JUDICIAL ACADEMY

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ENDURING JUSTICE

READING MATERIAL

Intensive Training for S.D.O. / Magistrates on Relevant Provisions of Cr.P.C., S.P.T. and C.N.T.

Organised & Compiled by
Judicial Academy Jharkhand
Dhurwa, Ranchi

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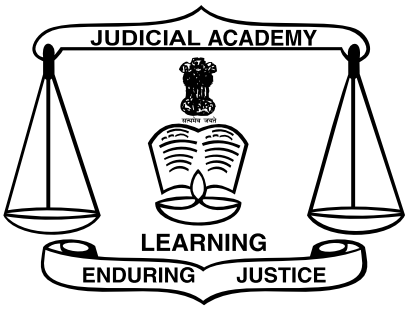

READING MATERIAL

FOR
INTENSIVE TRAINING FOR S.D.O. / MAGISTRATES ON RELEVANT PROVISIONS OF CR.P.C., S.P.T. AND C.N.T. AT JUDICIAL ACADEMY JHARKHAND

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POWERS AND FUNCTIONS OF S.D.O. / EXECUTIVE MAGISTRATES under Code of Criminal Procedure, 1973

RELEVANT PROVISIONS OF CR.P.C.

CRIMINAL PROCEDURE CODE, 1973:

BACK GROUND: The law relating to Criminal Procedure applicable to all Criminal Proceedings in India (except those of state of Jammu & Kashmir and Nagaland and the tribal areas of Assam) is contained in the Criminal Procedure Code, 1898. This code has been amended from time to time by various Acts of the Central and State Legislatures. Apart from several Amendments, the provisions of the Code of 1898 have remained practically unchanged through the decades and no attempt was made to have a comprehensive revision of this old Code till the Central Law Commission was set up in 1955.

A comprehensive report for the revision of the Code, namely the Forty First Report, was presented by the Law Commission in the year 1969. One of the main recommendations of the Commission was for the separation of the Judiciary from the Executive on all India basis in order to achieve uniformity in this matter.

Basing on the recommendations of Law Commission, the Code of Criminal Procedure 1973 was enacted extending to the whole of India except the State of Jammu & Kashmir. It came into force on the 1st day of April, 1974.

Chapter VIII Sections 107 to 124 and Chapter X Sections 129 to 148 of the present Code makes extensive provisions with regard to the power of executive magistrate for dealing with emergent situation for taking preventive measures. While Sections 107 to 124 deals with security for keeping peace and good behaviour Sections 129 to 148 are provisions for maintenance of Public Order and Tranquility.

Apart from the above, the following Sections deal with powers and functions of Executive Magistrates:

Section		Subject
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Section 20 Cr.P.C. (Executive Magistrates) :

In every District, the following Officers are appointed as Executive Magistrates by the Government U/S 20 Cr.P.C.

1. Collector
2. Joint Collector
3. District Revenue Officer
4. Revenue Divisional officer
5. Tahsildar

The above Officers are appointed as Magistrates by virtue of the Offices held by them as noted against each.

	Designation of the Officer (1)	Appointed as (2)	Local Jurisdiction (3)
1.	Collector	District Magistrate	Entire District
2.	Joint Collector	Addl.Dist. Magistrate	Entire District
3.	Dist.Rev.Officer	Addl.Dist. Magistrate	Entire District
4.	Rev.Divil.Officer	Sub Divisional Magistrate	Entire Revenue
5.	Tahsildar	Mandal Executive Magistrate	Entire Mandal

Additional District Magistrates shall have such of the powers of a District Magistrate under this code or under any other law for the time being in force.

Additional District Magistrates are not empowered to issue detention order under NASA and Preventive Detention Act.

All Executive Magistrates other than the Addl. District Magistrate shall be subordinate to the District Magistrate. And every executive Magistrate (other than S.D.M), exercising powers in a sub-division shall also be subordinate to the Sub-Divisional Magistrate, subject, however, to

the general control of the District Magistrate.

District Magistrate may from time to time give special orders, consistent with this Code, as to the distribution of business among the Executive Magistrates subordinate to him and as to the allocation of business to an Additional District Magistrate.

Section 21 Cr.P.C. (Special Executive Magistrates) :

Under Section 21 Cr.P.C. the State Government may appoint, for such term as they may think fit to be known as "Special Executive Magistrates" for particular areas or for performance of particular functions and confer on such Special Executive Magistrates, such of the powers as are conferrable under the code.

Generally, Deputy Collectors and Tahsildars and Deputy Tahsildars are appointed as Special Executive Magistrates to handle urgent Law and Order problems on the special occasions.

Section 22 Cr.P.C. (Local Jurisdiction of the Executive Magistrate) :

Under Section 22 of the Cr.P.C. the local jurisdiction of the Executive Magistrate is determined by the District Magistrate, subject to the control of the State Government, within which the Executive Magistrate may exercise all or any of the powers invested under the code. Unless so determined, the jurisdiction and powers of every such Magistrate shall extend throughout the district.

Section 23 Cr.P.C. (Subordinate of Executive Magistrates) :

The Executive Magistrates, other than the Addl. District Magistrates, shall be Subordinate to the District Magistrate and every Executive Magistrate (other than the Sub Divisional Magistrate) exercising powers in a Sub Division shall also be subordinate to the Sub Divisional Magistrate, subject to the general control of the District Magistrate. The District Magistrate may make rules or give orders, from time to time, as to the distribution of business among the Executive Magistrates subordinate to him and as to the allocation of business to an Additional District Magistrate.

CR.PC. CHAPTER VIII, SECURITY FOR KEEPING THE PEACE & FOR GOOD BEHAVIOUR (SECTION 107-116)

SECTION 107

1. When and Executive Magistrate receives information that any person is or likely to commit a breach of peace or disturb the public tranquility or to do a wrongful act that may probably occasion in a breach of the peace or disturb the public tranquility and is of the view that there is sufficient ground for proceeding, he may, in the manner hereinafter provided, require such person to show cause why he should not be ordered to execute a bond with or without sureites for keeping peace for such period not exceeding one year, as the Magistrate thinks fit.
2. Proceeding under this Section may be taken before any Executive Magistrate when either the place where either the place where the breach of the peace or disturbance is

apprehended is within the local jurisdiction or there is within such Jurisdiction a person who is likely to commit a breach of the peace or disturb the public tranquility or to do any wrongful act as aforesaid beyond such jurisdiction.

OBJECT OF 107 Cr.P.C.:

The main object of this Section is "Preventive and not Punitive". This Section is to enable the Executive Magistrate to take measures with a view to prevent commission of offences, involving breach of the peace or disturbance to public tranquility. Proceedings under Chapter 8 are "inquiries" and not "trials" and the person proceeded against is not an accused. It is aimed at person who causes a reasonable apprehension of conduct likely to lead to a breach of peace or disturb public tranquility.

SECTION 108 Cr.P.C.:

Security for good behaviour from person disseminating seditious matters.

1. Commission of a single or isolated offence at a particular time does not justify action U/s 108 Cr.P.C.
2. It should be shown that there is an intention of disseminating seditious matters or continuing his activities in the immediate future.

SECTION 109 Cr.P.C.:

1. It deals with a person who is coming within the limits of an Executive Magistrate jurisdiction and is taking precaution to conceal his presence with a view to committing a cognizable offence.
2. The object is to enable an Executive Magistrate to proceed against Suspicious stranger lurking within his jurisdiction.

ESSENTIAL CONDITION BEFORE APPLYING SECTION 109 Cr.P.C.:

Before applying Sec. 109, the Executive Magistrate should see two necessary things:-

1. The person is taking precaution to conceal his presence; and
2. His concealment must be with a view to committing an offence.

OBJECT OF SECTION 110 Cr.P.C.:

Security for good behaviour from habitual offenders--

To protect the public against hardened and habitual criminals.

PROCEDURE:

In respect of the above Sections, the Executive Magistrates should direct the Respondents to execute bonds for a period not exceeding one year with or without sureties for the cases initiated U/s 108, 109 and for a period not exceeding 3 years in respect of section 110 Cr.P.C.

The procedure as laid down U/s 107 Cr.P.C. is applicable in these cases also i.e. issue of Order U/s 111 Cr.P.C. etc.,

SECTION 113 Summons or warrants against persons not so present--

SECTION 114 Copy of order to accompany summons or warrant--

Section 116 Inquiry as to truth of information

1. When an order under Section 111 has been read or explained under Section 112 to a person present in Court, or when any person appears or is brought before a Magistrate in compliance with it shall proceed to inquire into the truth of the information upon which action has been taken, and to take such further evidence as may be necessary.
2. The inquiry shall be made as may be practicable, in the manner hereinafter prescribed for conducting trial and recording of evidence in summons cases.
3. If the Magistrate considers that immediate measures are necessary for prevention of a breach of peace or disturbance of public tranquility, or the commission of any offence or for the public safety, may, for reasons to be recorded in writing, direct the person in respect whom the order under Section 111 has been made to execute a bond, with or without sureties for keeping the peace or maintaining good behavour until the conclusion of the inquiry and may detain him in custody until such bond is executed or, in default of execution un the inquiry is concluded.
4. For the purposes of this Section the fact that a person is a habitual offender or is so desperate and dangerous as to render his being at large without security hazardous to the community may be proved by evidence of general repute or otherwise.
5. The inquiry under this Section shall be concluded within six months from the date of its commencement, and if such inquiry is not completed, the proceeding under this chapter shall be terminated unless, for special reasons to recorded in writing, the Magistrate otherwise directs:

Provided that where any person has been kept in detention pending such inquiry, the proceeding against that person, unless terminated earlier, shall stand terminated on the expiry of a period of six moths of such detention.

The inquiry under this Chapter commences when the order passed under Section 111 is read to the person proceeded against when he is present in Court. The Sessions Judge may revise the order of extension of six month time by the Magistrate.

PROCEDURE:

A Magistrate has no jurisdiction under Section 111 to proceed against any person before him if he has no information against him. The information may be received through a police report or the report of the subordinate Magistrate or through a private individual. The procedure after receiving information actually commences from Section 111. When an Executive Magistrate receives information that any person is likely to commit a breach of the peace or disturb the public tranquility or to do any wrongful act that may probably occasion a breach of the peace or disturb the public tranquility, he should go through the content of information along with the relevant material placed before him and if he is of the opinion that there are sufficient grounds to initiate action U/s 107 Cr.P.C., he should pass orders, record the same on the right side corner of the first page of information stating:

"I have perused the information/written report along with the relevant material placed before me and I am satisfied that there are sufficient grounds to initiate action U/s 107 Cr.P.C. Taken on file. Issue Order U/s 111 Cr.P.C with summons U/s 113 Cr.P.C".

Before initiation of action U/s 107 Cr.P.C., it should be ensured that the order contains the brief facts of the case, persons involved, their addresses etc., along with the list of PWs and also the property particulars to decide the quantum of surety to be fixed. When all these things are available and to satisfaction by the Executive Magistrate as stated above, he shall make an order in writing U/s 111 Cr.P.C., setting forth the substance of the information received, the amount of the bond to be executed and directing the Respondents to show cause as to why they should not be ordered to execute a bond for of Rs. …… (amount to be specified herein) with or without sureties (to be decided and indicated herein) for like-sum each for keeping the peace for such. The order may not contain the entire information but it must contain the matters which may convey to person called upon an intelligible picture of the information. The order of Magisterial not indicating nature of information which induced him to take action under Section 107 is bad.

The word wrongful act under this section mean an act forbidden by the penal statute of India or declared to be penal or wrognful by such statute and not meerely an improper or criminal act. Magistrate has power to call for a report from police or other Magistrate before a proceeding under this Section.

Period not exceeding one year.

Summons U/s 113 Cr.P.C., shall be accompanied by a copy of the order made U/s 111 Cr.P.C.

On the appointed date and time, when all the Respondents are present, the contents of Section 111 Cr.P.C., are read over or explained U/s 112 Cr.P.C., and inquiring / questioning each of the Respondents whether he admits the offence / wrongful act having been committed by him and if he denies the committal of offence / wrongful act as charged against him, then it should be recorded in writing in the form prescribed and his signature is taken duly attested by the Executive Magistrate.

Thereafter, summons shall be issued to the PWs as per the list of witnesses, Inquiry U/s 116 (1) Cr.P.C., commences the moment all the respondents present, they are examined to ascertain the truth of the allegation by taking evidence or otherwise. When the Executive Magistrate considers that immediate measures are necessary for the prevention of a breach of the peace or disturbance of the public tranquility, for reasons to be recorded in writing, pass an order U/s 116 (3) Cr.P.C., directing the Respondents to execute bonds for the amounts and with sureties as indicated in the other U/s 111 Cr.P.C., for keeping the peace until the conclusion of the inquiry and may detain him in the custody until such bond is executed or in default of execution until the inquiry is concluded. The interim Bonds cannot be ordered to be executed before the commencement of the inquiry.

DOCKET SHEET – HOW TO WRITE:

EXAMPLE: 13.03.2002

Case called. All the Respondents present. P.C 2002 of Yemmiganur Rural P.S present. All the Respondents have been examined under Sec. 112 Cr.P.C., and they have denied the offences / wrongful acts having been committed by them and refused to execute the bonds as directed. As it is considered immediate measures are necessary for the prevention of a breach of the peace or disturbance of public tranquility, an order U/s 116(3) Cr.P.C., is passed and pronounced in open Court, directing the Respondents to execute the Interim Bonds keep the peace until the conclusion of the inquiry and accordingly they have executed the Interim Bonds. Case

adjourned to 26.03.2002 at 11 A.M., at Yemmiganur. Bind over the Respondents present. P.C. informed. Issue summons to P.W. 1 and 2.

COURT DIARY – HOW TO WRITE:

Case called. All the Respondents present. P.C 2002 of Yemmiganur Rural P.S present. All the Respondents have been examined under Sec. 112 Cr.P.C., and they have denied the offences / wrongful acts having been committed by them and refused to execute the bonds as directed. As it is considered immediate measures are necessary for the prevention of a breach of the peace or disturbance of public tranquility, an order U/s 116(3) Cr.P.C., has been passed and pronounced in open Court directing the Respondents to execute the Interim Bonds to keep the peace until the conclusion of the inquiry and accordingly they have executed the Interim Bonds. Case adjourned to 26.03.2002 at 11 A.M., at Yemmiganur. P.C. informed. Respondents present are bound over. Summons Issued to P.W. 1 and 2.

