

STUDIES IN THE JHARKHAND TENANCY LAWS

C. Ashokvardhan



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**(Referee-Dr. Praveen Jha
Associate Professor, Centre for Economic Studies &
Planning, JNU, New Delhi)**



**CENTRE FOR RURAL STUDIES
Lal Bahadur Shastri National Academy of Administration
Mussoorie - 248 179 (Uttaranchal)**



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2005

**Published by
Centre for Rural Studies**

**Lal Bahadur Shastri National Academy of Administration
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Presented to Shri Ashish Ranjan Sinha, IPS, Director General,
Police, Bihar for his support and guidance ever since our P. G.
Hostel, Ranighat (Patna University) days.

FOREWORD

D. S. MATHUR
IAS

Director
LBS National Academy of
Administration, Mussoorie

STUDIES IN THE JHARKHAND TENANCY LAWS by Dr. C. Ashokvardhan, besides presenting an incisive overview of the tenancy laws operative in Jharkhand, puts forth select case studies from the Chota Nagpur and Santal Parganas regions in a lucid and succinct manner.

The problem of tribal land alienation in the Jharkhand region persists historically despite plethora of restrictive laws and regulations. The tribal tenant being weak and resourceless is prone to fall a prey to devious and dubious means and he has nothing but his land to dispose off to meet exigencies. It has often been argued that the restrictions should be removed in order to enable the tribal tenant to turn his land into liquid investible capital. But given his susceptibilities vis-à-vis much stronger forces and given the lack of any other resources to bare survival such a suggestion has been squarely ruled out by those who have studied tribal land economy in depth. For the economically developed minority of the tribal elite land is one among many assets and is disposable. However, for the general mass this approach will be disastrous.

The legal approach so far has not only been half hearted, it is also full of inconsistencies and often looks like a bundle of compromises. The historical atrocities, manipulations and injustices come rather heavy on the law-maker and there have been conscious efforts to leave loopholes.

While the survey and identification of alienation cases itself is tardy and lackadaisical, whatever that surfaces goes under the carpet of long-drawn legal battles relying on documentary evidence (adduced conveniently by non-tribals in the shape of survey entries etc.) and even if an eviction order is passed, it remains to be carried out in letter and in spirit.

Collusive suits are being filed in SAR (Scheduled Area Regulation) Courts for getting a compensation fixed and transfers regularised. A coterie of middlemen is reported quite active in this regard.

The agricultural sector in the Jharkhand tribal context is in peril. There is an endeavour to allow non-agricultural uses of agricultural land on the pattern of the Bihar Tenancy Act. Apart from this being an easy way to benami transactions and alienations, a shrinkage in agricultural land will adversely affect food security.

Of late there is a spurt in verbal leases of agricultural land in favour of non-tribals. There is no assessment of such informal transfers as they thrive on tacit understanding and neutral equilibrium. The transfer mostly is in lieu of a petty loan, that is seldom repaid, and the land continues to be cultivated by the non-tribals.

A major percentage of tribal land in Santal Parganas is voluntarily transferred to non-tribals by annual patta and mortgage. This is despite Section 21 of the Santal Parganas Tenancy Act under which only a non-tribal raiyat is allowed to mortgage his land. Further under section 22, any raiyat can make over his holding temporarily on trust for cultivation (widows, minors, disabled, temporarily absent etc.) to a raiyat of the Santal Parganas. It is a fact of life that outsiders have benefited out of this provision as well. The Santal raiyat has gradually become a non-cultivating raiyat by choice, given a zero capital/ resource base, back at home.

The Jharkhand case could as well be traced elsewhere in the Fifth Schedule Areas in the country. The road to success lies, perhaps, in concerted efforts on the part of all concerned, to thwart the menace of encroachment into and enslaving the “sacred domain”.

The author deserves compliments for a really painstaking work, which will surely help our Officer Trainees to enlighten themselves on the issues involved.

D.S. MATHUR

INTRODUCTION

L. C. SINGHI, IAS

**Professor & Coordinator
Centre for Rural Studies
LBS National Academy of
Administration, Mussoorie**

The study of tenancy laws operational in Jharkhand lays bare a plethora of modes by which tribal land is transferred to a non-tribal. It further probes into the circumstances that often lead to such transfers. The transfer is generally effected by sale, gift or mortgage for a price or compensation. Usually the process of land alienation follows a circuitous route. It begins by an advance of consumption loan to a tribal household, followed by further advance, accumulation of debt, failure to repay the debt, and finally mortgage of land against the debt. Failure to redeem the mortgage results into sale or permanent transfer. Usufruct mortgage of land for a loan if unredeemed produces the same result. Leasing-out of land to a non-tribal household, if not resumed for self-cultivation or any other use over a long period of time may turn into perpetual lease amounting to permanent possession of the lessee.

Acquisition of tribal land by the State for purposes of development projects is another form of tribal land alienation that has entered the scene in the post-Independence period.

Paradoxically enough, a tribal by virtue of a land asset is definitely rich in terms of costs of land, but the productivity being low, he remains a pauper. Irrigation potential has not looked up in tribal hamlets. Without proper geodetic surveys, without looking into

feasibility and viability, without compensation/ rehabilitation/ resettlement packages, many schemes remained much short of expectation. Modern agriculture packages remain on paper. The moneylender rules the roost. Employment Guarantee Schemes do not encompass the entire year.

Legal solutions alone may fall short of delivering results. As in Operation Barga in West Bengal, a host of supplementary measures, including poverty alleviation through multi-faceted measures like agro-based industries and small business (lessening dependence on agriculture) were adopted, we may have to think similarly here in Jharkhand, too.

The tribal's illiteracy, lack of knowledge or the subtleties of cash economy, and his subsistence level economy make him highly vulnerable to the exploitative and unscrupulous ingenuity of the non-tribal. In other words, these stand out as the three most crucial conditions in which exploitation germinates, flourishes and thrives. This is why the exploiter class has a vested interest in creating and perpetuating this social and economic status of the tribal, which may be characterised by its total absence of bargaining power from the viewpoint of the tribal. On the other hand, non-tribal vested interests seem to be in total control of the tribal regions. It is they who seem to dictate the terms and conditions of any and every transaction that is connected with the tribal and it is they who dispose off his land, assets and labour as they wish.

The section on case studies in this book encompasses a gist of the actual judicial procedures involved in deciding cases of tribal land alienation. On the face of it, it might seem specific to a Jharkhand Court situation, nonetheless, the procedures are by and large common to revenue courts elsewhere in the country. The presentation of the legal framework and court proceedings in one

capsule will definitely serve the training needs of successive batches of Officer Trainees in the Academy. The OTs will be taking home the input, to a field and court situation in their career.

Dr. C. Ashokvardhan, is a familiar name to the Academy. He has evinced keen interest in meeting the training needs of the OTs with regard to revenue and land reforms. I wish his interest to continue and active association with the Academy grow in the days to come.

L. C. SINGHI

ACKNOWLEDGEMENT

I picked up the basics of the Santal Parganas Tenancy (Supplementary Provisions) Act, 1949 in course of my posting as Sub-Divisional Officer, Godda (now in Jharkhand). Subsequently, I had a rather long stint as Settlement Officer in Dhanbad (now in Jharkhand), where I had to deal with the relevant provisions of the Chota Nagpur Tenancy Act, 1908 both in administrative and in judicial capacity. In the process, and in the nature of things I could see the application of the two laws in a ground and human life situation and I can say for certain that the exposure and the experience was unique. I acknowledge the contributions made by a plethora of lawyers, officials and office and field staff in a general way. Names and faces fade in the ruthless march of time, but glimpses survive in an exclusive corner of the memory plate, irremovable and indelible.

Shri D. S. Mathur, Director, LBSNAA and Shri L. C. Singhi, Professor & Coordinator, Centre for Rural Studies, LBSNAA, were the first to introduce the case study approach in the Academy as a potent training method in the land reforms component. I do hope the case studies incorporated in this volume will facilitate the otherwise difficult entry into the labyrinth of intricate laws.

Shri Subhransu Tripathy, Assistant Professor and Dr. A. P. Singh, Research Associate lend in fact, the pillars on which the CRS in the Academy rests. They are busy all through in research and training activities, moving out frequently for a different scent of air in the states. I acknowledge the consistent friendship and support from them as also the undiminishing secretarial help received from Shri Samar Singh Kashyap, Shri Adesh Kumar & Shri Dalip Singh Bist.

This modest work is dedicated as a token of regards to Shri Ashish Ranjan Sinha, IPS, DGP Bihar, in reminiscence of an association over a period of about 34 years beginning in 1971. That was the year I had taken admission in the University Department of Political Science, Patna University (1970-72 batch) and was given an accommodation in the prestigious Post Graduate Hostel at Ranighat, along the cool and the serenity of the Ganga. Shri Sinha was my senior in the Hostel and was a student of Political Science himself. I owe a special debt of gratitude for his support and guidance ever since. His coming to the IPS in 1972 was a gain to the Services and a loss to the academics. My own joining of the teaching profession in Patna University took me to Bokaro for pursuing my Ph.D. work on Personnel Management & Financial Administration in the Bokaro Steel Plant. Frequent interactions with Shri Sinha, the then S.P. Bokaro, enriched my information base. I came to the IAS in 1980 and my very first posting as SDO, Godda further provided me an occasion to work with Shri Sinha, the then SP, Sahebganj (covering Godda as well). His insights into the critical issues underlying paddy harvesting disputes between tribals and non-tribals helped me develop my own understanding of the situation, often becoming critical (for details, refer to page 73 of the text). Both Shri Sinha and myself had been a witness to a variant dawn descending on the horizons of the 1855 sub-division of Godda, when it attained the status of a district on May 25, 1983.

Frequent interactions with Shri A. C. Ranjan, IAS, Secretary, Revenue & Land Reforms, Government of Jharkhand, have been of immense help to me in preparing the case studies section.

I owe a special debt of obligation to my younger colleagues in Jharkhand, Dr. Pradeep Kumar, Deputy Commissioner, Ranchi and Shri A. K. Sinha, Deputy Commissioner, Dumka but for whose prompt assistance, the case studies section in this book would not

have been there at all. Frequent interactions with Shri Birendra Kumar, Deputy Commissioner, Godda, lent me further insights.

C. ASHOKVARDHAN

ABBREVIATIONS

AC	Additional Collector
ADC	Additional Deputy Commissioner
AGP	Assistant Government Pleader
BoR	Board of Revenue
CO	Circle Officer
DC	Deputy Commissioner
DCLR	Deputy Collector, Land Reforms
DoB	Date of Birth
DP	Draft Publication
FP	Final Publication
GP	Government Pleader
JB	Jamabandi
LC Case	Land Ceiling Case
LCR	Lower Court's Record
LH	Land Holder
RA	Revenue Appeal
RM	Revenue Miscellaneous
RoR	Record of Rights
SDO	Sub Divisional Officer
U/S	Under Section
Vs	Versus
VOS	Vide Order Sheet

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CHAPTER – 1

TRANSFER PROVISIONS IN THE CHOTA NAGPUR TENANCY ACT, 1908

THE INCIDENCE OF TRANSFER AS GLEANED FROM SURVEY SETTLEMENT REPORTS

The Survey Settlement Reports relied upon in this chapter are as follows:

1. Final Report on the Survey & Settlement Operations in the District of Ranchi (1902-1910) by J. Reid, ICS, Settlement Officer, Chota Nagpur.
2. Final Report on the Survey & Settlement Operations in the District of Hazaribag (1908-1915) by J.D. Sifton, ICS, Settlement Officer, Chota Nagpur.
3. Final Report on the Resettlement of the Kolhan Government Estate in the District of Singhbhum (1913-18), by A.D. Tuckey: ICS, Assistant Settlement Officer, Chota Nagpur.
4. Final Report on the Survey and Settlement Operations in the District of Palamau (1913-1920) by T.W. Bridge, ICS, Settlement Officer, Chota Nagpur.
5. Final Report on the Revisional Survey and Settlement Operations in the District of Ranchi (1927-1935) by F.E.A. Taylor, ICS, Settlement Officer, Chota Nagpur.

In the 19th Century, there were no specific rules to guide the Courts in the administration of Civil Justice, for some years, until the introduction of the Civil Procedure Code (Act VII of 1859). The Courts, however, appeared to have been guided by the general spirit of the rules framed by Captain Wilkinson and by the Regulations. When Act VIII of 1859 was extended to the districts of Hazaribag, Manbhum and Lohardaga (upto the end of 1898, the District of Ranchi was known as Lohardaga), the following provision was added to the notification:

“As for good and sufficient reasons, it is considered expedient that the present restrictions on the sale of landed property in those districts should continue in force no sale of land shall be made in the districts of Hazaribag, Lohardaga and Manbhum, without the sanction of the Commissioner of the Province having been obtained before.”

By the terms of the notification, dated the 13th June, 1882, the Commissioner was empowered in any case in which he might consider it desirable to do so, “to forbid the sale of any estate or part of an estate situated in the Chota Nagpur Division.”

Upto the year 1882, no landed property could be sold or alienated without the consent of the Commissioner. From that year this restriction was withdrawn, and the Commissioner henceforward had power only to prohibit the sale of estates or portions thereof. This latter power also had been taken away since 1908.

The wisdom of the rules, prohibiting transfer of land, was proved by subsequent experience. The free sale of landed property, arrears of rent, and the rights of transfer of raiyati and Khuntkatti tenancies, which were exercised from 1882 onwards, led to serious abuses and

to grave disturbances in the Munda country as J. Reid points out in his Survey Report (1902-1910) on Ranchi:

“62. Government was obliged to give statutory effect again to the principles, which the authority of the Agent enforced in the early days of the South-West Frontier Agency. The restrictions on the transfer of these tenancies contained in sections 46, 48 and 240 of the present Tenancy Act give effect to the same principles. Power has also been delegated to the Commissioner by the provisions of Section 208 of the Tenancy Act to prohibit or stay the sale of tenures or portions thereof for arrears of rent. But, as the law stands at present, he cannot interfere with sales under the Civil Courts’ process.”

Earlier, the influx of hordes of middlemen had gradually led to the great Kol insurrection of 1831-32. About this time not only were the village headmen, the Mankis and the Mundas, being supplanted, but the raiyats were being deprived of the oldest and the most valuable lands in the villages by the new comers. In effect, little or no redress could be obtained by the aborigines. The old local rulers had been deprived of administrative powers, and the British Courts sat at Sherghati or at Chatra. The rising of the Kols cleared the country of aliens for a time; but the insurrection was put down with a strong hand. The landlords were exasperated. They retaliated severely, and a considerable disturbance of peasant proprietary tenure undoubtedly occurred.

Among the primitive communities of Mundas and Uraons, the reclamer of a patch of land in the jungle was regarded as its owner. As the community progressed, he paid a slight tribute or rendered slight service to the village chief, but, his status as bhuinhar or pioneer, or descendant of a bhuinhar was always regarded as vastly higher than that of the latecomers, who had settled on the land when

the village was established. The landlords while acknowledging the privileged character of bhuinhari lands were not willing to admit their existence in any but a few of the oldest villages, while the whole body of raiyats, on the other hand, began to advance claims to the privileges of bhuinhar. Finally, the opposing parties began to dispossess each other by force.

In order to settle these disputes authoritatively and finally, Act II of 1869 was passed by the Bengal Council. Under the Act, Special Commissioners were appointed, who had power to survey and demarcate the privileged lands of the tenants (bhuinhari) and the landlords (manjhihas). The Special Commissioners had power to restore to possession persons, who had been wrongfully dispossessed of lands of bhuinhari or manjhihas tenure at any period within twenty years before the passing of the Act, and the record was declared final and conclusive of the incidents of the tenures recorded.

A Bill to consolidate the law of landlords and tenants was postponed in 1899, until the survey and settlement operations had thrown some light on agrarian conditions. By the end of the year 1903, the Settlement Officers had collected a considerable amount of data, and the local investigation made in the Munda country was held to justify the necessity of emergent legislation. One of the main objects of the Amending Act of 1903 was to give finality to the record-of-rights regarding the incidents of Mundari Khunt Kattidari tenancies. As Reid remarks:

“104..... The results of the investigation made by the Settlement Officers, regarding the abuses to which the unrestricted sale and transfer of raiyati and other tenancies had led, were held to justify the imposition of restrictions on right of transfer by raiyats and Mundari Khuntkattidars. The provisions enacted in 1903 are

the same as those, which are contained in sections 46 to 48 and section 240 of the present Tenancy Act, with certain modifications. At the same time provision was made for summary sale of holdings in execution of decrees for arrears of rent; and a special procedure was prescribed for the recovery of arrears of rent from Mundari Khunt Kattidars. The vexed question of the registration of transfer of, and successions to, tenures was settled; and all tenures were made saleable for arrears of rent accruing on them.”

A new Act (the Chota Nagpur Tenancy Act, Act VI of 1908) was framed to include all provisions affirming local customary rights and usages, which the investigations of the Settlement Officers had shown to be necessary, and several provisions of law and procedures, borrowed from the Bengal Tenancy Act, which were in no way inconsistent with local usages and customs and which the experience of the Civil Courts had shown to be essential for the proper administration of the rent law in Bengal.

Reid contends that transfers of holdings by sale are now prohibited by law; but the law is partially inoperative at least in the Sadar subdivision. The modus operandi of the money-lenders in the neighbourhood of Ranchi is thus described by one Assistant Settlement Officer, Babu Rama Lal Varma, Deputy Collector:

“The mahajans get zarpeshgi deeds executed by the raiyats without registering the documents, and take possession of the land so mortgaged. After a few years, they pay salami to the landlord and get their names registered as raiyats of the holdings. When the raiyats are able to pay back the consideration, the mahajans take their stand on their alleged status as raiyats, suppressing the zarpeshgi deeds, which are in their possession. The raiyats are thus unable to prove that the holdings belong to them, as they are out of

possession, and they lose their lands for ever.” (Quoted in 282, Reid’s Survey Report).

Reid is optimistic, however, that as the record of rights has now been prepared, it will be difficult for the money-lenders in future to practice this sort of chicanery.

The raiyats are not the only classes who are exploited by the moneylenders. Mr. H. McPherson, Assistant Settlement Officer, gives the following account of the state of affairs in Thana Mandar: “Transfers of land in this area are numerous, both raiyats and landlords having mortgaged their interests to carry on litigation. The bhuinhars have also sold most of their bhuinhari lands, and the landlords have lost whole villages.” (Quoted in 282, Reid’s Survey)

With respect to the survey of Hazaribag (1908-1915), Babu D.M. Panna wrote after attestation of Gola - “Among the tenure-holders the richest are the banias. They are the mahajans of the agriculturists, and lend them money at exorbitant rates of interest, the maximum rate coming to 75 per cent. Whenever the agriculturist wants pecuniary assistance he goes to the bania and borrows money from him either on simple bond or on the mortgage of his lands. The bania caste people are gradually becoming the landed aristocracy of the place, as the Khairat villages of the Brahmins and the jagir villages of the Rajputs are slowly passing into their hands.” (Quoted in 252 Survey Report: 1908-1915: Hazaribag by J.D. Sifton)

Babu Tulsi Dass Mukherji, Munsif on deputation to Settlement, wrote in his circle note for the year 1910-11: “..... The height of oppression and deceit on the part of these mahajans, most of whom are the notorious Sahus, consist in casting off their zarpeshgi; and taking a raiyati settlement from the malik in collusion with the

latter. Twenty-five to fifty per cent of the disputes relate to such transactions. The evil does not proceed so much from the mahajans' claims for compound interest which keeps the debt intact for ever, as it were, but from their pernicious habit of taking these collusive raiyati bandobasts without diminishing their debt in any way." (Quoted in 252. J.D. Sifton's report on Hazaribag Survey 1908-1915).

Regarding the Kolhan-Singhbhum area, A.D. Tuckey in his Final Report on the Resettlement of the Kolhan-Government Estate in the district of Singhbhum (1913-1918) points out:

"56. A main principle of the British administration of the Kolhan has been to preserve the Hos in their communal system and to protect them from their lands corrupted by foreigners for whom without protection they can be no match, once their power to appeal to force has been taken away."

The intrusion of Dikkus had a bad effect on the character of the Hos. The Dikkus encouraged litigation as a means to acquire land from the less intelligent Hos. They did not readily admit the authority of the Hos, Mundas and Mankis, and they attempted to corrupt these officials into settling abandoned holdings with them contrary to the village custom. The gradual spread of the foreign element and the bad effect it had upon the Hos does not seem to have attracted notice until Mr. Craven collected statistics and called attention to the results. He showed that the number of Dikku holdings had increased tenfold since the settlement of 1867, and that two-thirds of these were of new-comers who had obtained a footing in the estate during the preceding thirty years. The rules governing the settlement of Dikkus and the reporting of mutations were then defined and enforced, and an Inspector was appointed a few years later, whose chief duty was to enquire into Dikku settlements, and

transfers of land. The Mankis and Mundas had to report on a Dikku settled in the village and also to report all mutations. The Kolhan Inspector visited each village in turn and sent in a report of settlements of Dikkus in the village, and of all transfers by sale or mortgage.

Mr. W.B. Thomson's rules, which were approved by the Government in 1903 contain the following provisions with regard to sales and mortgages to Dikkus. Sales: A sale to a Dikku should not be allowed if any Ho is willing to become the purchaser, or in any case if the Dikku is an undesirable raiyat. Mortgage: If the mortgagee is a Dikku and specially a Dikku who goes in for money-lending or is in any way an undesirable raiyat, the Dikku should be ejected and the land given to the mortgagor or any other Ho who comes forward to pay off the amount of the mortgage less the profit from the land during the time of mortgage. Settlement: New Dikkus who have settled since the settlement without permission should be turned out, unless some good reason exists for permitting them to remain.

The rules for turning out Dikkus were not enforced absolutely, and each case was considered on its merits, but objectionable Dikkus were turned out in many cases, and the ejecting of Dikkus from lands obtained by sale or mortgage was enforced. The rules had no legal sanction behind them, and there was no way of enforcing orders if they were disobeyed. Nevertheless, the measures taken were on the whole effective and the orders were carried out in a very great majority of cases.

Referring to the Kolhan rules Mr. A.D. Tuckey writes in his Resettlement Report : On Kolhan-Singhbhum : 1913-1918: that the Rules forbid the introduction of aliens. Under clause 15(4) of the record-of-rights the Munda shall not allow any foreigners not

already recorded as resident raiyats to cultivate lands in the village without the written permission of the Deputy Commissioner, and he shall report at once to that Officer any such case that occurs and under clause 19 no resident of another village shall be allowed to settle in the village without written permission of the Deputy Commissioner.

RESTRICTIVE PROVISIONS UNDER THE CHOTA NAGPUR TENANCY ACT, 1908

SECTION 46

This section is to be studied in the following three parts:

- (a) Restrictions on the transfer of Scheduled Tribe/Backward Class/Scheduled Caste lands.
- (b) Restoration of land that has been illegally and fraudulently transferred.
- (c) Explanations regarding certain terms used in the Section.
No transfer by a raiyat of his right in his holding or any portion thereof –
 - (a) by mortgage or lease for any period exceeding five years or
 - (b) by sale, gift or any other contract or agreement, shall be valid to any extent. (Sub-section 1)

The raiyat may, however, enter into a bhugut bandha mortgage of his holding or any portion thereof for a period not exceeding 7 years or if the mortgagee is a society registered under the Bihar & Orissa Cooperative Societies Act (B & O Act VI of 1935) for a period not exceeding fifteen years (Proviso to Sub-section 1).

Section 46 enables an occupancy raiyat belonging to the Scheduled Tribes to transfer his lands, with the previous sanction of the Deputy Commissioner, to another member of the Scheduled Tribes who resides within the police station limits where the land is situated. Occupancy raiyats of the Scheduled Castes and Backward Classes are also similarly authorised to make transfers to other members of SC/BCs respectively who are resident in the district where the holding is situated. The Section also authorises transfer of the rights of any occupancy raiyat in his holding or any portion thereof to a society or bank or to a company or a corporation having stated qualifications, with a view to procuring agricultural credit. Other occupancy raiyats, who are not a member of the Scheduled Tribes, Scheduled Castes or Backward Classes, may transfer their rights in their holdings or any portion thereof by sale, exchange, gift, will, mortgage or otherwise to any other person. (Provisos a, b, c and d to Sub-section 1).

The section implies that restrictions on mortgage or lease (not to exceed 5 years) and on transfer by any mode are meant only for occupancy raiyats belonging to the Scheduled Tribes, Scheduled Castes and Backward Classes. They can, indeed, transfer land rights, but with the previous sanction of the Deputy Commissioner and to members of like castes/classes alone. There are no fetters on transfer rights of other classes of occupancy raiyats, who do not belong to the castes/classes noted above. Any transfer in contravention of Sub-section (1) shall not be registered or recognised by any court.

The Deputy Commissioner shall be a necessary party in all civil suits in which one of the parties is a member of the Scheduled Tribes, and the other is not. The Deputy Commissioner is also ordained to put back the transferor under Sub-section (1) into

possession, on the latter's application within 3 years after the expiry of the period enshrined in the transfer.

PROVISIONS OF TRANSFER FROM S.T. TO NON-S.T.

The Deputy Commissioner can proceed suo moto on an application by the S.T. transferor, provided the same is not time-barred by 12 years. He will hear both the parties and if he concludes that Clause (a) of the second proviso to Sub-section (1), which authorises transfer of S.T. lands only to eligible S.T. raiyats, has been violated, he will eject the transferee and put the transferor back into possession.

There are two provisos to the ejectment provision:

- (I) if the transferee has constructed any building or structure on such holding or any portion thereof, the Deputy Commissioner shall, if the transferor is not willing to pay the value of the same, order the transferee to remove the same within a period of six months from the date of the order, or within such extended time not exceeding two years from the date of the order as the Deputy Commissioner may allow failing which the Deputy Commissioner may get such building or structure removed:
- (II) Where the Deputy Commissioner is satisfied that the transferee has constructed a substantial structure or building on such holding or a portion thereof before the commencement of the Chota Nagpur Tenancy (Amendment) Act, 1969 he may validate such a transfer, if the transferee either makes available to the transferor an alternative holding or portion of a holding of equivalent value, in the vicinity or pays adequate compensation to be determined by

the Deputy Commissioner for the rehabilitation of the transferor.

As stated already, the time bar for ejectment under Section 46 is 12 years, meaning thereby that at the expiry of 12 years, the transferee will perfect his title over transfer land by adverse possession.

The restrictions on the transfer of raiyati holdings were first introduced in the amending Act of 1903, the object being to stop the sale of holdings by improvident raiyats, and to restrict all forms of mortgage and thereby to save the population from becoming serfs to the money-lender. The terms of the law, as embodied in the 1908 Act, are very emphatic. A mortgage or lease for any period expressed or implied, which exceeds or might in any possible extent, exceed five years, is invalid. A mortgage, therefore, which purports to be for a period of five years, but which contains a proviso that the lease may run until the consideration money is repaid by the mortgagor, or which contains or implies any other alternative is void ab-initio and cannot be registered. Nor is a transfer by sale, gift or any other contract or agreement valid.

Registration Officers are bound to examine all documents, which purport to be leases or mortgages of the raiyati holdings or Bhuinhari tenures, in order to see that the limitations on transfer contained in the law are not contravened. If the conditions contravene the law, the Registration Officer must refuse to register the document. Several cases, however, come to light, in which illegal and invalid transfers have been registered.

If a transfer is effected in violation of section 46 or any other law, the transferee would be deemed to be in adverse possession ever since the date of the transfer (Khami Mahatuni V. Charan Napit

AIR 1953 Pat. 365). Under Section 46, a lease for a period exceeding five years is prohibited, and the raiyat who leases out his holding under an invalid lease is entitled to sue to recover possession of his holding. He has to bring his suit within the period of Limitation otherwise he cannot recover possession and the alienee may acquire the land by adverse possession (Maharaj Singh V. Budhu Chamar, 1952 Pat. 46).

