

## **SANTHAL PARGANAS TENANCY LAWS**

### **SANTHAL PARGANAS TENANCY (SUPPLEMENTARY PROVISIONS) ACT, 1949**

**[Bihar Act XIV of 1949]<sup>1</sup>**

*[1st April, 1949]*

*An Act to amend and supplement certain laws relating to landlord and tenant in the Santal Parganas.*

Whereas it is expedient to amend and supplement certain laws relating to landlord and tenant in the Santal Parganas.

It is hereby enacted as follows:

1. Short title, commencement and extent. – (1) This Act may be called the Santal Parganas Tenancy (Supplementary Provisions) Act, 1949.

(2) It shall come into force on such date as the <sup>2</sup>(State) Government may by notification, appoint in this behalf.

<sup>3</sup>[(3) It extends to the whole of Santal Parganas Division comprising of <sup>4</sup>[Dumka, Sahibganj], Godda, Deoghar and Pakur.

### **COMMENT**

Commencement – The Act came into force on the 1<sup>st</sup> Nov. 1949 by Notification No.9169-R, dated 24/09/1949, in Bihar and Orissa Local Statutory Rules and Orders, Vol. 1, Part VIII.

2. Power to vary local extent of the Act and effect of the withdrawal of the Act from any area. – (1) The <sup>1</sup>[State] Government may, by notification withdraw this Act, of any part thereof, from any portion of the Santal Parganas <sup>2</sup>[Division] and may likewise extend this Act, or any part thereof to the area from which the same has been so withdrawn.

(2) The withdrawal of this Act or any part thereof from any area under sub-section (1) shall not, –

(a) Affect the previous operation of this Act in such area or anything

Duly done or suffered there under before such withdrawal; or

- (b) affect any right, privilege, obligation or liability acquired, accrued or incurred in such area under this Act before such withdrawal; or
- (c) affect any penalty, forfeiture or punishment incurred in respect of any offence committed under this Act with reference to such area before such withdrawal; or
- (d) Affect any investigation, legal proceeding or remedy in respect of any such right, privilege, obligation, liability, penalty, forfeiture or punishment as aforesaid;

And any such investigation, legal proceeding or remedy may be instituted continued or enforced and any such penalty, forfeiture or punishment may be imposed as if no such withdrawal had been made.

### COMMENTS

**Section 2**—Applicability of Hindu Succession Act. —Provision of Section 2(2) of Hindu Succession Act lay down that this Act does not apply to members of Schedule Tribes. Santals being members of Schedule Tribes. Governed by the Customary Law in matters of inheritance and succession. A Santal widow cannot make alienation without legal necessity therefor. [Banset Manjhi v Raimat Majhiain, 1994 (2) PLJR 582].

**Section 2**—Applicability of B.L.R Act, 1950. —Bihar Land Reforms Act, 1950, is validly applicable to all portions of the Santhal Pargans. The Provisions of Section 3 of Regulation, 1872 are impliedly repealed as a result of the enactment of the the Fifth Schedule of the Constitution of India, and in the absence of any notification under clause (5) of Part B of the Schedule, the jurisdiction of the Bihar Legislature to legislate for the scheduled area of the Santal paragon cannot be doubted. [Bedabala Devi v. State of Bihar, 1953 BLJR 77: AIR 1954 Pat 159 (DB)].

3. Repeal.- The enactments mentioned in Schedule A are hereby repealed to the extent specified in the fourth column thereof.

## COMMENT

Sections 3, 27 (1), (3) and 28.- Santhal Paragana Tenancy, (Supplementary Provisions) Act, 1949 became applicable from 1<sup>st</sup> Nov. 1949. Section 3 of Act states that enactment mentioned in Schedule 'A' are repealed to the extent specified in the forth column thereof. Schedule A of the Act is listed as one of the Acts the Regulation of the 1872 and the extent of the repeal of Regulation was in connection of Sections 27 and 28. One Section 27 of the Regulation stood repealed by the Act, question arises whether the right which had accrued to purchaser under the Regulation in connection with the operation of Section 27 sub-sections (1) and (3) of the Regulation was save or not despite the repeal of the said Section 27. At the relevant provision shows that no expressed provision in the Act which lays down that notwithstanding the order passed or action taken in connection with transaction under the regulation, and notwithstanding any right which might have accrued there under fresh scrutiny of the said transaction could be made under the relevant provision of Act, which corresponded to the earlier repealed Section 27 of the Regulation. When such contrary intension does not appear from the scheme of the Act, the effect of repeal of Section 27 of the Regulation squarely attracts the provision of the Section 8 of the Bihar General Clauses Act, 1917.