IMPORTANT:-

It should be borne in mind that the inquiry should commence when all the Respondents are present only and if not after exhausting all efforts i.e., to secure the presence of the absentee Respondents by issuing BWs (Bailable Warrants), NBWs (Non-Bailable Warrants), and after recording deposition from the Police Officers, not below the rank of Sub Inspector of Police, that efforts made to execute the NBWs to produce the absentee Respondents in the Court Proved futile, then the case should be split up and the case against the absentee Respondents registered separately and dealt with. PWs should be inquired in the form of Depositions. The exhibits admitted in evidents shall be marked as follows:

1. If filed by the prosecution with the capital letter "P" followed by a numeral P1, P2, P3 and the like.
2. If filed by Defence with the capital letter "D" followed by a numeral D1, D2, D3 and the like.
3. In case of Court exhibits with the capital letter "C" followed by a numeral C1, C2, C3 and the like.
4. All the exhibits filed by the several Respondents shall be marked consecutively.

Normally, prosecution is to be conducted by the A.P.P. Grade – II, and in his absence Police Officer not below the rank of Sub-Inspector.

After the completion of evidence of Prosecution Witnesses, and at the request of the Defence counsel, the Executive Magistrate may examine the Defence Witnesses also. Arguments are to be heard from both sides before passing final order. After taking into consideration all the material facts of the case, the evidence adduced by the PWs and DWs, if any, it is proved that it is necessary for keeping the peace or maintaining good behaviour, as the case may be, the Executive Magistrate shall make an order in writing U/s 117 Cr.P.C., directing the Respondents to execute bonds as directed in the order U/s 111 Cr.P.C. And if, on an inquiry U/s. 116 Cr.P.C., it is not proved that it is necessary for keeping the peace or maintaining good behaviour, as the case may be, the Executive Magistrate, shall make an order releasing them, if they are in custody only for the purposes of inquiry, or if they are not in custody, shall discharge them U/s 118 Cr.P.C. If the material on record discloses that though there was a danger of peace at one point of time , because of the happening of subsequent events the danger of breach of peace has disappeared the Court can drop the proceeding and discharge the accused proceeded against.

Disputes relating to land, waterways, etc. Where the dispute exists between parties about land waterways etc it is the discretion of the Magistrate whether to proceed under Section 107 or Section 145 of the Cr.P.C. The normal rule is that where the breach of peace is threatened on account of dispute regarding land, the Section which a Magistrate should apply is Section 145 of the Cr.P.C. There may arise situation that it is not possible to prevent breach of the peace by merely making an order under Section 145, there should be no objection in proceeding under Section 107.

Orders passed U/s. 117 Cr.P.C., or 118 Cr.P.C., should invariably be pronounced in open Court.

Appellate authority: Court of Sessions.

IMPORTANT POINTS TO BE KEPT IN MIND WHILE DEALING THE CASES U/S 116

107 Cr.P.C.

1. The information need not be from the Police only. It may be from the public also.
2. Only fresh incidents of breach of the peace or disturbance of public tranquility such as astray, hurt etc., should be taken into account. Old incidents are useful only to prove the existence of enemity between the opposite parties, but they do not give support to the theory that there is imminent danger to peace. Convictions on fresh incidents, strengthens the case U/s 107 Cr.P.C.
3. When FIR along with its enclosures are received, the Executive Magistrate has to put his initial with date and time of receipt and how it was received. i.e., either in person or in post. The FIR and enclosures., received for action U/s 107 to 110, 145 to 147 should be examined immediately and if there are no defects, take it on file under the relevant provisions of Cr.P.C. If there are defects it may be returned for rectifications and re-submission.
4. Magisterial cases should be registered in Register No. 6 and numbered serially and continued annually.
5. An order U/s 107 Cr.P.C. is passed when the Executive Magistrate is of the opinion that the information, received by him to the effect that any person was likely to commit breach of the peace or to disturb public tranquility is credible.
6. Summons U/s. 113 Cr.P.C. accompanied by order U/s. 111 Cr.P.C. should be got served through the concerned Police.
7. No person should be ordered to give security of a nature different from or of an amount larger than or for a period longer than that specified in the Order made U/s 111 Cr.P.C.
8. The amount of every bond shall be fixed with due regard to the circumstances of the case and shall not be excessive, Imposition of excessive amount is not justified and bad in law. For this purpose the property particulars statement should be insisted.
9. 1. It is desirable that instead of holding the case in the Headquarters, as far as practicable, to post it to interior places within his jurisdiction where there are no transport facilities available to make the Respondents realize their sufferings and readily come forward to execute bonds to keep the peace as directed.
   2. While conducting the Court there is need for maintaining decency, decorum, discipline and strict silence.

3. The A.P.P Grade should conduct the prosecution and examination of witnesses as is being done in judicial courts.

10. When all the Respondents are present, they should be examined U/s 112 Cr.P.C. and inquiry commenced. The case should not be casually treated and adjourned without any valid reasons.

11. When the inquiry is adjourned, an order of the court in writing giving the reasons therefor shall be recorded. The reason for which an adjournment can be granted may be either due to the absence of the witness or any other reasonable cause.

12. The case should not be adjourned for more than 14 days at a time.

13. Hearing Book should be maintained.

14. Defence Counsel should file Vakalathnama. One Vakalathnama is enough for all the Respondents. This Vakalathnama is to be signed by all the Respondents and accepted by the Defence Counsel.

15. Whenever the Respondents are absent, issue of summons is to be resorted to first.

16. If summons proves to be not effective, then BWs should be issued.

17. Issue of NBWs should be resorted to as a last resort to procure the presence of Respondents.

18. The Executive Magistrate, if he sees sufficient cause, dispense with the personal attendance of any Respondent and may permit him to appear by a pleader.

19. The persons against whom the proceedings have been started are called "Respondents" and not "Accused".

20. The Proceedings before the Executive Magistrate are only **"Inquiries"** but not **"Trials"**.

21. From the date of taking on file a docket sheet should be maintained indicating the proceedings on each date of posting and the date of next posting, any orders of issue of summons etc., to any witness. The docket sheet should also indicate the final disposal of the matter in brief though the detailed order may be on a separate paper.

22. Whenever the Court is held, the Executive Magistrate should write the Docket sheet in his own handwriting. It should not be allowed to be written by the clerk dealing with the subject.

23. Court Diary should be written on the same date of hearing itself and attested by the Executive Magistrate.

24. Court fee stamps affixed to the petitions presented in the Court should be punched and the amount of it should be entered in the relevant register.

25. **Forfeiture for Breach of Bonds:-** Forfeiture of Bond is justified only in a Breach of the undertaking specified in the bond and no other reason. In such cases action can be taken U/s 446 Cr.P.C. and orders passed after observation of necessary formalities under this section for forfeiting the Bond and levying Penalty / Fine. The Court may at its discretion remit any portion of the penalty mentioned and enforce payment in part only. The Penalty / Fine amount should also be collected, entered in the Register and got remitted and entry attested by the Executive Magistrate. This procedure may also be followed in respect of cases where the Respondents fail to attend Court after having bound over themselves on the earlier date of hearing.

26. After pronouncement of either interim order U/s 116(3) Cr.P.C. or final order U/s 117 Cr.P.C. if any Respondent fails to execute bond as directed, he may be detained to custody until such bond is executed or in default of execution until the inquiry is concluded.

27. When the person in respect of whom the inquiries will be made is a minor, only his sureties shall execute the bond.

28. The inquiry U/s 116 (1) Cr.P.C. should be completed within a period of 6 (six) months from the date of commencement and if such inquiry is not completed, then the proceedings on the expiry of the said period stands terminated, unless for special reasons to be recorded by the Executive Magistrate, saying that in the circumstances of the case, the proceedings are to be kept alive, though the case is over 6 months. (Sec 116(6) Cr.P.C.

29. To issue order terminating the proceedings U/s 116(6) Cr.P.C. if there are no special reasons to keep alive the Proceedings beyond six months as illustrated below:-

    Order:-

    The proceedings were started on the report of Station House Officer …… Dated …… The Respondents appeared on …… the order U/s 111 Cr.P.C. was read over to them and explained the substance explained thereof U/s 112 Cr.P.C. Though 6 months have elapsed no progress is made in the case. No fresh incidents are reported after the initiation of Security Proceedings. Hence, there are no reasons to keep alive these proceedings and as such they stands terminated U/s 116 (6) of Cr.P.C. and the Respondents are discharged U/s 118 Cr.P.C.

30. The Executive Magistrate has powers to refuse to accept any surety offered or reject any surety accepted previously on the ground that such surety is an unfit person for the purpose of the bond (Section 121 Cr.P.C.)

CR.P.C. CHAPTER X MAINTENANCE OF PUBLIC ORDER AND TRANQUILITY (SECTIONS 129 TO 148)

A –-Unlawful Assemblies (Section 129 to 132)

SECTION 129 Cr.P.C.:

(Unlawful Assemblies – Dispersal of Assembly by use of Civil Force).

1. Any Executive Magistrate or Officer-in-charge of Police Station or in the absence of such Officer-in-charge, any Police Officer, not below the rank of a Sub-Inspector of police, may command any unlawful assembly or any assembly of five or more persons likely to cause a disturbance of the public peace, to disperse; and it shall thereupon be the duty of the members of such assembly to disperse accordingly.

2. If, upon being so commanded, any such assembly does not disperse, or if without being so commanded, it conducts itself in such a manner as to show a determination not to disperse, any Executive Magistrate or Police Officer referred to in Sub Section (1) may proceed to disperse such assembly by force and may require the assistance of any male person, not being an Officer or member of the armed forces and acting as such, for the purpose of dispersing such assembly, and, if necessary, arresting confining the persons

who form part of it, in order to disperse such assembly or that they may be punished to law.

UNLAWFUL ASSEMBLY DISPERSAL: POINTS TO BE REMEMBERED:

1. The police must secure the presence of an Executive Magistrate where a breach of peace is anticipated.
2. The Executive Magistrate has got powers to give an order to police to assist him in handling the situation.
3. The senior most Police Officer shall assist the Executive Magistrate.
4. The Police shall act as ordered by the Executive Magistrate.
5. The Executive Magistrate is responsible to take a decision as to when the unlawful assemblies have to be dispersed.
6. The Executive Magistrate shall wear armed band in red colour with letter **"M"**.
7. The Executive Magistrate shall have definite opinion for the dispersal of unlawful assembly.
8. If the force is not adequate, the use of force should be attempted to control the unlawful assembly.
9. The Executive Magistrate shall order the kind of force to be used.
10. Firing shall be ordered only as a last resort.
11. Police party to be formed with 2 or more for dispersing unlawful assembly.
12. Firing order shall be done by the order in command of the party.
13. The Executive Magistrate shall communicate orders to the force.
14. The police will give order when necessary.
15. To disperse the mob, the officer shall give clear warning before use of tear gas or lathis.
16. If the mob fail to disperse, inspite of warning, firing may be given.
17. The Police Officer shall decide the minimum rounds to be fired.
18. Firing aim should be kept low and directed against the most threatening part of the crowd.
19. Files or sections ordered to fire shall unload immediately after firing without further word of command until the order to cease firing is finally given.
20. Firing should be ceased the moment the mob disperses from the scene.
21. Firing should be carried out from a distance sufficient to obviate the risk of being rushed on and to enable restrict fire control to be maintained.
22. Permission of Executive Magistrate is necessary in case the police are compelled to disperse the mob in different places of the same village.
23. Riot flags should be taken when Armed Reserves are called out in apprehension of disturbance and before firing or any other means of dispersal is resorted to should be hoisted before the mob in a position in which the inscriptions on them are clearly visible.
24. The Executive Magistrate or Police Officer shall make adequate arrangements to shift the wounded persons to the Hospital for Medical Aid. Dead persons should be sent to Mortuary.

The following points should also be kept in mind while initiating action U/s 129 Cr.P.C.:-

1. Conduct and behaviour of the assembly is to be determined.
2. Mere physical presence of all persons cannot make them members of unlawful assembly.
3. Unlawful assembly refusing to disperse can be dispersed by force.
4. An Order to disperse an assembly can be passed even when the assembly is not unlawful but is likely to cause breach of peace i.e. potential unlawful assembly.

B----------PUBLIC NUISANCE : (S ECTION 133 to 144 A Cr.P.C.):

Section 133 of Cr.P.C. enables a District Magistrate / Sub Divisional Magistrate or any other Executive Magistrate specially empowered by the State Government to deal with public nuisances. This power can be exercised either on receipt of a police report or other information. Public nuisances which can be dealt with under this section fall under the following six categories.

CATEGORIES OF PUBLIC NUISANCE:

1. Any unlawful obstruction or nuisance from any public place or from any way, river or channel, which is or may be lawfully used by the public.
2. The conduct of any trade or occupation, or keeping of any goods or merchandise, is injurious to the health or physical comfort of the community.
3. The construction of any building or disposal of any substance, as is likely to occasion conflagration or explosion.
4. Any building, tent, structure, or tree which is likely to fall and thereby cause injury to persons.
5. Any tank, well or excavation adjacent to any such way or public place.
6. Any dangerous animal, which requires to be destroyed confined or otherwise disposed of.

Nuisance is of two kinds: Private nuisance and public nuisance. Private nuisance is actionable in civil Court as tort. The Public nuisance is punishable under Section 268 of the IPC. A Civil suit may be filed for injunction or abatement against public nuisance by the Advocate General or by two or more persons who have obtained the consent of the Advocate General under Section 91 of the CPC. The civil and criminal remedy are concurrent and pursuit does not bar the other.