The term 'lease' used in Section 46 of the Act is not used in the same sense as understood under the Transfer of Property Act. Under the CNT Act, a lease means a document, which creates the right of a tenant. Section 44 provides that every raiyat shall be entitled to receive from his landlord a lease containing the particulars specified in the section. Thus, under the Act, a lease clearly means a document containing the terms and conditions of the settlement made in favour of the raiyat by his landlord. The word 'lease' in Section 46 is used in the same sense as in Section 44 of the Act. Both these sections find place in Chapter VIII of the Act which relate to lease and transfer of holdings and tenures (Haripada Mahato and another V. State of Bihar and others, 1988 BLT (Rep.) 258). Induction of an under-raiyat in an agricultural holding by a raiyat is certainly a transfer within the meaning of Section 46 of the C.N.T. Act. (Amin Mahto V. Commissioner, South Chota Nagpur Division, Ranchi and others, 1987 BLT (Rep.) 297).

Under Section 46(4), the remedy of the plaintiff is by way of an application within three years after the expiration of the period for which power was granted to the Deputy Commissioner to put the plaintiff in possession. No suit for ejectment is maintainable in the Civil Court.

SECTION 48

The provision of Section 46, regarding restrictions on transfer are now made applicable to Bhuinhari tenures surveyed under Act II of 1869, as if they were raiyati holdings. The rights of the landlord to transfer his manjhihas or bethkhata lands are not affected. Bhuinhari tenures which are not of a service character, were, by custom, transferable by sale, without the consent of the landlord. The provisions of Section 46, Sub-section (2) were, for that reason, not made applicable to Section 48, and, a temporary transfer of his right by a Bhuinhar could, therefore, appear to be binding on his immediate landlord. As a matter of custom the official service tenures held by the Pahan, the Mahato and other village officials cannot be transferred by lease or mortgage even for short periods, though this custom is being broken down, and these tenures have been, in some cases, sold by the Courts, in execution of decrees for debts due on the village officials, and have thus been lost permanently to the village community.

SECTION 71-A

Power to restore possession to members of the Scheduled Tribes over land unlawfully transferred – If at any time it comes to the notice of the Deputy Commissioner that transfer of a land belonging to a raiyat or a Mundari Khunt Kattidar or a Bhuinhar who is a member of the Scheduled Tribes has taken place in contravention of Section 46 or 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 enquiry in the matter, evict the transferee from such land without payment of compensation and restore it to the transferor or his heir, or in case the transferor or his

heir is not available or is not willing to agree to such restoration, re-settle it with another raiyat belonging to the Scheduled Tribes according to the village custom for the disposal of an abandoned holding:

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

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 Areas Regulation, 1969, he may, notwithstanding any other provision of the Act, validate such transfer where the transferee either makes available to the transferor an alternative holding or portion thereof as the case may be, of the equivalent value in the vicinity or pays adequate compensation to be determined by the Deputy Commissioner for the rehabilitation of the transferor.

Provided also that if after an enquiry the Deputy Commissioner is satisfied that the transferee has acquired a title by adverse possession and that the transferred land should be restored or re-settled, 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 improvements effected to the land which the Deputy Commissioner may deem fair and equitable

Explanation I -

In this section “substantial structure or building the value of which on the day of initiation of enquiry, was determined by the Deputy Commissioner to exceed Rs. 10,000/- but does not include structure or building of any value, the material of which can be removed without substantially impairing the value thereof.”

Explanation II -

A bhuinhar or Mundari Khunt Kattidar who is deemed to be a settled Raiyat under the provisions of Section 18 of this Act shall also be deemed to be a Raiyat for the purpose of this section.

Section 71-A has been inserted by the Bihar Scheduled Areas Regulation, 1969. The Regulation was framed for the purpose of eliminating hardship caused to a member of a Scheduled Tribe by a person who is not a member of the Scheduled Tribe. Section 71-A is based on the principle of distributive justice: AIR 1983 Pat 151, 1985 BLT (Rep.) 279 (FB), 1987 BLT (Rep.) 131 (FB), AIR 1969 SC 597.

The Deputy Commissioner has been given the power to restore the raiyati land of a member of the Scheduled Tribes if a transfer has taken place:

- (I) In contravention of Section 46 :
- (II) In contravention of any other provision of the Act;
- (III) By any fraudulent method including decrees obtained in suit by fraud and collusion.

The first proviso to Section 71-A confers power on the Deputy Commissioner to direct the transferee, who has constructed a building or a structure on the holding within 30 years from the date of transfer to remove the same failing which the same would be removed.

The second proviso refers to a situation in which the transferee has constructed a substantial structure before coming into force of Section 71-A. The Deputy Commissioner can validate such a transfer, if the transferee either makes available to the transferor an alternative holding or portion thereof of equivalent value in the vicinity or pays adequate compensation. By implication, if the transferee does not fulfil the conditions, the transfer can be invalidated and land restored to the transferor.

Through the third proviso, even if the transferee has acquired title by adverse possession, the Deputy Commissioner is enjoined to require the transferor or his heir to deposit market value of the land alienated as well as compensation for improvements made, as a condition precedent to restoration.

As is held by the Full Bench of the Patna High Court (Ranchi Bench) in CWJC No. 120 of 1979 (R) (Amarendra Nath Dutta and others and the State of Bihar and others):

“Under Section 71-A of the Act the jurisdiction of the Deputy Commissioner is to determine whether the transfers were made in contravention of section 46 or any other provision of the Act or by

any fraudulent method and not transfers in contravention of the Bihar Scheduled Areas Regulation, 1969. And, therefore, even without being retrospective in operation, Section 71-A can include within its ambit transfers made prior to the coming into force of that section, if they were in contravention of Section 46 or any other provisions of the Act or by any fraudulent method.” (1983 (31) (H.C., F.B.R.B. 609).

SECTION – 72

Surrender of land by Raiyat – (1) A Raiyat not bound by a lease or other agreement for a fixed period may, at the end of any agricultural year surrender his holding with the previous sanction of the Deputy Commissioner in writing.

- (2) But notwithstanding the surrender, the Raiyat shall be liable to indemnify the landlord against any loss of the rent of the holding for the agricultural year next following the date of the surrender, unless he gives to his landlord, at least four months before he surrenders, notice of his intention to surrender.
- (3) The Raiyat may, if he thinks fit, cause the notice to be served through the court of the Deputy Commissioner within whose jurisdiction the holding or any portion of it is situate.
- (4) When a Raiyat has surrendered his holding the landlord may enter on the holding and either let it to another tenant or take it into cultivation himself.
- (5) Nothing in this section shall affect any arrangement by which a Raiyat and his landlord may arrange for a surrender

of the whole or a part of the holding with the previous sanction of the Deputy Commissioner in writing.

By virtue of the amending Act of 1947 the surrender of a land by a raiyat can only be made with the previous sanction of the Deputy Commissioner in writing. To quote from the Full Bench Judgement of the Patna High Court in CWJC No. 610 of 1984: Smt. Bina Rani Ghosh V. Commissioner, South Chota Nagpur Division and others:

“When read with Section 6, such a surrender is a transfer of the statutory right of the raiyat to both hold the land and cultivate it either by himself or through others. As long as the raiyati right remains intact, the landlord has merely a right to claim rent from the raiyat and no more. The surrender of the raiyati right, therefore, involves a transfer of a statutory right in property, which would convert the mere right to rent into one of entering into Khas possession of the land and retaining or cultivating the same to the exclusion of all others. This is expressly recognised and conferred by sub-section (4) of Section 72 which provides that when a raiyat surrenders his holding, the landlord may enter on the holding and either let it to another tenant or take it into cultivation himself. It would thus seem that a raiyati right as defined in Section 6 and following from the other provisions of the Act is valuable right in property which cannot in the eye of law escape the label of a transfer of such property rights..... Therefore, it must be held that looking at the wider scheme of the Act a surrender of land by a raiyat would by itself amount to a transfer and if done without the previous sanction of the Deputy Commissioner in writing, it would obviously be contravention of the said section.” (1985 BLT (Rep.) 279 (FB).

WIDER CONNOTATION OF “TRANSFER”

The word “transfer” employed in Section 71-A is neither defined in the said section nor anywhere else in the Act. To quote again from the Full Bench Judgement of the Patna High Court in CWJC No. 610 of 1984 (R): Smt. Bina Rani Ghosh Vs. Commissioner, South Chota Nagpur Division and others:

“In the context this word as laid in Section 71-A would leave little manner of doubt that it was intended to cover all transfers, actual or implied. Apart from this, in the absence of a definition, the word ‘transfer’ has to be given its ordinary dictionary meaning and once it is so, it is settled beyond doubt that it is a word of wide import.” (1985 BLT (Rep.) 279 (FB).

In Shashi Bhushan Singh V. Shankar Mahto (AIR 1950 Calcutta 252), what fell for consideration was the use of the word ‘transfer’ in Section 26-F of the Bengal Tenancy Act, 1885. Their Lordships observed as under:

“(15) As indicated already in Section 26 F of the Act, there is no indication that the word ‘transfer’ is used in any restricted sense. It is used in the general and ordinary sense, and if any assistance can be obtained from sub-section (11) the only conclusion that can be drawn is that the intention of the legislature was not to limit the scope of the word ‘transfer’ in any particular manner. If without reference to any other section in the Act the interpretation of the word ‘transfer’ is to be based, we think that it is the wider meaning and not any restricted one which can be put upon the word transfer.”

And

“(16) The word transfer means the passage of a right from one individual to another. Such transfer may take place in one of three different ways. It may be by virtue of an act done by a transferor with an intention, as in the case of a conveyance or gift, or secondly, it may be by operation of law, as in the case of forfeiture, bankruptcy, intestacy etc. Or thirdly, it may be an involuntary transfer effected through Court, as in execution of a decree for either enforcing a mortgage, or for recovery of money due under simple money decree. The word ‘transfer’ in its ordinary sense would include all these different kinds of transfer.”

Section 71-A in a very wide-ranging context talks of transfer alone, while Section 5 of the Transfer of Property Act employs the composite term of a ‘transfer of property’ as a special term import. Equally it has to be borne in mind that the concept of transfer of property is not in the defining section but in a latter elaboration for the particular purposes of Section-5 and peculiar to the said statute. It is in this context that the salient warning in *Laurence Arthur Adamson and others V. Milbourne and Metropolitan Board of Works* (AIR 1929 Privy Council 181) has to be recalled that it is unsatisfactory and unsafe to seek a meaning of the word used in an Act in the definition clause of another statute dealing with cognate matter even by the same legislature much more so by another legislature. That view has again been forcefully reiterated in *Jainarayan V. Motiram Gangaram* (AIR 1949 Nagpur 34).

The Full Bench of Patna High Court has held in *Smt. Bina Rani Ghosh V. Commissioner, South Chota Nagpur and others* that on the larger purpose of the statute, and in the language of Section 71-A, a surrender by a Scheduled Tribe raiyat of his statutory right to hold land would amount to transfer within the meaning of the said section of the Act (1985 BLT (Rep) 279 (FB)).

SURRENDER & SETTLEMENT

On the larger purpose of the statute and in the language of Section 71-A, a surrender by a Scheduled Tribe raiyat of his statutory right to hold land would amount to transfer within the meaning of the said Section of the Act. A surrender coupled with a settlement, which in essence, is one transaction, would amount to a transfer within the ambit of Section 46 or 71-A. If the surrender and settlement form the same transaction or otherwise, then it would be transfer even in an extreme case when the settlement takes place nearly three years after the original surrender. In *Gopal Gadi Goala V. Rampariksha Rewani & others* (AIR 1958 Patna 553) it was categorically observed as follows:

“Unsophisticated as the people of that area are, but for the legislation, they would have been wiped out by people with superior intellect and bigger purse. Here also, the main object of the arrangement was to effect a transfer of the disputed land to the plaintiffs in satisfaction of their debts, and since this could not have been done directly because of the prohibition contained in Section 46 of the Act they took recourse to this circuitous arrangement. Their object is too patent to be discussed. In my opinion, such a transaction amounts to a clear circumvention of Section 46 of the Chota Nagpur Tenancy Act and cannot be legally given effect to.”

The aforesaid view was affirmed in *Lakhia Singh Patra and others V. Jatilal Aditya Deo and others* (AIR 1968 Patna 160). In *Bhagwandas V. Koka Pahan and others* (1980 BLT (Rep) 35) it was held:

“There is no dispute about the legal position that if it is proved that the surrender of a raiyati land of a member of the Scheduled Tribes was brought about in order to take a settlement of the same and in

other words surrender and settlement are proved to be one transaction or both are parts of the same transaction, Section 46 of the Act will be attracted. Consequently, the proceeding under section 71-A of the Act will be maintainable.”

SECTION 240

Restrictions on transfer of Mundari Khunt-kattidari tenancies. (1) No Mundari Khunt-kattidari tenancy or portion thereof shall be transferable by sale, whether in execution decree or order of a court or otherwise.

Provided that, when a decree or order has been made by any Court for the sale of any such tenancy or portion thereof, in satisfaction of a debt due under a mortgage (other than a usufructuary mortgage) which was registered before the commencement of the Chotanagpur Tenancy (Amendment Act, 1903 (Ben. Act 5 of 1903), the sale may be made with the previous sanction of the Deputy Commissioner.

(2) If the Deputy Commissioner refuses to sanction the sale of any such tenancy or portion thereof under the proviso to sub-section (1), he shall attach the land and make such arrangements, as he may consider suitable for liquidating the debt.

(3) No mortgage of a Mundari Khunt-kattidari tenancy or any portion thereof shall be valid, except a bhugut bandha mortgage for a period, expressed or implied, which does not exceed or cannot in any possible event exceed seven years.

Provided that a Mundari Khunt kattidar tenant may transfer by simple mortgage his right in his tenancy or any portion thereof with a view to raising loan for agricultural purpose to a society or bank registered or deemed to be registered under the Bihar and Orissa

Co-operative Societies Act, 1935 (Bihar and Orissa Act VI of 1935) or a company or Corporation owned by or in which not less than fifty-one per cent of the share capital is held by the State Government or the Central Government or partly by the State Government and partly by the Central Government and which has been set up with a view to providing agricultural credit to cultivators.

(4) No lease of a ‘Mundari Khunt kattidari’ tenancy or any portion thereof shall be valid, except a lease of one or other of the following kinds, namely: -

(a) ‘Mukarrari lease’ of uncultivated land, when granted to a Mundari or a group of Mundaris for the purpose of enabling the lessees or the male members of their families to bring suitable portions of the land under cultivation.

(b) Lease of uncultivated land, when granted to a ‘Mundari cultivator’ to enable him to cultivate the land as a Raiyat.

(5) Where a ‘Mundari Khunt-kattidari’ tenancy is held by the group of ‘Mundari khunt-kattidars’ no bhugut bandha mortgage or ‘mukarrari’ lease of the tenancy or any portion thereof shall be valid, unless it is made with the consent of all the ‘Mundari Khunt-kattidars.’”

(6) No transfer of a ‘Mundari Khunt kattidari’ tenancy or any portion thereof, by any contract or agreement made otherwise than as provided in the foregoing sub-section, shall be valid; and no such contract or agreement shall be registered.

(7) Nothing in the foregoing sub-section shall affect any sale or, except as declared in the proviso to sub-section (1), any

mortgage or any lease made before the commencement of the Chotanagpur Tenancy (Amendment) Act, 1903 (Bengal Act 5 of 1903).

If any person obtains possession of a 'Mundari Khunt-kattidar' tenancy or any portion thereof in contravention of the provisions of Section 240, the Deputy Commissioner may eject him therefrom, and if the tenancy was, before such possession was obtained, entered as a 'Mundari Khunt-kattidari' tenancy in a record of rights finally published under the Act or under any law in force before the commencement of the 1908 Act, no suit shall be maintainable in any Court in respect of such ejectment; but an appeal shall lie as provided in Chapter XVI of the Act (Section 242).

It is common knowledge that some of the provisions of the Act are in the nature of beneficial legislation because provisions have been made therein to protect the raiyati interests of the members of the Scheduled Tribes. Hence, the word 'transfer' used in Section 71-A of the Chota Nagpur Tenancy Act, 1908 is wide in its import and ambit and as such it cannot be given the same meaning which is given to that word in Section 5 of the Transfer of Property Act, 1872.

Surrender by a Scheduled Tribes raiyat of his statutory right amounts to transfer within the meaning of Section 71-A of the Chota Nagpur Tenancy Act, 1908.

Surrender by a Scheduled Tribes raiyat of his statutory right directly coupled with the subsequent settlement of such land by the landlord also amounts to transfer within the ambit of Section 71-A.

The Deputy Commissioner's power under Section 71-A extends to direct restoration of lands, transfers of which were made prior to the

coming into force of the Regulation by which Section 71-A was introduced in the Act. Hence, in the third proviso to Section 71-A, "adverse possession" shall mean adverse possession for 30 years from the date of transfer and the proviso is retrospective in operation.

TRANSFER PROVISIONS: AN ANALYSIS

1. If the Government is desirous of pursuing a genuinely restrictive policy, the Law of Limitation should be made inapplicable in every nook and corner of Chota Nagpur, irrespective of the distinction between Scheduled and non-Scheduled Areas. Since the transferee possession is a continuing wrong, the Law of Limitation would not apply. Neither the provisions of the Limitation Act nor the limitation as provided under Section 231 of this Act will apply to a transfer of general Scheduled Tribes land or of Mundari Khunt-kattidari land, when it is established that the transfer was in contravention of Section 46 or any other provisions (including Section 240) of this Act. Since there is a statutory bar on such transfer of land, the transfer must be held to be a continuous wrong and the Limitation Act will not cure such an illegal transfer (Phagu Mahto and Others V. Commissioner, South Chota Nagpur Division and others, 1986 BLT (Rep) 173 at p. 175).

If this recommendation is accepted, Section 231 of the 1908 Act will have to incorporate Sections 46, 48, 71-A and 240 as no-limitation sections and whatever limitation periods are enshrined in these Sections, should be deleted forthwith.

2. Section 49 of the CNT Act empowered the Deputy Commissioner to authorise transfers for reasonable and

sufficient purposes. Due to an apparent misuse of this power and evincing a lurking distrust with the Deputy Commissioners, the said powers have recently been drastically cut down allowing transfers only for industrial and mining purposes.

Both in Sections 46 and 71-A there are provisions for validating a pre-1969 Regulation transfer on the transferee providing a land of equivalent value in vicinity or on paying adequate compensation, to be determined by the Deputy Commissioner. The validation provisions are apt to be misused, on ulterior considerations, in two ways:

- (a) The transferee leaves no stone unturned in getting the transfer held to have taken place prior to the promulgation of the 1969 Regulation.
- (b) Once he succeeds in his bid, he moves on in his endeavour to get the compensation fixed at a low rate.

Since, the determination of the date of the transfer and the amount of compensation are both purely discretionary, appellate provisions, notwithstanding, the transferor's fate is more or less sealed in a lower court itself, with the balance of judgement tilting in favour of the transferee.

There is yet another hazard involved. More often than not, the transferee wins over the transferor at the very outset, gets a case instituted seeking restoration, and comes out gleefully after getting the transfer validated by a court of law. This is nothing but a fraud on law and a collusive adjudication.

In case the Government does not want to go ahead with a restrictive policy, it should straight- away regularise all the deeds or misdeeds

of the past and open tribal land to the market forces. But there is no justification, whatsoever, to allow a long rope to subordinate courts to declare a transfer as a pre-1969 one and to determine compensation, almost arbitrarily, without any reference to objective market conditions, thereby jeopardising the interests of the tribals.

It is common knowledge that a sale deed does not reflect the actual amount of money rolled in the transaction. What if the value of the tribal land instead of being determined realistically is quoted much below the cosmetic prices mentioned in a sale deed even.

3. Deputy Commissioners, while allowing the transfer of a tribal holding to tribal transferees, are apt to determine a rather low price. No objective yardsticks are followed. Current prices reigning actually in the locality are seldom looked into. They tend to ignore the ground truth that the purchaser, although a tribal, must definitely be on a much more sound footing than the seller. No conscious exercise is undertaken to give maximum advantage to the one who sells.

4. Housing Cooperative Societies, manned by non-tribals have come up on tribal lands, duly allowed by Deputy Commissioners in gross violation of Section 49. The same have been deemed to serve a 'public purpose', which is not the case, with respect to this Act. The Government may like to collect details of such permissions, nullify the same and remove the time bar of 12 years from Section 49 forthwith. Power to sit over the Deputy Commissioners should be vested in the Divisional Commissioners (instead of in the Government, as of now), as that will involve quicker and cheaper justice.

5. A similar probe and removal of 12-year bar is called for with respect to Section 46 (Sub-section 1 : clause (a) of Second Proviso)

also. The Government may like to ascertain as to what price the well-to-do tribal purchaser actually paid to the poor seller. As also, whether any one of the tribal cooperative societies allotted a developed plot or a constructed flat/shop to any one of the tribal sellers.

Needless to say that the neo-elite among the tribals are nowhere far behind in the race to keep the poor tribals of Chota Nagpur in the mire of poverty and to take advantage of their ignorance and other shortcomings.

6. In deciding whether a transfer dates back to pre-1969 period or not, the courts must rely only on documentary evidence. Credence to physical verification/oral evidence can be given to cases in rural areas alone where it was not necessary to have a map passed or take a ration card or power line.

7. Most unfortunate of all is that even if a restoration order is passed it is seldom executed. The buck is passed on to lower administrative units and restoration courts exercise no authority over such units. As and when a restoration information comes it is simply tagged to the restoration records. The Courts do not feel obliged to monitor follow-up. Nor is ever such exercise carried out seriously in the higher echelons of the administration. In the Hindpirhi area of Ranchi town, where a certain community is in illegal possession of tribal land on a large scale, communal disturbances are apprehended if evictions are carried out. The point to be considered is if there is to be conscious and wilful discrimination in the execution of the processes of law in different situations; or every one is to be treated equal in the eyes of law. The point before us is if it suffices that orders remain on paper only, paying lip service to law, or the same have to be carried out with the force of the State behind them. Whether it is a decision not to

restore or keep the restoration orders in the cold storage, the sufferer is an individual who, despite some self styled middle-men, continues to remain overawed and speechless as juxtaposed to the transferee who wields power, authority and influence.

8. There is a view that the date of validation/ regularisation should be extended from 1969 to a later year, say 1980-81 so that more tribal transferors are compensated in the process of regularisation. Otherwise, in 1999, as soon as the stipulated period of 30 years is completed, the transferees will obtain title by adverse possession.

9. Regarding transfer from S.T. to S.T. the transferee has to be a local resident of the Police Station in which the land is situate. By an amendment in Section 46, the term same town/revenue village may be substituted.

10. The Government may like to examine the present extent of the Scheduled Area. On verification of the existence of tribal pockets, the area can be extended to the uncovered areas as well. Population should not be the criterion. The Government perception should be the criterion.

11. The CJM should be empowered to decide on the penal provisions under Section 71-B.

SUGGESTED AMENDMENTS IN THE C.N.T. ACT (Section-wise)

Section 3

Definitions

(ii) Alienation or Transfer –

‘Alienation’ or ‘Transfer’ for purposes of this Act shall cover not only transfers by sale to a person not belonging to Scheduled Tribes but all kinds of transfers including benami transfers, transfers to wives, ploughmen, servants, adopted sons or daughters, sons or daughters taken in adoption by non-tribal transferee through marriage with tribal women, transfer through consent decree, declaratory suits, deeds of surrender or abandonment of land executed by a person belonging to Scheduled Tribe in favour of non tribals, encroachments, trespass, forcible dispossession, acquisition with bogus certificates pertaining their status as ‘Scheduled Tribes’, wrong declaration or suppression of information about caste/tribe and like.

Section 46

Sub-section 1

First proviso:- The expression ‘who is a resident within the local limits of the area of the police station within which the holding is situate’ will be substituted by the following expression;

‘Who is a resident within the local limits of the district within which the holding is situate’.

Section 46

The following paragraph will be added after sub-section 1 proviso-C

“No decree or order shall be passed by any court or officer 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 any decree or order, unless the right of the raiyat to transfer has been recorded in the record of rights or provided in this Act and then only to the extent to which such right is so recorded or provided.

“Provided that a holding or a portion thereof of an occupancy raiyat may be sold in accordance with the procedure laid down in Bihar & Orissa Public Demands Recovery Act, 1914 (B & O Act of 1914) for the realisation of loans taken from any Scheduled Bank within the meaning of the Reserve Bank of India Act, 1934, or a society or Bank registered or deemed to be registered under the Bihar and Orissa Co-operative Societies Act, 1935 (Bihar and Orissa Act VI of 1935) or a financial institution, or a company or a Corporation in which not less than fifty one per cent of share capital held by the State Government or the Central Government or partly by the State Government and partly by the Central Government and which has been set up with a view to provide agricultural credit to cultivator, but if the holding or a portion thereof belongs to a raiyat who is a Member of Scheduled Castes, it shall not be sold to any person who is not a Member of the Scheduled Tribes or Scheduled Castes.

“In case no person belonging to Scheduled Tribes or Scheduled Castes comes forward to buy such a land, the Government shall purchase the land for distribution or allotment to landless persons of the Scheduled Tribes and Scheduled Castes of that village/Police Station.”

Section 46:

The following paragraph will be added at the beginning of sub-section 4(A) (a) :

“If at any time it comes to the notice of the Deputy Commissioner that transfer of land belonging to a raiyat who is a Member of the Scheduled Tribes has taken place in contravention of Section 46 or any other provision of this Act or by any fraudulent method (including decrees obtained in suits by fraud and collusion) he may, after giving reasonable opportunity to the transferee who is proposed to be evicted, to show cause and after making necessary enquiry in the matter, evict the transferee from such land without payment of compensation and restore it to the transferor or his heir, or in case the transferor or his heir is not available or is not willing to agree to such restoration, re-settle it with another raiyat belonging to the Scheduled Tribes according to the village custom for the disposal of an abandoned holding.”

Section 46

Sub-Section 4(A) (a)

First Proviso- To be deleted.

Section 46

Sub-Section 4(A) (C)

The following expression will be added at the end of the first proviso:

“and shall get the land restored or in the event of failure to remove the structure, shall get the land along with the said structure, restored.”

Second Proviso- To be deleted

Explanation- To be deleted

Section 46

New Sub-section (6)

The land shall be restored after an order by the competent authority, within a maximum period of two months.

Explanation: Non-delivery of possession within the stipulated period shall not invalidate the restoration order or be a ground for re-opening the matter by the non-tribal adversary in any Court of law.

Section 46

New sub-section (7)

If a person not belonging to Scheduled Tribes acquires any rights or interests in tribal land, it should be incumbent upon the person to report to the competent authority within thirty days of acquiring such rights or interest.

Section 46

New Sub-section (8)

Acquisition of land belonging to Scheduled Tribes for housing schemes is totally prohibited.

(Main Provision inserted at the beginning of Section 46(4)
(A) (a).

Section 46

New Sub-section (9)

The provisions banning transfer/alienation of lands of persons belonging to scheduled tribes shall prevail over provisions which are not in consonance with them in any other law in force.

Section 46

New Sub-section (10)

Notwithstanding anything contained in any law or any thing having the force of law in Chotanagpur, no right shall accrue to any person in land held or acquired in contravention of the provisions of Section 46.

Section 46

New Sub-section (11)

No transfer in contravention of section 46 shall be registered or shall be in any way recognised as valid by any Court, whether in exercise of civil, criminal or revenue jurisdiction.

Section 71-A

To be deleted along with provisos and Explanation.