[Deonarayan Singh v. Commissioner, Bhagalpur, 1997 (2) BLJR 1352: 1998 (2) PLJR (SC) 3].

4. Definitions.-In this Act, unless there is anything repugnant in the subject or context,-

(i) 'aboriginal' means a person who belongs to an aboriginal or semi-aboriginal tribe or caste specified in Schedule B and includes a person belonging to such other aboriginal or semi-aboriginal tribe or caste as may, from time to time, be notified by the <sup>1</sup>[State] Government in this behalf;

(ii) “Agricultural year” means, where the Bengali year prevails, the year commencing on the first day of Baisakh, where the Fails year prevails the year commencing on the first day of Asin, where any other year prevails for agricultural purposes, that year;

(iii) “bhugut-bandha or complete usufructuary mortgage” means a transfer of the interest of a raiyat in his holding or part of the holding for the purpose of securing the payment of money advanced or to be advanced by way of loan, upon the condition that the loan, with all interest thereon, shall

Be deemed to be extinguished by the profit arising from the holding or part of the holding during the period of the mortgage;

(iv) <sup>1</sup>[“Commissioner’ means the Commissioner of the Santhal Parganas Division];

(v) “Community” means the social group to which a person belongs and for the purposes of this Act there shall be two such groups, aboriginal and non-aboriginal;

(vi) “Deputy Collector” includes an Assistant Collector and a Sub-Deputy Collector;

(vii) <sup>2</sup>[“Deputy Commissioner” means the Deputy Commissioner of the 3Dumka, Sahibganj, Godda, Deoghar, Pakur and includes],-

(a) Additional Deputy Commissioner, Sub-divisional Officer or Deputy Collector, empowered by the <sup>4</sup>[State] Government to discharge any of the functions of Deputy Commissioner under this Act; and

(b) any Deputy Collector, whom, subject to the control of the <sup>5</sup>[State] Government, the Deputy Commissioner may, by general or special order, authorise to exercise any of his functions under this Act;

#### COMMENTS

Deputy Commissioner- Prior to the enactment of the Bihar Santal Parganas Vidhi (Amendment) Act, 1984 (which came into force on 26/05/1984), under clause (vii) of Section 4 Deputy Commissioner for the purpose of SPT Act, 1949 means only the Deputy Commissioner of Santal parganas. [Hari Ballabh Narain v. State of Bihar, 1991 (1) PLJR 632].

The word “Deputy Commissioner” has been defined in Section 4 (vii) and it means and includes “Additional Deputy Commissioner”, Sub-Divisional Officer or Deputy Collector empowered by the State Government to discharge any of the functions of the Deputy Commissioner under the SPT Act, 1949.

[Probodh Kumar v. Commissioner, 1988 PLJR 811].

Sections 59 and 4, Clause (vii)-Notice under Section 69 of the Act by Deputy Commissioner of Deoghar dated 03/02/1984- Quashing of-Power conferred on 26<sup>th</sup> May, 1984- Notice without jurisdiction quashed. [Hari Ballabh Narain v. The State of Bihar, 1991 (1) BLJR 643].

### NOTIFICATION

S.O. 12, dated the 6<sup>th</sup> January, 1989.- In exercise of the powers conferred by section 4 (ii) A of the Santhal Parganas Tenancy (Supplementary Provision) Act, 1949 (Bihar Act 14,1949), the Governor of Bihar is pleased to empower Shri Ras Bihari Pandey, Additional Collector, Deoghar to discharge the function of the deputy Commissioner under the said Act within the limit of his administrative jurisdiction.