When a proceeding under Section 133(1) is drawn up for alleged obstruction of public right, the Magistrate is to make two inquiries firstly to determine whether or not there exists any public right in respect of it and secondly whether or not there is obstruction of it by the public. These two inquiries can not be made without complying with the requirement of Section 137 and 138 of the Cr.P.C. If the party against whom such conditional order has been made denies the existence of the alleged public right, the Magistrate shall inquire that question by taking evidence of such objector. If on such enquiry the Magistrate finds that the evidence in support of the denial of the alleged right is reliable , the Magistrate shall stay the proceeding before him until the question of existence is decided by a competent court.

Section 134 Service or notification of order-- The order shall if practicable , be served on the person against whom it is made.

Section 135 Person to whom order is addressed to obey or show cause--

Section 136-- Consequence of his failing to do so-- If such person does not perform such act or appear and and show cause he shall be liable to penalty prescribed under Section 188 of the IPC.

Section 137 Procedure where existence of public right is denied

Section 138 Procedure where he appears to show cause

Section 139 Power of magistrate to direct local investigation and examination of expert.

Section 141 Procedure on order being made absolute and consequence of disobedience-

Section 142 Injunction pending inquiry

The proceeding under this section is summary and is meant for urgency. The whole object of this Section is that the public should not suffer and such dangers and obstruction should be removed at the earliest.

U/s 133(1) Cr.P.C., such Executive Magistrate may make a conditional order requiring the person causing such obstruction or nuisance, or carrying on such trade or occupation, or keeping any such goods or merchandise, or owning or possessing or controlling such building, tent, structure, substance, tank well or excavation or owning or possessing such animal or tree, within a time to be fixed in the order to remove such obstruction or nuisance etc., to destroy, confine or dispose of such dangerous animal as mentioned above or if he objects to do so, to appear before him or some other Executive Magistrate Subordinate to him at a time and place to be fixed by the order and show cause in the manner provided why the order should not be made absolute.

No order duly made by an Executive Magistrate under this Section shall be called in question in any Civil Court. (Sec. 133(2) Cr.P.C)

The order passed U/s 133(1) Cr.P.C., if practicable, is served on the person against whom it is made in the manner herein provided for service of summons. If it cannot be so served, it shall be notified by proclamation and the copy thereof shall be stuck up at a conspicuous place (Sec. 134 Cr.P.C.,). If after passing conditional order, the Executive Magistrate finds that his direction is not complied with nor cause shown the order shall be made absolute making him liable to a penalty prescribed in Section 188 IPC. (Punishment U/s 188 is simple imprisonment for one month or fine of Rs. 200/- or both.

If the person against whom an order U/s 133 Cr.P.C is made appears and denies the existence of any Public right as alleged, the Executive Magistrate shall inquire into the matter and if he finds that there is any reliable evidence in support of such denial he shall stay the proceedings until the matter is decided by a competent Court and if he, finds that there is no such evidence in support of such denial, he shall proceed U/s. 138 Cr.P.C., and inquire to the matter. (Sec. 137(2) Cr.P.C) And if the person, against whom an order under section 133 is made, appears and shows cause against the order, and under taking evidence, if the Executive Magistrate is satisfied that the order, either as originally made or subject to such modification as he considers necessary, is reasonable and proper the order shall be made absolute without modification or, as the case may be with such modification, and if he is not so satisfied, no further proceedings shall be taken in the case (U/s 138 Cr.P.C.,).

On taking such evidence, if any

This phrase means that on the report of a police officer or any other information, the

Magistrate may take only such evidence as would satisy him that there is a Prima facie case for proceeding under Section 133.

N.B:- No order duly made by the Executive Magistrate U/s 133 Cr. P.C. shall be called in question in any Civil Court. (Sec. 133(2) Cr.P.C.,).

SECTION 143 Cr.P.C.: (EXECUTIVE MAGISTRATE MAY PROHIBIT REPETITION OR CONTINUANCE OF PUBLIC NUISANCE):

An Executive Magistrate can prohibit repetition or continuation of public nuisance U/s 143 Cr.P.C.

A District Magistrate OR Sub Divisional Magistrate or any other Executive Magistrate empowered by the State Government in this behalf, may order any person not to repeat or continue a public nuisance as defined in IPC (45 of 1860) or any special or Local Law.

Section 133 of the Cr.P.C dealing with public nuisance does not stand automatically repealed by the Pollution Act.

SECTION 133 and SECTION 147

Section 133 is of remedial nature whereas Section 147 is preventive and therefore, under section 133 a proceeding can be only resorted when there is a question of removal of obstruction already there, on the public place whereas a proceeding under Section 147 can be drawn up when there is no obstruction placed but there is apprehension of interference of the right of use of any land or water.

SECTION 144 Cr.P.C.: (Power to issue orders in urgent cases of nuisance and apprehended danger):

Section 144 Cr.P.C. intended to be availed of for preventing disorders, disturbances and annoyances and with a view to secure the public weal. The restraints envisaged in Section 144 Cr.P.C. is anticipatory. Anticipatory restrictions are imposed upon particular kind of activities in an emergency. If the Executive Magistrate on receipt of requisition from the police, is of the opinion that there is sufficient ground for proceeding under this section and immediate prevention or speedy remedy is desirable, he may by a written order stating the material facts of the case, direct any person to abstain from a certain act etc., if such Executive Magistrate considers that such direction is likely to prevent, or tends to prevent, obstruction, annoyance or injury to any person lawfully employed causing danger to human life, health or safety or a disturbance of public tranquility or a riot or an astray.

Preservation of the public peace and tranquility is the primary function of the Government and aforesaid power is conferred on the Executive Magistrate to enable him to perform that function effectively during the emergent situations.

An order under this section may, in cases of emergency or in cases where the circumstances do not admit of the serving in due time of a notice upon the person against whom the order is directed be passed "Ex-Parte". (Sec. 144(2) Cr.P.C) the order issued by the Executive Magistrate is directed to a particular individual or to the public in general or the specified groups of the particular place or area. (Sec. 144(3) Cr.P.C.,) The order is proclaimed by public announcement and display at important places.

The order will specify the period for which it will remain in force and the area covered by it. This order may be kept in force for a maximum period of TWO MONTHS and if the State

Government is satisfied from the prevailing condition, direct that the order made by the Executive Magistrate shall remain in force for such further period not exceeding six months from the date on which the order made by the Executive Magistrate would have, but for such extension, expired, as it may specify in the said notification. (Sec 144(4) Cr.P.C.) Any Executive Magistrate that issued the order or the Magistrate subordinate to him or the State Government may rescind the order on its own motion or on the application of the person aggrieved. (Sec. 144(6) Cr.P.C)

This is the provision normally made use of to prevent trouble and maintain public peace and effective Law and Order during the celebrations of Moharum or other festivals or holding meetings processions passing along the public street, prohibiting the assembly of 5 or more persons carrying any arms or lethal weapons including knives, sticks, stones, bricks etc., When the situation is very serious apart from Section 144 order, prohibiting the assemblies etc., armed forces are called out to maintain Law and Order. In some situations CURFEW restricting the movement of public is also imposed and legal provision under which the prohibitory orders of CURFEW are issued also to be only U/s 144 Cr.P.C.

SECTION 145 Cr.P.C.:- DISPUTE AS TO IMMOVABLE PROPERTY:

(Procedure when dispute concerning land or water is likely to cause Breach of Peace.)

When there is a dispute between two parties / groups over the possession of land, water or the boundaries thereof and if the dispute is likely to cause a breach of the peace and on receipt of report of Police Officer or upon other information, the Executive Magistrate having jurisdiction in the matter, should take action U/s 145 Cr.P.C. The Police report / information should contain the nature of dispute, the detailed description of the property, and the parties to the dispute and the nature of threat to the public peace it poses. On being satisfied from such report / information, the Executive Magistrate make an order in writing U/s 145 (1) Cr.P.C., stating the grounds of his being so satisfied and requiring the parties concerned to appear before him on a specified date and time and put in written statements of their respective claims regarding the fact of actual possession of the subject of dispute.

This order is served on the parties in the manner provided for the service of summons. (145 (3) Cr.P.C.). On the appearance of the concerned parties and on filing of the written statements and other documents, on their behalf, the Executive Magistrate peruses the statements so put in, hear the parties, receive all such evidences that may be produced by them, take such further evidence, if any, as he thinks necessary and if possible decide whether any and which of the parties was at the date of the order made by him under sub-section (I), in possession of the subject of dispute, without reference to the fact as to who is the owner or who had right to possession (Section 145 (4) Cr.P.C.,)

If, the Executive Magistrate decides that one of the parties was or should be treated as being in such possession, he shall declare that possession in his favour, and if that party was forcefully and wrongfully dispossessed within two months next before the date on which the report of a Police Officer or other information was received or after that date and before the date of his order under sub-sec.(I), he may restore to possession the party forcibly and wrongfully dispossessed. (U/s 145 (6) Cr.P.C.,) whenever, possession of a party is decided and declared U/s 145 (6), such party is entitled to continue in possession until otherwise ordered by an order from a competent Court. If the Executive Magistrate is not satisfied himself as to which of the Party was in possession as aforesaid, he may pass orders transferring the case to the District Judge for further proceedings as per Law.

If any standing crop or other produce of the property in dispute, is subject to speedy and natural decay, the Executive Magistrate may make an order for the proper custody or sale of such property and after the completion of the inquiry, shall make such order of the disposal of such property or the sale proceeds thereof as he thinks fit. (U/s 145(8) Cr.P.C.)

If, the Executive Magistrate at any time, after making the order U/s 145(1) Cr.P.C., considers the case to be one of the emergency or if he decides that none of the parties was then in such possession as is referred to in section 145 Cr.P.C. or if he is unable to satisfy himself as to which of them was then in such possession of the subject of dispute, he may U/s 146(1) Cr.P.C. attach the subject of dispute until a competent Civil Court has determined the rights of the parties thereto with regard to the person entitled to the possession thereof. Provided further, that he may withdraw the attachment any time, if he is satisfied that there is no longer any likelihood of Breach of the peace with regard to the subject of dispute.

NOTE :

1. The mere pendency of a civil suit regarding the subject matter of dispute will not deprive the jurisdiction of the Executive Magistrate to take action U/s 145 Cr.P.C.
2. Simultaneous proceedings U/s 107 Cr.P.C. & 145 Cr.P.C. between the same parties not barred.
3. An order U/S 145 pronounced in open Court must be deemed to be duly promulgated so far as the parties to the case are concerned. Therefore, disobedience of an order passed under Section 145 would be punishable under Section 188 of I.P.C.

SEC. 147 Cr.P.C. (Dispute concerning right of use of land and water)

Whenever an Executive Magistrate is satisfied from the report of a Police Officer or upon other information that a dispute likely to cause a Breach of the Peace exists, regarding any alleged right of user of any land, or water, within his local jurisdiction, he shall make an order in writing, stating the grounds of his being so satisfied and requiring the parties concerned in such disputes to attend his court in person or by Pleader on a specific date and time and to put in written statements of their respective claims.

On the date of inquiry and filing of written statements etc., the Executive Magistrate shall peruse the statements so put in, hear the parties, receive all such evidence as may be produced by them, consider the effect of such evidence and if possible, decide whether such right exists and the provisions of Section 145 Cr.P.C. shall so far as may be, apply in the case of such inquiry. (Sec.147(2) Cr.P.C.). If it appears to him that such rights exist, he may make an order prohibiting any interference with the exercise of such right, including, in a proper case, an order for the removal of any obstruction in the exercise of any such right. (Sec. 147(3) Cr.P.C.)

Proceedings started U/s 147 Cr.P.C. can be converted to one U/s 145 Cr.P.C. in appropriate cases and those started U/s 145 can be converted to one U/s 147 Cr.P.C., after recording reasons.

For the purpose of Section 145, 146 or 147 Cr.P.C., if the local inquiry is felt necessary, the District Magistrate or Sub-Divisional Magistrate may depute any subordinate Executive Magistrate to conduct such inquiry and submit report and that report can be read as evidence in the case. (Section 148 Cr.P.C.)

CERTAIN NEW PROVISIONS (SECTION 174, 176, 411, 412)

SECTION 174 Cr.P.C.: (INQUIRY INTO CASES OF SUDDEN UNNATURAL DEATHS, SUICIDES ETC.):-

The following Executive Magistrates are empowered to hold inquests:-

1. District Magistrate
2. Additional District Magistrate
3. Sub-Divisional Magistrate
4. Mandal Executive Magistrate

INQUEST: The important points to be borne in mind in holding inquest.

Inquest is the inquiry made U/s 174 Cr.P.C. to ascertain apparent cause of death. In all cases of sudden and unnatural deaths, like suicide or accident or death due to any machinery or animal or under circumstances raising reasonable suspicion that some other person has committed an offence, the Station House Officer or some other Police Officer specially empowered by the State Government who receives the information of committal of suicide, death etc., shall immediately give intimation of the nearest Executive Magistrate, empowered to hold inquest he shall proceed to the place immediately where the body of such deceased person is.

On reaching the spot, the presence of two or more respectable inhabitants of the locality to serve as panchayatdars, and the blood relations of the decreased (if identity is known) and any witnesses that are aware of the circumstances surrounding the death, are secured and start the inquest to ascertain the apparent cause of death. The following points are to be noted as accurately as possible.

1. The Nature of the surroundings where the body lies.
2. The exact position of the dead body.
3. Accurate description of all various injuries, fractures etc. seen on the body.
4. The probable weapon with which the injuries might have been inflicted.
5. The details of the properties found on the body.
6. The marks of identification and other special features that go to establish the identity of the body.

All the relevant columns of the inquest report should be accurately filled up by the Executive Magistrate in his own hand and opinion of the Panchayatdars regarding the apparent cause of death should be mentioned in the relevant column.

In cases of death of married woman within 7 years of her marriage, Executive Magistrate should conduct inquest. After drawing up the inquest report of the apparent cause of death, describing such wounds, fractures, brushes, and other marks of injury as may be found on the body, and stating in what manner, or by what weapon or instrument, such marks appear to have been inflicted. (Sec.174(1) Cr.P.C). This inquest report should be signed by Police Officer and also other persons present. Thereafter, the body is to be forwarded to the nearest Civil Surgeon for conducting Post-Mortem Examination in the following cases:-

1. In cases of suicide by a marriage woman within 7 years of her marriage.,

2. In all cases of death of a woman within 7 years of her marriage in any circumstances raising a reasonable suspicion that some other person committed an offence in relation to such woman.
3. In all cases of death of married woman within 7 years of her marriage where the relative of the woman requests of a Post-Mortem.
4. In all cases where there is any doubt regarding the cause of death.
5. In all cases where the police officer for any reason thinks it necessary.