CHAPTER – 2

TRANSFER PROVISIONS IN THE SANTAL PARGANAS TENANCY (SUPPLEMENTARY PROVISIONS) ACT, 1949

Prior to the passing of the Santal Parganas Tenancy (Supplementary Provisions) Act, 1949, there was no self-contained codified law of tenancy for the areas. Some of the tenancy laws were contained in Regulation III of 1872. Some were to be found in the Record of Rights and Duties as contained in Settlement Reports, in the rulings of the Commissioner, Bhagalpur and the Deputy Commissioners and in the decisions of civil and revenue courts and also in the executive instructions of the Government and revenue authorities issued from time-to-time. The Santal Parganas Enquiry Committee in its report in 1938 felt that the codification of various laws, rulings and executive orders should be taken up, but at the same time, it was conscious that straight codification might result in rigidity and inflexibility.

The Santal Parganas Tenancy (Supplementary Provisions) Act, 1949 tends to amend and supplement the existing tenancy laws of Santal Parganas. It codifies some of the customary laws relating to the exchange of raiyati lands, sub-letting of raiyati lands under certain circumstances, settlement of vacant and abandoned holdings, rate of landlord's fees on transfer, rights of raiyats relating to tanks and water reservoir, grazing land and jaherthan and rights of raiyats on trees on his lands etc.

The Act repeals certain sections in the following Regulations made by the Governor-General-in Council:

Year	No.	Short Title	Extent of Repeal
1872	III	The Santal Parganas Settlement Regulation, 1872	Section 27 and 28
1886	II	The Santal Parganas Rent Regulation, 1886	Section 25 and 25 A
1907	III	The Santal Parganas Rent (Amendment) Regulation, 1907	Section 8
1934	I	The Santal Parganas Settlement (Amendment) Regulation, 1934	Section 2

From 1937 onwards a series of amendments were introduced in the tenancy laws of the area through the following measures:

- (I) The Santal Parganas Settlement (Amendment) Regulation, 1937 (Bihar Regulation III of 1937)
- (II) The Santal Parganas (Reduction of Rents) Regulation, 1939 (Bihar Regulation I of 1939)
- (III) The Santal Parganas Settlement (Amendment) Regulation, 1939 (Bihar Regulation V of 1939)
- (IV) The Santal Parganas (Payment of the Commission to Headmen) Regulation, 1942 (Bihar Regulation VI of 1942).

After 1949, the Bihar Act 14 of 1949 was further amended by a series of amendments through the following notable legislations:

- (A) The Bihar Scheduled Areas Regulation, 1969 (Regulation I of 1969)

(B) The Bihar Scheduled Areas Regulation, 1972 (Regulation I of 1972)

(C) The Santal Parganas Tenancy (Supplementary Provisions) Amendment Act, 1975 (Bihar Act 17 of 1976)

The scope of the present chapter is limited to examining the legal provisions with regard to the transferability of raiyati holdings in Santal Parganas.

SECTIONS RELATING TO TRANSFER IN THE S.P.T. ACT

20. Transfer of raiyat's rights: (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 such right is so recorded.

Provided that a lease of raiyati land in any subdivision for the purpose of the 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 where gifts by a recorded Santal Raiyat to a sister and daughter are permissible under the Santal law, such Raiyat may, with the previous written permission of the Deputy Commissioner, validly make such a gift:

Provided also that an aboriginal Raiyat may, with the previous written permission of the Deputy Commissioner make a grant in respect of his lands 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) Notwithstanding anything to the contrary contained in the record of rights 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 this Sub-section shall apply to a transfer made by an aboriginal Raiyat of his right in his holding or portion thereof in favour of his Gardi Jamai or Ghar Jamai.

Provided further that a raiyat who is a member of aboriginal tribes or aboriginal castes may, with the previous sanction of the Deputy Commissioner and a raiyat, who is not a member of the aboriginal tribes or aboriginal castes may without such previous sanction, enter into a simple mortgage in respect of his holding or a portion thereof with any Scheduled Bank within the meaning of the Reserve Bank of India Act, 1934, or a society or bank registered or deemed to be registered under the Bihar and Orissa Co-operative Societies Act, 1935 (Bihar and Orissa Act VI of 1935) or a financial institution or with a Company or a Corporation owned by or in which not less than fifty-one per cent of share capital is held by the State Government, or the Central Government, or partly by the Central Government and which has been set up with a view to provide agricultural credit to 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 or officer 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 any decree or order, unless the right of the raiyat to transfer has been recorded in the record of rights or provided in this Act and then only to the extent to which such right is so recorded or provided.

Provided that a holding or a portion thereof of an occupancy raiyat may be sold in accordance with the procedure laid down in the Bihar and Orissa Public Demands Recovery Act, 1914 (B & O Act 4 of 1914) for the realization of loans taken from any Scheduled Bank within the meaning of the Reserve Bank of India Act, 1934, or a society or bank registered or deemed to be registered under the Bihar and Orissa Co-operative Societies Act, 1935 (Bihar and Orissa Act VI of 1935) or a financial institution, or a Company or a Corporation owned by or in which not less than fifty-one per cent of share capital is held by the State Government, or the Central Government, or partly by the State Government and partly by the Central Government and which has been set up with a view to provide agricultural credit to cultivators, but if the holding or a portion thereof belongs to a raiyat who is a member of the aboriginal tribes or aboriginal castes, it shall not be sold to any person who is not a member of the aboriginal tribes or aboriginal castes.

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 the Scheduled Tribes as specified in Part III of the Schedule to the Constitution (Scheduled Tribes) Order, 1950, has taken place in contravention of sub-section (1) or (2) or by any fraudulent method (including decrees obtained in suits by fraud or collusion), he may, after giving reasonable opportunity to the transferee, who is proposed to be evicted, to show cause and after making necessary enquiry in the matter evict the transferee from such land without

payment of compensation and restore it to the transferor or heir, or in case the transferor or heir is not available or is not willing to agree to such restoration, re-settle it with another raiyat belonging to the Scheduled Tribes according to the village custom for the disposal of an abandoned holding.

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

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 Areas Regulation, 1969, he may, notwithstanding any other provisions of the Act, validate such a transfer where the transferee either makes available to the transferor an alternative holding or portion thereof, as the case may be, of the equivalent value in the vicinity or pays adequate compensation to be determined by the Deputy Commissioner for the rehabilitation of the transferor.

Provided also that if after an enquiry the Deputy Commissioner is satisfied that the transferee has acquired a title by adverse possession and that the transferred land should be restored or re-settled, 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 improvements effected to land which the Deputy Commissioner may deem fair and equitable.

Explanation – For the purpose of this section a financial institution means –

- (i) a banking company as defined in the Banking Regulation Act, 1949;
- (ii) the State Bank of India constituted under the State Bank of India Act, 1955;
- (iii) a subsidiary Bank as defined in the State Bank of India (Subsidiary Bank) Act, 1959;
- (iv) a corresponding new bank constituted under the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1970;
- (v) Agricultural Refinance Corporation constituted under the Agricultural Refinance Corporation Act, 1963;
- (vi) the Agro-Industries Corporation;
- (vii) the Agricultural Finance Corporation Limited, a company incorporated under the Companies Act, 1956; and
- (viii) any other institution as may be notified in this behalf as a financial institution by the State Government in the Official Gazette.

21. Transfer of raiyati land by bhugut-bandha or complete usufructuary mortgage by a non-aboriginal raiyat and its limits – (1) Notwithstanding anything contained in section 20, the (State) Government may by notification in this behalf published in the Official Gazette, permit non-aboriginal raiyats, either of the whole of the Santal Parganas or such portion of it as may be considered desirable, to transfer with effect from such date as may be notified,

their rights in their holdings upto the extent of one fourth of their paddy and first class bari lands by bhugut-bandha or complete usufructuary mortgage to –

- (i) a land mortgage bank duly established by the (State) Government, or
- (ii) a grain gola recognized by the Deputy Commissioner, or
- (iii) a society registered or deemed to be registered under the Bihar and Orissa Co-operative Societies Act, 1935 (Bihar and Orissa Act VI of 1935), or
- (iv) a raiyat of the Santal Parganas:

Provided that –

- (a) no such transfer shall be recognized as valid unless it has been made by means of a registered deed and reported in the prescribed manner by the transferor and transferee to the Deputy Commissioner and to the landlord within one month of the registration of the deed:
- (b) no such transfer shall be made for a period exceeding six years and, on the expiry of the period of transfer, no further transfer of any of the lands of the transferor raiyat shall be permissible for a period of six years.

(2) At the time of reporting the transfer to the Deputy Commissioner as required under clause (a) of the proviso to sub-section (1), the transferee shall deposit a fee of five rupees together with a written notice in the prescribed form in the office of the Deputy Commissioner to cover the cost of processes and of re-delivery of possession to the transferor raiyat or his heir on the expiry of the period for which he has transferred his land in accordance with the provisions of sub-section (1) and no such

transfer shall be deemed to be valid unless such fee has been deposited within one month of the registration of the deed.

(3) The transferee shall be liable to pay the rent of the land and shall be liable to immediate eviction and the cancellation of his mortgage on failure to do so. The rent to be paid by the transferee shall be at the settlement rate for the area and class of land transferred.

(4) On expiry of the period of mortgage, the Deputy Commissioner shall of his own motion cause a notice to be served on the parties to the transaction that the period of the mortgage has terminated and shall proceed to evict the transferee and deliver possession to the transferor raiyat.

(5) Any transfer of land made otherwise than under the provisions of the foregoing sub-sections shall be deemed to be a transfer made in contravention of sub-section (1) of section 20.

(6) Any mortgagee found in possession of any land belonging to a raiyat after the expiry of the period of such mortgage shall be punished with imprisonment for a term which may extend to three months and shall also be liable to fine which may extend to five hundred rupees and in the case of a continuing offence, to a further fine not exceeding ten rupees for each day during which the offence continues.

23. Exchange of raiyati land (1) Raiyats desiring to exchange their lands may apply in writing to the Deputy Commissioner who may in his discretion permit such an exchange to be made.

Provided that the Deputy Commissioner shall not permit an exchange to be made unless he is satisfied that –

- (a) the parties to the exchange 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; and
- (d) the lands proposed to be exchanged are of the same value.

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

42. Ejectment of a person in unauthorized possession of agricultural lands: The Deputy Commissioner may at any time either of his own motion or on an application made to him pass an order for 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 or any law or any thing having the force of law in the Santal Parganas.

64. General rule of limitation: All applications made under this Act, for which no period of limitation is provided elsewhere in this Act, shall be made within one year from the date of the accruing of the cause of action.

Provided that there shall be no period of limitation for an application under section 42.

69. Bar to acquisition of right over certain lands: Notwithstanding anything contained in any law or anything having the force of law in the Santal Parganas, no right shall accrue to any person in –

- (a) land held or acquired in contravention of the provisions of section 20 or
- (b) land acquired under the Land Acquisition Act, 1894, for the Government or for any local authority or for a railway company, while such land remains the property of the Government or of any local authority or of a railway company, or
- (c) land recorded or demarcated as belonging to the Government or to a local authority which is used for any public works, such as a road, canal or embankment, or is required for the repair or maintenance of the same, while such land continues to be so used or required or
- (d) a vacant holding retained by a village headman, mulraiyyat and members of their family, or a landlord, or
- (e) village headman's official holding, grazing land, jeherthan and burning and burial grounds.

It will be worthwhile raising certain basic questions in the process of our scrutiny. It is to be hoped that in our bid to find suitable answers, we may be able to develop a clear understanding of the law as well.

QUESTIONS RELATING TO THE TRANSFERABILITY OF RAIYATI HOLDINGS IN SANTAL PARGANAS:

QUESTION – 1

The district of Santal Parganas was carved out of certain areas of the districts of Bhagalpur and Birbhum, where occupancy lands of raiyats were transferable. Logically, why lands falling in Santal Parganas also should not, ipso facto, be deemed to be transferable.

The Full Bench of the Patna High Court has ruled in CWJC Nos. 1573, 1793 of 1970 and CWJC No. 56 of 1971 (1972 PLJR 415) that we have to examine the law, which applied to the Santal Parganas, after its creation in 1855. The area called Damin-i-Koh and other areas of the districts of Bhagalpur and Birbhum, principally inhabited by Santals, were carved out as a separate district of Santal Parganas by the Santal Parganas Act, 1855, principally for the reason that the general Regulations and Acts in force in the Presidency of Bengal were not adapted to the "Uncivilized race of the people called the Santal" as the Preamble of the Act will itself show.

QUESTION – 2

Whether the Limitation Act was applicable to the district and title by adverse possession could be acquired under the Santal Parganas Settlement Regulation, 1872 (Regulation III of 1872).

Under section 3 of this Regulation, certain Regulations and Acts were made applicable in the district and those were mentioned in the Schedule of the Regulation. No other enactment, either passed before or after the coming into force of the regulations was to apply to the Santal Parganas, unless expressly made applicable to this district. It may be mentioned that the Limitation Act and the Code of Civil Procedure are amongst the enactments mentioned in the Schedule, on which basis, it has been argued that the Limitation Act was applicable to the district and title by adverse possession could be acquired.

The decisions of the Patna High Court, such as in the cases of Kala Devi V. Khelu Rai and others (AIR 1949 Patna 124), Kishun Barai V. Huro Pandey (AIR 1949 Patna 408) and Kheyali Bhuiya V.

Bisan Mahto (1957 BLJP 820) support the contention that the Limitation Act applied to the Santal Parganas and title by adverse possession could be acquired under Regulation III of 1872. It will suffice to refer to a passage from the earlier decision, i.e. AIR 1949 Patna 124:

“It does not follow, however, that defendants 7 to 9 are still in the position of trespassers, for, by this very Regulation, the whole of the Limitation Act was made applicable to the Santal Parganas, including the provision regarding prescriptive title. It has accordingly been rightly held by the Subordinate Judge that the defendants, having entered on the land as trespassers and having held it for a period of twelve years in open assertion of permanent tenancy rights therein, have now acquired the right asserted by these and cannot be ejected.....”

Section 27(3) of the Regulation authorised the Deputy Commissioner to evict a transferee, who had come in possession in contravention of Sub-Section (I) of that Section, in his discretion. This power was subject to the exception provided in proviso (a) to that Sub-section, which read thus:

“Provided.....”

(a) that the transferee whom it is proposed to evict has not been in continuous cultivating possession for twelve years.”

In a nutshell, those who had acquired good title under Regulation III of 1872 could not be evicted.

QUESTION-3

Whether raiyati rights were ever transferable in Santal Parganas.

The Santal Parganas Act, 1855 which constituted the district, made the old laws and regulations applicable to a limited extent, none of which made raiyati holdings transferable. In Regulation III of 1872, original Section 26 made provisions for dealing with “improper ouster from land”, pending completion of survey operations. In course of survey, such of the lands which were specifically transferable by custom were recorded as such, from which also it is clear that there was no general custom of transferability of holdings. After survey operations were completed, Section 26, which outlived its utility, was substituted by Section 27, which prohibited transfer by legislation, that is to say it put an end to any further growth of the custom of transferability in the case of non-transferable holdings, than those recorded as transferable by custom during the last survey. Even if a large number of invalid transfers were not disturbed, that would not be a ground for holding that the lands were transferable in Santal Parganas. Regarding the prohibition against transfers after incorporation of Section 27 in Regulation III of 1872, in 1908, by the Santal Parganas Settlement (Amendment) Regulation, 1908 (Regulation III of 1908), the matter stands concluded by the decision of the Supreme Court in the case of Ram Kisto Mandal V. Dhankisto Mandal (AIR 1969 Supreme Court 204) that no incidence of transferability attached to lands of the raiyats in Santal Parganas and the lands were inalienable. The relevant portion from the said decision may usefully be quoted:

“The language of section 27 is clear and unambiguous. It prohibits any transfer of a holding by a raiyat either by sale, gift, mortgage or lease or by any other contract or agreement..... Sub-section (2) of

section 27 in clear terms enjoins upon the Courts not to recognise any transfer of such lands by sale, mortgage, lease, etc. or by or under any other agreement or contract whatsoever.”

Section 27 of Regulation III of 1872 was deleted by the Act of 1949, and, in its place Section 20 has been incorporated in the Act, maintaining the provisions against the transferability of raiyati lands. Section 20 reads thus:

“20. Transfer of Raiyat’s Rights-

(1) No transfer by a Raiyat of his right in his holding or any other 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 records of rights, and then only to the extent to which such right is so recorded.

Provided that a lease of Raiyati land in any Subdivision for the purpose of the 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 where gifts by a recorded Santal Raiyat to a sister and daughter are permissible under the Santal law, such Raiyat may, with the previous written permission of the Deputy Commissioner, validly make such a gift.

Provided also that an aboriginal Raiyat may, with the previous written permission of the Deputy Commissioner make a grant in respect of his lands 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) Notwithstanding anything to the contrary contained in the record of rights no right of an aboriginal Raiyat in his holding or any portion thereof which is transferable shall be transferred in any manner to any one but a bonafide cultivating aboriginal Raiyat of the Pargana or Taluk or Tappa in which the holding is situated:

Provided that nothing in this Sub-section shall apply to a transfer made by an aboriginal Raiyat of his right in his holding or portion thereof in favour of his Gardi Jamai or Ghar Jamai.

(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 or officer 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 any decree or order, unless the right of the raiyat to transfer has been recorded in the record of rights or provided in this Act and then only to the extent to which such right is so recorded or provided.

(5) If at any time it comes to the notice of the Deputy Commissioner that a transfer in contravention of Sub-section (1) or (2) has taken place he may in his discretion evict the transferee and either restore the transferred land to the Raiyat or any heirs of the Raiyat who has transferred it, or resettle the land with another Raiyat according to the village custom for the disposal of an abandoned holding.

Provided that the transferee whom it is proposed to evict shall be given an opportunity of showing cause against the order of eviction”.

Sub-section (5) of this Section has been substituted by the Bihar Scheduled Areas Regulation, 1969 (Bihar Regulation I of 1969), by a new sub-section (5) and the scope of the new sub-section is confined to cases of transfer in contravention of sub-sections (1) and (2) of Section 20 by members of the Scheduled Tribes only, as specified in Part III of the Constitution, and, not to raiyats generally.

A review of the aforesaid enactments will show that there was no general incidence of transferability of raiyati holdings in the district of Santal Parganas.

QUESTION – 4

Whether the restriction of transferability as incorporated in the Act of 1949, became inoperative after the commencement of the Constitution of India.

It has been contended that the 1949 Act might have been a valid piece of legislation in 1949, but it was rendered invalid after the commencement of the Constitution of India. Reliance has been placed on Article 13 (1) in contending that any law putting prohibition on rights “to acquire, hold and dispose off property” guaranteed under Article 19 (1) (f) of the Constitution will be invalid and get eclipsed. Under Article 13 of the Constitution, pre-Constitutional laws which were inconsistent with the fundamental rights enumerated in Part III of the Constitution have been rendered void to that extent. Article 31(1) of the Constitution reads thus –

“(1) All laws in force in the territory of India immediately before the commencement of this Constitution, in so far as they are inconsistent with the provisions of this Part, shall, to the extent of such inconsistency, be void.”

The Patna High Court (Full Bench) has held in CWJC Nos. 1573 and 1793 of 1970 and CWJC No. 56 of 1971 (1972 PLJR 415) that Article 19 (1) (f) of the Constitution has not the effect of creating a right which was non-existent on the date of the commencement of the Constitution, as laid down in the case of Director of Endowments, Hyderabad V. Akram Ali (AIR 1956 Supreme Court 60). A relevant portion from the said decision may usefully be quoted:

“It was conceded that the Nizam had power to confiscate the property and to take it away from the respondent ‘in toto’ and it was conceded that if he had done so the rights so destroyed would not have revived because the Constitution only guarantees to a citizen such rights as he had at the date it came into force; it does not alter them or add to them; all it guarantees is that he shall not be deprived of such rights as he has except in such ways as the Constitution allows.”

The High Court held that the Constitution having no retrospective effect, with respect to the point under consideration, it does not make a non-transferable right transferable. Therefore, the restriction on transfer contained in Section 20, Sub-section (1) and (2), of the Act is not ultra-vires to Article 19 (1) (f) of the Constitution. Ownership of property is a bundle of rights and transferability is one of such rights and it will be fallacious to confuse absence of one of the rights with the ‘property’ itself. If one of the rights is non est on the date of the commencement of the Constitution, that cannot be revived. It is only when the right was continuing and the prohibition was wrong that Article 19 (1) (f) of the Constitution will come in, as observed by the Supreme Court in the case of Gurudatta Sharma V. The State of Bihar (AIR 1961 Supreme Court 1684 – at page 1697).

QUESTION – 5

Whether prohibition of transfer by all kinds of raiyats is an unreasonable restriction.

It has been pointed out that Section 20(1) of the SPT Act was in general terms and it prohibited transfer by all kinds of raiyats. It has been conceded that the restriction may be reasonable within the meaning of Article 19 (5) of the Constitution in cases of Scheduled Tribes, but it could not be so in case of raiyats in general and that the law in so far as it has been made *lex loci* in the district of Santal Parganas prohibiting transfer in all cases is an unreasonable restriction and could not be justified under the said Article. A large number of outsiders have somehow come to acquire lands in Santal Parganas, which transfers have been recognised. It has been contended that to apply the law of non-transferability in those cases also could not be justified and those non-Scheduled Tribe raiyats of Santal Parganas could not be allowed to remain in the same state as they were in the last century.

This argument, though attractive, is without any substance and has got to be rejected in view of the decision of the Supreme Court reported in AIR 1969 Supreme Court 204 (Supra) which has also referred to an earlier decision of the Supreme Court in the case of *Jyotish Thakur and others Vs. Tarakant Jha and others* (AIR 1969 Supreme Court 605). A relevant portion from the said decision reads thus:

“The prohibition against transfer of raiyati lands situated in Santal Parganas has its roots in the peculiar way of life of Santal villages, which favours the emergence of a powerful village community with its special rights over all the lands of the village. This community

of village raiyats has preferential and reversionary rights over all lands in the village, whether cultivated or un-cultivated. There is also in the majority of the villages of this district, a Headman, who in addition to performing certain village duties, collects rent from the raiyats and pays it to the proprietor. One of his duties in his capacity as the Headman is to arrange for settlement of lands in his village, which may fall vacant and thus become available for settlement. All the raiyats in the village are included in the Jamabandi prepared for the village and it is the Headman’s duty to settle the available land with one of the Jamabandi raiyats. It is manifest that the interest of the village community as also of the Headman would suffer if the land, which as raiyati land would be included in the Jamabandi, is allowed to be taken out of the total quantity of the raiyati lands. If once these lands are allowed to lose their raiyati character, it is certain, the village may find, in the course of a few years, the total stock of land available for settlement to resident raiyats dwindling before their eyes. It was in this state of things that the alteration of a raiyati holding in any form was interdicted by Government orders in 1887. These orders had the effect of checking the practice of open transfers. But transfers in disguised forms continued as is clear from a note of McPherson to the settlement report of the Santal Parganas wherein he warned against such disguised transfers. His note was accepted by the Government and the result was the amendment of the Regulation by which Section 27 was inducted therein.”

There cannot be any doubt, on the basis of the decision of their Lordships of the Supreme Court, that restriction on transfer was reasonable one and fully justified in the interest of the village community of Santal Parganas and for the protection of the Scheduled Tribes residing therein as it will be they who will have preferential right of getting those lands in the event of any jamabandi raiyat, aboriginal or non-aboriginal, becoming extinct or

abandoning any holding. The argument, therefore, that Section 20 (1) of the Act was violative of Article 19 (1) (f) of the Constitution, in as much as this was made lex loci of Santal Parganas and applied to non-Santals, is without substance.

QUESTION-6

Whether title by adverse possession could be acquired after the 1949 Act was promulgated.

Coming to the question whether title by adverse possession could be acquired after the 1949 Act came in, it will be useful to refer to Section 42, 64 and 69 of the SPT Act.

Section 42 of the Act reads thus:

“42 The Deputy Commissioner may, at any time, either of his own motion or on an application made to him, pass an order for ejection of any person who has encroached upon, reclaimed, acquired or come into possession of agricultural land in contravention of the provisions of this Act or any law or anything having the force of law in Santal Parganas.”

The other two sections, namely, Section 64 and 69 of the Act may also be quoted:

“64 All applications made under this Act, for which no period of limitation is provided elsewhere in this Act, shall be made within one year from the date of the accruing of the cause of action.

Provided that there shall be no period of limitation for an application under Section 42.”

69. "Notwithstanding anything contained in any law or anything having the force of law in Santal Parganas, no right shall accrue to any person in

- (a) land held or acquired in contravention of the provisions of Section 20, or,
- (b) land acquired under the Land Acquisition Act, 1894, for the Government or for any local authority or for railway company, while such land remains the property of the Government or of any local authority or of a railway company, or,
- (c) land recorded or demarcated as belonging to the Government or to a local authority which is used for any public works, such as a road, canal or embankment, or is required for the repair or maintenance of the same until such land continues to be so used or required, or,
- (d) a vacant holding retained by a Village Headman, Mul Raiyat and members of their family, or a landlord, or,
- (e) Village Headman's official holding, grazing land, Jaherthan and burning and burial grounds.”

Section 69 (a) has made it clear beyond doubt that notwithstanding anything contained in any law or anything having the force of law in the Santal Parganas, no right shall accrue to any person in any land held or acquired in contravention of the provisions of Section 20 of the Act. Section 20 prohibits transfer, settlement or lease in any manner unless the right to transfer is recorded in the record of rights, in respect of any raiyati holding. Therefore, although the law of limitation has been made applicable by Section 3 of

Regulation III of 1872, which provision has not been repealed by the Act, still Section 69 makes it clear beyond any shadow of doubt that no right will be acquired or accrue in contravention of Section 20 of the Act. The provision in Section 64 is that there will be no period of limitation for filing an application. Section 42 of the Act also seems to achieve the same object. Therefore, the application of acquisition of title by adverse possession under Section 28, read with Articles 142 and 144 of the Limitation Act is explicitly excluded in the Act. Full Bench of the Patna High Court in CWJC Nos. 1573 & 1793 of 1970 and CWJC No. 56 of 1971 (1972 PLJR 415) holds that contravention of the provisions of Sub-section (1) and (2) of Section 20 will be a continuing wrong because of Section 69. It has, however, been made clear in the ruling noted above that Sub-section (1) and (2) of Section 20 of the Act are prospective and do not bar acquisition of title by adverse possession in respect of contravention of the Regulation, as distinct from the contravention of the Act.

QUESTION –7

Whether the Limitation Act applies to the Santal Parganas and its application is not excluded under the SPT Act, 1949.

It has been argued that the Bihar Scheduled Areas Regulation, 1969 (Bihar Regulation I of 1969), which was assented to by the President on the 8th February, 1969, and which amended Article 65 of the Limitation Act, provided a longer period of 30 years' limitation in case of Scheduled Tribes instead of 12 years. The argument is if title by adverse possession could not be acquired under the Limitation Act, in Santal Parganas, which is a Scheduled Area, there was no meaning in providing, by amendment, a larger period of limitation for possessory suits by Santals. It has also been suggested that this Regulation (I of 1969) has amended Section 20

(5) of the Act and from the third and the last proviso to the amended Sub-section (5), it will be apparent that adverse possession could be acquired in case of Scheduled Tribes after 30 years' possession and on parity after twelve years in case of non-Scheduled Tribes.

