessary to refer to Section 24 which reads as follows:

"24. (1) Notwithstanding anything contained in this Act, in any case of land acquisition proceedings initiated under the Land Acquisition Act, 1894, —

(a) Where no award under section 11 of the said Land Acquisition Act has been made, then, all provisions of this Act relating to the determination of compensation shall apply; or

(b) Where an award under said section 11 has been made, then such proceedings shall continue under the provisions of the said Land Acquisition Act, as if the said Act has not been repealed.

(2) Notwithstanding anything contained in sub-section (1), in case of land acquisition proceedings initiated under the Land Acquisition Act, 1894, where an award under the said section 11 has been made five years or more prior to the commencement of this Act but the physical possession of the land has not been taken or the compensation has not been paid the said proceedings shall be deemed to have lapsed and the appropriate Government, if it so chooses, shall initiate the proceedings of such land acquisition afresh in accordance with the provisions of this Act:

Provided that where an award has been made and compensation in respect of a majority of land holding has not been deposited in the account of the beneficiaries, then, all beneficiaries specified in the notification for acquisition under section 4 of the said Land Acquisition Act, shall be entitled to compensation in accordance with the provisions of this Act."

10. Insofar as sub-section (1) of Section 24 is concerned, it begins with non obstante clause.
By this, Parliament has given overriding effect to this provision over all other provisions of 2013 Act. It is provided in clause (a) that where the land acquisition proceedings have been initiated under the 1894 Act but no award under Section 11 is made, then the provisions of 2013 Act shall apply relating to the determination of compensation. Clause (b) of Section 24(1) makes provision that where land acquisition proceedings have been initiated under the 1894 Act and award has been made under Section 11, then such proceedings shall continue under the provisions of the 1894 Act as if that Act has not been repealed.

11. Section 24(2) also begins with non obstante clause. This provision has overriding effect over Section 24(1). Section 24(2) enacts that in relation to the land acquisition proceedings initiated under 1894 Act, where an award has been made five years or more prior to the commencement of the 2013 Act and either of the two contingencies is satisfied, viz; (i) physical possession of the land has not been taken or (ii) the compensation has not been paid, such acquisition proceedings shall be deemed to have lapsed. On the lapse of such acquisition proceedings, if the appropriate government still chooses to acquire the land which was the subject matter of acquisition under the 1894 Act then it has to initiate the proceedings afresh under the 2013 Act. The proviso appended to Section 24(2) deals with a situation where in respect of the acquisition initiated under the 1894 Act an award has been made and compensation in respect of a majority of land holdings has not been deposited in the account of the beneficiaries then all the beneficiaries specified in Section 4 notification become entitled to compensation under 2013 Act.

12. To find out the meaning of the expression, “compensation has not been paid”, it is necessary to have a look at Section 31 of the 1894 Act. The said Section, to the extent it is relevant, reads as follows:

“31. Payment of compensation or deposit of same in Court. – (1) On making an award under section 11, the Collector shall tender payment of the compensation awarded by him to the persons interested entitled thereto according to the award, and shall pay it to them unless prevented by some one or more of the contingencies mentioned in the next sub-section.

(2) If they shall not consent to receive it, or if there be no person competent to alienate the land, or if there be any dispute as to the title to receive the compensation or as to the apportionment of it, the Collector shall deposit the amount of the compensation in the Court to which a reference under section 18 would be submitted:

13. There is amendment in Maharashtra—Nagpur (City) in Section 31 whereby in sub-section (1), after the words “compensation” and in subsection (2), after the words, “the amount of compensation”, the words “and costs if any” have been inserted.

14. Section 31(1) of the 1894 Act enjoins upon the Collector, on making an award under Section 11, to tender payment of compensation to persons interested entitled thereto according to award. It further mandates the Collector to make payment of compensation to them unless prevented by one of the contingencies contemplated in sub-section (2). The contingencies contemplated in Section 31(2) are: (i) the persons interested entitled to compensation do not consent to receive it (ii) there is no person competent to alienate the land and (iii) there is dispute as to the title to receive compensation or as to the apportionment of it. If due to any of the contingencies contemplated in Section 31(2), the Collector is prevented from making payment of compensation to the persons interested who are entitled to compensation, then
the Collector is required to deposit the compensation in the court to which reference under Section 18 may be made.

15. Simply put, Section 31 of the 1894 Act makes provision for payment of compensation or deposit of the same in the court. This provision requires that the Collector should tender payment of compensation as awarded by him to the persons interested who are entitled to compensation. If due to happening of any contingency as contemplated in Section 31(2), the compensation has not been paid, the Collector should deposit the amount of compensation in the court to which reference can be made under Section 18.