If the condition of the body or other circumstances do not permit the body from being transported to the place where the Medical Officer is stationed, a requisition can be given to the Medical Officer to visit the spot and conduct the autopsy at the site.

NOTE: The purpose of inquest is only to ascertain outward (apparent) cause of death. The question as to how the deceased was assaulted or who assaulted him or under what circumstances will not fall within the ambit and scope of the proceedings U/s 174 Cr.P.C.,

As per the decision of the Supreme Court, and several High Courts, the inquest report need not be burdened with all details ranging from motive and the manner in which the offence was committed. Whatever is mentioned in the columns of inquest report should be covered by the statements of witnesses examined at the inquest. The statements/answers in inquest cannot be taken as statement of any single person as the answers mentioned therein are only the gist of versions given by several witnesses.

SECTION 176 Cr.P.C. (INQUIRY BY EXECUTIVE MAGISTRATE INTO CAUSE OF DEATH):-

In all cases of death in police custody either actual or constructive and in all cases where a married woman dies within 7 years of her marriage either by suicide or other circumstances raising a reasonable, suspicion that some otherperson committed an offence in relation to such woman, inquest has to be held by an Executive Magistrate. Usually, in practice all cases where FIR is issued u/s 174 Cr.P.C., the FIR is sent to the Executive Magistrate with a request to hold inquest at times what started as a case U/s 174 will turn out as one U/s 302 IPC (Murder) or some other serious offence. In view of the statutory functions, inquest should be held with the least possible delay.

The original should be filed along with the FIR that was earlier received. A copy of it should also be furnished to the concerned SHO or the investigating officer, apart from sending copies to District Magistrate and Sub-Divisional Magistrate.

EXHUMATION / DISINTERNMENT U/S 176 (3) Cr.P.C. :-

In cases where the dead body is buried (interned) and it is considered that the body has to be dug out (Exhumed/Disinterned) for the purposes of examining it, the Executive Magistrate, having jurisdiction, in order to discover the cause of the death make an order in writing permitting the body to be exhumed / disinterned. The Executive Magistrate is to be present at the exhumation. When inquiry is to be held under this section, the Executive Magistrate wherever practicable should inform the relatives of the decreased whose names and addresses are known and shall allow them to remain present at the inquiry. He should get the grave properly identified by the relatives or other persons before ordering the opening of the grave.

It may be noted that opening a grave is interference with the dead and will amount to an

offence, if a wrong grave is opened. It will be useful if the sample of the top soil of the grave is taken and preserved. After the grave is carefully opened and body exposed, the exact position of the body in the grave should be noted in the record. The soil immediately in contact with the body should also be sampled and preserved. The items of clothing etc. should be noted, and the body then got lifted out of the grave and inquest after the body is identified by someone to the satisfaction of the Executive Magistrate.

The exhumation is a Magisterial function performed under the statutory provisions of Sec. 176(3) Cr.P.C. The main requirement of which is the subjective satisfaction of the Executive Magistrate based on inquiry. Such being the case, when the Executive Magistrate after inquiry has refused to exhume, it is not open to a superior Executive Magistrate to order the exhumation without making any independent inquiry or recording grounds of satisfaction.

DYING DECLARATION ADMISSIBLE IN EVIDENCE:

A dying declaration is a statement made by a person as to the cause of his death or as to any of the circumstances of the transaction which resulted in his death. It is admissible in evidence under cause (1) of Section 32 of Indian Evidence Act in cases in which the cause of that person's death comes into question. Such a statement is relevant whether the person who made it was or was not at the time when it was made under expectation of death.

WHO CAN RECORD:

1. There is no hard and fast rule that a competent Executive Magistrate alone should record a dying declaration. It can be recorded by any Executive Magistrate, Medical Officer or under special circumstances by Police Officers.
2. Since a dying declaration, which is free from doubt, can be the sole basis of Conviction, it is the bounder duty of the Investigating Officer to request a Competent Executive Magistrate to record the dying declaration of the victim.

Such dying declaration recorded by Executive Magistrate forms a part of the record of investigation.

Sections 411 & 412 Cr.P.C. (Withdrawal and making over of Cases) :

The District Magistrate or Sub-Divisional Magistrate may, for the reasons recorded, make over for disposal any proceedings started before him to any Magistrate subordinate to him and also withdraw any case from, or recall any case which he has made over to, any Magistrate subordinate to him and dispose of such proceedings himself or refer it for disposal to any other Magistrate.

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Relevant Constitutional Provisions

ARTICLE 244 OF THE CONSTITUTION OF INDIA

244. (1) The provisions of the Fifth Schedule shall apply to the administration and control of the Scheduled Areas and Scheduled Tribes in any State 1*** other than 2[the States of Assam3[,4[Meghalaya, Tripura and Mizoram]]].

(2) The provisions of the Sixth Schedule shall apply to the administration of the tribal areas in 2[the States of Assam 3[,5[Meghalaya, Tripura and Mizoram]]].

FIFTH SCHEDULE
[Article 244(1)]

Provisions as to the Administration and Control of Scheduled Areas and Scheduled Tribes

PART A
GENERAL

1. Interpretation.—In this Schedule, unless the context otherwise requires, the expression "State" does not include the States of Assam, Meghalaya, Tripura and Mizoram.

2. Executive power of a State in Scheduled Areas.—Subject to the provisions of this Schedule, the executive power of a State extends to the Scheduled Areas therein.

3. Report by the Governor to the President regarding the administration of Scheduled Areas.—The Governor of each State having Scheduled Areas therein shall annually, or whenever so required by the President, make a report to the President regarding the administration of the Scheduled Areas in that State and the executive power of the Union shall extend to the giving of directions to the State as to the administration of the said areas.

PART B
ADMINISTRATION AND CONTROL OF SCHEDULED AREAS AND SCHEDULED TRIBES

4. Tribes Advisory Council.—(1) There shall be established in each State having Scheduled Areas therein and, if the President so directs, also in any State having Scheduled Tribes but not Scheduled Areas therein, a Tribes Advisory Council consisting of not more than twenty members of whom, as nearly as may be, three-fourths shall be the representatives of the Scheduled Tribes in the Legislative Assembly of the State:

   Provided that if the number of representatives of the Scheduled Tribes in the Legislative Assembly of the State is less than the number of seats in the Tribes Advisory Council to be filled by such representatives, the remaining seats shall be filled by other members of those tribes.

   (2) It shall be the duty of the Tribes Advisory Council to advise on such matters pertaining to the welfare and advancement of the Scheduled Tribes in the State as may be referred to them by the Governor.

   (3) The Governor may make rules prescribing or regulating, as the case may be,—

      (a) the number of members of the Council, the mode of their appointment and the appointment of the Chairman of the Council and of the officers and servants thereof;

(b) the conduct of its meetings and its procedure in general; and

(c) all other incidental matters.

5. Law applicable to Scheduled Areas.—(1) Notwithstanding anything in this Constitution, the Governor may by public notification direct that any particular Act of Parliament or of the Legislature of the State shall not apply to a Scheduled Area or any part thereof in the State or shall apply to a Scheduled Area or any part thereof in the State subject to such exceptions and modifications as he may specify in the notification and any direction given under this sub-paragraph may be given so as to have retrospective effect.

(2) The Governor may make regulations for the peace and good government of any area in a State which is for the time being a Scheduled Area.

In particular and without prejudice to the generality of the foregoing power, such regulations may—

(a) prohibit or restrict the transfer of land by or among members of the Scheduled Tribes in such area;

(b) regulate the allotment of land to members of the Scheduled Tribes in such area;

(c) regulate the carrying on of business as money-lender by persons who lend money to members of the Scheduled Tribes in such area.

(3) In making any such regulation as is referred to in sub-paragraph (2) of this paragraph, the Governor may repeal or amend any Act of Parliament or of the Legislature of the State or any existing law which is for the time being applicable to the area in question.

(4) All regulations made under this paragraph shall be submitted forthwith to the President and, until assented to by him, shall have no effect.

(5) No regulation shall be made under this paragraph unless the Governor making the regulation has, in the case where there is a Tribes Advisory Council for the State, consulted such Council.

PART C
SCHEDULED AREAS

6. Scheduled Areas.—(1) In this Constitution, the expression "Scheduled Areas" means such areas as the President may by order1 declare to be Scheduled Areas.

(2) The President may at any time by order2—

(a) direct that the whole or any specified part of a Scheduled Area shall cease to be a Scheduled Area or a part of such an area;

(aa) increase the area of any Scheduled Area in a State after consultation with the Governor of that State;

(b) alter, but only by way of rectification of boundaries, any Scheduled Area;

(c) on any alteration of the boundaries of a State or on the admission into the Union or the establishment of a new State, declare any territory not previously included in any State to be, or to form part of, a Scheduled Area;

(d) rescind, in relation to any State or States, any order or orders made under this paragraph, and in consultation with the Governor of the State concerned, make fresh orders redefining the areas which are to be Scheduled Areas;

and any such order may contain such incidental and consequential provisions as appear to the President to be necessary and proper, but save as aforesaid, the order made under sub-paragraph (1) of this paragraph shall not be varied by any subsequent order.

PART D
AMENDMENT OF THE SCHEDULE

7. Amendment of the Schedule.—(1) Parliament may from time to time by law amend by way of addition, variation or repeal any of the provisions of this Schedule and, when the Schedule is so amended, any reference to this Schedule in this Constitution shall be construed as a reference to such Schedule as so amended.

(2) No such law as is mentioned in sub-paragraph (1) of this paragraph shall be deemed to be an amendment of this Constitution for the purposes of article 368.

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LAND LAW : C.N.T., S.P.T., B.L.R., ACT

"Just like in heaven, everybody wants a piece of land"
...John Steinbeck

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 the Districts of Santhalpargana viz 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. Further,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 (1902onwards) 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 ie rights, restrictions and responsibilities. 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 cadestral 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-raiyat, 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.

Sudarshan Nair Vs. State of Bihar 2012(2) JLJR 375

There is presumption of correctness to final survey records of rights U/s. 84 of the Chota Nagpur Tenancy Act. The said entry has been made in the year 1961 but the plaintiffs failed to bring any chit of paper to rebut the said entry. The rent receipts are said to be issued by the Thikadar who had no authority to settle the land and issue rent receipts. Even if the said land receipts are taken into consideration the same cannot be said to be the document of title. The plaintiffs have not been able to bring any impeachable document to show his continuous possession over the land. Learned Trial Court has based his findings on the basis of claim of settlement without any legal evidence.

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,20,32,35,42, 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 *H***on'ble Patna High Court in Parithosh 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 (Jaggdishprasad 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 fileld 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 Tennacy 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.

2008(4)JCR249 (Jhr) Fagua Oran Vs State of Jharkhand.

Section 9 of CPC---Courts have Jurisdiction to try all suits of civil nature in which the cognizance is either expressly or impliedly barred.---Statutory permission and appeal permission granted under the section46 of the Act which is included under section258 thereof---Civil suit clearly stands barred and is not maintainable under S/258 of the Act against a statutory permission granted by a statutory authority. ---The permission which was granted under S/46 Act attained its finality in the appeal as it was not challenged.--Gift deed granted on the basis of permission in of respondents 5&6—Possession of land instrument of transfer valid, legal in favour of the respondents 5 & 6.

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 I–B Continuous Khatian is maintained in Form I of The Bihar Tenant Holding(Maintenance of Records) Rules 1976 (It is enclosed at appendix NoI)-It is prepared under Bihar Tenant Holding(Maintenance of records) Act 1975

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 changes 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 I A. Where there has been a survey and record of rights prepared it will be updated in form I B (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 appendixNoII). 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** t*hat Jamabandi once created can not 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 Jurisdiciton 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.

2009 (2) JCR 247 Jhr Joshef Munda Vrs. Mostt. Fudi & others

Status of a person duly entered in the finally published record of right cannot be altered after 58 years by filing a suit in the year 1978 and further his right cannot be taken away by applying the custom that only male descendant will inherit the land left by their ancestors provisions of section 7 & 8 of 1908 shall have no application.

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 Meaning of a tenure-holder--

Tenure-holder means primarily a person, who has acquired from the proprietor, or from another tenure-holder, a right to hold the land for the purpose of collecting rents or bringing under cultivation by establishing tenants on it and includes--

1. the successor-in-interest of persons, who have acquired such right, and
2. the holder of tenures entered in any register prepared and confirmed under the Chota Nagpur Tenures Act, 1869

Section 6-Meaning of raiyat

1. Raiyat means primarily a person who has acquired a right to hold land for the for the purpose of cultivating it by himself or by member of his family, or by hired servants or with the aid of partners; and includes the successor-in-interest of persons who have acquired such a right, but does not include mundari-khut-kattidar.

   Explanation- Where the tenant has a right to bring a land under cultivation, he shall be deemed to have acquired a right to hold it for the purpose of cultivation, nothwithstanding the fact that he uses it for the purposes of gathering the produce of it or of grazing cattle on it.

2. A person shall not be deemed to be a raiyat unless he holds it under a proprietor or immediately under a tenure-holder or immediately under a Mundari-khunt-Kattidar.

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 7 Meaning of raiyats having Khunt-Katti rights--

1. Raiyats having Khunt-Katti Right means a raiyat in occupation of , or having any subsisting title to land reclaimed from Jungle by the original founders of the village or their descendants in the male line of any such family:

   Provided that no raiyat shall be deemed to have khunt-katti rights in any land unless he and all his predecessor-in-title have held such land or obtained a title thereby virtue of inheritance from the original founders of the village.