The above argument overlooks the basic fact that the aforesaid Regulation I of 1969 was enacted to make provisions and to amend certain laws in their application to the Scheduled areas in the State of Bihar, as the preamble shows. The effect of the amendments is that the limitation under Article 65 of the Limitation Act, where applicable, will be 30 years in case of Scheduled Tribes instead of 12 years, as in the case of others. From the above amendment no inference can be drawn that title by adverse possession could be acquired under the 1949 Act, in spite of the clear provision of Section 69 of the said Act. To understand the true import of the provisions of Sub-section (5) of Section 20 as amended, it would be relevant to analyse the scope thereof. It may be recalled that the unamended Sub-section (1) and (2) of 5 applied to cases of transfer in contravention of sub-section Section 20, in all cases, that is to say, the Scheduled Tribes as well as the non-Scheduled Tribes. The amendment has confined its operation to cases of transfer by Scheduled Tribes only, in contravention of Sub-section (1) and (2). Sub-section (5) of Section 20 also covers cases of transfer of land by Scheduled Tribes 'by any fraudulent method' (including decrees obtained in suits by fraud or collusion) (Inserted by Section 3 of the Bihar Scheduled Areas Regulation, 1971 (Bihar Regulation I of 1972). In that respect, the operative field of Sub-section (5) of section 20, in respect of Scheduled Tribes, has been enlarged. Since the scope of this provision has been widened, no argument can be sustained that acquisition of title by adverse possession was envisaged under the last proviso. This may very well relate to cases which are not covered by contravention of Sub-section (1) and (2)

of section 20, and protected under 69 (a) of the Act (1972 PLJR 415).

Section 3 of the old Limitation Act laid down that a suit or appeal etc. filed beyond the period of limitation shall be dismissed by the Court, even if no defense on account of limitation had been taken. It is thus apparent that the right to acquire title by adverse possession is a statutory right under the Limitation Act and not a common law right or a fundamental right guaranteed under Part III of the Constitution, for the contravention of which Article 19 (1) (f) could be attracted which would make the provisions of the Act invalid. This view finds support from the decision of the Supreme Court in the case of Jamuna Prasad Mukherjiya V. Lachhi Ram and others (1965 Supreme Court Reports 608).

QUESTION –8

Whether Section 42 of the 1949 Act is discriminatory.

It has been contended that Section 42 of the Act is discriminatory, in as much as if action for eviction is taken before a Civil Court, there will be a defence that the suit is barred, if brought after twelve years, in case of non-Scheduled Tribes, or 30 years, in case of Scheduled Tribes, as under amended Article 65 of the Limitation Act, by Regulation I of 1969, but there will be no defence, if action is taken before the Deputy Commissioner, under section 42 of the Act, for eviction. The position, therefore, comes to this that whereas the suit will fail before the Civil Court, if such a defense is sustained, but if the plaintiff will go before the Revenue Court, i.e. the Deputy Commissioner, he will get the desired relief. Therefore, this was a harsher remedy and Section 42 was hit by Article 14 of the Constitution, as it was a denial of “equality before law or equal protection of laws.”

In the case of Jyotish Thakur (AIR 1963 Supreme Court 605), their Lordships of the Supreme Court held that jurisdiction of the Civil Court was not barred under the 1949 Act.

The remedy under the Act is not harsher in as much as, even if a party goes to a Civil Court, the law to be applied before the Civil Court will be the provisions of the Act itself, which under Section 69 bars the acquisition of any right in all classes of lands. Civil Court also is not to recognise transfers in contravention of Section 20 of the Act and also to take note of Section 69 which bars acquisition of all rights. Hence there is no substance in arguing that the procedure to be followed before the Deputy Commissioner would be harsher. Under section 57 to 60 of the Act, there is provision for appeal, second appeal, revision and review against the orders in proceeding before the Deputy Commissioner. Therefore, the proceedings under the Act cannot be said to be onerous or harsh to the litigants. On the other hand, the proceedings before the Deputy Commissioner may be quicker ones and thus eliminate the delay in the dispensation of justice.

QUESTION – 9

Whether Section 42 of the 1949 Act is expropriatory.

An argument has been advanced that section 42 of the 1949 Act is expropriatory, in as much as, it provided for taking away the property from a transferee and giving it to the transferor without payment of compensation. This argument is based on the assumption that title by adverse possession would be acquired under the Act in case where transfer was in contravention of Section 20 (1) and (2) of the Act.

Title by adverse possession could not be acquired under the 1949 Act by a transferee, in view of the clear bar to acquisition of any such title under section 69 of the Act. Therefore, restoring back the property from the unlawful possession of a transferee, who could not acquire any title from such an invalid transfer, in spite of his long possession, to the transferor, whose title; at no point of time extinguished, will not come under the mischief of Article 31 of the Constitution (1972 PLJR 415).

CONCLUSIONS

1. There was no incidence of transferability of raiyati holdings in Santal Parganas on the date of the commencement of the Constitution, either because there was no right of transferability at any point of time in Santal Parganas, or even alternatively because Section 27 of Regulation III of 1872 had made them non-transferable, which section was replaced by Section 20 of the Act in 1949.

The Constitution having no retrospective effect, with respect to the point under consideration, it does not make a non-transferable right transferable. Therefore, the restriction on transfer contained in Section 20, Sub-section (1) and (2) is not ultra vires Article 19 (1) (f) of the Constitution.

Even if Article 19 (1) (f) of the Constitution was attracted, there cannot be any doubt on the basis of the decisions of the Supreme Court that restriction on transfer was reasonable one and fully justified in the interest of the village community of Santal Parganas and for the protection of the Scheduled Tribes residing there.

2. Those who had acquired good title under Regulation III of 1872 could not be evicted. Limitation Act applied to the Santal Parganas and adverse title, under the Regulation, could be acquired.
3. Although, the Law of Limitation has been made applicable by Section 3 of Regulation III of 1872, which provision has not been repealed by the 1949 Act, still Section 69 makes it clear beyond any shadow of doubt that no right will be acquired or accrue in contravention of Section 20 of the 1949 Act. The application of acquisition of title by adverse possession under section 142 and 144 of the Limitation Act (old) is explicitly excluded in the Act.

It may, however, be made clear that Sub-section (1) and (2) of Section 20 of the 1949 Act are prospective and do not bar acquisition of title by adverse possession in respect of contravention of the Regulation, as distinct from the contravention of the 1949 Act.

4. Section 42 of the 1949 Act is a legislation in respect of Entry 21 of List II – State List of the Seventh Schedule to the Constitution, and is not violative of or repugnant to the provisions of the Limitation Act, a Central Legislation, dealing with acquisition of right by adverse possession. It is a valid piece of legislation.
5. The Limitation Act is operative in the Santal Parganas, but its application in so far as acquisition of title by adverse possession is concerned has been abrogated to acquisition of title in regard to raiyati lands and some other kinds of lands as mentioned in Section 69 of the 1949 Act which the Bihar Legislature was competent to enact under the State List II,

while making law in respect of 'land' and 'right' in or over land.'

TRANSFER PROVISIONS: AN ANALYSIS:

1. Pre-dated, cooked up documents are often presented in Courts by persons belonging to non-Scheduled Tribes to stake title claims by 12 years or more of adverse possession prior to 1.11.1949. These documents are not registered. Documents, which are compulsorily registrable, if not registered, should not be given any legal cognizance. Kurfa, being one such commonly adduced document, should not be taken as a document in evidence.
2. Apparent incongruence between Section 42 and 69 of the 1949 Act on the one hand and the three Provisos to Sub-section 5 to Section 20 should be removed without any further delay.

If the Government intends to continue with a restrictive policy wherein no rights will accrue out of adverse possession after the promulgation of the 1949 Act, the three Provisos added to the main Act by the Scheduled Areas Regulation, 1969 (Bihar Regulation I of 1969) should be deleted forthwith.

There is yet another cogent reason why the three provisos should be deleted. Provisos 1 & 2 talk about compensation/re-purchase money/adequate value and the like. In a way land is rendered transferable or a transfer is sought to be regularised. This militates against Sub-section (1) and (2) of Section 20 whereby transfer is prohibited.

In case the Government intends to embark on a rather open ended policy to a certain extent, the said provisos may be retained and Sections 42 and 64 of the 1949 Act may be suitably amended or deleted. In that case, necessary modification in Sub-sections (1) and (2) of section 20 too will have to be carried out, rendering raiyati holdings of all classes of raiyats transferable, without any fetters.

The said three Provisos, which also appear in the Chota Nagpur Tenancy Act (Section 71-A), are compatible to other provisions in that Act as there are no provisions in that Act corresponding to sub-sections (1) and (2) of Section 20, Sections 42 and 69 of the S.P.T Act.

3. Sub-section 5 of Section 20 of the pre-1969 Regulation S.P.T. Act was much more drastic than the post-1969 Regulation Sub-section (5). The former imposed transfer restrictions on all kinds of raiyats. The latter applies only to Scheduled Tribe raiyats.

True, non-S.T. raiyats can still be taken care of under Section 42 of the S.P.T. Act.

However, it will be more in the fitness of things if all classes of raiyats are covered in the post-1969 Regulation Sub-section (5) as well to correspond in a more apparent and fitting way to Section 42.

4. The 30 year limitation in Proviso-3 to Sub-section (5) of Section 20 is concerned only with S.T. land. The Proviso is silent on non-S.T. land.

However, since this proviso rebels against the overall spirit of the Act as enshrined in Section 69 this and the other two Provisos should be deleted, as recommended above, in case the Government is desirous of continuing a genuinely restrictive policy.

5. Section 42 of the S.P.T Act talks about ejection. It is silent on restoration. If it is read in conjunction with Section 20(5), we will find that in the latter while S.T. land is restorable, non-S.T. lands are not restorable.

Section 42 must be so modified as to provide for restoration as well for all classes of lands.

6. There is a major anomaly in law hindering tribal development in Santal Parganas.

Provisions under section 21 of the S.P.T. Act regarding bank loan, bhugat bandha (mortgage) are meant only for non-tribals, that too, for agricultural improvement alone.

This Section must be opened for tribal raiyats also.

All classes of raiyats should be allowed to make non-agricultural uses of agricultural lands and should also be allowed, with Deputy Commissioner's permission to transfer lands against delineated purposes. (as in Section 49 of the Chota Nagpur Tenancy Act). Appeals may lie with the District Judge.

It is worth noting that banks etc. usually advance credit against a mortgage of such lands only, which are transferable.

Even with regard to non-S.Ts. there is a contradiction in law. While Sub-sections (1) and (2) of section 2 put a general ban on transfer, Section 21 allows mortgage of non-S.T. land (deeming it to be transferable), for purposes of institutional credit.

7. As per Section 2 of the S.P.T. Act, the State Government may, by notification, withdraw this Act, or any part thereof, from any portion of the Santal Parganas Division and may likewise extend this Act or any part thereof to the area from which the same has been so withdrawn.

There has not been such withdrawal in areas which were in course of time urbanized. The Government may like to notify such withdrawal from such areas.

8. Basauri tenancies are transferable. The R.O.R.(Records of Rights) makes provisions to this effect. No such explicit provision exists in the S.P.T. Act. As a result, the protective cover which is available to other raiyats is not available for Basauri raiyats. This lacuna needs be removed.

9. As per Section 20(2) a tribal raiyat can transfer lands recorded as transferable in the ROR to another tribal raiyat.

Since literate and prosperous tribal elements are apt to exploit the lesser-developed tribals, this provision may be deleted.

10. There should be a provision in law that eviction orders should be implemented within one year from the date of the order, subject to extension for reasons to be recorded in

writing. As of now there is no time limit for effecting restoration, which drags on ad infinitum.

Rules should be framed with regard to the execution of eviction order under Section 42 on the pattern of Order XXI of the CPC. True, where the law is silent, the CPC will apply. However, there is no harm if specific Rules are framed.

11. Regarding civil suits (in between tribals or between tribals and non-tribals), it should be made imperative through an amendment in the S.P.T. Act to implead the Deputy Commissioner as a necessary party.
12. If a tribal has no lawyer, no lawyer should be allowed to a rival party. The earlier Santal Civil Rules carried a provision to that effect.
13. Section 67 of the S.P.T. Act provides for penalties. But it is silent as to who will take cognizance. A provision should be made that cognizance will be taken as per the provision of the Cr. P.C.

Secondly, the authority whose orders are violated should file OCR (Official Complaint Report) with the CJM. The CJM may decide on fine or imprisonment. In the case of fine, the CJM may write to the Deputy Commissioner to initiate proceedings under the Public Demands Recovery Act.

14. There should be provision for recovering demurrage for the unauthorised use of tribal land.

15. The transferee should be obliged to restore land in its original condition within a certain period failing which the authorities shall get the same restored to its original condition and recover costs thereof by instituting a certificate case.
16. There is a view that even in non-transferable villages, lands belonging to non-Scheduled Tribes should be made transferable.

As per the SPT Act, a tribal land can be transferred to the tribal's daughter, sister or widowed mother and the widow. There are provisions for Ghar Jamai also.

Law is silent with regard to non-S.T. lands. The non-S.T. lands too must be made transferable to family members likewise.

17. No lease provisions exist on tribal lands. Section 20 (Proviso -1) provides for a 1-year lease only for liquor shops. Lease facilities for specific periods may be provided in law.

As of now, lands for stone quarrying in Pakaur areas are being leased out against affidavits, which are extra-legal. There should be provisions for mining leases for specified periods.

18. There is a view that in order to meet a special contingency like wedding, death or treatment of serious diseases, the tribals should be allowed to transfer a limited portion of their lands. This will prevent them from falling a prey to

unscrupulous money-lenders and elements indulging in disguised transfers.

Some codification of the right to property in respect of Santal women is the need of the hour. As of now, Santal women have a right to maintenance, but no right to property. A daughter has neither the right to maintenance nor the right to property. A widow will not inherit property, but she has a right to maintenance. It is common crime that issueless widows are killed on this or that pretext and there is clean acquittal of the accused for want of evidence.

Inheritance is allowed in the Santal custom, only in the following two cases:

- (a) if there is no male heir, the daughter's husband is taken as Ghar Jamai and it is he (not the daughter) who inherits the property of the father-in-law. Customarily, there is a declaration to that effect. The Ghar Jamai is shown all the lands etc. belonging to the father-in-law. The consent of the Pradhan is essential for the marriage to be valid. Such a son-in-law loses all title and interest in his own paternal property. In the event of the demise of the Ghar Jamai, his son inherits the former's property. If there is no son, the property goes to the agnates of the Ghar Jamai's wife, who, in turn avails of her right to maintenance.
- (b) In case a Santal raiyat has no male issues, he can adopt the son of his daughter and a function called Agumit is organised on the occasion. The Pradhan's consent is essential in this respect as well.

It is to be noted here that the Santal women have no right to adoption.

It is interesting to note that a major percentage of Cr.P.C. cases in Civil Courts and in the Courts of Executive Magistrates relate to proving or disproving a gharjamai. The interest of the daughter's agnates lies in getting a Ghar Jamai derecognised in order to take hold of the Ghar Jamai's property.

It is apprehended that in the event of a Santal woman getting a right to property and marrying a non-Santal, the latter might desert the wife after grabbing her property. It is suggested that in case the Santal women are given the right to property the same should cease to exist in the event of their marrying a non-Santal.

As custom prevails today, a Santal woman has no property rights either at father's home, before marriage, or in husband's property at the latter's home. If she has a minor son, she is a bare caretaker or a governess. If she is issueless, property will go to her agnates and she will be entitled only to Khoris (maintenance).

If there is a complete family partition, widows and her children must get the share, which would have gone to her husband had he been alive.

The Department of Revenue and Land Reforms, Government of Bihar, must issue necessary instructions to revenue authorities to record the land rights of Santal women, especially, widows.

A relevant extract from the Survey Report 1913-1918 (Kolhan-Singhbhum) by A.D. Tuckey, ICS, Assistant Settlement Officer, Chota Nagpur may be usefully quoted here –

“88 Maintenance holdings of Unmarried Ho Women – An unmarried Ho woman is entitled on her father’s death to be maintained by her brothers, or if she does not care to live with them, to a share in the property for her maintenance. This she will keep until her marriage or death; in either event the land reverts to her male kin. A separate Khatian was given for these maintenance holdings of unmarried women. In the “Name of raiyat” column the owner was recorded as A, sister of B, C and D, and in the “Special incidents” column it was noted that on the death or marriage the lands would revert to the family.”

19. Quite a good number of entries, bad in law, were made in favour of non-Scheduled Tribes, coming from outside the region, in course of the Gantzers’ Survey (1922-1935). The factum possession, nevertheless, remained with the Santals, whose ancestors’ names against the lands concerned figured during the Brown Wood’s Survey (1873-1879) and McPherson and Allanson’s Survey (1898-1907). Paddy harvesting continues to be a law and order problem in many pockets of the region even today as the owner of the land (on paper) and the tiller of the land are two different entities. The Government may like to issue necessary instructions to set aside Gantzers’ and to allow entries in favour of the actual tiller who falls in the genealogical line from Wood’s Settlement downwards.

SUGGESTED AMENDMENTS IN THE S.P.T. ACT (SECTION – WISE)

Section 4

Definitions

(ii) Alienation or Transfer –

‘Alienation’ or ‘Transfer’ for purposes of this Act shall cover not only transfers by sale to a person not belonging to Scheduled Tribes but all kinds of transfers including benami transfers, transfers to wives, ploughmen, servants, adopted sons or daughters, sons or daughters taken in adoption by non-tribals, transfer through marriage with tribal women, transfers through consent decree, declaratory suits, deeds of surrender or abandonment of land executed by a person belonging to scheduled tribes in favour of non-tribals, encroachments, trespass, forcible dispossession, acquisition with bogus certificates pertaining to their status as scheduled tribe, wrong declaration or suppression of information about caste/tribe, and the like.

Section 20 (1)

The following new provisos will be added;

Provided also that a member of the Scheduled Tribes can transfer his land to another member of the Scheduled Tribes with the prior permission and under the supervision of the Deputy Commissioner. Such a member can also transfer his land to the Government which, in turn, will use the land acquired or purchased for distribution among deserving members of the Scheduled Tribes in the same district or for any other express public purpose.

Provided also that in a scheduled area, a person who is not a member of the Scheduled Tribes can transfer his land either to a member of the Scheduled Tribes or to the Government in the manner prescribed in the preceding proviso.

Provided also that in a non-scheduled area a person who is not a member of the Scheduled Tribes can transfer his land either to a member of the Scheduled Tribes or to a person who is not a member of the Scheduled Tribes or to the Government.

Note – A separate fund will be created by the Government to effectuate transfers of land, as in the foregoing, to the Government.

Section 20 (4)

The following provision to be made at the end of proviso:-

“In case no person belonging to scheduled tribes or scheduled castes comes forward to buy such a land, the Government may purchase the land for distribution or allotment to landless persons of the scheduled tribes and scheduled castes of that village/police station.”

Section 20 (5)

The expression (a) to be added at the beginning of the first para.
New Insertions:

- (a) The Deputy Commissioner may, of his own motion or on an application filed before him by an occupancy raiyat who is a member of the Scheduled Tribes for annulling the transfer on the ground that the transfer was made in contravention of the provisions of section 20, hold an enquiry in the prescribed manner to determine if the transfer has been made in contravention of the provision under section 20.

Provided that before passing an order at the end of the said enquiry, the Deputy Commissioner shall give parties concerned a reasonable opportunity to be heard in the matter.

- (b) If after holding the enquiry referred to in clause (b) of this sub-section, the Deputy Commissioner finds that such transfer was made in contravention of the provisions of Section 20, he shall annul the transfer and eject the transferee from such holding or portion thereof as the case may be, and put the transferor in possession thereof.

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

Note:- First, Second and Third provisos to Section 20(5) will be deleted.

Section 20

New Sub-section (6)

The land shall be restored after an order by competent authority within a maximum period of two months.

Explanation: - Non-delivery of formal possession within the stipulated period shall not invalidate the restoration order or be a ground for reopening the matter of the non tribal adversary in any court of law.

New Sub-section (7)

If a person not belonging to the Scheduled Tribes acquired any rights or interests in tribal land, it should be incumbent upon the persons to immediately report to the competent authority.

New Sub-section (8)

Acquisition of land belonging to the members of the Scheduled Tribes for housing schemes is totally prohibited.

New Sub-section (9)

The provisions banning transfer/alienation of lands to persons belonging to Scheduled Tribes shall prevail over other provisions, which are not in consonance with them in any other law in force.

New Sub-section (10)

Notwithstanding anything contained in any other law for the time being in force, the Deputy Commissioner shall be necessary party in all suits of a civil nature relating to any holding or portion thereof in which one of the parties to the suits is a member of the Scheduled Tribes and the other party is not a member of the Scheduled Tribes.

Section 42

The expression ‘and non-agricultural land’ will be added after ‘agricultural land.’

Case Study No. 1

SAR CASE NO. 112/1995-96, 90/1994-95, 74/1993-94

District: Ranchi

This case was started on 16.6.1995 against Ops Shiv Vachan Prasad, Gupteshwar Nath Chaudhary and K.P. Singh U/S 71-A of the CNT Act, on a petition by Bul Munda S/o Late Somra Munda resident of Hinoo, district- Ranchi. The petitioner wants the restoration of 52 decimals of his land in plot No. 616 of the same Khata. Against the same Ops land restoration case No. 116/94 had been filed for the restoration of a total area of 50 decimals falling in 615, 616 and 576 falling in khata No. 171. Again the same petitioner has filed SAR Case No. 74/ 1993-94 against Shiv Vachan Prasad on 19.6.1993 for the restoration of 29 decimals of land in plot No. 616 of Khata No. 171.

A show cause has been filed by Shiv Vachan Prasad, Gupteshwar Nath Chaudhary and K.P. Singh in SAR Case No. 112/1995-96. Hence all the related cases were amalgamated in SAR Case No. 112/1995-96.

The petitioner furnished the photo copy of the khatian of khata No. 171 of Mouza Hinoo. Its entries make it clear that this khata is entered in the names of Somra Munda and Bul Munda S/o Vimal Munda. The disputed plot No. 576 and 616 has been shown to be occupied by Bul Munda. Plot No. 576 has an area of 52 decimals, plot No. 615 has 23 decimals and plot No. 616 has got 21 decimals of area.

The Ops submitted in their show cause that the case was not maintainable. They further contended that the petition was barred by

limitation. The petitioner has not framed any definite charge against the Ops. He has not been able to prove how, by whom and in what manner, which particular provision of the CNT Act has been violated. The petition, therefore, is far from being clear. The transfer itself could not be proved.

OP Shiv Vachan Prasad submitted that 4 kathas, 1 chhatak of land and house falling in plot No. 576 has been bought on 9.4.1969 vide registered sale deed from Taiyab Ali S/o Wahi Ali. Similarly, 2 kathas of land in plot No. 576 and 616 had been purchased by Smt. Manju Rani W/o Keshaw Prasad Singh from Mrinal Shankar on 21.8.1979. Mrinal Shankar in turn had bought 12 kathas of land vide registered sale deed No. 5225 dated 17.5.1969 from Jaya Krishna Prasad Singh. Smt. Mangala Chaudhary W/o Gupteshwar Nath Chaudhary is in possession of 4 kathas of plot no. 576 and 616. She had bought this land vide registered deed No. 7106 dated 21.8.1979 from Mrinal Shankar. Originally, this land had been taken in Chhapparbandi settlement from the ex-intermediary on 20.5.1946 by Abdul Mannan. The ex-intermediary had settled as Chhapparbandi a total area of 96 decimals of land as follows: 52 decimals in plot No. 576, 23 decimals in plot No. 615 and 21 decimals in plot No. 616. Since the land had changed its nature to Chhapparbandi, it was beyond the pale of the CNT Act.

The 96 decimals of land, as aforesaid, had been surrendered by the recorded tenant in favour of the ex-intermediary on 12.5.1938.

The Ops have got the disputed lands mutated in their favour. They have adduced the following documents in support of their show cause:

1. Photo copy of the Chhapparbandi settlement paper dated 20.9.46 issued in the names of Abdul Mannan by Babu Triveni Prasad, ex-intermediary.
2. Zamindari Rent Receipt from 1949 to 1955 issued in the name of Abdul Mannan
3. Photo copy of the registered sale deed No. 5965 dated 31.7.1965 issued by Abdul Mannan in favour of Taiyab Ali.
4. Registered sale deed dated 9.4.1969 executed in favour of Jaya Prasad.
5. Registered sale deed dated 17.5.1969 executed by Jaya Krishna Prasad in favour of Mrinal Shankar.
6. Registered sale deed dated 21.8.1979 executed by Mrinal Shankar in favour of Smt. Mangala Chaudhary.
7. Mutation correction slip dated 7.6.1980 issued in favour of Mangala Chaudhary and rent receipt from 1979 to 1986.
8. Rent receipt issued by the Ranchi Municipal Corporation.
9. Sale deed dated 9.4.1969 executed by Taiyab Ali in favour of Smt. Kamla Devi W/o Shiv Vachan Prasad.
10. Rent receipt issued by the Ranchi Municipal Corporation in favour of Kamla Devi.
11. Mutation Case No. 173/1986-87 disposed off in favour of Kamla Devi.
12. Sale deed dated 21.8.1979 executed by Mrinal Shankar in favour of Manju Devi.
13. Rent receipt issued by the Ranchi Municipal Corporation.

In course of argument, the petitioner submits that the transfer is violative of Section 46 of the CNT Act. The petitioner says that the house constructed over the disputed plot is post- 1969. According to him, the surrender dated 12.5.1938 was bogus. The disputed land had been acquired by Abdul Mannan fraudulently. Mannan sold the same to various persons. Somra Munda had got no rights to surrender the disputed land.

The Ops on the other hand contend that the petitioner had nowhere proved as to when or how the petitioner had been divested of his land. The registered deed dated 1965 proves that Taiyab Ali, the purchaser from Abdul Mannan was in possession over the land concerned through a larger house. During the 1967 riots, Taiyab Ali had sold his land and house to different persons. In this connection a ruling from the Hon'ble High Court reported in 1987 BLT 505 has been quoted as follows: "there is no provision in the whole of the Chota Nagpur Tenancy Act laying down the procedure for conversion of agricultural land into non-agricultural land. There may be land within a compound of a house or shop which could not be held to be an agricultural land for the purpose of the applicability of the CNT Act. The character of the land could be lost by its user... Losing the character of land is permissible in law particularly when there is no provision or no procedure for obtaining order from authority that the land has lost its original character."

Findings

The nature of the land had been changed much before the purchase of the impugned land by the present Ops by Taiyab Ali and before him Abdul Mannan's construction of a house over the same. The fact of the construction made by Taiyab Ali has been supported by Ops' witness namely, Maqbool Alam and Ramlal Prasad. Secondly, the return filed by the ex-intermediary shows a settlement of the dispute land with Abdul Mannan on 20.5. 1946. Chhapparbandi rent had been fixed too. In the sale deed of 1965, the Chhapparbandi settlement dated 20.5.1946 has found a mention. The said patta of 1965 is prior to the promulgation of the Scheduled Area Regulation, 1969. Even if 1946 is treated as the cut-off year for transfer, the petition for restoration has been filed after a lapse of 49 years.

Case Study No. 2

SAR CASE NO. 75/1996-97

District: Ranchi

Taking from Taiyab Ali's sale deed as well, the petition has been filed after a lapse of 30 years. In this context, a number of reported Judgements of the Hon'ble High Court have been cited, including, 1994 (1) PLJR 91, 1994 (2) PLJR 621 1992 BLJR 966. The Ops have termed the petitioner's case as barred by limitation.

Evidently, the ex-intermediary had settled the disputed land with Abdul Mannan, who in turn, had sold it to Taiyab Ali on 31.7.1965. Taiyab Ali had raised a house on the disputed land which had been sold part-wise at different points of time with the OPs. This fact has been substantiated by witnesses. It is also a fact that the petitioner has not been able to frame definite charges in his petition. He has even filed separate cases with the same cause of action at different points of time. Chhapparbandi land cannot be subjected to the rigours of Section 71-A of the CNT Act. Moreover, the petition is barred by limitation.

Order

Since the provisions U/S 71 (A) of the CNT Act aim at tribal welfare, the Ops were directed under the second proviso to Section 71 (A) of the CNT Act to either make available equivalent valued land or pay compensation @ Rs. 10,000/- per katha through a Bank Draft in the Court itself to the recorded tenant including the petitioner. Eventually a total sum of Rs. 1,20,000/- was paid to the petitioner by the OPs by way of compensation.