16. The mandatory nature of the provision in Section 31(2) with regard to deposit of the compensation in the court is further fortified by the provisions contained in Sections 32, 33 and 34. As a matter of fact, Section 33 gives power to the court, on an application by a person interested or claiming an interest in such money, to pass an order to invest the amount so deposited in such government or other approved securities and may direct the interest or other proceeds of any such investment to be accumulated and paid in such manner as it may consider proper so that the parties interested therein may have the benefit therefrom as they might have had from the land in respect whereof such money shall have been deposited or as near thereto as may be.

17. While enacting Section 24(2), Parliament definitely had in its view Section 31 of the 1894 Act. From that one thing is clear that it did not intend to equate the word “paid” to “offered” or “tendered”. But at the same time, we do not think that by use of the word “paid”, Parliament intended receipt of compensation by the landowners/persons interested. In our view, it is not appropriate to give a literal construction to the expression “paid” used in this sub-section (sub-section (2) of Section 24). If a literal construction were to be given, then it would amount to ignoring procedure, mode and manner of deposit provided in Section 31(2) of the 1894 Act in the event of happening of any of the contingencies contemplated therein which may prevent the Collector from making actual payment of compensation. We are of the view, therefore, that for the purposes of Section 24(2), the compensation shall be regarded as “paid” if the compensation has been offered to the person interested and such compensation has been deposited in the court where reference under Section 18 can be made on happening of any of the contingencies contemplated under Section 31(2) of the 1894 Act. In other words, the compensation may be said to have been “paid” within the meaning of Section 24(2) when the Collector (or for that matter Land Acquisition Officer) has discharged his obligation and deposited the amount of compensation in court and made that amount available to the interested person to be dealt with as provided in Sections 32 and 33.

18. 1894 Act being an expropriatory legislation has to be strictly followed. The procedure, mode and manner for payment of compensation are prescribed in Part V (Sections 31-34) of the 1894 Act. The Collector, with regard to the payment of compensation, can only act in the manner so provided. It is settled proposition of law (classic statement of Lord Roche in Nazir Ahmad*) that where a power is given to do a certain thing in a certain way, the thing must be done in that way or not at all. Other methods of performance are necessarily forbidden.

19. Now, this is admitted position that award was made on 31.01.2008. Notices were issued to the landowners to receive the compensation and since they did not receive the compensation,

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* Nazir Ahmad v. King Emperor; [A.I.R. 1936 Privy Council 253(2)]
the amount (Rs.27 crores) was deposited in the government treasury. Can it be said that deposit of the amount of compensation in the government treasury is equivalent to the amount of compensation paid to the landowners/persons interested? We do not think so. In a comparatively recent decision, this Court in Agnelo Santimano Fernandes*, relying upon the earlier decision in Prem Nath Kapur†, has held that the deposit of the amount of the compensation in the state’s revenue account is of no avail and the liability of the state to pay interest subsists till the amount has not been deposited in court.

20. From the above, it is clear that the award pertaining to the subject land has been made by the Special Land Acquisition Officer more than five years prior to the commencement of the 2013 Act. It is also admitted position that compensation so awarded has neither been paid to the landowners/persons interested nor deposited in the court. The deposit of compensation amount in the government treasury is of no avail and cannot be held to be equivalent to compensation paid to the landowners/persons interested. We have, therefore, no hesitation in holding that the subject land acquisition proceedings shall be deemed to have lapsed under Section 24(2) of the 2013 Act.

21. The argument on behalf of the Corporation that the subject land acquisition proceedings have been concluded in all respects under the 1894 Act and that they are not affected at all in view of Section 114(2) of the 2013 Act, has no merit at all, and is noted to be rejected. Section 114(1) of the 2013 Act repeals 1894 Act. Sub-section (2) of Section 114, however, makes Section 6 of the General Clauses Act, 1897 applicable with regard to the effect of repeal but this is subject to the provisions in the 2013 Act. Under Section 24(2) land acquisition proceedings initiated under the 1894 Act, by legal fiction, are deemed to have lapsed where award has been made five years or more prior to the commencement of 2013 Act and possession of the land is not taken or compensation has not been paid. The legal fiction under Section 24(2) comes into operation as soon as conditions stated therein are satisfied. The applicability of Section 6 of the General Clauses Act being subject to Section 24(2), there is no merit in the contention of the Corporation.

22. In view of the foregoing discussion, it is not necessary to consider the correctness of the impugned judgment on merits.

23. The appeals fail and are dismissed with no order as to costs.

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*Ivo Agnelo Santimano Fernandes and Others v. State of Goa and Another; [(2011) 11 SCC 506]