S.O 14, dated the 6<sup>th</sup> January, 1989.- In exercise of the powers conferred by Section 4 (ii) A of the Santhal Parganas Tenancy (Supplementary Provision) Act, 1949 (Bihar Act 14, 1949) the Governor of Bihar is pleased to empower Shri Ram Bachan Tiwari, Deputy Collector , Deoghar to discharge the function of the Sub-divisional officer under the said Act within the limit of his administrative jurisdiction till the Sub-divisional Officer is not posted at Deoghar.

सं० १ सर्वेस्था० (रा०) ७७/९१-२६४४रा० – संथाल परगना काश्तकारी (अनुपूरक उपबंध) अधिनियम, १९४९ (बिहार अधिनियम १४,१९४९) धारा ४ (VIIए) के अधीन प्रदत्त शक्तियों का प्रयोग करते हुए बिहार के राज्यपाल उक्त अधिनियम की धारा २० (V)

एवं ४२ के अन्तर्गत श्री राम निवास शास्त्री, प्रभारी पदाधिकारी, दुमका बन्दोबस्त को उनके अधिकारिता क्षेत्र दुमका, गोड्डा, देवघर एवं साहेबगंज में उपायुक्त की शक्तियों का उपयोग करने के लिए प्राधिकृत करते हैं,]

(viii) “Holding” means a parcel or parcels of land held by a raiyat and forming the subject of a separate tenancy”

- (ix) “khas village” means a village in which there is no mulraiyyat nor for the time being any village headman irrespective of whether there was or was not previously a mulraiyyat or village headman in the village;
- (x) “landlord” means a person other than the village headman or mulraiyyat entitled to receive rent and includes a proprietor, a tenure-holder, a ghatwal and the <sup>1</sup> Government;
- (xi) “non-aboriginal” means a person who does not belong to any aboriginal or semi-aboriginal tribe or caste specified in Schedule B or to any other aboriginal or semi-aboriginal tribe or caste notified by the <sup>2</sup>[State] Government under clause (i) of Section 4;
- (xii) “prescribed” means prescribed by rules made by the <sup>3</sup>[State] Government under this Act;
- (xiii) “raiyyat” means a person not being a landlord, who has acquired a right to hold land for the purpose of cultivating it by himself or by members of his family or by hired servants; and includes the successor in interest of a person who has acquired such a right;

Explanation. – A village headman shall be deemed to be a raiyyat in respect of his private holding if any.

- (xiv) “Recorded” means recorded in the record-of-rights;
- (xv) “Rent” means whatever is lawfully payable in money by–
- (a) a village headman or mulraiyyat of a village to the landlord of that village in accordance with the record- of-rights hereinafter referred to as village rent, or
- (b) a raiyyat, on account of the use or occupation of the land held by him to his landlord, either directly or through a village headman or mulraiyyat as the case may be, and includes all dues (other than personal services) which are recoverable under any law for the time being in force as if they were rent;
- (xvi) “Santal Civil Rules” means the directions issued by the <sup>1</sup>[State] Government for observance in the administration of civil justice in the Santal Parganas by officers appointed under Clause (2) Section 1 of the Santal Parganas Act, 1855 (37 of 1855).

<sup>2</sup>[(xvii) “Santhal Parganas” means the Santal Parganas Division comprising of Dumka, Sahibganj, Godda and Deoghar districts.]

(xviii) “Settlement rate of rent’ means the rate of rent mentioned as settlement rate in the record-of-rights.