This case has been initiated on a petition by Shanicharwa Munda S/o Late Lakshman Munda village Bajra PS Sukh Deo Nagar, district Ranchi for the restoration of his alienated land against OP Missionaries of Charity village Radha Rani Nagar, P.S. Sukh Deo Nagar, district Ranchi. The petitioner has alleged that 98 decimals, 2 decimals and 5 decimals (totaling to 1.05 acres) of his land falling respectively in plot No. 235, 236 and 256 in Khata No. 83 of Mouza Bajra Thana No. 140, had been occupied unlawfully by the Ops. The petitioner claims to be an adivasi through an affidavit.

The OP submits in his show cause that the case is not maintainable. Earlier also the petitioner had filed land restoration case No. 245/85 which was dismissed on 29.2.1988. Hence the case is covered by the principle of Res Judicata. The petitioner again filed the present case which was dismissed on 30.9.1997. The petitioner moved in appeal and the Deputy Commissioner, Ranchi remanded it for re-hearing. The land in question is entered in the name of Munna Munda in the khatian. He sold it to Konaka Oraon vide registered Deed No. 2991/23.9.1935. Konaka Oraon cultivated the same upto 1941. Konaka Oraon sold it to Binoo Oraon vide registered Deed No. 3922/4.8.1941. Binoo Oraon came into cultivating possession and started paying rent. He obtained permission U/S 49 of the CNT Act and sold it to the present Ops. There was mutation in favour of the Ops and they have been paying rent to the Government. A social service organization connected with late Mother Theresa is being run on the land concerned. The organization caters to leprosy eradication.

The petitioner furnishes a photo copy of the Khatian, photo copy of the order passed in land restoration case No. 51/81-82 and the photo copy of the Additional Collector's order in SAR Appeal No. 325/83-84. The OP has furnished photo copy of the order passed in land restoration case No. 245/85-86, certified copy of Deed No. 2991/1935 and Deed No. 3922/1941, certified copy of Rent Suit Deputy Collector Case No. 6 R 8 (II)/ 73-74 and Deed No. 6247/1981, copy of the C.O. Office Mutation Case No. 165/ R 27/1981-82 and copies of rent receipts from 1978-79 to 1981-82.

The OP claims to have bought the land after taking the permission of the Deputy Commissioner, Ranchi U/S 49 of the CNT Act. The case is also barred under Res Judicata. The petitioner, on the other hand, asserts that the permission U/S 49 of the CNT Act was obtained after misleading the concerning court.

Findings

The following facts emerge chronologically on a perusal of the documents on record. The land in question pertains to the adivasi khata since it is recorded in the khatian as Kayami in the name of Munna Munda. Binoo Oraon after obtaining the approval of the Deputy Commissioner, Ranchi (on 5.4.1976) U/S 49 of the CNT Act, in RSDC- M- Case No. 6 R II/73-74 sold to the OP vide a registered sale deed on 29.5.1981. Shanicharwa Munda the heir of the recorded tenant instituted land restoration case No. 51/81-82 against Chhotka Binoo Oraon, the seller to the present OP. An order to restore the land was passed. In SAR Appeal No. 325/83-84, the Additional Collector vide his order dated 29.6.1985 upheld the order passed by the lower court. A revision filed against the said AC's order dated 29.6.1985 was dismissed in Deputy Commissioner's Court Case No. 328/ R-15/98-99.

The present OP was not made a party in the land restoration case No. 51/81-82 or in its appeal or revision. During the period aforesaid, the land in question had been sold to the OP vide a registered sale deed and he had also got delivery of possession. The mutation in favour of the OP had been carried out vide case No. 165/R 27/81-82 on 22.6.81 itself and he had started paying rent with effect from 1978-79.

Shanicharwa Munda (the petitioner in Land Restoration Case No. 51/81-82) filed Land Restoration Case No. 245/85-86 against the present O.P. The same was dismissed in view of Deputy Commissioner's permission to sell U/S 49 of the CNT Act. No Appeal was preferred against this order.

Again, the same Shanicharwa Munda filed the present case No. 75/96-97, which was dismissed on 30.4.1997 on the basis of Res. Judicata. The petitioner went in appeal in the Court of the Deputy Commissioner Case No. 328/R-15/98-99). The Deputy Commissioner remanded the matter to the lower court on the point that the order dated 30.4.1997 relied solely on the order passed in the Land Restoration Case N. 245/85-86 whereas the Land Restoration Case No. 51/81-82 was kept out of purview.

The matter for consideration is:

- (a) The OP bought the land in question, under permission from the Deputy Commissioner from an individual vide registered sale deed, against whom land restoration order in Case No. 51/81-82 was passed. Hence permission was obtained fraudulently.
- (b) The petitioner had earlier filed a land restoration case No. 245/85-86 against the same OP which stood dismissed.

Nonetheless, instead of going in appeal, the petitioner filed the present land restoration case.

The Court, in the light of the above, framed the following issues for consideration:

1. Whether this court is competent to order restoration in a case where the Deputy Commissioner's permission has been obtained in fraud?
2. Whether the court can hear again the same matter which has been decided by this very court in case No. 51/81-82 and 245/85-86?

Sub-section 5 of Section 49 of the CNT Act deals with permission obtained in fraud. The Hon'ble Jharkhand High Court in CWJC No. 2321/1991 R (JLJR 2001-1-225: Jeevan Lal Vs. the State of Bihar) holds that "application under 71-A of the said Act has been filed in 1990-91 i.e. about 30/50 years of the transfer on the sole allegation that transfer was made in illegal manner. In my considered opinion, such application under section 71-A of the said Act is not maintainable. Had it been a case where transfer was effected without obtaining permission of the Deputy Commissioner under Section 49 of the said Act then the application under Section 71-A of the said Act could have been entertained on the ground that transfer was effected in contravention of the provisions of the said Act."

In para 10 of the order of the Hon'ble Jharkhand High Court in CWJC No. 504/1994 (Mahato Munda Vs. The State of Bihar) reported in JLJR 2003 (4) 354 it is held that "it appears that the lands in question were transferred by the ancestors of the petitioner after obtaining permission under Section 49 of the CNT Act from

the competent authority". No challenge was made that the provision of section 49 was not followed.

"There is a specific period of limitation prescribed under sub-section 5 of Section 49 of the CNT Act to annul any transfer, in case of any illegality committed in the matter of transfer of land. The application having not been preferred within the period of limitation (12 years) as prescribed under sub-section 5 of section 49 of the CNT Act, the period of limitation cannot be extended by allowing a party to prefer application under Section 71-A of the CNT Act."

In para 13 and 20 of the order of the Hon'ble Jharkhand High Court passed in CWJC No. 2800/1996 (Niranjan Mahali Vs. the State of Bihar), reported in JCR 2003 (3) 492 it is held that "permission under Section 49 granted in 1947 by the Deputy Commissioner – not open to be doubted by subordinate officer in the year 1990, 1995, 1996 after lapse of such a long period.

"Neither a land reform deputy collector nor an additional collector could have ordered restoration of land in the proceedings – the said power being an exclusive prerogative of the State Government Under Section 49 (5) of the said Act, which is also subject to limitation of 12 years."

It becomes clear from a perusal of the stipulation in Section 49 (5) of the CNT Act and the orders passed by the Hon'ble High Court that the SAR Court has got no powers to restore a land against which permission to sale has been granted U/S 49 of the CNT Act.

The points on which this case has been remanded have already been decided in various land restoration cases. Consequently, this case has also been covered under the principle of res judicata. The present OP even though affected had not been made a party in land

restoration case No. 51/81-82. On getting knowledge about the same, he ought to have moved the concerning superior court. Similarly, on coming to know that a wrong person had obtained permission to sell the land under Section 49 of the CNT Act, he ought to have moved in appeal U/S 49 (5) of the CNT Act. Or else, on coming to know about the orders in land restoration case No. 245/85-86 (in which he himself was the petitioner), he should have preferred an appeal before the Deputy Commissioner. But he started a new land restoration case which was untenable.

Order

Since the case is covered by the principle of res judicata and since the transfer is preceded by permission U/S 49 of the CNT Act and its restoration is beyond the competence of the SAR Court, the petition was dismissed.

Case Study No. 3

SAR CASE NO. 44/49

District: Ranchi

Gist of the Case

This case was instituted under Section 71-A of the Chota Nagpur Tenancy Act on the petition of Sudip Oraon S/o Late Birsa Oraon village Hesal P. S. Sukhdeo Nagar, Ranchi against OP Vimla Devi W/o Baidya Nath Chaudhary village Laxminagar, Hesal, P.S. Sukhdeo Nagar, District Ranchi for the restoration of the petitioner's alienated land. The petitioner alleged that his land bearing an area of 2 Kathas 2 Chatak in Plot No. 670, Khata No. 91 had been illegally usurped by the O.P. The petitioner further furnished an affidavit to the effect that he belonged to the Scheduled Tribe.

The O.P. in her show cause submitted that the case was not maintainable. She admitted that she was in possession of 3.5 decimals (approximately) 2¼ kathas of the impugned land in plot No. 670 and 671 in Khata No. 91. Her father late Ramjee Chaudhary had purchased the same from Ram Oraon, the recorded tenant on plain sale patta in 1947 against the payment of Rs. 51/-.

He came in possession, built a house and resided for life. After him, the OP came in possession. He spent Rs. 40,000/- in 1960 and constructed a pucca house. The nature of the land has changed to charparbandi. Hence Section 71-A of the CNT Act will not apply.

The petitioner has furnished the Xeroxed copy of khatian and a witness by way of evidence.

The OP did not furnish any evidence in support of her show cause.. She remained absent on consecutive dates. None of the parties turned up for argument. Hence, the matter was disposed off on the basis of evidence available on the record.

The Regulation Court had considered the following points here –

1. Whether the impugned plot is recorded in the Adivasi Khata.
2. Whether Section 46 or any other provision of the CNT Act has been contravened.
3. Whether the case is time-barred, i.e. whether the land has been transferred within 30 years of the institution of the case.

As per the khatian furnished by the petitioner the land has been recorded as “Occupancy” in the names of Mahadeo Oraon, Ram Oraon etc. as khatiani raiyats. Evidently, the impugned plot belongs to the Adivasi Khata. Plot 670 and 671 fall in this very khata. The petitioner acknowledges the possession by the OP on 2 khatas 5 chatak area of plot no. 670 and 671 and submitted that the recorded tenant of the impugned land was his grand father Ram Oraon. He further submitted that a building existed on the land and now he himself was dispossessed. In the cross-examination he explained that he had instituted the case for getting compensation. The house must be about 50 years old. He did not know if his grand father Ram Oraon had sold the land on his own accord. Baidyanath Chaudhary, the husband of the OP and the OP’s witness has admitted that the land was that of the petitioner. There is nothing like municipality rent, land tax, power bill or an account of constructing the house. The land had been purchased 40-42 years ago from Sudip Oraon’s father.

Findings

Both the parties have put up their case in order to reap the advantage of the 2nd proviso to Section 71-A of the CNT Act, in collusion with each other. Witnesses too have been accordingly examined and cross-examined.

The OP has failed to produce any documents in support of his claim. There is no provision in the CNT Act to sell tribal land to a non tribal through a plain paper sale, that too without the permission of the Deputy Commissioner. The OP could not even establish that the impugned land had been transferred more than 30 years ago to render the case time-barred.

All this tends to prove that the OP has been in illegal possession of the impugned land falling in the Adivasi Khata in contravention of Section 46 of the CNT Act.

Order

The court ordered the dispossession of the OP from the impugned land under Section 71 of the CNT Act. He was directed to remove his possession from the impugned land and also remove structure, if any, within a month and make over the possession to the petitioner and other heirs of the recorded tenant. Accordingly the Circle Officer, Ranchi Sadar will issue delivery of possession orders.

Case Study No. 4

SAR CASE NO. 32/2000-01

District: Ranchi

This case has been initiated on a petition by Bhaua Oraon S/o Late Mahali Oraon village Hehal P.S. Sukh Deo Nagar district Ranchi U/S Section 71-A of the CNT Act, 1908 against OP Smt. Devanti Devi W/o Narsingh Mistry village Hehal PS Sukh Deo Nagar, district Ranchi for the restoration of his alienated land. The petitioner has alleged that 2.5 kathas of his land pertaining to plot No. 665, khata No. 91 of Mouza Hehal has been unlawfully occupied by the O.P. The petitioner claims to be an adivasi. He has filed an affidavit asserting that he is heir to the recorded tenant.

In his show-cause the OP asserts that the case is time-barred since it has been filed after 45 years from the date of transfer. The father of the OP had bought 2 kathas, 8 chatak of land in the impugned plot in the petitioner's name at a valuation of Rs. 80 on 4.6.1955 from Mahali Oraon S/o Dashru Oraon on 4.6.1955 against an unregistered sale deed. Thereafter, a house was built on the land at an expense of Rs. 40,000/-. She further asserts that after the construction of the said house, the nature of the land concerned has changed and no longer is the CNT Act attracted.

The petitioner has furnished xeroxed copies of the khatian, rent receipt and also adduced witness.

The OP has produced one witness in support of her show-cause. Despite several instructions she has not been able to furnish any documentary proof.

The SAR Court framed the following issues in this regard:

1. Whether the impugned plot pertains to an adivasi khata.
2. Whether the purported transfer is violative of Section 46 or any other provision of the CNT Act.
3. Whether the case is time-barred, i.e. whether the transfer dates back more than 30 years from the date of the filing of the petition.

The khata under consideration is recorded as kayami in the name of Mahadeo Oraon and others in the khatian adduced by the petitioner. The rent receipt adduced by the petitioner is issued in the name of Mahadeo Oraon for the year 1987-88.

In his evidence the petitioner has testified that the land belongs to him and that the same is recorded in the name of his father Mahali Oraon in the khatian. He confirms the OP's possession of the dispute land. The same was sold to the OP by his father and a house was built 40-50 years ago. He submitted in his cross-examination that the sale-purchase had not been preceded by permission.

The OP's witness (her husband) has admitted possession over the land in question and has supported the show cause.

Findings

It becomes evident to the Court that both the parties have filed a collusive suit to take advantage of the second proviso to Section 71-A of the CNT Act, 1908. The witnesses have been examined and cross-examined accordingly.

The OP, despite instruction, has failed to furnish any documentary proof. Even if the purported sale was effected through an

unregistered sale deed, the CNT Act does not warrant any such transfer by a tribal to a non tribal raiyat.

The OP is clearly in unlawful possession of the land in question, which falls in adivasi khata, in violation of Section 46 of the CNT Act, 1908.

Order

An order of eviction was passed against the OP U/S 71-A of the CNT Act, 1908. She was directed to remove her possession including building, if any, and make over the land to the petitioner within a month of the order. Delivery of possession orders were issued to the C.O. Sadar, Ranchi.

Case Study No. 5

SAR CASE NO. 69/2000-01

District: Ranchi

This case has been initiated on a petition by Christopher Minz S/o Late Julius Minz village Pis Road, Lalpur P.S. Lalpur, district-Ranchi U/S 71-A of the CNT Act, 1908 against OP No. 1 Yaduveer S/o Ghogha Bhagat, 2. Jeevanti Minz W/o Kirishna Bhagat, 3. Norvest Minz S/o John Tirkey, 4. Renu Minz W/o Ram Chandra Bhagat and Thomas Tigga S/o Suleman Tigga for a restoration of his alienated land. The petitioner alleges that the Ops have unlawfully occupied 90 decimals of his land pertaining to plot no. 886, Khata No. 6 of Mouza Hehal. The petitioner claims to be an adivasi. He has also executed an affidavit to that effect. The petitioner claims to have bought the dispute land vide a registered sale deed from the owner of the land with prior permission U/S 46. The OPs bought it after a lapse of 10 years.

In his show cause the OPs submit that the case is not maintainable. The OPs have bought the same vide a registered patta after taking the Deputy Commissioner's prior permission. Mutation has already taken place and that the OPs have been regularly paying rent. They have constructed a house over the land in question and are living therein.

By way of evidence, the petitioner has tendered a copy of the permission granted U/S 46, a copy of the registered sale deed and 3 witnesses. The Ops have submitted a copy of the permission granted U/S 46, a copy of the registered sale deed, mutation order and rent receipts.

The following facts emerge for consideration in this regard:

1. Whether the plot in question pertains to an adivasi khata?
2. Whether the transfer is in violation of Section 46 or any other provision of the CNT Act?

Admittedly, the impugned land pertains to the adivasi khata. It becomes clear through the Rent Suit Deputy Collector Case No. 104-R-8/II/75-76, and as submitted by the petitioner that Somra Oraon and Chandra Oraon had taken the permission to sell 90 decimals of the dispute plot to the petitioner of this case. The petitioner bought it vide Registered Deed No. 6828/1976 on 21.6.1976.

As far as the documentary proof of the Ops are concerned, Chandara Oraon had obtained the permission U/S 46 of the CNT Act vide Rent Suit Deputy Collector Case No. 92-R/8-II/1988-89 to sell the land to the Ops as follows:

OP	Area (in khata)	Registered Sale Deed No.
1. Thomas Tirkey	8	11753/ 10.12.90
2. Norvest Tirkey	8	11751/ 10.12.90
3. Yaduveer Bhagat	10	11752/ 10.12.90
4. Jeevanti Minz	10	8291/21.7.92
5. Renu Minz.	11	8291/21.7.92

The OPs have also tendered mutation proof of the Anchal Office in their names.

Findings

Both the parties had taken the lands concerned in purchase through registered sale deeds in the light of permission granted U/S 46. Since Deputy Commissioner's permission has been taken, the land transferred cannot be restored U/S 71-A of the Act. If the petitioner so desires he can put up his claim in a competent court.

Order

The petition was dismissed as it was beyond the competence of the court to decide the same.

Case Study No. 6

SAR CASE NO. 96/2000-01

District: Ranchi

This case was initiated on a petition by Budhu Pahan S/o Baldeo Pahan, village Urughutu P.S. Pithoria, district Ranchi U/S 71-A of the CNT Act, 1908 for the restoration of his alienated land against OP Riyasat Ansari and Talu Ansari S/o Laisu Ansari, village Urughutu P.S. Pithoria, district Ranchi. The petitioner has alleged that the OPs have illegally grabbed 49 decimals of his land falling in plot No. 1665, Khata No. 70 and 3 decimals of his land falling in plot no. 1666 of Mouza Urughutu. The xeroxed copy of the khatian adduced by the petitioner clarifies that the land in question pertains to the adivasi khata.

Despite successive notices and a notice by registered post the OP never turned up. This amplifies the fact that he did not have any valid papers with regard to the land in question. Hence the case was proceeded ex-parte.

The petitioner has adduced xeroxed copy of the khatian, an affidavit and a witness (the petitioner himself).

The Khatian clarifies that khata No. 70, under khewat No.2, Thana No. 13 is recorded as kayami in the name of Bahura Pahan and others, caste Munda. The plots in question fall in the said khata. The petitioner submits that the land in question is his ancestral land. He further submits that Bahura Pahan, the recorded tenant was the elder brother of his father. The OPs have occupied the land illegally for the last 5 years.

Findings

The SAR Court, in the light of evidences and the silence of the OPs, comes to the conclusion that the OPs had occupied the impugned land, as pertaining to the adivasi khata in violation of Section 46 of the CNT Act, 1908.

Order

An order of eviction was passed against the OP U/S 71 (A) of the CNT Act, 1908. He was directed to remove structure, if any, and make over the possession of the land to the petitioner within a month of the order. Delivery of possession orders were issued to the C.O. Sadar, Ranchi.

Case Study No. 7

SAR CASE NO. 12/2001-02

District: Ranchi

This case was initiated on a petition by Kartik Pahan S/o Late Phagu Pahan village Argora PS Argora district Ranchi under Section 71-A of the Chota Nagpur Tenancy Act, 1908 against OPs namely: 1. Dipak Prakash, 2. Uday Prakash, 3. Jyoti Prakash, 4. Guha Prakash all sons of Bipin Bihari, 5. Lal Babu, 6. Dr. Anjana Kumari, village Kashyap Vihar, behind Line Club P.S. Argora, district Ranchi for the restoration of the petitioner's alienated land. The petitioner has alleged that each of the 6 OPs has illegally come into possession of 10 decimals of the petitioner's land (60 decimals) falling in plot no. 1954 khata no. 396 of village Argora. The petitioner claims to be an adivasi and has filed an affidavit to that effect.

Despite a total number of 59 dates, the OPs have not evinced any inclination to file a show cause.

The petitioner has produced a photocopy of the khatian and 3 witnesses, namely Kartik Pahan, Mahavir Oraon and Sanjay Kujur.

The following issues have been considered by the SAR Court:

1. Whether the impugned plot pertains to an adivasi khata.
2. Whether the purported transfer is violative of Section 46 or any other provision of the CNT Act.
3. Whether the case is time-barred, i.e. whether the transfer dates back more than 30 years from the date of the filing of the petition.

The name of Husan Pahan and others is recorded in the khatian produced by the petitioner, as recorded tenants. The land is bakasht bhuinhari. The land clearly pertains to adivasi khata.

The witnesses (one of whom is the petitioner himself) have submitted that the impugned land is in possession of the OPs. The transfer was fraudulent. The petitioner submits that he is the grandson of the recorded tenant. A total area of 60 decimals is in unlawful possession of the OPs. In his deposition, Mahavir Oraon has stated that each one of the witnesses is in possession of 10 decimals of the plot in question for the last 20 years and has been residing there for about 5-6 years after building a house. He also testified that the land was the petitioner's ancestral land.

Findings

The OPs have been unlawfully holding the concerning land of the petitioner, pertaining to adivasi khata, in violation of Section 46 of the CNT Act, 1908. The case is not time-barred.

Order

An order to evict the 6 OPs. was passed U/S 71-A of the CNT Act, 1908. They were directed to remove their possession including any building from the impugned land and make over the same to the petitioner and other heirs of the recorded tenant within a month of the order. Accordingly, delivery of possession order was issued to C.O. Sadar, Ranchi.

Case Study No. 8

SAR CASE NO. 117/2001-02

District: Ranchi

This case was filed under Section 71-A of the Chota Nagpur Tenancy Act on the petition of Budh Ram Oraon S/o Nandu Oraon village Hehal PS Sukh Deo Nagar district Ranchi against OP Badri Narain Gope S/o Karma Gope village Hehal Bans Toli, PS Sukh Deo Nagar, district Ranchi for the restoration of his alienated land. The petitioner has alleged that the OP has illegally occupied 6 kathas of his land falling in plot No. 286 Khata No. 98 of Mouza Hehal.

The petitioner is an adivasi and the impugned land admittedly belongs to him.

In his show cause, the OP has submitted that the case is not maintainable. The OP is in possession of the impugned plot through a thatched dwelling house. He resides therein with his family. His ancestor had bought the land concerned on 4.12.1945 from the recorded tenant against a consideration of Rs. 95 through an unregistered sale deed. He is willing to pay compensation to the petitioner or to give alternative land. The OP's ancestor had spent Rs. 30,000/- and the OP himself had spent Rs. 35,000/- over the land in question.

The petitioner has produced two witnesses, namely Budh Ram Oraon (the petitioner himself) and Phula Oraon- by way of evidence.

The OP has, in support of his show cause, furnished the following documents:

1. Photo copy of the unregistered sale deed.
2. Three receipts issued by the Bihar State Electricity Board against payments of Bills.
3. Photo copy of the estimates of electrical wiring.
4. Receipt for the purchase of electricity metre.
5. Photo copies of 6 receipts of power bill payment of the Jharkhand State Electricity Board.

The petitioner has adduced two witnesses, namely, Badri Narain Gope and Baijnath Kachchap.

The petitioner's witnesses have clarified that the pucca house on the impugned plot is fairly old. The petitioner submits that the recorded tenant Nandu Oraon was his father. The OP's witnesses too have tendered evidence likewise.

Findings

The Court feels that both the parties have filed a collusive suit to take the advantage of the second proviso to Section 71-A of the CNT Act, 1908. The witnesses have been cross-examined accordingly.

The plain paper sale deed furnished by the OP is hardly legible. In any case neither this paper is reliable nor is there any provision in the CNT Act for the transfer of tribal land to a non-tribal against a plain paper Hukumnama. The earliest power bill submitted by the OP dates back to 1993. Hence the bills fail to establish the existence of the OP's house for more than 30 years. The case is not rendered

time-barred. Clearly, the OP is in illegal possession of the impugned land in violation of Section 46 of the CNT Act, 1908.

Order

An order of eviction was passed against the OP U/S 71 (A) of the CNT Act, 1908. He was directed to remove his possession and make over the same to the petitioner within a month of the order. Delivery of possession orders were issued to the C.O. Sadar, Ranchi.

Case Study No. 9

SAR CASE NO. 403/2001-02

District: Ranchi

This case was filed by Barnwas Runda S/o late Alfons Runda village Lalpur, Pees Road, PS Lalpur, district Ranchi under Section 71-A of the Chota Nagpur Tenancy Act, 1908 against OP Basant Prasad Gupta S/o Late Ram Lakhan Sahu, village Madhukam, PS Sukh Deo Nagar, district Ranchi for the restoration of his alienated land. The petitioner has alleged that the OPs have unlawfully occupied 1.50 katha of his land pertaining to plot No. 203, khata no. 33 in Mouza Madhukam Thana No. 204. The petitioner claims to be adivasi and has further claimed through an affidavit to be the heir of the recorded tenant.

Rajeshwar Runda, Herbert Runda and Ernest Runda, all sons of Late Augustin Runda; and Joseph Runda, Gregory Runda and Rupas Runda all sons of Late Alfons Runda were also made parties alongwith the petitioner in the wake of an intervener petitioner.

The OP has submitted in his show-cause that the land in question pertained to the adivasi khata. The same had been purchased by his father from the petitioner's father in 1968 and a house was constructed.

After his father's death, the petitioner is in possession of the said land. The case was also time-barred.

The petitioner has furnished the xeroxed copy of the khatian, xeroxed copy of rent receipt and one witness. The OP has furnished

an illegible copy of the unregistered sale deed in support of his show cause.

The following points have been considered in this case by the court:

1. Whether the impugned plot falls in an adivasi khata.
2. Whether Section 46 or any other provision of the CNT Act has been violated in the transfer.

As per the khatian adduced by the petitioner the concerning khata runs as kayami in the name of Phagua Oraon and others. The impugned plot falls in this very khata.

The rent receipt for this khata has been issued for the year 1989-90 in the name of Tuna Oraon. The witness adduced by the petitioner has submitted that the OP has occupied 2 kathas of the plot in question for about 15-20 years and has also raised a house thereon.

Findings

The OP has furnished a plain paper transfer deed for the plot concerned. Neither this paper is reliable nor is there any such provision for transfer against plain paper sale deed in the CNT Act without the permission of the Deputy Commissioner. The rent receipt issued for 1989-90 bears the name of the adivasi tenant. The petitioner's witness has submitted that the OP is in possession on the land for 15/20 years. Hence the claim of the OP that the case is time-barred is not tenable. The OP has not been able to furnish any decisive proof in support of his show cause. Evidently, he has occupied the impugned plot pertaining to adivasi khata in contravention of Section 46 of the CNT Act.

Order

An order of eviction was passed against the OP U/S 71 (A) of the CNT Act, 1908. He was directed to remove his possession and make over the same to the petitioner within a month of the order. Delivery of possession orders were issued to the C.O. Sadar, Ranchi.

Case Study No. 10

SAR CASE NO. 435/2001-02

District: Ranchi

This case was instituted under Section 71-A of the Chota Nagpur Tenancy Act on the petition of Lenga Oraon S/o Late Kalha Oraon village Bajra Bariatu, P.S. Sukh Deo Nagar, district Ranchi against O.P. Raja Biram Pati Singh S/o Tahsildar Singh village Bajra P.S. Sukh Deo Nagar, Ranchi for the restoration of alienated land. The petitioner has alleged that the OP has illegally occupied 1 katha of his land pertaining to plot no. 73, katha No. 70 of Mouza Bajra. The petitioner claims to be an adivasi.