   2010 (3) JLJR 450 Debu Napit and others Vs. State of Jharkhand and others in which it has been held that if there is specific act defining right of under raiyat, customary right cannot be allowed to, prevail over specific provision of Act. There was no provision in the C.N.T. Act granting a right of occupation and cultivation to the heirs of "Dar-raiyat" or under raiyat. Since the appellants in that case where legal heirs of Dar-raiyat i.e. under raiyat, and there being no provision under the Chhota Nagpur Tenancy Act to inherit the right of cultivation after the death of under-raiyat, the appellants were denied the right of cultivation.

2003 (4) JLJR 737

Under-raiyat as of right does not acquire any occupancy right in the land held by him under a raiyat in the absence of any custom or usage prevalent in the area in respect thereof. It

was held that right of an under-raiyat is neither transferable nor heritable and it survives till his life and it extinguishes on his death.

Lalu Munda Vs State of Bihar 2004 (1) JCR 458 (Jhr)

Naukrana land given by ex-landlord in lieu of services. Possession of servant is permissive possession such possession can not be termed as possession of raiyat.

Section 8 Mundari-Khunt-Kattidari means a mundari who has acquired land to hold jungle land for the purpose of bringing suitable portion thereof under cultivation by himself or by male member of his family, and includes,--

1. the heir male in male line of any such mundari when they are in possession of such land or have have any subsisting title thereto;
2. as regards any portions of such land which has remained continuously in the possession, of such Mundari and his descendants in the male line, such descendants.

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 Khuntkattidari tenancy under section 240. But, section 241 provides and permits certain transfers. If any person encroached upon the Mundari Khuntkattidari tenancy or a portion thereof such person can be ejected under section 242 of the CNT Act. Mundari Khuntkattidari tenancy gives certain rights to the person, who are known as khewatdars in chapter XVIII of the CNT Act, 1908.

CHAPTER IV - OCCUPANCY-RAIYAT - SECTIONS 16 TO 36

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

There are basically two class of raiyats whose occupancy right has been recognized under the CNT Act. The first is under Section 16 which recognizes the status of occupancy raiyat as follows:

Every raiyat who immediately before the commencement of this Act, has by operation of any enactment or local custom, or usage or otherwise, a right of occupancy in any land, notwithstanding the fact that he may not have cultivated or held the land for 12 years.

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 whethere 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.

Section 17 Definition of settled raiyat---

Every person who, for a period of twelve years, whether wholly or partly before or after the commencement of this Act , has continuously held as raiyat, land situate in any village whether under lease or otherwise, shall be deemed to become on the expiration of that period a settled raiyat.

(3) A person shall be deemed, for the purposes of this section, to have held as raiyat any land as raiyat by a person whose heir he is

The definition is wide enough to include land held by two or more co-sharer as a raiyati holding. It also includes settled raiyat of a villages as long as he holds any land as a raiyat in thal village and three years thereafter. If the raiyat recovers possession under Section 71 of by suit he shall be deemed to have continued to be settled raiyat notwithstanding his being out of possession for more than three years.

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 be settled raiyat. 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 raiyats 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.

MANJHIHAS 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 to 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 raiyats 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(amendment) 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 an 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 ab-original 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.)**.

2009 (3) JCR 25 JHR Ramesh Pramanik Vrs. State of Bihar

restriction of transfer of rights by raiyat under section 46 (1) ------ oral settlement or a gift is neither valued nor permitted being a contravention of section 46 (1) compromise in title suit regarding transfer of rights in raiyati land being collusive was in contravention of section 46 (3) the respondents were khatiyani raiyati and his name was recorded in the year 1964 and the same was confirmed the appeal and revision. Restoration application filed within thirty years was maintainable.

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 t**hat 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 31.12.1977according 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 Lohardega District.
3. Bishunpur, Ghaghra, Chainpur, Dumri, Raidih, Gumla, Sisai, Bharno, Kamdara, basia and Palkot block in Gumla 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.
13. Litipara, Amrapara, Hiranpur, Pakur, Maheshour and Pakuria blocks in Pakur district.
14. Boarijore and Sunderpahari blocks in Godda 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 12years . 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-- Lanlord 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 he 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 violatioin 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 partcular land is entered in the register maintained under the Act then it will be deemed to be a Bhunhari 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 bhuinhari land under the Chotanagpur Tenure Act in seven categories–

1. Bhuinhari – The cultivation of the original clearers of the village.
2. Bhuinhari Mahtos – The official cultivation of the Mahto.
3. Bhuinhari Mundari – The official cultivation of the village Munda.
4. Bhuinhari Pahanie – The official cultivation of the Pahan or village priest.
5. Bhuinhari Pahbhara – 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 Bhuinhar 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 mundaris.

The above restriction has been partly lifted under **Section 241** and Mundari-khunt-kattidar

may without the consent of his land lord 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 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 khuntkattidar 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) JLJR 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 is 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 pursuant 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 Jharkhandand 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 flexibilty 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 Municpality. Application for restoration having been filed after 51 years of transfer it was also held to be barred by limitation.

Godwin Ekka Vrs. State of Bihar 2009 (3) JLJR 357 Sectiion 46 & 71A –

Dar Raiyati Settlement made in the year 1934 without permission of DC-- no visible element of deceit-- original settlee herself was an aboriginal having same social back ground.- Under Raiyati settlement made in her favour is a well recognized kind of tenancy under the act------ creation of under Raiyati tenancy and custom of acquisition of right even similar to those of an occupency Raiyat, is not violative of any provisions of the act ----- it can not be held to be per se illegal and violative of any provision of the act so as to bring the same within the fold of Section 71A---- besides lapse of more than 43 years is not a reasonable time for exercising power u/s 71A.

2009 (3) JCR 327 JHR Durga Charan Sadar Vrs. State of Bihar

Section 71 (A) -------restoration of possession was transferred took place in the year 1920 C.N.T. Act was not applicable at that point of right which was introduced in 1951.-----suit was filed in 1974.-------requirement of D. C. to be impleaded introduced by amendment act 1975 in section 46 of the Act -----compromise decree not challenged for over 13 years.-----civil court decree not challenged. ----------restoration case was helplessly barred by limitation.

Mahadeo Oraon Vrs. State of Bihar 2009 (3) JCR 340

the period of 30 years u/s 71A amended by section 48 (4) is to be computed from the date of transfer -----unregistered huknama is not admissible and cannot be considered as deed of title.

2001(3) Jhr CR 290 (Jhr) Budhram Bhagat Vs State of Bihar

Chotanagpur Tenancy Act 1908 Section 71-A and 46 –Restoration of surrendered land— Raiyat surrendering land on 21.1.1938-- Application for restoration moved after 56 years— Prior permission of Deputy commisioner not required at that stage.----Surrender not in contravention of Section 46 ----Application of restoration filed under Section 71 A was held to be hopelessly barred by limitation in terms of Sections 64 and 65 of the Limitation Act. The land was surrendered in January 1938 and the application u/s 71A filed after 56 years. It was held by Hon'ble the Apex Court in Jaimangal Oraon Vrs. Meera Naiyar AIR 2000 SC 2276 that there was no requirement of prior permission at that stage and thus the surrender cannot be held to be in contravention of Section 46 of the C.N.T Act.

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 land lord** 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 hoding may restore him to possession.

[2004] 1 JLJR205 Jamhir Ansari Vs Ketna Oraon

The status of a *adhbataidar* is that of a tenant and not of a hired labour. Derilection 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 ,therefore 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 failson 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 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 land lord to a tenant to reclaim waste land or cultivate , the land lords 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)JCR428

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 Gazetter, 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 debars 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 recgonised 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-khut-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 mulraityat 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 Artilce 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.

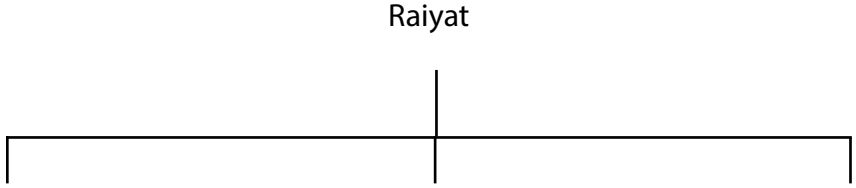
This provision reminds us of the power conferred on a DC under Section 46(4) and 71 A of the CNT Act.

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:-



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
6. Rights of raiyats in trees on his own holding.
7. Raiyat's right to erect buildings
8. 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 restriciton 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 interse 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 Paragana 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 Vs 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 **basuari (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 temporarity on trust for cultivation to a raiyat after notifying to the S.D.O. and Headman or mulraiyat 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.

2009(3)JCR 769(Jhar) Chakaram Mahto Vs State of Jharkhand

SPT Act 1949—Section 42 – Scope of –Confers a very large power on the Deputy commissioner to evict any unauthorized person who is in possession of agricultural land in contravention to the provision of section 20 of the Act – Idea behind Section 69 of the Act being to prohibit accrual of the adverse possession of those lands in SP—Concurrent finding of three authorities – not to be interfered under the writ jurisdiction

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, loose 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(erstwhile 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-raiyats 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 maintined 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-raiyati interest. When an estate is vested in the State, any encumbrances is automatically wiped out.

What is vesting and what are its legal consequence comes up in almost all land related civil disputes?

Most of such disputes have their roots from the time of land reform Act. Often it is argued that such and such land got vested and such land did not get vested in the state. This argument is basically fallacious as one and all land got vested in the State by virtue of S/3 of the Act. Setion 3 says that the estates or tenures of a proprietor or tenure holder has passed to and become vested in the state. It does not say that the interest of the raiyat has got vested in the State. The import of section is that the proprietary Right and its natural corollary of collecting rent got vested in the state. But this did not affect the occupancy right of the raiyat. Before the land reform Act came into force during the British Raj there were three kind of agrarian relation. The first category was the land of which the proprietary right was vested in the crown and the land revenue was collected by the landlords The second category of land was those lands in which the proprietary Right of land was vested in the Local rajas who collected the land revenue either directly or through intermediary land lord. The BLR Act swept away all these categories and the State stepped into the shoes of the proprietors and tenure-holder assuming their Proprietary Right and their right to collect the land Revenue. The occupancy Right of the raiyat/tenant was not affected. The collector under S4/f was deemed to have taken charge of such estate or tenure and of all interests vested in the state under this section.

From the sweeping nature of the vesting the following respite was secured to the proprietors and tenure-holders:

1. Homestead of intermediaries was to be retained by them as tenants. Such land was by legal fiction deemed to have settled by the state with such intermediaries.
2. Certain land in khas possession of the intermediaries to be retained by them on payment

of rent as raiyats having occupancy rights.

3. Building together with lands on which such building stand in the possession of intermediaries and used golas, factories or mills to be retained by them on payment of rent.
4. Section7B –Right to hold mela to vest in the state subject to the proviso to this Section.
5. Section7D—Land and building, etc. acquired for an industrial undertaking and utilised for providing civic amenities etc shall be deemed to have been leased to have been leased by such Govt. to such undertaking.
6. sectionE—Land to have been acquired for an industrial undertaking and leased out by it to another for expansion deemed to be leased by the Govt.
7. Section 4(f)Trust etc

It was held that there was no question of partial vesting of the agricultural land, rights in or of the intermediaries got vested in the state.

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 boanfides 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)".

Smt. Kalpana Pandey Vs. State of Jharkhand 2008 (4) JCR 389 –

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 Mazarua 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 jamaband 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 **Brajnandan 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 Lanlord 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 1**996 AIR SC 1936 Mosammat Bibi Sayeeda Vs 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(J) 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 Section3, 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 pre0existing 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.

1974 PLJR 138 Jagbandhan Nath TiwaryVs Thuiya Mahli

Section 6(1)(a)ii,6(2)&35 –Plaintiff appellant, after vesting of his estate, making application under Section6 ----Circle officer holding defendant Respondents as adhbatiadars under plainitff upon year to year oral lease and fixing the rent in the name of the plaintiff.---Plaintiff claiming surreptitious dispossession by the defendant, filing the present suit claiming the recovery of land---Adh batidars, if can be said to be hired labors?---plaintiff, if can be said to be in khas possession within the meaning of Section (1)(a)(ii)-- defendants plea challenging the finding of the circle officer, if barred by section 35 of the BLR Act.---plaintiff's if can recover possession if not found to be a trespassers---held first that adhbatiadars are not hired labours----2nd plaintiff was not in khas possession within the meaning of Section (1)(a) (ii)--3rdly The defendants plea is not barred by section 35 –Lastly the plaintiffs can not recover possession even if defendants are found to be trespassers.----Since the yield is shared between the land lord and the ardhbatiadar he can not be said to be in the possession of the land on the basis of a lease. The provision of S/(6)(1) (b) is applicable when the landof intermediary is in possession of a temporary lessee of the estate or tenure . The defendants were not found to be such temporary lessee therefore section 6(1)(b) is not applicable in such case.----There is nothing in the Act to make the order passed by the collector to be a final order.--Section 35 only bars the jurisdiciton of the court to entertain any suit in respect of an order passed under chapter II to VI of the Act. In this case defendants have challenged the entries in the rent roll which has been prepared in the name of the plaintffs. The defendants have not filed this suit. The position would have been different if the defendants had filed the suit. Assailing the order of collector made under /6(2). Section 35 will not stand as a bar to the objection raised by the defendants specially when it is urged that the order passed by the circle officer is incorrect on the face of it.---The fact that the defendants have failed to prove any semblance of title over the disputed land will not entitle the plaintiff to get a decree for recovery of possession over the land in question. It is one land in khas possession of the proprietor which is saved int he vesting in the state under section 6. The right to recover possession from the trespasser also got vested in the state.

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 the same may be heritable by custom and custom is require to be pleaded and proved and onus lies upon the peson who claims such custom to plead and prove the same. 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 Mahto 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.

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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 then 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
PARTI KADIM	:	Old fallow Land not cropped within three years.
PARWANA	:	An order by a person in authority
PATTA	:	A kind of lease
RAIYAT	:	A person who has acquired a right to hold land for the purpose of cultivation
SAHAN	:	Enclosure or Court yard; the uncultivated land adjoining and forming part of the home stead
SALAMI	:	A capital payment being paid by tenant to land lord .
TASDIQUE	:	Attestation of the draft record of rights during survey operation.

❑❑❑

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 Shikmi Khatian the name of the actual tenant along with khata number.