<sup>3</sup>[(xix) “tenant” includes a tenure-holder, village headman and mulraiyyat;]

(xx) “Vacant holding” means an abandoned holding or holding of which the raiyyat has died without heirs;

(xxi) “Village” means,-

(a) the area defined, surveyed and recorded as a distinct and separate village in the map and record-of-rights prepared under any law for the time being in force, and

(b) Where a survey has not been made and a record-of- rights has not been prepared under any such law, such area as the Deputy Commissioner may, with the sanction of the Commissioner, by general or special order, declare to constitute a village:

Provided that when an order has been passed under Section 9 of the Santal Parganas Settlement Regulation (Reg.3 of

1872) directing that a survey be made and record-of- rights prepared in respect of the whole or any part of the Santali Pagans, the <sup>1</sup>[State] Government may by notification, declare that in such area ‘village’ shall mean the area which for the purposes of such survey and record-of- rights may be adopted by the Settlement Officer, subject to the control of the Commissioner, as the unit for making the survey and preparing the record-of-rights;

(xxii) “village community means the body of all the jamabandi raiyyats of a village, their co-sharers, children and heirs; and

(xxiii) “village headman” means the person appointed or recognised whether before or afte the commencement of this Act by the Deputy Commissioner or other duly authorised officer to hold the office of a village headman whether known as pradhan, mustajur, manjhi or otherwise, but does not include a mulraiyyat.

### **COMMENT**

Sections 4 (ix) and 5- Appointment of Headman-Election under Section 5 of the Act-Hereditary succession when applicable-held, principle of hereditary

succession is applicable only when incumbent dies and his successor available- In case where incumbent resigned voluntarily election to be held amongst candidates of same village and not from different village.

[Sheopujan Bhagat v. Thakur Hembrom, 1997 (1) All PLR 51 (SC)].

## **CHAPTER II**

### **VILLAGE HEADMEN AND MULRAIYATS**

**5. Appontment of a village hweadman of a khas village.-** On the application of a raiyat or of landlord of any khas village and with the consent of at least two thirds of the jamabandi raiyats of the village ascertained in the manner prescribed, the Deputy Commissioner may declare that a headman shall be appointed for the village and shall then proceed to make the appointment in the prescribed manner.

### **COMMENTS**

Sections 5 and 6- SPT Supplementary Rules, 1950, Rule 3(5)- New Headman- Appointment of- deceased Pradhan died leaving successor- Acceptability of- To be ascertained from the will of  $\frac{2}{3}^{\text{rd}}$  of Jamabandi Raiyatsnamely 16 anna raiyats- Failure to give due notice to al the Jamabandi raiyats-Decision of Deputy Commissioner unsustainable- Set Set aside- Command issued to service all the Jamabandi raiyats bty every attempt and thereafter pass order.

[Mahipal Mishra v.State of Jharkhand, 2003 (2) JCR 401: 2003 (2) JLJR 274 (Jhr)].

Sections 5 and 6 and Santal Paraganas Tenancy (Supplementary) Rules, 1950, Rules 3, sub-rule (5)- Pradhan-Appointment of Pradhan-How to be made- Claim as appointed to be Pradhan- Is a subject to select a fit person for such appointment. [Jagdish Misra v. Chamaklal Mishra, 1965 BLJR 674].

Section 5- If on the date fixed requisite consent of two-third majority of the Jamabandi raiyat is not available under rule 3(1) further adjournment cannot be allowed, application is liable to be dismissed. [Banke Bihari Lal v.Commissioner, 1969 PLJR 492].

Sections 5 and 6- Santhal Parganas Tenancy (Supplementary) Rules, 1950, Rule 3-Appointment of Pradhan- Non-Khas village- Provisions of Section 6 of the Act attracted-Office is hereditary in nature- Next heir who is fit, is entitled to be the Headman- Sub divisional Officer competent to ascertain the views of Jamabandi raiyats of the village- Earlier matter remanded for compliance of Rule 3 on reconsideration –Reconsdiration has to be in terms



of clauses 3 and 4 of the Schedule V of the rules- Single Judge while disposing of the writ petition did not understood the scope of remand order made earlier- Order modified- Direction issued to Sub-Divisional Officer to ascertain the views of the Jamabandi raiyats of village on the question of fitness to succeed to the post in terms of clauses 3 and 4 of Schedule V of the rules by proceeding under rule 3(5).

[Swarnlata Devi v. State of Jharkhand & Ors., 2003 (3) JCR 416 (Jhr)].