The petitioner has furnished a xeroxed copy of the Khatian wherein the disputed land has been recorded in the name of Budhua Oraon as kayami. Through an affidavit as well he claims the land as his.

The OP appeared in the court on 18.3.2002. Since then he failed to submit a show cause despite 31 dates in all. Evidently, he does not have any valid documents in support of the transfer.

Findings

It is evident from the petitioner's petition, affidavit and khatian and the silence of the OP that the latter has occupied the impugned land, which falls in the Adivasi khata, unlawfully, in violation of Section 46 of the CNT Act, 1908.

Order

An order of eviction was passed against the OP U/S 71 (A) of the CNT Act, 1908. He was directed to remove his possession and make over the same to the petitioner within a month of the order. Delivery of possession orders were issued to the C.O. Sadar, Ranchi.

Case Study No. 11

SAR CASE NO. 470/2001-02

District: Ranchi

This case was instituted under Section 71-A of the Chota Nagpur Tenancy Act on the petition of Birsa Oraon and Chumna Oraon sons of late Budhua Oraon alias Guha village Madhukam P.S. Sukh Deo Nagar district Ranchi against OP Nagendra Sah S/o Late Rup Lal Sah, village Madhukam, PS Sukh Deo Nagar, district Ranchi for the restoration of the petitioner's alienated land. The petitioner alleged that his land bearing an area of 0.65 decimals or 1 katha has been unlawfully taken over by the OP. The petitioner has claimed that he is tribal. He has furnished an affidavit to the effect that he is the heir of the khatiani raiyat of the khata in question.

The OP in his show cause has submitted that having bought the land from the petitioner's father against a plain sale deed, he constructed a house prior to 1965 and has been residing there for 40 years.

The petitioner has produced a xeroxed copy of the khatian and two witnesses by way of evidence. The OP has not been able to produce any papers/ documents in support of his show cause. He has however produced two witnesses.

Both the parties remained absent on 9 consecutive dates. Hence the documents on record formed the basis for considering the case.

The following points have been considered in the instant case:

1. Whether the impugned plot pertains to the Adivasi Khata.

2. Whether the purported transfer is in contravention of Section 46 or any other section of the CNT Act.
3. Whether the case is time-barred, i.e. whether the land has been transferred within 30 years of the institution of the case.

The name of Sukh Ram Munda is recorded as khatiani raiyat in the concerned khata in the khatian adduced by the petitioner. Evidently, the impugned land pertains to adivasi khata.

Both the petitioners submitted that Sukh Ram, the khatiani raiyat was their grandfather. Both have admitted the possession of the OP over the impugned land. They have admitted the existence of a 35-year old dwelling house over the land and prayed for the payment of compensation.

The evidence tendered by the OP's witnesses falls in tune with that of the petitioners.

Findings

The court is convinced that both the parties have filed a collusive suit to reap the advantage of the second proviso to Section 71-A of the CNT Act. The witnesses have been examined and cross-examined with the same purpose.

The OP has failed to furnish any papers pertaining to the transfer or any other papers. Even if his claim is accepted there is no provision in the CNT Act allowing plain paper sale of a tribal land to a non-tribal.

The above facts tend to establish the unlawful possession of the impugned land by the OP in violation of Section 46 of the CNT Act. The OP could not even establish that the matter was time-barred.

Order

The court ordered the dispossession of the OP from the impugned land under Section 71 of the CNT act. He was directed to remove his possession from the disputed land and also remove the structure, if any, within a month and make over the possession to the petitioner and other heirs of the recorded tenant. Accordingly, the Circle Officer, Ranchi Sadar will issue delivery of possession orders.

Case Study No. 12

SAR CASE NO. 1135/2001-02

District: Ranchi

This case was initiated on a petition by Ram Singh Oraon S/o Late Bhunu Oraon village Sundil P.S. Ratu, district Ranchi, U/S 71-A of the CNT Act, 1908, for the restoration of his alienated land, against the following co-villager OPs:

1. Ram Lal Prasad Sahu S/o Ram Dhani Sahu
2. Veena Devi S/o Gopal Sahu
3. Ram Chandra Sah S/o late Kashi Nath Sah
4. Dwarka Vishwakarma S/o late Japan Vishwakarma
5. Ram Bali Prasad S/o Ram Dhani Saw
6. Raj Deo Sharma S/o late Ram Byas Sharma

The petitioner submitted that the OPs named above had grabbed the following land, belonging to the petitioner:

Mouza – Sundil
Khata- 173

Plot No.	Area (in decimals/ kathas)
1098	86/3
1097	42/13
1140	77/4
1139	3
Total	-23

SAR Case No. 29/2002-03 had been initiated on a petition by the same petitioner against Krishna Prajapati S/o Prithwi Prajapati and

Dilip Sao S/o Braj Mohan for a restoration of his land. In the said petition the petitioner had alleged that the two OPs named above had grabbed the following of the petitioner's lands-

Mouza- Sundil
Khata No. 173

Plot No.	Area (Kathas)
1097	4
1098	2-75

Since both the cases had the same petitioner and the impugned plots were the same, the SAR Court amalgamated the two proceedings.

It is clear from a xeroxed copy of the Khatian adduced by the petitioner that the land in question was recorded as kayami in the names of Gandura Oraon and others. Hence the plot pertains to an adivasi khata.

The OPs were noticed. Except Dwaraka Vishwakarma the rest of the OPs appeared and filed a show cause. The OPs submitted that they owned a thatched house on the plot concerned and lived with a family. Their ancestors had bought the land from the recorded tenants. Sharmi and Sanicharwa Oraon died issueless. Gandura had a son namely Hari Bhagat. Munna Oraon, the father of the petitioner was the son of Hari Bhagat. The petitioner's stand has been endorsed by his three witnesses. The eight witnesses brought by the OPs have corroborated the stand of the OPs concerned.

Findings

The SAR Court feels that both the parties had filed this suit in collusion to reap the benefit of the second proviso to section 71-A of the CNT Act.

The xeroxed copies of plain sale deeds are illegible. Even if the same are viewed as sale papers, they have no credence in the CNT Act. The copies of the sale deeds are not attested. Chaukidari receipts are singularly unreliable. No conclusive proof has been adduced by the OPs. Clearly, the OPs have been holding the dispute land pertaining to adivasi Khata illegally in violation of Section 46 of the CNT Act, 1908.

Order

An order of eviction was passed against all the OPs U/S 71-A of the CNT Act, 1908. The OPs were directed to remove their possession and make over the land concerned to the petitioner within a month of the order. Accordingly, delivery of possession orders were issued to the CO Ratu, Ranchi.

Case Study No. 13

SAR CASE NO. 30/2002-03

District: Ranchi

This case was instituted under Section 71-A of the Chota Nagpur Tenancy Act on the petition of Bija Oraon, Munda Oraon and Potia Oraon sons of Dhudhu Oraon village Chhota Ghaghra PS Doranda district Ranchi against OPs Sadho Oraon S/o Bhadaia Oraon, Phagua Oraon S/o Sadho Oraon and Phagna Oraon S/o Bahera Oraon, Anchal Namkom, village Chhota Ghaghra PS Doranda, district Ranchi for the restoration of the petitioner's alienated land. The petitioner alleged that his land bearing an area of 7 Decimals falling in plot No. 285 Khata No. 86 Mouza Chhota Ghaghra PS No. 220 had been unlawfully taken over by the OPs. The petitioners have claimed that they are adivasis and have also furnished an affidavit to the effect.

In their show cause, the OPs have explained that the case is non-maintainable, that they are in possession of the impugned land since 1958 and that they have spent Rs. 30,000/- on constructing a house over the same.

The petitioners have furnished a copy of the concerning khatian, xeroxed copy of the rent receipt and a witness namely Poteya Oraon. The OPs have produced a plain Hukumnama as documentary proof. They did not argue their case.

The court dealt with the following issues in this regard:

1. Whether the impugned plot pertains to the adivasi khata.

2. Whether the purported transfer is in contravention of Section 46 or any other section of the CNT Act.
3. Whether the case is time-barred, i.e. whether the land has been transferred within 30 years of the institution of the case.

The khata in question has been opened in the name of Gunga Oraon bakasht Bhuihari Pahani in the khatian adduced by the petitioner. The rent receipt against the khata in question has been issued by the Namkom Anchal in the name of Poteya Oraon for the year 2002-03.

The petitioner has submitted that his grand father Gunga Oraon is the recorded tenant. Admittedly, the OPs are in possession of the impugned land, and yet the said land had never been sold by their father to the OPs. They further submitted that taking undue advantage of the petitioners in jail for 12 years, the OPs have constructed a house over the concerning plot 8 years ago. They deny any settlement of the disputed land with the OPs in 1958.

Findings

The OPs did not get the permission of the Deputy Commissioner in the transfer under question. The land in question is 'bakasht bhuihari pahnai' under adivasi khata. Evidently the OPs have, in violation of Section 46, 48 of the CNT Act, held the land in question unlawfully. The plain paper sale deed does not have any reliability. Nor is the case time-barred.

Order

The Court ordered an eviction of the OPs namely Sadho Oraon S/o Bhadwa Oraon, Phagua Oraon S/o Sadho Oraon and Phagna Oraon S/o Bahera Oraon from the impugned land under Section 71-A of

the CNT Act. They were directed to remove possession from the impugned land, remove structure, if any, within a month of the order and make over the same to the OPs and heirs of the recorded tenant. Accordingly, the Circle Officer was directed to issue delivery of possession orders.

Case Study No. 14

SAR CASE NO. 32/2002-03

District: Ranchi

This case was instituted under Section 71-A of the Chota Nagpur Tenancy Act on the petition of Bandhu Oraon alias Dhedhle S/o Late Bhagatu Oraon, village Sundil, PS Ratu, district Ranchi against OPs Sanju Devi W/o Mahendra Prasad and Lalita Sinha W/o Upendra Kumar Sinha, village Dhanai Soso, PS Ratu, district Ranchi for the restoration of their alienated lands. The petitioner has alleged that 5 kathas and 2 kathas of his land in plot No. 463, khata No. 46 in Mouza Dhanai Soso PS No. 147 has been occupied unlawfully by the two OPs named above respectively. The petitioner is a tribal and the land is, admittedly, his.

The OPs have submitted in their show cause that the case is not maintainable. The OPs have been residing over the plot concerned with family. Sanju Devi has got a thatched house. Her ancestor had bought 2 kathas of the impugned land from the recorded tenant on 4.2.1945 against a consideration of Rs. 95.00 on the basis of a plain paper Hukumnama. She is willing to compensate the petitioner. OP-2 Lalita Sinha is in possession of 2 kathas of the disputed land. The OPs are even willing to give alternative land for the land under their occupation. It was submitted by the OPs that while their ancestors had spent Rs. 15,000/- over the land and house, a sum of Rs. 20,000/- had been spent by the OPs themselves.

The petitioner has produced Bandhu Oraon (petitioner himself) and Dashrath Lohar by way of witness. They have submitted a xeroxed copy of the khatian which proves that Bothal Oraon is one of the

recorded tenants. The petitioner explains in his counter-affidavit that Bothal Oraon is his grandfather.

The OPs have not furnished any documents in support of their show-cause.

Findings

The petitioner's witness has admitted the OP's possession and the existence of a dwelling house over the disputed land since long. The petitioner has submitted that the recorded tenant was his grand father. Another recorded tenant died issueless. It has further come out that the father-in-law of the petitioners constructed a house over the land in question. Sanju Devi admits possession over 5 and Lalita Devi over 2 kathas of the impugned land. Both are ready to pay compensation.

It appears to the court that both the parties have filed a collusive suit to reap the advantage of the second proviso to Section 71-A of the CNT Act. Witnesses have been examined accordingly. The OPs while admitting possession, have not been able to adduce any decisive proof in support of their show cause. Evidently, the OP Sanju Devi has illegally taken over 5 Kathas and the OP Lalita Sinha over 2 Kathas of plot 463 falling in disputed khata No. 46 in contravention of Section 46 of the CNT Act.

Order

The Court ordered the ejectment of OPs namely Sanju Devi and Lalita Sinha village Dhanai Soso, PS Ratu, district Ranchi from the land in dispute. They were directed to remove their possession and make over the same to the petitioner within a month of the order

failing which delivery of possession orders will be issued to the C.O. Ratu, Ranchi.

Case Study No. 15

SAR CASE NO. 52/2002-03

District: Ranchi

This case has been initiated on a petition by Sushil Roba and Clarence Roba S/o Arthur Roba village Kokar, P.S. Ranchi Sadar, district Ranchi under Section 71-A of the Chota Nagpur Tenancy Act, 1908 against O.P. K.P. Mishra S/o G.S. Mishra Village Kokar, P.S. Ranchi Sadar, district Ranchi for a restoration of their alienated land. The petitioner has alleged that the OP has illegally occupied 13 decimals of his land falling in plot No. 1154, Khata No. 24 of Mouza Kokar. The Xeroxed copy of the khatian produced by the petitioner corroborates that the land in question pertains to adivasi khata.

Despite notice and newspaper publication of the same, the OP did not turn up. Hence ex-parte proceedings were started in this case.

The petitioner has adduced a xeroxed copy of the khatian, affidavit and a witness namely Jataru Oraon. He himself has appeared as a witness too.

It is evident from the khatian that khata no. 24 of Thana no. 196 is recorded in the name of Patras Roba S/o Kaliya, caste Oraon and the same also bears plot No. 1154. In his affidavit the petitioner testifies that Patras Roba, the recorded tenant had four sons, namely, Christopher Roba, Viraj Roba and Cyril Roba. The only son of Christopher Roba was Alexander Roba. Arthur had three sons, namely, Clarence Roba, Sishil roba (both petitioners) and Peter Roba (expired).

In his evidence the petitioner has stated that the OPs had unlawfully occupied the disputed land for 8-10 years and that the land was recorded in the name of his grand father Patras Roba. Jataru Oraon, in his evidence, has testified that the dispute land belongs to the petitioner who also pays rent for the same.

Findings

The evidence adduced tends to highlight the fact that the OP has illegally occupied the impugned land, pertaining to adivasi khata, in contravention of Section 46 of the CNT Act, 1908.

Order

An order of eviction was passed against the OP U/S 71-A of the CNT Act, 1908. The OP was directed to remove his possession and make over the land concerned to the petitioners and heirs of the recorded tenant within a month of the order. Delivery of possession orders were issued to the C.O. Sadar, Ranchi.

Case Study No. 16

SAR CASE NO. 301/2002-03

District: Ranchi

GIST OF THE CASE

This case has been instituted under Section 71-A of the Chota Nagpur Tenancy Act on the petition of Bhauwa Oraon S/o Late Mahali Oraon village Hesal, PS Sukhdeo Nagar, district Ranchi for the restoration of the petitioner's alienated land. The petitioner has alleged that 2 kathas of his land falling in plot No. 606 Khata No. 91 of Mouza Hesal has been grabbed illegally by the O.P. The petitioner has furnished an affidavit to the effect that he was an adivasi.

In his show cause, the OP has submitted that the impugned land was recorded in the name of Mahali Oraon. It had become Chaparbandi. A substantial structure had come up over the land in 1947-48. Since then the OP has been residing in the same. The OP had purchased two kathas of the impugned land in 1946 from Mahali Oraon, the Khatiani raiyat. The case is time barred and is fit to be dismissed. The OP had purchased two kathas of the impugned land in 1946 from Mahali Oraon, the Khatiani raiyat. The OP, however, has not been able to furnish any evidence in support of his claim.

The court perused available documents and other evidence.

The following points emerge for consideration in this case:

1. Whether the impugned plot is that of adivasi Khata.
2. Whether the said transfer contravenes Section 46 or any other provision of the CNT Act.

3. Whether the case is time barred, i.e. whether the land has been transferred within 30 years of the institution of the case
4. Whether the impugned land is chaparbandi.

In the Khatian produced by the petitioner Mahadeo Oraon has been shown as the recorded tenant in the concerning khata. Evidently, the impugned land falls in adivasi khata.

The petitioner has submitted that the land concerned is his khatiani land. In his affidavit he has submitted that the concerning khata has been recorded in the name of his father late Mahali Oraon.

Findings

Evidently, the OP has been in illegal occupation of the impugned land falling in Adivasi Khata in violation of Section 46 of the CNT Act. The case is not even time-barred.

Order

The Court ordered the dispossession of the OP from the impugned land under Section 71-A of the CNT Act. He was directed to remove his possession from the impugned land and also remove structure, if any, within a month and make over the possession to the petitioner and other heirs of the recorded tenant. Accordingly, the Circle Officer, Ranchi Sadar will issue delivery of possession orders.

Case Study No. 17

SAR CASE NO. 58/2003-04

District: Ranchi

This case has been initiated on a petition by Somra Oraon alias Simon Minz S/o Late Gunga Oraon village Hundru, P.S. Doranda district Ranchi U/S 71-A of the CNT Act, 1908 for the restoration of his alienated land against OP Md. Kalim Abdin S/o Md. Jainul Abdin, village Doranda, PS Doranda, district Ranchi. The petitioner has alleged that the OP had illegally occupied 2 kathas of his land falling in plot No. 364, 365 and 366 of khata No. 191 of Mouza Hundru, Thana No. 224. The petitioner claims to be an adivasi and through an affidavit adverts that he is heir to the recorded tenant of the khata in question.

Through a show-cause the OP states that the impugned land including a house, belongs to the OP. The same had been sold vide an unregistered sale deed at a consideration of Rs. 500/- on 9.3.1945 by the recorded tenants, namely, Mahadev Oraon and Gungo Oraon to the OP's father. The OP having come into possession constructed pucca house with boundary wall over the said land. The OP has been paying rent to the municipal corporation regularly. The case is not maintainable.

The OP has been in possession for 58 years and has during this period spent about Rs. 1.00 lakh over house construction etc. The OP has, as well taken electricity connection. The case should be dismissed.

The petitioner has adduced the Xeroxed copy of the khatian and one witness by way of evidence.

The OP in support of his show cause has adduced a copy of the plain Hukumnama, a xeroxed copy of a rent receipt and Xeroxed copy of an electricity bill. He has also produced two witnesses.

The following points emerge for consideration in this context:

1. Whether the impugned plot pertains to an Adivasi Khata?
2. Whether Section 46 or any other provision of the CNT Act has been contravened
3. Whether the case is time-barred, i.e. whether the transfer has taken place 30 years prior to the filing of the case?

According to the khatian adduced by the petitioner, the Khata in question is recorded in the names of Mahadev Oraon and others as kayami, which proves that the land in question pertains to the adivasi khata.

The witnesses adduced by both the parties put forth similar facts of the case.

Findings

It becomes evident from the evidence of the two parties that both the parties have tendered collusive statements to reap the benefit of the second proviso to Section 71-A of the CNT Act 1908. The witnesses have been examined and cross-examined with this purpose in mind. Hence the evidences are far from being reliable.

The transfer is based on a plain paper transaction. The photo copy of the rent receipt is not authentic. It does not reveal the person issuing it. An electricity bill purported to be issued in 2004 in the name of the OP hardly connects itself to the land in question. The

transfer has not been allowed by the Deputy Commissioner. There is no provision in the CNT Act allowing unregistered transfer of a tribal land without the permission of the Deputy Commissioner. Nor does the plain paper stand the test of reliability. The OP has not been able to establish beyond doubt that the transfer is more than 30 years old, rendering it time-barred. The OP has failed to place any decisive proof in support of his show cause. Clearly, the transfer of the impugned plot falling in adivasi khata is violative of Section 46 of the CNT Act, 1908.

Order

The Court directed the OP's eviction from the land in question U/S 71-A of the CNT Act. He was directed to remove his possession/structure, if any, from the impugned plot within one month of the order and make over the same to the petitioner as well as other heirs to the recorded tenant. Accordingly, delivery of possession orders were issued to the Circle Officer, Ranchi Sadar.

Case Study No. 18

SAR CASE NO. 79/03-04

District: Ranchi

This case has been initiated on a petition by Jaura Munda S/o Vishram Munda village Jorar, P.S. Namkom district Ranchi U/S 71-A of the CNT Act, 1908 for the restoration of his alienated land against Ops Etwa Munda and Sukra Munda S/o Late Golia Munda village Jorar, P.S. Namkom, district Ranchi. The petitioner has alleged that the Ops have illegally occupied 8 and 4 decimals of his land falling in plot No. 311 and 323 respectively in Khata No. 70, Mouza Jorar Thana No. 215. The petitioner claims to be an adivasi. He has also furnished an affidavit claiming to be the son of the recorded tenant.

In his show cause, the Ops submit that they are in possession of the impugned land since 1953. The same was bought by them from Birsa alias Bishram Munda, the recorded tenant. They are living with families in two houses built much before 1969. There are 6 and 4 rooms respectively in the two houses. The land is not cultivable. Bishram Munda had filed case No. 332/ 1978-79, seeking a regularization through permission but no orders could be passed due to the death of Bishram Munda,

The case is time-barred.

The petitioner has produced the xeroxed copy of the Khatian and rent receipt by way of evidence.

The Ops have adduced two witnesses to support their show cause.

The following points emerge for consideration:

1. Whether the plot in question pertains to an adivasi khata?
2. Whether purported transfer is in violation of Section 46 or any other provision of the CNT Act, 1908.
3. Whether the case is time barred, i.e. whether the transfer had taken place 30 years prior to the filing of the case?
4. Whether the land is chhaparbandi?

According to the Khatian adduced by the petitioner, the khata in question is recorded as kayami in the name of Manaki Munda and Gabrail Munda S/o Deba Munda, which goes on to affirm that the disputed plot falls in adivasi khata.

Findings

In their show cause, the Ops themselves admit that they had bought the land in question vide an unregistered sale deed. No permission for transfer was taken from the Deputy Commissioner. There is no provision for the transfer of an adivasi land through plain paper deed without the prior permission of the Deputy Commissioner. It is in clear violation of Section 46 of the CNT Act. The Ops have not been able to prove that the transfer is more than 30 years old. Thus neither the point of time bar nor the gradual conversion of the nature of the land into Chhaparbandi could be proved. As per the xeroxed copy of the rent receipt furnished by the petitioner, the rent upto 2000-01 has been paid in the name of Bishram Munda by the petitioner Jaura Munda. As per the khatian, the total rent payable area of the khata is 3.33 acres. While the Ops claim to be in possession of the land in question, they have not been able to support any conclusive proof in support of their show cause.

Evidently, the Ops have occupied the land in question as pertaining to adivasi khata, illegally, in contravention of Section 46 of the CNT Act, 1908.

Order

An order of eviction was passed against the Ops U/S 71-A of the CNT Act, 1908. They were directed to remove structure, if any, and make over the possession of the land to the petitioner within a month of the order. Delivery of possession orders were issued to the C. O. Namkom.

Case Study No. 19

SAR CASE NO. 192/03-04

District: Ranchi

This case has been started on a petition by Kolha Oraon S/o Late Ghura Oraon and Bishwanath Oraon S/o Jagarnath Oraon village Heenu, PS Jagarnathpur, district Ranchi U/S 71-A of the CNT Act, 1908 against Ops. 1. M.R. Bose, 2. S.N. Chaudhary, 3. Rameshwar Prasad, 4. Ashutosh Chatterjee, 5. R.N. Nandi, and 6. Rang Bahadur Singh all residents of Dinkar Nagar, near Hatia Railway Station, PS Jagarnathpur, district Ranchi for a restoration of the petitioner's alienated land. The petitioners have alleged that the Ops respectively have illegally occupied 4, 4, 5, 6, 5, 6 kathas (total 30 kathas of the petitioner's lands) pertaining to plot No. 1249, khata No. 31 of Mouza Heenu. The petitioners claim to be adivasis through an affidavit.

Notices were served upon the Ops. OP Ashutosh Chatterjee refused to receive the same. Hence an ex-parte order had to be passed against him. The rest of the Ops submitted a show cause, according to which the petitioner's ancestors sold the land to Yadu Nandan Tiwary in 1952. The sale was confirmed vide an order passed in Title Suit Case No. 226/ 1967. Yadu Nandan Tiwary sold 7.75 decimals of plot No. 1254 and 0.50 decimals of Plot No. 1290, a total of 8.25 decimals of land to Shankar Ramjee Malusarai in 1972 vide a registered sale deed. 5.50 decimals of land in plot No. 1247 and 1248 is in possession of Sulakshana Devi whereas her husband R.B. Singh has been made an OP. Sulakshana Devi had bought 5.75 decimals of land under plot No. 1247 and 1248, Khata No. 31 from Yadu Nandan Tiwary vide a registered sale deed in 1976. Vide mutation Case No. 626 (R) 27/ 1967-68 Yadu Nandan Tiwary had

got the land mutated in his favour. Sulakshana Devi had got the land mutated in her favour vide Mutation Case No. 683 (R) 27/ 1976-77 and also got holding No. 30 opened in her name in ward No. 30 of the municipal corporation.

The show cause goes on to state that while Baliram Chaudhary is in possession of 4 kathas of land in plot no. 1249, S.N. Chaudhary has been named as an OP. This land had been sold by Yadu Nandan Tiwary in 1971 to Saroj Shrivastava who had, in turn, sold it to Baliram Chaudhary in 1995 vide a registered sale deed. The land had even been mutated in favour of the seller.

Rameshwar Prasad submitted that he had been made an OP in the case, whereas his wife Ratna Devi was in occupation of 4 kathas of land in khata No. 1249. She had bought the same from Saroj Shrivastava in 1984 vide registered sale deed. Mutation had already taken place in favour of Ratna Devi in the Municipal Corporation.

Mintu Ranjan Bose submitted that he was in possession of 3 kathas of plot no. 1243 and 1250 which he had bought in 1978 from Bimla Kumari Sinha. Bimla Kumari had bought this land on 3.11.1969 from Yadu Nandan Tiwary.

Rabindra Nath Nandi submitted that he had bought 2 kathas and 1.50 Chhatak of land in plot No. 1248 from Paresh Chandra Kundu in 1982. Kundu, in turn, had bought the same from Yadu Nandan Tiwary in 1971.

All the appearing Ops submitted that the case was time barred, hence, fit to be dismissed.

The petitioner submitted a photo copy of the khatian and a witness by way of evidence.

The appearing Ops submitted photocopies of 5 registered sale deeds, mutation papers and rent receipts in support of their show cause. They also produced 6 witnesses.

The following points have been looked into in this context:

1. Whether the plot in dispute pertains to an adivasi khata?
2. Whether the purported transfer is violative of Section 46 or any other provision of the CNT Act?
3. Whether the case is time-barred, i.e. whether the transfer took place 30 years prior to the filing of the case?

Findings

The impugned plot pertains to the adivasi khata as the name of Gaila Oraon, caste Oraon, is entered as the recorded tenant of the khata concerned in the khatian produced by the petitioner.

Two kathas and 1.50 Chhatak of land falling in plot No. 1248 of the khata in question was bought by Rabindra Nath Nandi from Paresh Chandra Kundu vide Deed No. 6409/7.7.1982. Mutation and rent receipts are all post- 1992.

Three kathas of land in plot No. 1249, 1250 of the khata concerned was bought by Mintu Ranjan Bose from Vimla Kumari vide Deed No. 428/16.1.1978 and rent receipts are post- 1978.

Ratna Devi W/o Rameshwar Prasad bought 4 kathas of land inclusive of half house in plot No. 1249 of the Khata concerned from Saroj Shrivastava vide Deed No. 3461/ 13.3.84. Mutation and rent receipts are post- 1984.

Baliram Chaudhary purchased 4 kathas of land inclusive of a thatched house in plot No. 1249 of the Khata concerned from Saroj Shrivastava vide Deed No. 7556/ 20.9.95.

Sulakshana Devi W/o Rang Bahadur Singh purchased a total of 5.50 decimals of land in plot No. 1249 and 1248 of the concerning khata from Yadu Nandan Tiwary. Mutation and rent receipts are post- 1976.