Serial no. in the Khatian	Name of tenant fathers name, caste and residence	Plot ..... Plot no. Boundary		Nature of land (Classification)	Area ..... A D Hec.			Possession, nature of possession Shikmi possession etc. Remarks
1	2	3	4	5	6	7	8	9

Rent about plots with kind rent, its conditions for possession		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	Substance of the order for making changes letter no. and date, name of the officer giving order	Remark
Rent excluding cess, according to the enquiries of the A. A.	Assessed reasonable rent if any excluding cess			
10	11	12	13	14

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)

District ....., Sub-division ....., Anchal ..... Tenants ledger number .....

Village ..... R.T. No. ....., Khata No..... Police Station ..... Name of tenant .....

..... Father's Name ....., Village ....., P.O. .....

Area			Annual demand		Rent		Coins	
Year	Area	Decimals	Year	Approval for changes	Rupees	Paise	Rupees	Paise
1	2	3	4	5	6	7	8	9

Collection								Cess			
Year	Total Demand	Total Collection	Receipt No. Challan No. Money order No.	Arrear Demand Collection Rupees	Arrear Demand Collection Paise	Current Demand Collection Rupees	Current Demand Collection Paise	Road Cess Arrear Demand Collection Rupees	Road Cess Arrear Demand Collection Paise	Road Cess Current Demand Collection Rupees	Road Cess Current Demand Collection Paise
1	2	3	4	5	6	7	8	9	10	11	12

Education Cess				Health Cess				Remarks
Arrear Demand Collection		Current Demand Collection		Arrear Demand Collection		Current Demand Collection		
Rupees	Paise	Rupees	Paise	Rupees	Paise	Rupees	Paise	
13	14	15	16	17	18	19	20	21

Govind Singh Vs. Shanti Sarup

1979 AIR 143

FACTS :

On a complaint by land lord against the tenant, a baker in the let out premises, that an oven and a chimney emitting dark smokes is a nuisance under Section 133 of Cr.P.C., the magistrate after hearing the parties and local inspection confirmed his earlier conditional order directing the owner of the bakery to remove the Chimney within a period of ten days. He also ordered the party concerned to cease carrying business as baker at the particular site. The Additional Sessions Judge reversed the order but the High Court upheld the order of the magistrate. The Supreme Court in the Special Leave Petition.

HELD :

- The magistrate conclusion that the Chimney was not only an encroachment upon a public place but is virtually playing with the health of the public and a strong wind could carry the flames over a distance and may cause conflagration; is upheld.
- It is however added that the learned magistrate went beyond the scope of his jurisdiction when he ordered the baker to stop carrying on the trade of a baker at the site. Preventing the baker from using the oven is certainly within the terms of conditional order but not so the order requiring him to desist from carrying on the trade of baker at the site.

❑❑❑

Mathura Lal Vs. Bhawarlal & Others.

Date of Judgement 13/09/1979

FACTS :

Apprehending breach of Peace on account of dispute over house the Sub-Divisional Magistrate passed a preliminary order U/S 145 (1) Cr.P.C. and later attach the subject matter of the dispute U/S 146 (1) on the ground that it was the case of emergency. The appellant objection is that once the subject of the dispute has been attached under section 145 and 146 the S.D.O. was not competent to proceed with the enquiry under section 145, but the same was overruled by the magistrate.

The appellant failed in his revision petition before the sessions judge and the High Court and has preferred the appeal before the Supreme Court. The question for consideration is as to whether the magistrate can proceed with the enquiry U/S 145 after passing and the order of attachment under section 146 (1) Cr.P.C. on the ground of emergency.

HELD :

- Section 145 and 146 of the Cr.P.C. together constitute a scheme for resolution of a situation where there is a likelihood on breach of peace because of dispute concerning any land or water or their boundries. Section 146 cannot be separated from section 145 at the contaextual construction must prevail over isolationist construction.

- On being satisfied about existence on a dispute and likelihood on breach of peace the magistrate issues a preliminary order stating the ground on satisfaction and calling upon the parties to appear before him and submitting their written statement. On perusal of the written statement he would proceed to record evidence to decide which of the parties was in possession on the date of preliminary order and declares possession of such a party if he comes to such a conclusion. In case he is unable to decide as to who was in possession or he is of the opinion that none of the parties are in possession he attaches the property. Thus a proceeding begun with a preliminary order must be followed up by an enquiry.
- The magistrate however stopes the proceedings at any time if one or the other of the parties satisfies him that there has never been or that there is no longer any dispute likely to cause a breach of peace. He then cancels the preliminary order under section 145(5).
- There is no express stipulation in section 146 that the jurisdiction of the magistrate ends with the attachment, nor is it implied that the obligation to proceed with the enquiry prescribed by section 145 (4) is against any such implication.

The appeal is dismissed.

❑❑❑

Municipal Council, Ratlam Vs. Sri Vardhichand & Others.

1980 AIR 1622

FACTS :

The residents of a prominent residential locality of the Municipality in their complaint under section 133 Criminal Procedure Code to the Sub Divisional Magistrate averred that the municipality had failed despite several pleas, to meet its basic obligations like provision of sanitary facilities of the roads, public conveniences for slum dwellers who were using the road for that purpose, and prevention of the discharge from the nearby alcohol plant into the public street despite its statutory obligation envisaged in section 123 M.P. Municipalties Act, 1961. The Municipality took the plea that the petitioners had opted for the location on their own fully aware of the insanitary conditions and therefore they could not complain. It also pleaded financial constraints.

The Magistrate upon inquiry finding substance in the complainant's plea ordered the Municipality to provide the amenities and to abate the nuisance by constructing drain pipes with flow of water to wash the filth and stop the stench and that failure would entail prosecution U/S 188 I.P.C.

The Special Leave Petition in the filed by the Municipality that the raised is, as to, "whether a court can by affirmative action compel a statutory body to carry out its duty to the community by constructing sanitary facilities as great cost and on a time bound basis".

HELD :

- It is the responsibility of the magistrate under section 133 Cr.P.C. to order removal of such nuisance within a time to be fixed in the order. This is a public duty implicit in the public power to be exercised on behalf of the public pursuant to a public proceeding. Failure to comply with the direction will be visited with a punishment contemplated by section 188 I.P.C.

- The Municipal Commissioner or other executive authority are bound to obey the order under section 133 Cr.P.C, because disobedience shall be punishable with simple imprisonment or fine as prescribed in the relevant provision.
- Wherever there is a public nuisance section 133 Cr.P.C. may be invoked and it is the public duty of the magistrate to the members of the public who are victim of nuisance and so he shall exercise it when the jurisdictional facts are present.
- In view of absence of any saving Clause in section 123 M.P. Municipalities Act 1961 when the municipal council is penniless, the court, armed with the provisions of the two codes and justified by the obligation under section 123 of the act must venture into positive direction as it has done in the present case.
- The Supreme Court approved scheme of construction work to be under taken by the municipality for the elimination of in sanitary conditions to commence within two months and the magistrate to inspect the progress of the work every three months and see that it is implemented.

❑❑❑

Shanti Kumar Panda Vs. Shakuntala Devi

DATE OF JUDGMENT : 03-11-2003

FACTS :

The S.D.M. finding the case as one of emergency directed the shop to be attached under section 146 (1) while passing a preliminary order under section 145 (1) of the code vide Order dated 16.05.92. The respondent upon being noticed submitted that he is not the owner of the shop which belongs to Shakuntala Devi its lawful owner. The said Shakuntala Devi moved on her own to the court of S.D.M. but without giving her a chance to be heard the proceeding was disposed off declaring the appellant Shanti Kumar Panda to be in possession of the disputed shop and alternative of preliminary order as also in the two months prior thereto. He passed an order released it in favour of Shanti Kumar Panda directing that he would remain in possession till the rights is determined by the Competent court.

The court of Additional Sessions Judge dismissed the revision and the High Court also dismissed the writ application holding that the aggrieved party has already moved before the civil court in a suit and is availing alternative remedy.

Shakuntala Devi filed the Civil suit seeking permanent preventive injunction against Shanti Kumar Panda, in which the learned civil judge passed an ad-interim preventive injunction so as to protect her possession over the shop. He also directed the court officer to go at the site of the shop and upon opening the locks put Shakuntala Devi in its possession.

In miscellaneous appeal the District Judge set aside the order of Civil Judge holding that the trial court was not justified in issuing the order of injunction unless and until the order of S.D.M is set aside by a decree of a civil court and no injunction can be granted when the disputed property is in Custodia Legis. The High Court allowed the writ against the order of the District Judge and restored the order passed by Civil Judge, against which Special Leave Petition was preferred before the Supreme Court.

HELD :

- Possession being nine points in law the purpose of enforcement of law is to maintain peace and order in the society. The proceeding under section 145/146 of the code being quasi-civil, quasi-criminal in nature, the purpose is to provide speedy and summery remedy so as to prevent a breach of peace by submitting the dispute to the executive magistrate. The magistrate would confine himself to ascertain which of the disputing party was in possession on the date of preliminary order or within two months before the said date and maintain the Status-quo as to possession until the entitlement to the possession was determinant by a court, having competence to inter into adjudication of civil rights, which a executive magistrate cannot. In no case the executive magistrate would take cognizance of a dispute and interfere if there is no liklihood of breach of the peace or if the likelihood of breach of peace though existed at a previous point of time, had ceased to exist by the time he was called upon to pronounce the final order.
- It is well settled that a decision by a criminal court does not bound the civil court while a decision by the civil court winds the criminal court. The finding regarded by the Magistrate does not bind the court.The decision given under section 145 the code has relavance and as is admissible in evidence to show-
    - That there was a dispute relating to a particular party
    - That the dispute was between the parties
    - That such dispute lead to the passing of a preliminary order under section 145 (1) or a attachment under section 146 (1), on the given date; and.
    - That the magistrate found one of the parties to be in possession of the disputed property on the date of preliminary order.
    - The effect of section 145-146 order of the executive magistrate order is that burden is thrown on the unsuccessful party to prove its possession or entitlement to possession before the competent court.
- The Civil Court while respecting the order of the executive magistrate will be loath to issue an order of interim injunction or to order an interim arrangements inconsistent with the order by the executive magistrate. However, to say so is merely stating a rule of caution or restrain, on exercise of discretion by court, dictated by prudence and regard for the urgent/emergent executive orders made within jurisdiction by their makers; and certainly not a tap on the court. The court have jurisdiction to make an interim order including an order of ad-interim injunction inconsistent is the order of the executive magistrate. The jurisdiction is there but the same shall be exercised not as a rule but as a exception.

  The appeal was dismissed.

❑❑❑

State of M.P. Vs. Kedia leather and liquor limited and others.

Date of Judgment. 19-08-2003

FACTS:

The Sub-Divisional Magistrate ordered in terms of section 133 of the Code of Criminal Procedure directing the respondents owners of industrial units to close their industries on the allegation that serious pollution was created by discharge of effulens from the respective factories and thereby a public nuisance was caused.

Upon being challenged the High Court held that the provisions of water and (Prevention and Control of pollution) Act 1974 and Air (Prevention and Control of Pollution) Act 1981 implidely repealed the provisions of section 133 of the code, so far as allegations of public nuisance by Air and Water pollution by industries or persons covered by the two Acts are concerned and therefore the S.D.M. did not have the jurisdiction to act under section 133 of the code. The Supreme Court however.

HELD:

- The Supreme Court setting aside the judgment of the High Court has observed that, "Nuisance is an which materially interferer with the ordinary physical comfort of human existence. To bring in application of section 133 of the code, there must be eminent danger to the life or property and consequential nuisance to the public. The object and purpose behind section 133 of the code is essential to prevent public nuisance and involves a sense of urgency in the sense that if the magistrate fails to take recourse immediately, irreparable damage would be done to the public.
- The provisions of section 133 of the code can be culled in aid to remove public nuisance cause by effulent of the discharge and Air discharge causing hardship to the general public. The area of the operation of the code and the pollution laws in question are different with wholy different aims and objects; and though the alleviate nuisance, that is not of identical nature. They operate in their respective fields and there is no impediment for their existence side by side.

❑❑❑

Amresh Tiwari vs. Lalta Prasad Dubey & Others.

Date of Judgement 25-04-2000

FACTS :

The Supreme Court was approached against the order of the High Court passed U/S 482 Cr.P.C. setting aside the order of S.D.M dropping/discontinuing a proceeding under 145 Cr.P.C.

A civil suit was filed regarding a land which was projected to includ the subject matter of dispute for which a proceeding under section 145 Cr.P.C. was also initiated. An order of status-quo as on date of order was passed by the Civil Judge on 10th. Of October 1990 and on the same date the property in question under 145 Cr.P.C. proceeding was transferred for consideration and possession was also handed over simultaneously. While the suit was pending

an impression was given that the property in question under 145 Cr.P.C. proceeding is not part and parcel of the suit land. Considering this aspect the magistrate dismissed the application for discontinuing the enquiry under 145 Cr.P.C. The said order was challenged before the District Court and the High Court but was affirmed at all levels.

Subsequently it was admitted that the property in question under 145 Cr.P.C. proceeding was part of the suit property suit land and thereafter the learned S.D.M on an application dropped the 145 enquiry in view of pending civil suit in which an order of for maintenance of status-quo has already been passed.

The said order challenged before the High Court in which the High Court set aside the order of S.D.M on the ground that earlier the order of the S.D.M not to drop the proceeding was challenged and upheld up to the High Court level. The said order of the High Court upon being challenged before the Supreme Court is set aside where it has been.

HELD :

- It is settled law that interim orders even though they may have been confirmed by the Higher Courts, do not prevent passing of contrary order at the stage of final hearing.
- Parallel proceedings should not be permitted to continue and in the event of the decree of the Civil Court, the Criminal Court should not be allowed to envoke its jurisdiction particularly when possession being examined by the Civil Court and the parties are in a position to approach the Civil Court for interim order such as injunction or appointment of receiver for adequate protection of the property during pendency of the dispute. Multiplicity of the litigation is not in the interest of the parties nor should public time be allowed to be wasted over meaningless litigation.
- It is clarified that the court does want to suggest that in every case where a civil suit is filed, section 145 proceeding would never lie. It is only in cases where civil suit is for possession or for declaration of title in respect of same property and where relifs regarding protection of the property concerned can be applied for and granted by the Civil Court that proceeding under section 145 should not be allowed to continue. This is because the civil court is competent to decide the question of title as well as possession between the parties and the order of Civil Court would be binding on the magistrate.