Sections 5,6 and 7 and Schedule 5 read with Santhal Parganas Tenancy Manual, 1911 (Pages 291 to 299)- Hereditary right in appointment-Affirmation by authority as village headman-Resident in village necessary to discharge his duties- short visit by headman illegal- Appointment on hereditary right of village headman illegal- Direction to initiate proceeding for appointment of village headman- illegal- Direction to initiate proceeding for appointment of village headman-From a perusal of the headman's duties it is self-evident that for any meaningful discharge of those duties, it would be essential for the headman to permanently and regularly reside in the village in question and it would not be possible to discharge those duties satisfactorily in case he lived outside the village on Government postings and came to the village only intermittently. The headman has, in fact, a long list of duties which can be duly discharged only by a person living in the concerned village. Thus, the result of his appointment would be that he would be enjoying the social status and prestige and he and his family members would be deriving the many benefits attached to that office but he would not be discharging most of the duties of the headman. In the light of the above discussion, the Court was of the considered view that only a person regularly residing in the village can be considered to be a suitable candidate for the office of the headman and respondent No. 5 notwithstanding his hereditary claim, is unfit for the office of headman for the simple reason that he is not living there regularly. In the Court's opinion, therefore, the authorities acted erroneously in allowing his claim simply on the basis of hereditary right and directing for his appointment as headman. It as headman was bad and illegal. Before concluding it is to be observed that it has been found that the petitioner too has no hereditary claim to the office because his grandfather was dismissed from the office of head man. The Apex Court accordingly direct the Deputy Commissioner, Dumka to initiate proceeding for appointment of village headman for the village in question as provided under Chapter 2, read with Schedule 5 of the Act. In case 2/3<sup>rd</sup> of

the Jamabandi raiyats do not give their consent for appointment of a headman, the village MAY BE CONVERTED INTO A KHAS VILLAGE. [Babulal Hembrum v. State of Bihar, 1998 (1) PLJR 43: 1998 (1) ALL PLR 277 (Pat)].

6. Landlord to report the death of village headman. –When the village headman of a village which is not khas, dies, the landlord of the village shall report the fact within three months of its occurrence to the Deputy Commissioner with a view to the appointment of a village headman in the prescribed manner.

### **COMMENTS**

Section 6- 'To elect a village headman' in Form A under Rule 3 gives a clear indication that the appointment of the headman by way of election by the raiyats of the village but it is relevant raitat of village means Jambandi raiyat without taking into consideration the opinion of the Jamabandi raiyat the order is bad in law.[Jagdish Mishra v. Chamaklal Mishra, 1965 BLJR 674:ILR 45 Pat 668]

Section 6 – It was held that authorities should have first considered the case of person claiming right to the post of Pradhan on the basis of hereditary claim. It was pointed out that the procedure of election under Section 5 comes only after rejecting the right of hereditary claim. [Thakur Hembrom v. State of Bihar, 1980 BLJR 448:1980 BLJ 212 (DB)].

Section 6- Authorities under this act are bound to considered the claim of the post of Pradhan on the basis of hereditary claim first. After rejection of this claim the authority can considered the alternative method of appointment of Pradhan by election. [Thakur Hembrom v. State of Bihar, 1980 BLJR 448:1980 BLJ 212 (DB)].

7. Village headman to be granted patta and to execute kabuliyat and furnish security. – (1) A village headman shall on appointment be granted a patta, and may be required to execute a kabuliyat in the prescribed form. He shall in the discharge of the duties of his office be governed by such rules as may be made by the <sup>1</sup>[State] Government.

(2) The village headman on appointment or when record – of- rights is being prepared under the Santal Parganas Settlement Regulation (Reg. 3 of 1872} may be required to pledge so much only of his own or the family holding or holdings held under the same landlord as woud in the

opinion of the Deputy Commissioner suffice together with the official holdings to secure the village rent for one year:

Provided that ordinarily the rent of the official holding, if any plus that of the lands pledged as security shall be at least ten per centum of the total village rent payable by the village headman:

Provided further that at every appointment of a new village head-man, the consent of co-sharers, if any, shall be taken in writing before the family holding is pledged as security for village rent. The co-sharers shall have the right to have their shares released from security, at any time after the first five years, but all arrears of village rent must be paid up in full before any share is so released.