All the documents tendered by the Ops. are post- 1976 and even if the OPs' occupation is calculated from the dates of the deeds, the period falls short of 30 years. Besides, the papers submitted fail to reveal how and when a transfer from the adivasi raiyat had taken place.

The petitioner submitted that the impugned land had been recorded in the name of his grandfather. OPs' witnesses have corroborated this fact. It appears that both the parties have moved in a collusive way in order to gain the advantage of the second proviso to Section 71-A.

The OPs, while claiming the case to be time-barred, also express their willingness to pay compensation in para 20 of their written statement.

Evidently, the impugned land, pertaining to the adivasi khata has been transferred without the Deputy Commissioner's prior permission and all the 6 OPs have occupied the same unlawfully in violation of Section 46 of the CNT Act, 1908.

Order

The court directed the OPs' eviction from the lands in question U/S 71-A of the CNT Act. He was directed to remove his possession from the impugned land within one month of the order and make over the same to the petitioner as well as other heirs to the recorded tenant. Accordingly, delivery of possession orders were issued to the Circle Officer, Ranchi.

Case Study No. 20

SAR CASE NO. 976/ 03

District: Ranchi

This case was filed by Baha Oraon S/o Late Tukru Oraon village Arsande PS Kanke district Ranchi under Section 71-A of the Chota Nagpur Tenancy Act, 1908 against OP 1. Siti Baitha S/o Loka Dhobi, 2. Vikram Baitha S/o Late Chhathu Baitha, 3. Gandauri Baitha S/o Siti Baitha and Fagu Baitha S/o Late Chhathu Baitha all residents of village Bodaiya PS Kanke for the restoration of his alienated land. The petitioner has alleged that the OPs have unlawfully occupied 47 decimals of his land falling in plot No. 333 Khata No. 577 of Mouza Bodaiya. The petitioner claims to be an adivasi.

The petitioner has furnished the xeroxed copy of the khatian in which the impugned land is shown recorded in the names of Lelaiya Oraon and others as kayami. An affidavit filed by the petitioner reveals that he is the successor of the khatiani raiyat.

Despite 7 dates fixed by the court, the OP has not yet submitted a show cause. He was given a last opportunity. This proves that he does not have any valid papers relating to the land in question.

The petitioner submitted that Lelaiya Oraon was his grandfather. The OPs are in possession over the dispute land for about 3 to 4 years. They all belong to the same family. The said land had never been sold by his ancestors or any other family member.

Findings

The evidence adduced by the petitioner and the silence of the OPs goes on to prove that the land in question which pertains to the Adivasi khata has been unlawfully occupied by the OPs in contravention of Section 46 of the CNT Act, 1908.

Order

An order of eviction was passed against the OPs. U/S 71 (A) of the CNT Act, 1908. They were directed to remove their possession and make over the same to the petitioner within a month of the order. Delivery of possession orders were issued to the C.O. Sadar Ranchi.

CASE STUDY NO. 1

In the court of the Deputy Commissioner, Dumka
Rev. Misc. Appeal No. 412/79-80
Jogendra Lal Saha Vrs. Shanicharwa Uraon
Date of Order – 12.7.1982

This appeal has been preferred against the order dated 31.5.79 passed by S.D.O. Sahebganj in Rev. Misc. case No. 76/ 75-76 evicting the appellant from plot No. 331 of Bara Talbana, P. S. Taljhari.

The case of the appellant, in brief, is that plot No. 331 of Mouza Bara Talbana was recorded as forest though there was no forest. Out of this plot No. 331, 64 B. 8 K. 6 dhurs of land was settled with the appellant vide lease No. 936 dated 25.2.69 and the forest department had already given their consent to the said settlement vide letter No. 2743 dated 25.6.66 and the Mining Department had settled the land in favour of the appellant. As the mining lease for 10 B. of land within this plot No. 331 had already been granted to one Smt. Karana Nowel for working china clay, this portion has not been included in the said mining lease granted to the appellant by the Mining Department. The appellant started working the mines since 25.2.69 and has already set-up washing plant and constructed several buildings on the spot without any opposition from the respondent and the mining operation is already going on. The District Mining Officer, Dumka duly informed the DFO and the court of Deputy Commissioner that lease had already been granted on 25.2.69 by the mining department to the appellant for a period of 20 years after obtaining consent of the forest department and submitted that the appellant had been working the china clay mines on plot No. 331.

After getting the settlement the appellant on demand duly deposited surface rent @ Rs.10/- per acre. Plot No. 331 in question is recorded as palas jungle and the appellant has cleared a good portion of the jungle and that no portion of it is used for the purpose of cultivation.

It is further contended that two cases with respect to the aforesaid land are pending before the Deputy Commissioner vide Forest Appeal No. 454/ 7475 and F.S. case No. 3/59-60. The SDO, on receipt of the petition referred the matter to CO Taljhari, but no report was submitted by him and the learned SDO without any report and without hearing, evicted the appellant from plot No. 331 of Mouza Bara Talbana.

The contention of the appellant is that he has been granted lease of the land in question by the State Govt. executed by the Deputy Commissioner and he constructed substantial structure and operating the mines paying huge royalty to the State Govt. and that the matter is subjudice before the Deputy Commissioner, Dumka. Therefore, the order of the SDO is fit to be set aside.

The case of the respondent, in brief, is that the land in question was originally under the forest area but on a petition filed by the respondent, 30 bighas of land out of plot No. 331 was released from the Forest Department in favour of the respondent and they are in cultivating possession of the land in question. It is further submitted that the appellant has taken the lease from the Mining Department without their knowledge. As the land in question belongs to them, the SDO has rightly passed order for eviction which may be confirmed.

The appellant has filed the certified copy of the order dated 20.5.80 of RMA 454/ 74-75 of this court. This appeal was preferred against the order dated 12.7.74 passed by the Forest Settlement Officer in F.S. Case No. 3/ 59-60 allowing the claim of the respondent over 30 bighas of land in plot No. 331. The order of the Forest Settlement Officer has been set aside, so the plea taken by the appellant that the land has been released in their favour by the Forest Department is not maintainable. The case of the appellant is that mining lease has been granted in respect of the land by the Mining Department and the mining operation is going on. The SDO has not looked into this plea of the appellant. Although he had entrusted the matter to the C.O. for enquiry but he passed the order of eviction without waiting for the report of the C.O. In view of this, the Deputy Commissioner found it necessary to consider this aspect of the appellant's contention and the case was, therefore, remanded to the learned SDO, Sahibganj for necessary consideration and order according to law.

CASE STUDY NO. 2

In the court of the Deputy Commissioner, Dumka
Rev. Misc. Appeal No. 834/79-80
Sripati Chandra Das Vrs. Bishwa Nath Sharma
Date of Order – 7.9.1982

This appeal is arising out of the order dated 13.8.79 passed by SDO, Godda in his R.E.R. case No. 326/79-80 refusing eviction of the respondent from plot No. 344 of J.B. No. 26 of mouza Gorhimal, P.S. Godda.

Briefly stating, the case of the appellant is that plot Nos. 344, 345 and 346 are recorded in the name of Most. Triguna Bala Dasi, adoptive mother of the appellant. In or around 1955, the recorded tenant constructed a temple on the aforesaid plot No. 346 and installed the deity of Shri Satya Narain Swamijee in the said temple and appointed, Jamuna Maharaj, father of the respondent as 'Pujari' and threw open the said temple to the public. The contention of the appellant is that Jamuna Maharaj dishonestly got his name mutated vide mutation case No. 45/65-66 in respect of plot No. 346 in the CO's Office, Godda having an area of one bigha as Sebayat and also in respect of plot No. 344, having an area of 2 bighas. The recorded tenant filed a revision vide mutation revision No. 76/68-69 for setting aside the said order before the learned Additional Collector, Dumka, but the Additional Collector rejected the mutation revision No. 76/68-69 on the ground that his eviction U/S 20 (i) of the S.P.T. Act was not possible in the mutation appeal. Most. Triguna Bala Dasi died a few months after the mutation revision was rejected. The appellant instituted R.E.R. case No. 326/79-80 before SDO, Godda for the eviction of the respondents, who are sons of Jamuna Maharaj. Accordingly, the learned SDO

directed the respondent to show cause against eviction. The respondents filed show cause stating that the recorded tenant had no money for the construction of the temple and Jamuna Maharaj, their father, constructed the said temple and 2 bighas of land within plot No. 344 was being utilised for the maintenance of Bhog and Sewa Puja for Shri Sri Satyanarain jee and Jamuna Maharaj was appointed Sebayat.

The contention of the appellant is that as the temple after construction and installation of the deity was thrown open to the public, the temple is managed by public donation and subscription and there was neither the necessity of dedicating the said two bighas of land within plot No. 344 for the maintenance of Bhog and Sewa Puja of the deity nor the question of appointing Jamuna Maharaj a Trustee or Sewayat of the said dedication. In fact the said two bighas of land within plot No. 344 was never dedicated for the maintenance of Bhog and Sewa Puja, nor the above named Jamuna Maharaj was appointed Sewayat of the deity nor any such family arrangement was made. The remaining area of plot No. 344, 346 and 345 had also been alienated by Most. Triguna Bala Dasi herself during her life-time. In spite of the facts as above, the learned SDO, Godda, without making any enquiry into the facts of the case, dropped the proceeding in favour of the respondents on finding that 2 bighas of land within plot No. 344 had been given to Jamuna Maharaj, father of the respondents by family arrangement.

The contention of the appellant is that the SDO did not make any enquiry himself into the facts of the case and dropped the proceeding. It is also contended that there is no material on the record to show that plot No. 344 had been given to Jamuna Maharaj for the maintenance of the temple and for Bhog and Sewa Puja. It is also contended that from the mutation proceeding case No. 45/65-66 as well as mutation revision No. 76/68-69, Jamuna Maharaj made

out a case that two bighas of land within plot No. 344 had been given to him as gift by Most. Triguna Bala Dasi, but the respondent has set up a new case that the land has been given to him by family arrangement which is absolutely false and baseless. It is further contended that Jamuna Maharaj has himself admitted that two bighas of land had been gifted to him by Most. Triguna Bala Dasi. The respondents are liable to be evicted from the lands in question U/S 20 (5) of the S.P.T. Act as no gift is permissible in the district of Santal Parganas according to the S.P. Tenancy Act. It is also contended that Jamuna Maharaj did not belong to the family of Triguna Bala Dasi or the appellants and, as such, the question of giving the said two bighas of land within plot No. 344 does not arise. There was no material on record that Jamuna Maharaj was appointed Trustee or Sewayat in respect of the temple for two bighas of land and, therefore, it is to be held that the respondents are in illegal possession of the said two bighas of lands.

The case of the respondents is that plot No. 344, 345 and 346 is recorded in the name of Triguna Bala Dasi – Plot No. 344 has an area of 2 bighas 13 kathas 3 dhurs. Most. Triguna Bala Dasi had no issue and, therefore, she adopted one Ram Chandra Das as her son on 24.6.55 and the said Triguna Bala Dasi with her adopted son Ram Chandra Das made a family arrangement according to which plot No. 346 having an area of 1 bigha was given for the construction of a temple of Sri Satya Narain Swami and 2 bighas of land in plot No. 344 was allotted for Bhog and Sewa Puja of Sri Satyanarain Swami and Jamuna Maharaj was made Sewayat for the said temple. According to the family arrangement, he got the temple constructed which is free for the general public for worship. It was further contended that from the land for which the eviction has been sought and from the produce of the said temple, arrangement is being made for Bhog and Sewa Puja for the said temple. It is further the case of the respondents that mutation has

been allowed as Sewayati land in respect of the land in question. It has been contended that the said Triguna Bala Dasi subsequently cancelled the deed of adoption dated 24.6.55 and executed a registered deed of adoption dated 2.5.59 purporting adoption of one Sripati Das, who is the appellant in this case. According to the respondents, the alleged adoption of Sripati Das is void and, therefore, Sripati Das cannot have any claim in the property of Triguna Bala Dasi. This is however, a matter to be decided by a competent Civil Court. The said Triguna Bala Dasi desired to construct a temple on her land and to install the deity of Sri Satyanarain Swamijee. Triguna Dasi discussed the matter with the father of the respondents, Jamuna Maharaj and Sri Maharaj volunteered to help and contribute. Later on, Most. Triguna Bala Dasi along with her adopted son, Ram Chandra Das made a family arrangement dedicating 1 bigha of land in the said plot No. 346 for the construction of a temple of Lord Sri Satyanarain Swamijee and 2 bighas of land in plot No. 344 for the maintenance of Rag Bhog and Sewa Puja of the said Lord Satya Narain Swamijee and as per the said arrangement, the said Jamuna Maharaj was made Trustee of the dedication. The other grounds of the respondents have already been discussed alongwith the case of the appellant.

The contention of the respondent is that as it is a family arrangement, it does not come within the purview of illegal transfer and, hence, no order for eviction U/S 20 or 42 of the S.P.T. Act can be passed.

From the facts available on records it comes to light that it is an admitted case that the land in question i.e. two bighas of land in plot No. 344 has been gifted by Most. Triguna Bala Dasi U/S 20 of the S.P.T. Act. No sale, gift etc. of the J.B. land is permissible in the district of S.P. and, therefore, the said deed of gift is against the principle of law and, therefore, the respondents are liable for

CASE STUDY NO. 3

eviction U/S 20 (5) of the S.P.T. Act. Jamuna Maharaj was not the family member of Triguna Bala Dasi and, therefore, giving of 2 bighas of land within plot No. 344 by family arrangement cannot be said to be a legal transfer. Therefore, it appears to be a fit case in which eviction order should have been passed by the SDO against the respondents.

Considering this aspect, the Deputy Commissioner allowed the appeal and set aside the impugned order. In result, the respondents were evicted from 2 bighas of land out of plot No. 344 of J.B. No. 26 of mouza Gorhimal, P.S. Godda. The SDO was directed to take action accordingly.

In the court of the Deputy Commissioner, Dumka
Rev. Misc. Appeal No. 116/82-83
Daud Mian Vrs. Chand Soren
Date of Order – 1.11.1982

This appeal is directed against the order dated 15.7.82 passed by SDO, Dumka in R.E. case No. 101/76-77 evicting the appellant from plot No. 544 and 565 of mouza Damri P.S. Dumka mufassil.

The case of the appellant is that on 1.11.76, the respondent filed a petition before SDO, Dumka stating that the appellant has constructed a house on plot No. 544 and 565 appertaining to J.B. No. 16 of mouza Damri and the respondent had no knowledge that the land belongs to him as he was minor and, hence, the respondent prayed that the appellant may be evicted. On the basis of this petition, R.E. case No. 101/76-77 was registered and the appellant was asked to show cause against eviction. On 2.8.78, both the appellant and the respondent filed a joint petition of compromise before SDO, Dumka in which the respondent admitted the possession of the appellant over the land in question measuring 10 kathas 5 dhurs and also admitted that he had no right, title and interest over the said house and land. But the learned SDO by his order dated 12.4.79 without considering the facts passed the order of eviction. Against the above order of eviction, the appellant preferred an appeal before the Deputy Commissioner which was transferred to Additional Deputy Commissioner, Dumka for disposal. The learned ADC set aside the order of the lower court and remanded the case to SDO with a direction to enquire into the matter whether the appellant's house and the land in dispute is in possession since last forty years and in such case the appellant is not

liable for eviction. The matter was entrusted to CO, Dumka, who submitted his report dated 5.1.81 stating that the house of the appellant stands on the plot in question since forty years and the appellant is residing in it and is in possession. But inspite of all this, the SDO, Dumka vide his order dated 15.7.82 evicted the appellant from the land and house in question.

The main contention of the appellant is that as he has been in possession of the land and house since forty years which was supported by the Anchal Adhikari, Dumka, he cannot be evicted. The appellant has further contended that under the provisions of the Scheduled Area Regulation, 1969, a person cannot be evicted from the land on which substantial structure exists and in the event of eviction, compensation should be ordered. But these mandatory provisions of law have not been followed by the learned SDO.

On perusal of the record of the lower court, it appears that the Circle Officer, on local inspection found that actually plot No. 565 is not under dispute, but the disputed plot is 545, which is contiguous to plot No. 544 towards north, which is also under JB No. 16. The CO also found the house of the appellant Daud Mian over plot No. 544, which has a mud-built wall with Khaprail roof and it is about forty years old. As regards plot No. 545, the CO has reported that the appellant Daud Mian is possessing it as Bari land and mango trees were also found standing thereon.

The Deputy Commissioner finds that the learned SDO has rightly disbelieved the report of the Anchal Adhikari. On the other hand, the appellant has not produced any document, nor any rent receipt to prove his right over the land in question. It seems, he has unauthorisedly grabbed the land which belongs to the tribal. Having regard to these, the Deputy Commissioner found no merit in

the appeal which was dismissed and the land was restored to the respondent.

CASE STUDY NO. 4

In the court of the Deputy Commissioner, Dumka
Rev. Misc. Appeal No. 246/82-83
Gendu Bala Dasi Vrs. Mathan Mahato
Date of Order – 1.10.1983

This appeal has been preferred against the order dated 8.9.82 passed by SDO, Jamtara in R.E. case No. 187/79-80, rejecting the prayer of the appellant for the eviction of the respondent from plot Nos. 66, 67, 68, 73, 74, 75 and 41 having a total area of 1.84 acres under J.B. No. 5 of mouza Khamarchak, P.S. Nala.

The case of the appellants, in brief, is that J.B. No. 5 of mouza Khamarchak is recorded in the name of Jitu Mirdha in the last survey settlement and they (appellants) are successors-in-interest of the said Jitu Mirdha, since deceased. About 14 years ago, the respondents illegally and fraudulently grabbed about 1.87 acres of land under J.B. No. 5 of mouza Khamarchak belonging to Jitu Mirdha by means of collusive and fraudulent title suit. The appellants filed a case of eviction of the respondent before the SDO, Jamtara which was registered as R.E. case No. 187/79-80 in which the respondents filed show cause giving false assertion that they are in possession of the land from before 1949 and the learned SDO admitted the show cause filed by the respondents and dismissed the petition for eviction.

The contention of the appellants is that the learned SDO did not examine the length of possession of the respondents over the land in question and the genuineness of the title suit and kurfa settlement in regard to the land in question and, therefore, the order of the learned SDO is against the provisions of law. According to the petition

dated 10.9.83 the appellant died on 13.8.83 and the appellant No. 2 and 3 are the next heirs.

The case of the respondents is that Mathan Mahto obtained settlement of this land in question in kurfa from the original owner in 1346 B.S. corresponding to the year, 1940 A.D. There were other litigations between the respondent Mathan Mahto and original owners of the disputed land and their successors-in-interest and the said cases had been decided in favour of Mathan Mahto. Therefore, one Balbhadra Mahto filed R.E. case No. 150/69-70 in respect of the land in question and Mathan Mahto and the appellants were made parties. The learned SDO passed an order on 10.8.70 directing eviction from the land in question against which Mathan Mahto filed R.M.A. case No. 289/70-71 in the court of the Deputy Commissioner, Dumka which was dismissed and Mathan Mahto filed writ petition before the Hon'ble High Court vide C.W.J.C. No. 120/71, which was allowed vide order dated 9.11.73 and the case was remanded to the Deputy Commissioner, Dumka. Later on, a joint petition of compromise was filed before the Deputy Commissioner, Dumka duly signed by Mathan Mahto and the Mirdhas including the present petitioners and successors-in-interest in which it was clearly mentioned that Mathan Mahto was in possession of the disputed land since 1940 and the learned Deputy Commissioner accepted the compromise on 31.12.77. The respondent, Mathan Mahto is paying rent and his name has also been mutated. Thus, the respondent is in possession of the disputed land much before 1949 and, therefore, he cannot be evicted from the land in question, in view of the ruling of the Hon'ble High Court, Patna reported in 1978 B.B.C.J. page No. 572. The respondents have, therefore, submitted that in view of long standing possession of the respondent over the disputed land, they have acquired occupancy right U/S 18 of Regulation 3 of 1872.

CASE STUDY NO. 5

The respondents have filed relevant documents including rent receipts and kurfanama. The appellants have filed parcha of J.B. No. 5 and some rent receipts.

On examining the documents and hearing the learned counsels, the Deputy Commissioner was satisfied that the respondents had acquired prescriptive right over the disputed land by adverse possession and, therefore, they could not be evicted U/S 42 of the S.P. Tenancy Act, in view of several decisions of the Hon'ble High Court in this regard and, therefore, he did not find any reason to interfere with the order of the learned lower court. In result, the appeal was dismissed.

In the court of the Deputy Commissioner, Dumka
Rev. Misc. Appeal No. 34/84-85
Bhagirath Rawani Vrs. Bihari Rawani
Date of Order – 15.4.1988

This is an appeal against the orders of SDO, Jamtara dated 21.4.84. Before this order, an earlier order was passed by the SDO against which an appeal was preferred and the learned ADC, Dumka was pleased to remand back the case to the SDO directing enquiry on three specific points and a decision thereafter. The enquiry was conducted by the SDO himself and he came to the same conclusion as before. The present appeal is, therefore, against the second order of the SDO dated 21.4.84 as mentioned earlier.

The jotes in question are recorded in the Khatian in the name of Tulsi Rawani. Both the parties had admitted the fact that the present appellant is the legitimate grandson of the recorded tenant, who is dead now. Secondly, the Pradhan, after the death of the recorded tenant had settled the plots with his own two daughters. It was also unlikely that the Pradhan had sought permission of the Deputy Commissioner before settling the jotes with his daughters as per rules. It was also not clear whether the jotes were at all declared fauti in the first place in order to be eligible for settlement.

The Deputy Commissioner held that it was unlikely that the plots would have been allowed to be abandoned by the legitimate heir who had now claimed the said plots. It also appears that the very fact of settlement by the Pradhan with his own daughters smacks of nepotism and motive on his action. Hence, the Deputy Commissioner set aside the settlement of the Pradhan with his

daughters i.e. the present respondents and directed that the said plots be restored back to the appellant, who was rightful heir of the plots in question.

CASE STUDY NO. 6

In the court of the Deputy Commissioner, Dumka
Rev. Misc. Appeal No. 260/1985-86
Durga Murmu Vrs. Arjun Kumar Sen
Date of Order – 7.7.95

This appeal has been filed against the order dated 27.1.86 passed by the Sub-Divisional Officer, Dumka in R.E. case No. 8/1984-85. Vide the said order, the SDO had evicted the appellants from plot No. 567 of village Lagwan, Thana Jama. The appellants have submitted that the impugned plot No. 567 bearing a total area of 3 bighas, 14 kathas and 11 dhurs actually belongs to appellants No. 3 to 6. They have argued that the recorded tenants of the concerning plot is their ancestor, namely, Jetha Hembrom. The appellants further submit that a Section 145 proceeding under the Cr PC had been started in 1980 against the disputed land wherein the appellant's possession had been declared.

The respondents have submitted on the other hand that the concerning land had been obtained by them vide objection case No. 75/1924 in course of the last survey and settlement. The appellants argue that the Ops. have got their names entered fraudulently. But they have not been able to establish how and in which way the fraud was committed. If at all a fraud was played they ought to have acted in accordance with law. The Cr PC proceedings U/S 145 hardly settles the ownership question.

The Deputy Commissioner is satisfied that the appellants had unlawfully encroached upon the land in question. The SDO had rightly evicted them from the same. Hence, there was no need for

interfering with the order dated 27.1.86 passed by the SDO. The appeal was dismissed.

CASE STUDY NO. 7

In the court of the Deputy Commissioner, Dumka
Rev. Misc. Appeal No. 7/1986-87
Ibrahim Mian Vrs. Hemlal Maraiya
Date of Order – 8.6.1990

The Deputy Commissioner mentions the following documents furnished by both the parties:

Documents filed by the appellant –

1. Certified copy of the order dated 10.6.1959 passed in Dumka Second Court Case No. T.S. No. 1/1959.
2. Certified copy of the order dated 4.4.1959 in Dumka Second Court Case No. T.S. No. 2/1959.
3. Certified copy of the mutation list.
4. Rent receipts of Jamabandi No. 8/1.
5. Rent receipts of Mouza Mathakesi Jamabandi No. 123.
6. Mutation list of Butan Mian.

The respondents have filed the xeroxed copy of the SDO's order dated 31.3.1986 passed in R.E. case No. 76/1984-85 and of 'Basgari' report.

The disputed land falls in Jamabandi No. 123 of Mouza Mathakeso, Jamabandi No. 8 of Mouza Bhoja and Jamabandi No. 13 of Mouza Nawadih. Admittedly, this land is recorded in the names of Kola Maraiya and Kalu Maraiya in the last survey and settlement. Kola Maraiya was the father of the respondent and Kalu Maraiya was the uncle of the respondent. Kalu Maraiya died issueless. Hence, the

CASE STUDY NO. 8

respondent is the successor to the land in question. There is no dispute over this fact.

The appellant No. 1 Ibrahim Mian submits that he is in lawful possession over the lands in question and that he had taken the same from the recorded tenant by kurfa settlement 50 years ago. The C.O. Saraiyahat has issued correction slip in his favour in mutation case No. 36/1962-63. Since then he has been paying rent. TS No. 29/60 and TS No. 21/1969 had been filed with regard to the same plot. Similarly, appellant No. 2 Butan Mian has advanced claim over the concerning portions of the disputed land, making a reference to the correction slip issued in mutation case No. 7/1963-64 and the fact of the payment of rent by him. He mentions TS No. 1/59-B filed in this regard.

In view of the above, the appellants pray for the setting aside of the SDO's impugned order.

Indisputably, the respondents are the legal heirs of the recorded tenants. As per the Hon'ble High Court Judgement as reported in 1985 BBCJ Page No. 12, an adverse possession to be perfected in Santal Parganas has to be effective from 12 years prior to 1.11.1949 the date of the promulgation of the SPT Act.

The appellants have filed the copy of the Title Suit. But the same was dismissed in default. Hence, no benefits accrue out of this suit to the appellants. Mutations lose all legal sanctity in view of the Hon'ble High Court's order referred above. Rent receipts are much later than 1949. The appellants have failed to produce any evidence which could establish their possession from 1937.

The appeal was dismissed and the SDO's order was upheld.

In the court of the Deputy Commissioner, Dumka
Rev. Misc. Appeal No. 100/1986-87
Sanuel Mian Vrs. Kapsu Mian
Date of Order – 18.1.1991

This appeal has been filed against the order dated 23.7.86 passed by the SDO, Jamtara in R.E. case No. 28/1984-85.

The plot under dispute falls in plot No. 89 (4 decimals) Jamabandi No. 3 – ka of Mouza Kadamitur, Thana Narayanpur and is recorded in the name of Samir Mian in the last survey Khatian. JB No. 3 – ka, plot No. 91 and 92 bearing an area of 3 and 6 decimals respectively of Mouza Kadamitur are recorded in the name of Fakir Mian in the last survey khatian. Plot No. 93 (Dhani-III, area 4 decimals) and plot No. 100 (Bari-II, area 45 decimals) of the same Jamabandi are recorded in the names of Fakir Mian and Samir Mian. After the death of Samir Mian, his brother Fakir Mian became legally entitled to all the above mentioned plots. After the death of Fakir Mian, his only son Mangru Mian and after the death of Mangru Mian, his son Sanuel Mian became the legal owners. The impugned land was given under usufructuary mortgage to the respondents. Therefore, the appellant has filed a petition for eviction.

The Op submits that the concerning land had accrued to him in family compromise. Section 20 of the SPT Act is not applicable in this case. He further submits that mutation has already taken place in his favour in C.O. Narayanpur Mutation Case No. 20/67. It is clear to the Deputy Commissioner on a perusal of the genealogy that the OP Kapsu Mian is the grandson of the recorded tenant's

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uncle. He submits that in 1936-37, Satan Mian the brother of Fakir Mian, the recorded tenant, had made over the land to Matan Mian in family partition. Since then Nanda Mian son of Matan Mian and Kapsu Mian son of Nanda Mian have been in cultivating possession. This plea, however, is not acceptable to the Deputy Commissioner. The lands belonging to the recorded tenant can devolve only on his heirs, not on his uncle. If at all the father of the recorded tenant was alive at the time of the survey, the land ought to have been recorded in his name, which did not happen. Hence, the appellant had raised the issue of family partition only to hide the fact of illegal transfer. Since it is not a case of family partition, the Hon'ble High Court's order reported in 1971 AIR 87 does not apply to it.