❑❑❑

Felix Tamba Versus The State of Jharkhand and others.

W.P. (PIL) No. 2313 of 2008.

FACTS:

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 notification/circular, dated 30.07.2007 under the signature of secretary,revenue and land reforms department, Govt. of Jharkhand, 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.

Notification/ circular 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 thecase of "Mandu Prakhand Sahakari Grih Nirman Sahyog Samiti Ltd &Anr.Vs.State of Biharr"(2004)1 JCR-402. 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. However On reading of the decision of the learned Single Judge vis-à-vis the aforesaid notification, prima facie it appears 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.

Question arose here whether impugned circular violates the rights of the members of the Scheduled Tribes, the question needs to be decided in the light of section 46 and 47 of the chotanagpur tenancy act,1908.

HELD:

- 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. The object behind the restriction put in the Section is that the raiyat may not come under the clutch of private money lenders.
- 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.
- The provision of section 47 of the chotanagpur tenancy act,1908 , transpires 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. 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. 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 under Section 47(1)(bb).
- 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.
- 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 and human 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. the impugned circular does contravene the provisions of Section 46 of the Chotanagpur Tenancy Act and the same is wholly unjustified and without jurisdiction. writ application allowed.

❑❑❑

Fulchand Munda vs. State of Bihar & Ors

on 24 January, 2008 SC Civil Appeal 3267 of 2001

FACTS:

1. The brief fact of the case are that the land of plot Nos. 1695, 517 and 802 under khata no. 288 within khewat no. 6/1 of village Hochar, P.S. Kanke, Ranchi was recorded in the record of rights as Bakast Bhuinhari land in the name of Chamatu Pahan & others as landlords. In the record of rights in the remark column, these lands were shown in possession of Kolha Kumhar & others, the predecessors-in-interest of the private respondents herein as Beyayani Bakbaje. The recorded bhumidar Chamtu Pahan & others filed a title suit against Kolha Kumar & 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 respondent 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 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 appellants predecessors neither redeemed the mortgage nor came in the possession of the land and that the suit for recovery of possession was not maintainable. After commencement of the Bihar Scheduled Area Regulation, 1969, successive applications were filed u/s 71 A Of the CNT Act, 1908 by the predecessors-in-interest of Chamtu Pahan but rejected by Special Officer in terms of limitation.

2. A fresh application was moved by the appellant u/s 71 A in the Supreme Court claiming himself heir of Chamtu Pahan that is member of Schedule Tribes and the land is question is Bakast Bhuinhari Pahani land recorded in the name of Chamtu Munda/Pahan and others in the record of rights and the said land cannot be transferred to a person other than the members of a Bhuinhari family as provided u/s 48 of the CNT Act. It was further alleged that the ancestors of the respondents by playing fraud on the grandfather of the appeallant, Chamtu Munda, took the same on oral mortgage for rs. 154/- for a period of 20 years, thus the transfer being in contravention of sec. 46 of the CNT Act. Possession of the land be restored.

HELD :

- 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 is further restricted transfer by sale, gift or any other contract or agreement and such transfer not be valid to any extent. The suit of appellant's predecessors for possession on the basis of oral mortgage was culminated into a decision by High Court in second appeal 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/ U/S 59 of the Transfer of

Property Act. Thus the predecessors could not be treated to be in the possession under the mortgage.

- Under the CNT Act as it stood in the year 1922, the transfer could have been challenged as it contravenes sec. 46 of the CNT Act, being a contract or agreement of transfer. That plea having not been taken by the appellant's predecessors, now that plea cannot be raise due to the principal of constructive Res Judicata.
- In sec. 71 A, the Deputy Commissioner is authorized to evict transferee from such land and to restore possession to the raiyat if the transfer is being effected in contravention of sec. 46 or any other provision of the CNT Act. The predecessors of the respondent could not treated to be in possession in contravention of sec. 46 as possession of land by them.
- The appellant cannot be permitted to take advantage under section 46 on same having been amended by an Act of 1947.
- For the aforesaid reason, the appeal is without substance and is dismissed.

❑❑❑

State of Bihar and another vs Umesh Jha

1962 AIR 50 .

FACTS:

Plots NO. 383 and 1033 are tanks in village Lakshmipur 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 Lakshmipur 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. 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 restraining 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 appeal against the said order. 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. The main question in this appeal was whether s. 4(h) of the Act is such a law as to be hit by Art. 14,19 and 31A of the Constitution, where

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.

HELD :

- S. 3 of the Amending Act, the second proviso to S. 4(h) cannot be retrospective in operation and therefore, in respect of an order of annulment made by the Collector before the Amending Act came into force the previous sanction obtained from the State Government would be sufficient, but subsequent confirmation by the State Government would be necessary in the case of an order made after the Amending Act came into force.
- The Bihar Land Reforms (Amendment) Act, 1959, which empowers the Collector to annul anticipatory transfers of land designed to defeat the object of the Act, is protected by Art. 31A of the Constitution although it does not by itself provide for the acquisition by the State of any estate or of any rights therein or for the extinguishment or modification of any such rights and its constitutional validity cannot be questioned under Arts. 14, 19 and 31 of the Constitution since the Act of which it is an integral part, is itself directed to that end and is protected by that Article.

  Appeal allowed.

❑❑❑

Gurucharan Singh vs. Kamla Singh & Ors

(1976) 2 SCC 152

FACTS :

This case is a civil appeal by special leave brought for declaration of right title, possession and mesne profit against the judgement and order of Patna High Court. Case in brief is that there was some property jointly shared by the plaintiff and the second defendant which by virtue of a partition deed dated October 30, 1952 fell in the exclusive domain of the plaintiff (appellant herein this case). The issue arose when it was discovered that the second defendant had already sold the suit property to some other person (first defendant) much before executing the latter partition deed and committed trespass. When pleaded before the magistrate under section 145 Cr.P.C, rightful possession was declared in favour of first defendant. When appealed in the court of first instance, the court decreed against the first defendant relying upon prior oral partition and exclusive hostile possession. However, in the Letters Patent Appeal, the High Court of Patna turned down the decision of court of first instance and ruled in favour of the first defendant and opined that the other party (herein after plaintiff) had lost his title due to operation of Section 3 and 4 of the Act and further could not salvage any interest under section 6 of the Act. Hence, this writ petition is brought before the apex court.

The court to decide the case discussed at length the jurisprudential concepts of possession as set out in the Bihar Land Reforms Act, 1950 with further discourses on operation of sections 3, 4, 5, 6 & 7 of the Act. The court also recounted the public duty embarked upon the Collector under Section 4(g) and Rule 7-H of the Act. Other important issues of law discussed by the court to give a conclusive authoritative dictum are the purview and circumstances under which

section 145 of Crpc works exclusivity of the jurisdiction of civil courts as conferred by land reform statutes, legality of voluntary partitions and whether, new plea of law can be raised at appellate stage amongst others.

HELD :

- The apex court did not agree to the fact that possession of a trespasser can be deemed to be khas possession or even constructive possession of the owner. Apex court disagreed with the observations made by the High Court which had relied upon judgments passed in Brijnandan Singh v. Jamuna Prasad and Sukhdeo Das v. Kashi Prasad. Apex court reiterated its position as pronounced in Surajnath Ahir v. Prithinath Singh and Ram Ran Bijai Singh v. Behari Singh to come to this conclusion. The court said, the possession of plaintiff had ceased totally at least two years before the vesting under Section 4 took place. Consequently, without title to the property, action for recovery of possession cannot be maintained. However, the court on an equitable ground ordered that appellant is entitled to mesne profit from the defendant, first party, until the date of vesting, i.e., January 1, 1956. The appeal in form of writ petition was dismissed and parties were to bear the cost.
- The court further opined that as neither of the defendants is in possession as per the plaint and written statement, the presumption that owner is in possession holds good and he is entitled to that possession being restored to him. This however does not affect the rights of the state, as against the plaintiff.
- On the issue of exclusivity of jurisdiction in land reform cases, apex court opined that jurisdiction of civil court is not excluded where the suit was a title suit and the title was disclaimed by the provisions of the special statute. Court further said that Civil Court can grant consequential relief of possession.
- On the issue whether new plea of law can be raised at the appellate stage, Supreme Court opined that a pure question of law going to the roots 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.
- Discussing the scope of Section 4(g) and Rule 7-H of the Act, the court opined that Collector has a public duty to take charge of lands vested in the State. Elaborating the matter further in context of this case, court opined that collector is duty bound to take possession of the land and dispossess trespassers, if any.
- On the issue of voluntary partitions and whether any partition affected should be in conformity with Estates Partition Act, 1897, Court is of the opinion that requirements of the Act are meant only for the protection of land revenues and does not affect the title or party's power to partition voluntarily or the courts power to decree partition.

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State of Bihar Vs. Sharda Prasad Rai And Ors

(2002)9SCC677

FACTS :

Appeal by the State of Bihar preferred from the judgment of the Patna High Court. In this case, subsequent proceedings were initiated under section 4(h) of the Bihar Land Reforms Act, 1950 but all were dropped on different dates. Simultaneously, proceedings under section 4(g) of the Bihar Land Reform Act were initiated but the same was also dropped by the Dy. Collector, Land Reforms and Development. When appealed, the Dy. Commissioner ordered that earlier barring of proceedings under section 4(h) of the Act does not bar fresh proceedings under section 4(g) of the Act. When appealed in High Court, order of the Dy. Commissioner was quashed. Hence, this appeal was preferred by the State of Bihar against the order of Patna High Court.

The issue in short is:- Whether proceedings initiated 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.

Section 4(g) empowers the Collector to serve a written order claiming direct possession of the property vested under the provisions of the Act if in his opinion state is entitled to have the direct possession of the property. He is further empowered to take adequate steps for its compliance after hearing the parties.

Similarly section 4(h) empowers the collector to make inquiry in respect of any transfer including the settlement or lease of any land or any kind of interest in any building used primarily as office or cutchery for collection of rent of such land or estate or part thereof. It further states that if the collector after inquiry is satisfied that such transfer was made at any time after the 1st day of January, 1946 with the object of defeating the provisions of the Act or causing loss to the state or obtaining higher compensation, he after giving reasonable notice and hearing the parties, 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.

HELD :

- The apex court opined that the two sections contemplate different situations and operate in different fields and therefore action under clause (h) does not bar a proceeding under clause (g).
- Though, the court opined that two clauses operate in two different situations, it set aside both the orders of the Dy. Commissioner and the Patna High Court and remanded the case back to the original authority, the Dy. Collector, Land Reforms as parties had not placed their case and relevant materials before the authorities in support of their case.
- Appeal was accordingly allowed in the circumstances as mentioned above.

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Baleshwar Tiwari vs. Sheo Jatan Tiwari

1997(5) SCC 112

FACTS:

The Respondent-plaintiff laid the suit for the declaration of the title situated in mauza Nainijore Pachhim Diara, Police Station Brahmpore, Bhojpur. The admitted position is that the respondent had purchased the land on May 23, 1957 for a sum of Rs. Annas from the Raja Dumraon Raj. Proceedings u/s 145 of Cr.p.c. were initiated in which it was held that the appellant was found in the possession of the land. Consequent thereto, the above declaratory suit came to be filed by the respondent. It is the case of the appellant-defendant that he has been in possession of the land as a leasee since the year 1925. The trial court accepted his contention and recorded finding as under:

"These own documents of the Dumraon Raj clearly shows that the defendant has been in possession over the suit land as raiyat sice 1925.Te defendant has also filed the original Khatiswani of the year 1950 fasli prepared by Dumraon Raj which also finds the name of defendant's ancestor over the suit land. The documents of the defendant clearly prove that the suit land was never the proprietor's Zerat land and was never in khas possession of Dumraon Raj." On that basis suit was dismissed.

On appeal, the subordinate judge held that the entries for the year 1952-69 shows that respondent was in the possession of the land, 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 no suit be brought in any civil court in respect of the order passed thereunder. Thereby 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 Tiwai and other persons werw recorded in several years of Chitha in respect of the suit land. This fact also establish that 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 Chitha."

Thus, he concluded that respondent had the title of the property. It is also evidenced that in 1979, in execution of the decree, the respondent came into possession of the land .

From these facts, the question that arises for consideration is: whether the respondent's predecessor-in-title, Dumraon Raj was in Khas possession of the land and thereby the respondent acquired title of the property under the sale deed?

Shri Ranjit kumar, learned counsel for the appellants, contends that the finding recorded by the Subordinate Judge is clearly incorrect. Shri B.B. Singh, learned counsel for the respondent, contends that provisions of section 6(1) and the u/r 7 E(iii), the land is the private land of the Dumraon Raj and the appellant had not acquired any raiyat under the Bihar Land Reforms Act. The estate was abolished in 1951. Thereafter, the appellant was not recognized as a raiyat.

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 possesssion , i.e., one foot on land. And one foot 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 the actual possession and admits of no dilution except to the extent specified u/s 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.

Gurucharan Singh V. Kamla Singh, (1976) 2SCC 152; Labanya Bala Devi V. State of Bihar Patna Secretariat, 1994 Supp (3) SCC 725; Brighu Nath Sahay V. Mohd. Khaliur Rahman, 1995 5 SCC 687, relied on

Surajnath Ahir V. Prithinath Singh, (1963) 3 SCC 290 Cited

It is true that the inclusive definition in Section (6) (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 payig rent to the intermediary prior to the abolition. His possession in only of a raiyat possession. It is the duty of the respondent to establish by uneqivocal evidence that the intermediary his intermediary right in the land and that the proof has not been established by adducing evidence. It is true that there is finding of a Subordinate Judge that an enquiry u/r 7-E(iii) was held but there is no finding recorded by 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 findin g 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 interdicted by due process and course of law, he is least concerned with the entries. It is common knowledge rural India that a raiyat always regard the lands 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 or claim and interest of the raiyat, the tiller of the soil on whom the Act confers title to the land he tills.