Secondly, Mando Mian, the father of the OP himself petitioned before the C.O. in Mutation Case No. 36/1966-67 that he had acquired the disputed land in settlement from Mangru Mian. His plea of remaining in possession since 1936-37 is unacceptable. All the documents filed are post-1960. The copy of the purported family partition too has not been filed.

In view of the above, SDO, Jamtara order dated 23.7.86 passed in R.E. case No. 28/1984-85 was set aside. The OP was evicted and the land was restored to the legal heirs (including the appellants) of the recorded tenant.

In the court of the Deputy Commissioner, Dumka
Rev. Misc. Appeal No. 108/1986-87
Chhaku Gorain Vrs. Magani Mandalain
Date of Order – 25.7.1992

This appeal has been filed against the order dated 25.8.1986 in SDO, Jamtara Court's R.E. case No. 17/1983-84. Vide the said order, the SDO had evicted the appellant from plot No. 10, Mouza Samukpohar, Thana Jamtara.

The appellant submits that the disputed land had been recorded in the name of Johari Mandal in the last survey. He further submits that Johari Mandal's father-in-law did not have a son and that the appellant had been kept as a ghar-jamai in village Kushiyara. Village Kushiyara is about 25 kms from village Samukpokhar. He further submits that Johari Mandal earlier got the disputed land cultivated through the appellant's father Bholu Gorai. Later on, Johari Mandal settled the land falling in plot No. 10 (excluding lands of plot No. 674) with the appellant's father namely Bholu Gorai vide Kurfa in June 1937. Ever since then the appellants are in cultivating possession of the land in question, have been paying rent and have acquired title by virtue of adverse possession. They finally submit that their eviction by the SDO was erroneous.

The disputed land is recorded in the name of Johari Mandal in the last survey and the respondents are the heirs of the recorded tenant. This is an admitted fact. The appellants further submit that the land in question had been made over to them through kurfa settlement by Johari Mandal in 1937. Nevertheless, the appellant produced a plain paper Hukumnama in support of his claim. The same does not

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carry any legal worth since it can be constructed by anybody. The Hon'ble Patna High Court has ruled that anyone claiming title by adverse possession will have to prove such possession since 1937, i.e. 12 years prior to the promulgation of the Act. The rent receipts adduced by the appellant date back maximally to 1955-56. Had the land been taken way back in 1937, why the same could not be mutated, has not been explained. Hence, it is a case of illegal transfer. The eviction order passed by the SDO was in order. Hence, the appeal was dismissed and the SDO's order dated 25.8.1986 passed in R.E. case No. 17/83-84 was upheld.

In the court of the Deputy Commissioner, Dumka
Rev. Misc. Appeal No. 112/86-87
Kalam Mian Vrs. Makbul Mian
Date of Order – 19.5.1995

This is an appeal against the order dated 25.8.86 passed by the learned Sub-Divisional Officer, Jamtara in R.E. case No. 35/85-86.

The case of the appellant is that the disputed land pertaining to Jote No. 2, plot No. 401 of Mouza Jhilua is recorded exclusively in the name of Maglu Mian. This plot is recorded as Bastu land and also contained Bari land growing vegetables. It has been alleged that the respondents have encroached this land and have illegally occupied it.

On the other hand, the case of the respondents is that the disputed land was given by the recorded tenant on verbal arrangement for the construction of house. The respondent after getting this piece of land in family arrangement amalgamated this plot with his plot No. 402, constructed house and made a compound and vegetable garden.

The matter was enquired into. From enquiry it came to light that the disputed land is in possession of the respondents and they have a house since long on that plot. But they could not show any document supporting the alleged family arrangement. Moreover, the OPs have not got their names mutated in respect of the disputed land.

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The learned SDO has made a distinction between Bastu and agricultural land. He has concluded that as the nature of the land is not agricultural, provision of Section 42 of the SPT Act will not be attracted. This, according to the Deputy Commissioner, is an erroneous interpretation. In his view, Bastu land is a part of agricultural land in Santal Parganas and like the agricultural land Bastu land is also non-transferable. The term 'Bastu' indicates that this is for residential purpose, but it cannot be separated from the general use i.e. agriculture. Illegal transfer of Bastu land will attract Section 42 of the SPT Act. As far as the question of possession of the land in the form of a residential house since long is concerned, this also does not legally debar from eviction. If the respondents got this land in family arrangement, they should have gone for an exchange.

In the light of the above, in this case, there is no option but to evict the respondents from the disputed land except in a situation where the respondents go for exchange of the land of similar value.

The order of the learned SDO dated 25.8.86 in R.E. case No. 35/85-86 was set aside. He should give to the respondents two months' time for amicable settlement between the parties, failing which he should go for evicting all the respondents from the disputed land.

In the court of the Deputy Commissioner, Dumka
Rev. Misc. Appeal No. 182/86-87
Smt. Dhanmati Sah Vrs. Manohar Rajak
Date of Order – 27.6.1998

This appeal has been preferred against the order dated 31.12.86 passed by the SDO, Jamtara in R.E. case no. 20/83-84.

The contention of the appellant is that jote No. 198 of mouza Malyari stands recorded in the name of Sadhu Singh, who was the original resident of village Karo, district Deoghar. The appellant had no land for homestead. So she approached the recorded tenant for settlement of 0.20 acre of land for basauri purpose. The recorded tenant settled 0.20 decimal of land with the appellant. Later on she constructed a house and other things necessary for homestead. In the process, the appellant prayed before the Notified Area Committee, Mihijam to create separate J.B. for the appellant out of plot No. 710, but the respondent No. 1 Manohar Rajak filed a R.E. case No. 20/83-84 in the court of SDO, Jamtara for the eviction of the appellant from the said plot. The appellant also prayed in the lower court that Section 20 of the SPT Act, 1949 was not applicable in the case of residential house, but without considering her prayer the SDO evicted the appellant from the said plot.

The SDO has mentioned in his order that Manohar Rajak prayed for the eviction of Smt. Dhamanti Sah W/o Sambari Sah of village Mihijam U/S 20/42 of the SPT Act from plot No. 710. He has also stated in his order that the said plot was recorded in the name of Sadhu Singh, who was a resident of a different village. The plot was lying vacant. He has also mentioned in his order that Laxmi

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Singh S/o Sadhu Singh has not submitted any paper or document corroborating their possession over the said land and, therefore, he treated this transfer as a collusive one U/S 20 of the SPT Act. Hence, he evicted Smt. Dhanmati Sah from the said land.

The learned Advocate for the appellant stated that the respondent is not a resident of Mihijam whereas the learned Advocate for the respondent stated that plot No. 710 is recorded as Dhani third class and transfer of the said land is illegal and as per the ruling of the Hon'ble High Court-BBCJ-1985 P/12, the appellant has to prove her possession over the said plot.

After considering all these facts, it is clear that plot No. 710 is recorded as Dhani third class, which is because of lying as barren in the absence of the recorded tenant. Taking advantage of barren land, the appellant is claiming her possession over the said land. But there are two things to be observed for deciding this issue:

- (1) This land is recorded as Dhani third class, which is meant for cultivation. Before converting it into a residential land one has to seek permission from the competent authority which has not been done in this case.
- (2) Secondly, the appellant has not submitted any document or paper which shows her possession over the same land. It is not proved that she has a residential house or anything over the land in question.

In view of the above this appeal was dismissed and the lower court's order was upheld.

In the court of the Deputy Commissioner, Dumka
Rev. Misc. Appeal No. 211/87-88
Sonalal Soren Vrs. Amrit Osta
Date of Order – 20.12.1995

This appeal has been filed against the order dated 20.1.1988 passed by the SDO, Dumka in R.E. case No. 148/1978-79. Vide the said order, the SDO had evicted the appellants from the disputed land which falls in Jamabandi No. 25 of mouza Punasia. The appellant's son substituted the appellant on death.

The appellant argues that his father had taken the land falling in plot No. 193 and 194 vide Kurfanama in 1930 and ever since he was in possession over the said land by residence and cultivation. The respondents submit that the said Kurfanama was forged as by that time the parcha under the Gantzer's settlement had not been published.

The SDO had ordered eviction as far back as 29.3.1979. The appellant had moved the Deputy Commissioner in appeal. He argued that the concerning mouza had been surveyed in 1925 itself. Hence, a kurfa settlement could be made. The then Deputy Commissioner had remanded the case back to the SDO for reconsideration on this very issue. Vide his order dated 20.1.88 the SDO kept up with his eviction order, treating the kurfa as illegal. The appellant has referred to the order dated 10.12.1984 passed by the Assistant Settlement Officer. Vide the said order the ASO had held the title of the appellant on the disputed land to be genuine on the basis of adverse possession. The ASO had even held the

appellant's eviction as impractical and had ordered the opening of a khata in his name.

There have been local enquiries on the disputed land. The appellant's possession by residence and cultivation has come out.

The Deputy Commissioner feels that an appeal could have been filed before the Settlement Officer against the order passed by the ASO. According to the Deputy Commissioner, the SDO's order dated 20.1.1988 was not proper, in the light of various local enquiry reports coupled with the ASO's order. The said order was set aside and the appeal allowed.

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In the court of the Deputy Commissioner, Dumka
Rev. Misc. Appeal No. 25/88-89
Prodhan Besra Vrs. Nandlal Kejriwan
Date of Order – 29.4.1997

This is an appeal against the order dated 28.3.88 passed by SDO, Dumka in R.E. case No. 97/87-88 holding lands of plot No. 261 of mouza Karharbil as Basauri closing the case of the respondent, first party.

The case of the appellant in brief is that plot No. 261 measuring 2 bighas – 18 kathas – 14 dhurs appertaining to Jamabandi No. 18 of mouza Karharbil stands recorded as Bari second class in the last Gantzer's settlement in favour of Dasmal Besra and others. The appellant is the son of Dasmal Besra. This Jamabandi No. 18 was recorded as Jamabandi No. 58 in the previous McPherson settlement. Out of the aforesaid land 13 bighas – 14 kathas – 4 dhurs of plot No. 58 and 32 was acquired in L.A. case No. 4/29-30. The land of plot No. 261 was never included in the proceeding of the aforesaid L.A. case. The appellant is in possession of the same and is making up-to-date payment of rent.

From the order of the court below it appears that the Sub-Divisional Officer had got the matter enquired by the Circle Officer, Dumka. The C.O. in his enquiry report found that plot No. 261 corresponding to 58 of McPherson settlement stood recorded in the name of the Arjun Besra. The original plot No. 58 and 32 having a total area of 13 bighas – 14 kathas – 4 dhurs was acquired for Basauri purpose. Plot No. 261, 281 and 282 having an area of 2 bighas – 13 kathas – 7 dhurs were mutated in the names of Shri

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Satyendra Chandra Rai and Shri Sobhan Chandra Rai vide mutation case No. 94/71-72. The aforesaid owners transferred the plots by registered deed No. 1468 in favour of Nandlal Kejriwal and others on 6.3.78 and they also got their names mutated in respect of the aforesaid plots vide order dated 28.4.78 in mutation case No. 5/78-79. It is clear that the aforesaid plots were acquired in L.A. case No. 4/29-30 which were duly sanctioned by the then Deputy Commissioner, Santal Parganas. Compensation was paid and delivery of possession was effected to the then Zamindar Jitendra Nath Dey. Final publication of Gantzer's settlement was made on 23.1.29 before the final acquisition of land and the name of Arjun Besra stands against the plot. Commissioner, Santal Parganas in R.M. appeal No. 5/85-86 has dismissed a similar eviction petition.

The Deputy Commissioner was satisfied that there was no merit in this appeal which was accordingly dismissed.

In the court of the Deputy Commissioner, Dumka
Rev. Misc. Appeal No. 27/88-89
Secretary, Roman Catholic Mission, Tarni Vrs. The State of Bihar
Date of Order – 23.11.1994

This is an appeal against the order dated 19.4.88 passed by the learned SDO, Dumka in his R.E. case No. 64/87-88. By that order the SDO has evicted the Roman Catholic Mission, Tarni, P.S. Gopikandar from plot No. 486 having an area of 16 bighas – 10 kathas – 19 dhurs. The above land is a Parti Kadim land in the survey khatian. The mouza, where the land situates is a Pradhani mouza and the Pradhan has settled this land with the Catholic Mission.

The appellant's argument is that the Pradhan on the request of the villagers settled this land because the Mission was going to start welfare activities for them. The welfare activities included hospital, school, playground, etc. They have further stated that the Mission has constructed pucca building on the settled land. The learned Advocate for the appellant has argued that the nature of the land has changed from agriculture and it is no more an agricultural land and hence, the eviction is illegal and not maintainable in the eyes of law.

From a perusal of the SDO's order dated 19.4.88 and materials available on record, the Deputy Commissioner finds that the SDO has rightly evicted the appellant from the disputed land on the following grounds:

- (1) Under the SPT (Supplementary Provisions) Act, 1949, settlement of waste land can only be done in favour of raiyats.

- (2) Waste land will be settled for agricultural purpose only.
- (3) The Pradhan has no right to settle waste land with any institution.

In the light of the above provisions, settlement of 16 bighas – 10 kathas and 19 dhurs of land of plot No. 486 of mouza Tarni with Roman Catholic Mission, Tarni is illegal and void. The SDO has rightly evicted the Mission from the above mentioned plot. The order of the SDO dated 19.4.88 was confirmed and the appeal was dismissed.

CASE STUDY NO. 15

In the court of the Deputy Commissioner, Dumka
Rev. Misc. Appeal No. 59/1988-1989
Basir Ahmed Vrs. Sunil Kumar Bhandari
Date of Order – 5.1.1996

This appeal has been filed against the order dated 17.6.1988 passed by the Sub-Divisional Officer, Dumka in R.E. case No. 5/84-85. Vide the said order the SDO had evicted the appellants from plot No. 35, Jamabandi No. 35 of mouza Naya Dumka. The appellant's argument, in brief, is that the disputed land is residential and no proceedings can start on a basauri land U/S 42/20 of the SPT Act. The appellants further submit that they have been residing in a house constructed on the disputed land since long. The appellants claim to have purchased the land from Sharda Prasad. The respondents, on the other hand, submit that the concerning land was their Jamabandi land and was non-transferable. The residential entry is erroneous and action had been initiated by the respondents to get the same rectified. The respondents also submit that the appellants have encroached the disputed land since 1984 and that the appellants' claim of possession for 45 years was wrong.

The Deputy Commissioner perused the order passed by the SDO, Dumka. The SDO had concluded on the basis of the Settlement Officer's order passed in Record Revision case No. 1059/1929 that the land concerned was agricultural, not residential. This conclusion appears to be correct. In any case the appellant has not been able to prove the way in which he obtained the land. The appellant's claim of a 45-year old possession, could not as well be proved. Hence, the Deputy Commissioner finds no reason for

interfering with the order dated 17.6.88 passed by the SDO. The appeal was dismissed.

CASE STUDY NO. 16

In the court of the Deputy Commissioner, Dumka
Rev. Misc. Appeal No. 86/88-89
Sonamuni Ghatwalin Vrs. Jagannath Rai
Date of Order – 25.9.1996

This is an appeal against the order dated 5.7.88 passed by the learned Sub-Divisional Officer, Dumka in R.E. case No. 98/85-86.

The case of the appellant, in brief, is as follows:

Originally, Jamabandi No. 15 of mouza Pakpahari belonged to Nandu Rai, who died leaving behind his two sons, Jata Rai and Kartik Rai and a daughter Matia Ghatwalin. Jata Rai and Kartik Rai died before the last survey settlement and J.B. No. 15 was recorded in the name of Malia Ghatwalin, widow of Jata Rai and Saraswati Ghatwalin, widow of Kartik Rai. Matia and Saraswati, the two widows also died issueless immediately after the last survey settlement and the land came in possession of Matia Ghatwalin, the daughter of Nandu Rai under the Hindu Law. Matia Ghatwalin also died leaving behind her daughter, Karuna Ghatwalin and grand-daughter, Sonamuni Ghatwalin, and after the death of Karuna, her daughter Sonamuni came in possession of the property.

The appellant has alleged that the respondent illegally encroached upon her land in J.B. No. 15 and as such she filed an application for the eviction of the respondent in the lower court. The SDO obtained a report from the Circle Officer, Ranishwar, which was in her favour. She has alleged that the lower court has ignored the report of the C.O. and passed a wrong order without applying mind.

CASE STUDY NO. 17

The learned counsel for the respondent has stated that Fauti case No. S.F. 339/53-54, 14/71-72 and 303/80-81 was started for declaring the land in question fauti, but all the three cases were dropped subsequently. The lands in question have been mutated in favour of the respondent in mutation case No. 47/81-82.

In view of the fact that this matter had been agitated several times and the fauti cases were subsequently dropped, and also considering the fact that the appellant has raised her claim after a gap of 33 years, the Deputy Commissioner found no merit in the appeal, which was accordingly dismissed.

In the court of the Deputy Commissioner, Dumka
Rev. Misc. Appeal No. 87/88-89
Pankhi Sen Vrs. Chitu alias Chatu Mahto
Date of Order – 16.8.1995

This order has been filed against the order dated 30.6.1988 passed by the SDO, Dumka in R.E. case No. 29/84-85. Vide the said order, the SDO had evicted the appellant from 0.6 decimals of land pertaining to plot No. 265 of mouza Chihutia, Thana Narayanpur.

The appellants have submitted that the disputed land had been taken in 1936 vide an Amalnama by their father from the recorded tenant. They further submit that the enquiring officer had found a house constructed on the disputed plot.

The respondents never presented their case despite several opportunities. Still it was evident from the SDO's order that the appellant had illegally taken over the land of the recorded tenant. Amalnama transaction does not carry any legal worth. Jamabandi land is non-transferable as per the Santal Parganas Tenancy Act. The SDO had rightly evicted the appellants from the disputed land. Hence, there was no need for interfering with the order dated 30.6.88 passed by the SDO. The said order was upheld and appeal dismissed.

CASE STUDY NO. 18

In the court of the Deputy Commissioner, Dumka
Rev. Misc. Appeal No. 145/88-89
Kadmi Devi Vrs. Rabindra Nath Choudhary
Date of Order – 31.03.1996

This is an appeal against the ex-parte orders dated nil passed by the SDO, Dumka in R.E. case No. 101/83-84 by which the appellants were evicted from plot No. 1032 and plot No. 1033 recorded in the name of Fakir Gorain and Jitu Gorain.

The claims of the appellants are that they are resident jamabandi raiyats of mouza Behrabank S.C. Gando, P.S. Dumka mufassil, Sub-Division Dumka, district Dumka and their ancestral jambandi lands stand recorded in the names of their grand father, Fakir Gorain and his brother Jitu Gorain under the last settlement Jamabandi No. 43 of mouza Behrabank. It may be stated here that the appellants are also called 'Mandals'. Jitu Gorain died issueless during the life time of his brother, Fakir Gorain.

That till their death the said recorded raiyats had continued in cultivating possession of all the lands of the said Jamabandi No. 43 and thereafter the appellants are continuing in cultivating possession of all the said lands.

The said recorded raiyats were illiterate and simple and it appears that due to the machinations of one of the co-sharer landlords for rent dues of only Rs. 12-1-0 P. they were evicted from the aforesaid Jamabandi No. 43 containing in all 13 bighas-10 kathas- 18 dhurs of lands in R.E. case No. 164 of 1935-36 without affording them proper opportunity to pay the alleged rent dues.

In the said case only one bigha of Bari land in one of the specified plots of the Jamabandi No. 43 in question was settled with late Indra Narain Choudhary of village Kuruwa for the satisfaction of the rent dues.

It appears that no delivery of possession over the settled land had ever been made by the actual eviction of the said recorded raiyats and they and the appellants continued in cultivating possession of all the lands of their said Jamabandi which are non-transferable in nature.

The alleged report of the delivery of possession of the court Amin was merely a table report and even against the order of the court which had not been made according to law in the presence of raiyats.

Bari second class plot No. 1025 comprises an area of 1 bigha-15 kathas- 14 dhurs. Dhani third class plot No. 1032 and Bari second class plot No. 1033 respectively comprises an area of 1 bigha- 6 kathas- 12 dhurs and 6 kathas- 13 dhurs. While the appellants and their predecessors-in – interest improved the nature of plot No. 1032 into Dhani 2nd class, the nature of other two plots continued as before.

The rent of the said Jamabandi had never been apportioned and the appellants continue to pay the entire rent thereof. It is submitted that rent receipts obtained by the respondents or their father besides being without prejudice ensure the benefit of the appellants and the same cannot confer on them any right over any of the lands of the appellants as the same were not according to law.

Admittedly the entire lands of the said jamabandi stand recorded in register II of the Anchal Adhikari in the name of Fakir Gorain as Jitu Gorain had died issueless.

During the current settlement all the lands of the said Jamabandi No. 43 have been recorded in the names of appellants No. 1 to 3.

During the current settlement taking advantage of their sound financial condition the respondents have laid false claim over portions of plot Nos. 1032 and 1033 in question but the same have been negated.

To pressurize the appellants the respondents had admittedly got initiated proceedings u/s 144 and 145 Cr. P.C. falsely claiming possession over portions of plot No. 1032 and plot No. 1033 but they had lost the said cases.

After losing the said cases the respondents had filed petition U/S 42 of the S.P. T. Act for the eviction of the appellants No. 1,2 and 4 to 7 from portions of plot No. 1032 measuring 13 kathas- 7 dhurs and plot No. 1033 measuring 6 kathas- 13 dhurs on which R.E. Case No. 101 of 1983-84 was started and Anchal Adhikari, Dumka was directed to submit enquiry report.

The case remained pending for years for the report of the Anchal Adhikari and because the case was not being taken up the appellants could not keep track of the dates and consequently it appears that the then SDO, Dumka ex-parte heard the case No. 1.7.1998 and reserved his orders.

The report of the Anchal Adhikari had been received in the court on 25.9.87 which falsified the claim of the respondents and in the facts

and circumstances of the case the appellants ought to have been noticed. At least their Advocate informed about the case but it appears that the then learned SDO while leaving Dumka on transfer passed the wholly illegal and unjustified order in the case in the first week of October, 1988 evicting the appellants from the said lands.

From the records it is clear that the appellants are the direct descendants of the Khatiyani raiyats, Fakir Gorain and his brother, Jitu Gorain. Jitu Gorain died issueless during the life-time of his brother Fakir Gorain. While the decree in favour of Kashidas Mandal is an admitted fact, the respondents have not been able to show any proof of delivery of possession. On the contrary, they have not got their names registered in Register II, nor they have got the land mutated in their favour. In the proceeding U/S 144 Cr. P.C., in Cr. Misc. case No. 735/81, prohibitory order U/S 144 was made absolute against the respondents and vacated in favour of the appellants. It is also strange that the SDO, has passed ex-parte orders without giving the appellants a proper opportunity to be heard.

The order of the SDO, dated nil in R.E. case No. 101/83-84 was accordingly set aside and the appeal was allowed.

CASE STUDY NO. 19

In the court of the Deputy Commissioner, Dumka
Rev. Misc. Appeal No. 57/92-93
Khalil Mian Vrs. Yusuf Ansari
Date of Order – 14.5.1998

This is an appeal against the order dated 31.7.1992 passed by the Sub-Divisional Officer, Jamtara in R.E. case No. 52/89-90.

In the memo of appeal the appellant has stated that plot No. 1072 measuring 82 dec. of mouza Karmatanr was recorded in the name of Abdul Mian and Idris Mian, both sons of Yusuf Mian. The land was originally Railway "B" class land and the same had been surrendered and later on the same was settled with the father of the appellant and Rahmatullah Mian, respondent No. 2, Salim Mian, Unus Mian and Ramjan Mian, respondent No. 3, 4 and 5 respectively and Idris Mian, respondent No. 6. The appellant has stated that the land is non transferable and inspite of that, respondent No.2, Rahmatullah Mian illegally executed a sale deed in favour of respondent No. 1, transferring an area of 3 dec. out of the said plot No. 1072. He has also stated that the land being non-transferable the so-called sale-deed alleged to have been executed by his deceased father Abdul Mian and the respondent No. 6 are ab-initio void. Moreover, the Deputy Commissioner, Santal Parganas, Dumka had issued a standing order to all sub-divisional officers of the district of Santal Parganas with copies to all Registration Officers of the district prohibiting sale and registration of railway 'B' class lands as per his memo No. 74/ Legal dated 10.1.59 and the then Commissioner, in S.P. Rev. Misc. case No. 132/76-77 in his order dated 8.5.1979 stated that on surrender of Railway 'B' class land the same ceases to be basauri land and it has to be settled

according to the S.P. Tenancy Act. Therefore, the appellant has prayed for the eviction of the respondent No. 1 and resettle the land with the appellant.

In his order the SDO has mentioned that plot No. 1072 was a railway 'B' class land and was settled in the name of late Abdul Mian. In the same order Yusuf Ansari and Abdul Ansari submitted a show cause in which it was stated that land acquired was recorded in para 30 as a transferable basauri land and on the basis of all these facts, the SDO, rejected the application of the appellant on the ground that there are many other houses which were constructed in the said land, so it would not be justified to evict the respondent No. 1.

The learned Advocate for the appellant stated that the Deputy Commissioner's standing order No. 74 dated 10.1.59 is still operative which prohibits sale of surrendered railway 'B' class land. Therefore, the respondent No. 1 should be evicted from the land in question. The learned Advocate, on the other hand, argued that the land in question is mentioned as railway 'B' class in the Gantzer's survey and settlement and there was a legal transfer of 3 Dec. of land out of the plot No. 1072 between Yusuf Ansari and Rahmatullah and other co-sharer of the said land i.e. Idris Mian had also given his consent at that time. He has also argued that section 42 of Mohmmedan Law allows transfer of land even before the death of a person.

After considering all these facts it is clear to the Deputy Commissioner that the respondent No. 1 had taken the said land only for residential purpose by a legal registered sale deed. Moreover, Yusuf Ansari is living peacefully after constructing a pucca house. Moreover, this land is a surrendered land from the railway and as per Hon'ble High Court's order in B.B.C.J.-1988 (page-372) it is clearly held that section 42 of the S.P.T. Act will not

apply in the case of the eviction of a person from residential house. The Deputy Commissioner, therefore, found no merit in this appeal which was dismissed and the lower court's order was up-held.

CASE STUDY NO. 20

In the court of the Deputy Commissioner, Dumka
Rev. Misc. Appeal No. 23/97-98
Mangal Besra Vrs. Pandu Besra
Date of Order – 3.12.1997

This is an appeal filed against the order of the Sub-Divisional Officer dated 12.5.97.

The SDO sought report from the Circle Officer about encroachment of the land of the respondent by the appellant of this case. The Circle Officer in front of both the parties enquired the subject in details. He recorded that the appellant of this case namely Mangal Besra had encroached the Jamabandi land of the respondent Pandu Besra by the construction of a house thereon. This was corroborated by other independent witnesses present at site.

The learned advocate for the appellant reasoned out that the appellant's grandfather had constructed a house on the land in dispute. Memo of appeal has also been read. It says that many cases like R.E. 11/89-90 M.R. case No. 408/70-71 and U/S 144 of Cr. P.C. have been filed in different courts involving plot No. 932 of mouza Bari Ranbahiyar which is subject matter of dispute.

It is clear to the Deputy Commissioner that encroachment has been made by the appellant on the land of the respondent of this case. The Circle Officer has also enquired into the details. Hence, the appeal was dismissed and accordingly the proceedings of this case were disposed off.

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