Appeal allowed

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Mahadeo Oraon VS. State of Bihar & Ors

[2009]4 JLJR 106]

FACTS :

Case came in form of a writ petition before the High Court of Jharkhand where the order passed by the Commissioner, South Chotanagpur Division is sought be quashed by which he set aside the order of land restoration exercising his revisional powers under Section 217 of CNT Act. It has been prayed that commissioner erred in calculating the period of limitation as the nature of land is Bakast Bhuihari land for which new limitation period stipulated is 30 years after the Amendment Act No. 1 of 1986 which previously was 12 years, has been overlooked by the Commissioner.

HELD :

- Court opined that it is an admitted fact that land in question was a Bhuinhari land which was transferred on 30.3.1974 and the petition for restoration was filed in the year 1993 and in view of the amendment of the first proviso to section 71A of the Act the limitation period to file the restoration petition under section 71A is 30 years from the date of transfer. Court further stated that limitation period before the amendment was 12 years as per section 48(4) of the Act which stood amended by the 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. The language of the first proviso as well as section 48(4) of the Act is that 30 years has to be completed from the date of transfer.
- Similar observations were made by Patna High Court in a case 1992(2) PLJR 986 where it was held that Bhuinhari tenures came within the purview of Section 71A from 1986 alone and period of limitation would be deemed to have been extended to 30 years. Order of the Commissioner being illegal is quashed. Writ allowed.

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Mahabir Kansi vs. State of Jharkhand

2008(4)JCR 429

FACTS:

Came in form of writ petition where order of the Dy. Commissioner, Ranchi passed in Misc. Appeal No. 254 of 1998 has been challenged who further affirmed the order of the SDO, Ranchi by which jamabandi of the Gairmauzarua Khas land is questioned in the name of the petitioner was annulled. Proceeding initiated pertains to a land recorded as Gair mazarua Malik Parti Kadim in the revisional survey record of rights. Petitioner to prove his right title and interest over the land stated that he bought the land from Chandan Sahu on consideration of Rs.1,50,000/- vide registered deed of sale dated 30.3.1989 who had inherited the land from Samu Sahu in whose name land was initially settled by the Ex. Landlord Maharaja of Ratugraha by way of grant of hukumnama dated 22.3.1942 on receipt of salami of Rs 549 from the settlee Samu Sahu. Petitioner thereafter mutated his name in the anchal office and rents were accordingly paid. It

has also been contended that no proceeding under section 4 (h) of the Bihar Land Reforms Act, 1950 was ever imitated with respect to the land in question for annulment of the settlement and therefore the order passed by the SDO and further affirmed by the Dy. Commissioner in cancelling the settlement is illegal and wrong in law and for which this writ petition has been preferred.

Respondent on the other hand submitted that land in question is Gairmauzaurua Malik land of the government and after vesting of Zamindari, the entire Gairmauzarua land vested in the government under section 3 and 4 of the Bihar Land Reforms Act, 1950. It further submitted that had the land been settled prior to 1956 then the Ex. Landlord would have submitted the returns of the land to the government, in which the name of the settlee would have been recorded as raiyat and after vesting of zamindari, the state government would have entered the name of the said raiyat in Register –II and granted rent receipts thereof to the said 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 here and therefore cancellation was right in law. It has been further submitted that land in question is enlisted in the land scam of Ranchi District and criminal cases have been filed against the revenue officials and the petitioner. The jamabandi produced by the petitioner was also alleged to be fake and forged.

HELD :

- Sada Hukumnama and jamindari receipts produced cannot be relied upon as the same can be manufactured any point of time and as in this case the original was not filed except the Xerox copies.
- Petitioner contention that ex landlord submitted its return to the government at the time of vesting of zamindari and state government further accepting the vendors of the petitioner as raiyats is false and erroneous as no rent receipts were produced from 1956 to 1983.
- Photocopy of Jamabandi as produced by the petitioner was found to be false and forged.
- On perusal of Register-II, it was apparent that Jamabandi of the disputed land was created in Register-II based on forged sada Hukumnama and without any order from the competent authority and against the statutory laws and circulars of the government.
- Petitioner contention that no action was taken under section 4(h) of the Bihar Land Reforms Act is unsustainable as transfer itself is illegal and performed by way of collusion with delinquent revenue officials.
- Accordingly, the writ petition is dismissed.

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JAGDEO MAHTO VS. COMMISSIONER, NORTH CHOTANAGPUR

FACTS

- Appellant filed Writ petition W.P(C) No. 881/2002 challenging 3 orders.
  (I) Order dated 08.07.2001 passed by Land Reforms Deputy Commissioner, Ramghar

(ii) Order dated 24.04.2001 passed by Additional Collector, Hazaribagh.

(iii) Order dated 18.12.2001 passed by the Commissioner, North Chotanagpur Division, Hazaribagh.

- Whereby Jamabandi in the name of the petitioner of Plot no. 122 under Khata No. 69 at Murramkalan village measuring 1.04 Acres was cancelled and same Jamabandi be opend in the name of Babulal Mahato original Respondent No. 5.
- Lands of Khata no. 69 and 52 of Mouza Murramkalan were auctioned in execution of rent decree against recorded tenants Sadhu Mahto and Bhairo Mahto and purchased by ex-landlords Umraon Singh and others.
- On 13.11.1919 grandfather's of the appellants namely Guna Ram Koiri were granted settlement of various lands under Khata No. 69 and 52 in Mouza Murramkalan by the Ex-landlord Umraon Singh and Others.
- Grandfather of the appellant became the raiyat and land settled in his favor. Subsequently Chhotanagpur Banking association by virtue of an auction sale had purchased the proprietory interests of the ex- landlord and became the landlord and executed rent receipts in favor of Guna Ram Koiri.
- After coming of the Bihar Land Reforms Act, Chhotanagpur Banking association filed a return under Bihar Land Reforms act showing Guana Ram Koiri as its raiyat and Jamabandi was created in favor of Gunan Ram and entered in Register No.II.
- In 1956-57 plots were acquired for construction of Ramghar block. Heirs of Guna Ram had sold their plots no. 182 and 183 of Khata no. 69 to one Inder Singh and Others and their names were mutated in the Register no. II.
- In 1990 on the basis of circle report of the Circle Amin a Misc. Case no. 2/1990-91 was initiated in respect of Khata no. 69 and 52 which included the land in dispute. Notices were issued to original respondent Babulal Mahato.
- Thereafter the circle officer by order dated 06.10.1990 that Jamabandi in the name of the appellant needs no reconsideration and the matter be placed before the Land Reforms Deputy Collector who vide its order dated 12.03.1990 dropped proceedings of Misc. Case No. 2/1990-91.
- After 10 year of lapse original respondent Babulal Mahato filed application before Circle officer Ramghar praying for assessment of rent in respect of disputed property registered in Rent Assessment Case No. 3/2000-01.
- The circle Officer vide Order dated 26.06.2000 recommended cancellation of Jamabandi running in the name of the appellant and same be opened in the name of original respondent Babulal Mahato, rent be realised from him. The Land Reforms Deputy Collector, Hazaribagh upon receiving the report of the circle officer ordered cancellation of Jamabandi in the name of the appellant and entering the name of original respondent Babulal Mahato in register No. II.
- Appeal Mis. Case No. 12 of 2000 was preferred against the above order before the Additional Collector, Hazaribagh which was dismissed.
- Thereafter Revision was filed before Commissioner North Chhotanagapur, Division, Hazaribagh which was dismissed by Order dated 24.04.2001.

- Writ petition W.P.(C) No. 881/2002 was filed for challenging the above order which was disposed by Order dated 09.08.2006 stating aggrieved person may move before court of competent jurisdiction for appropriate relief.
- Hence the present Letters of Patents Appeal against the Order Dated 09.08.2006.

Contentions raised by Appellant

- Rent Assessment Case No. 3/2000-01 was barred by principle of Res judicata and hence not maintainable. Since issue of Jamabandi be allowed to continue was earlier decided in Misc. Case No. 2/1990-91 same could not be allowed to be litigated in a subsequent proceeding.
- Long standing Jamabandi cannot be canceled by the authorities.

Contentions raised by Respondent

- Misc Case No. 2 /1990-91 was not initiated on basis of application made by any person. The proceeding was not for cancellation of existing Jamabandi nor it has for creation of Jamabandi rather it was proceeding initiated at the instance of Karamchari itself and not appellable.
- Further while adjudicating Jamabandi, the authorities do not exercise judicial or quashi judicial function. They cannot be termed as court. Nor the proceedings be termed as judicial proceedings. Section 11 applies to court proceedings only.
- 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 proceedings by the Collector under section 4(h) of the Bihar Land Reforms Act. Relied on case reported in 2003 (3) JLJR 793.

Court's Observation

- In order to apply section 11 CPC in a particular case following conditions are to be fulfilled
  - (i) Identity of the matter
  - (ii) Identity of parties
  - (iii) Parties in subsequent suit must have litigated under same title in former suit.
  - (iv) Court deciding former suit must be competent to try subsequent suit.
  - (v) Matter must be directly and substantially be in issue.
- Apart from the above matter in issue must be decided by competent court.
- Order of mutation is passed in a mutation proceedings decided by Revenue Authority.
- In Mahila Bajrangi vs. Badri Bai (2003) 2 SCC 464 was held revenue proceedings are not judicial proceedings in a court of law.
- In Shanti Devi vs. State of Bihar upon relying on earlier decision held that mutation proceedings are administrative proceedings and judicial proceedings and officers acting under the provision of Mutation Manual are not courts.
- Since Revenue authorities while deciding a mutation proceeding have been held to be not court of law and mutation proceeding not judicial proceedings therefore section 11 of the C.P.C are not applicable.
- Jamabandi was earlier opened by a Karamchari that too without the order of competent authority. And the following order passed by Revenue authority for cancellation of

Jamabandi after they found out that it was opened by Karamchari not authorized under the law and thus was without jurisdiction.

- In Hasham Abbas Sayyad vs. Usman Abbas Sayyad & Ors (2007) 2 SCC 355 held principle of estoppel, waiver and acquiescence or even Res Jusicata has no applictaion in the case when the order passed by the tribunal/court without jurisdiction would be coram non judice , being nullity.

HELD :

- Jamabandi standing in the name of any particular person can be cancelled when brought to the notice of the revenue authority that the order for creating Jamabandi has been passed by an authority who has no jurisdiction or authority but only after giving prior notice and an opportunity of hearing to the concerned person, whoes interest would be adversly affected.
- In Sitaram Choubey & Ors vs. State of Bihar & Ors reported in 1993 (2) PLJR 255 and also in Suraj Bhan & Ors vs. Financial Commissioner & Ors reported in (2007) 6SCC 186 it was held that entries in the revenue record do not confer any right or title on a person who's name appears in the record of rights. Such entries are for fiscal purpose and not of ownership. The title of the property can be decided only by a competent Civil Court.
- Single judge rightly refused to interfere with the impugned order passed by the Revenue authorities and observed that aggrieved person must move before court of competent jurisdiction for appropriate relief.
- Letters of Patents Appeal Dismissed.

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SHARMISTHA SINHA Vs. STATE OF JHARKHAND

2010 (2) JLJR 392

FACTS:

A proceeding u/s 71 A Of the CNT Act 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. It was claimed on the ground that the applicant Bandhan Oraon was illegally dispossessed from the said land though he is the descendant of the recorded tenant, a member of Scheduled Tribes. The Special Officer, SAR, 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, sec. 71 A of the CNT Act has no application in a case of 'Ghhaparbandi' lands.

In appeal before the Deputy Commissioner, Ranchi, The Deputy Commissioner dismissed the appeal and confirmed the order passed by the Special Officer, SAR holding that sec. 71 A of The CNT 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.

In a revision application before the commissioner, south Chhotanagpur Division, Ranchi

by respondent no. 5 the Deputy Commissioner has allowed the revision application and set aside the orders passed by the special officer as well as the the Deputy Commissioner, Ranchi and directed for restoration of the land in question in favour of respondent no. 5 Bandhan Oraon. In this order, which has been challenged by the writ petitioners.

HELD :

- In the present case, it is found that the land in question was allowed to be converted into 'Chapparbandi' by registered deed in the year 1951 itself and after conversion of the land into 'Chapparbandi', 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 'Chapparbandi' rent etc. therefore it appears that land in question was validly converted into 'Chapparbandi' 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.
- In the case of Ashwini Kumar Roy vs. State of Bihar 1978 BLT Page 332 (Pat)(RB) The division bench of Patna High Court, has clearly held that no proceeding u/s 71 A Of the CNT Act can be initiated for restoration of 'Chapparbandi' land. If the land is 'Chapparbandi' then it will be governed by the Transfer of Property Act and not by CNT Act.

In the view of the matter, I hold that the application u/s 71 A Of the CNT Act filed by the respondent no. 5 for the restoration of the land in question, was not maintainable in the view of the reasons stated hereinabove.

- On the question of limitation, it is held that in the case of Jai Mangal Oraon vs. Smt. Mira Nayak and others 2000 15 SCC 141, the Supreme Court held as follows:- "Merely because sec. 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, right of the parties acquired in the meantime under ordinary law and the the law of limitation."
- In the case of Situ Sahu and others vs. State of Jharkhand and others 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 u/s 71 A Of the CNT Act was sought to be exercised after reasonable delay and the lapse of 40 years is certainly not a reasonable time for exercise of power.
- The High Court also observe that, the application for restoration has been rejected and it has become final then subsequent application for restoration for the same would be hit by the principles of Res judicata.

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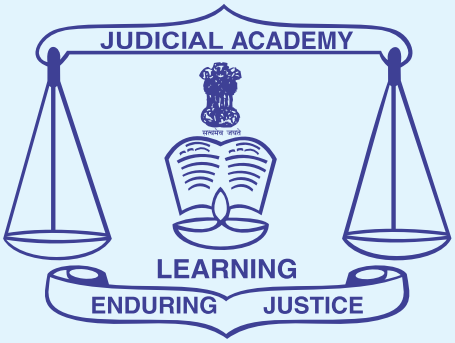

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