### Comment

No other evidence is necessary for determination of Raiyati interest in respect of agricultural land if it is created by settlement or by possession for long period and rent receipt is issued in favour of the settle. [Samir Kumar Mukherjee v. State of Bihar, 1999 (2) PLJR 409]

13. Rights of raiyat in respect of use of land – (1) A raiyat may use the land comprised in his holding,--

(a) In any manner which is authorised by local usage or custom, or

(b) Irrespective of any local usage or custom, in any manner which does not materially impair the value of the land or render it unfit for the purpose of cultivation.

(2) The doing of anything on the holding that is permitted by Section 15, Section 16, Section 17, or Section 18 shall not be deemed materially to impair to the value of the land or to render it unfit for cultivation.

14. Raiyats not to be ejected by order of the Deputy Commissioner --- A raiyat shall not be ejected by the landlord from his holding on the ground that he has used his land in a manner not authorised by section 13 except in execution of an order of ejectment passed by the Deputy Commissioner.

15. Raiyat's right to manufacture tiles and bricks – A raiyat shall have the right to manufacture bricks and tiles on his holding, free of any royalty or other charge, for the domestic or agricultural purposes of himself and his family.

16. Raiyat's right to construct bandhs, etc. on his own holding and to enjoy fish and other produce – A raiyat may construct or excavate on his own holding or on land settled with him bands, agars, tanks, wells and the like water reservoirs and channels in a reasonable manner and to the extent required for drinking or other domestic purposes and purposes of irrigation, as the case may be, without the permission of the landlord, provided no injury is caused to others by such construction or excavation. If there is any dispute as to whether or not any injury has been or is likely to be caused to any other person by such construction or excavation, the Deputy Commissioner may decide the same and pass such order as he deems fit and proper. The raiyat shall enjoy the fish and other produce of such water reservoirs and channels free of charge.

17. Rights of raiyats in trees on his own holding --- (1) Notwithstanding anything to the contrary contained in this Act or any other law or anything having the force of law in the Santal Parganas, a raiyat may—

(3) A village headman shall have the option to give at any time cash security instead of, or to supplement, the security of his land. The Deputy Commissioner shall fix the amount of such cash security which when paid shall be placed in revenue deposit.

8. Landlord to supply copies of jamabandi and record-of-rights to newly-appointed village headman. – Whenever a person other than an heir of the last village headman is appointed a village headman, it shall be the duty of the landlord to supply the village headman with the original jamabandi or copies thereof certified in the prescribed manner and the record-of-rights of the village within three months from the date of appointment.

9. Non-transferability of village headman's office. – The village headman shall have no right to transfer his office in any way.

10. Only land recorded as such to be treated as mularaiyat ka jote and mulraiyaati jote. --- No land which is not recorded as such shall be recognised or treated as mulraiyaat ka jote (private holding) or as mulraiyaat jote (official holding). Any waste land which is reclaimed by a mulraiyaat or a co-mulraiyaat or any vacant holding which is found in the possession of or is settled with a

mulraiyat or a co-mulraiyat shall be treated as non-transferable raiyati holding governed by the provisions of this Act relating to such raiyati holdings.

11. Headmen's reward fund. – All fines imposed upon, and realised from village headmen, mulraiyat and raiyats under this Act shall be deposited in to a fund to be known as the headmen's reward fund. Management of and disbursement from this fund shall be made by the Deputy Commissioner in accordance with prescribed rules.

### CHAPTER III

#### RAIYATS

12. Classes of raiyats – There shall be for the purposes of this Act the following classes of raiyats, namely, --

(a) Resident jamabandi raiyats, that is to say, persons recorded as jamabandi raiyats who reside or have their family residence in the village in which they are recorded.

(b) Non-resident jamabandi raiyats, that is to say persons recorded as jamabandi raiyats who do not reside or have their family residence in the village in which they are recorded.

(c) new raiyats, that is to say, person recorded as naya raiyats or nutan raiyats.

(a) Plant trees, orchards and bamboos on any land in his holding and cut, fell and appropriate the same.

(b) Cut, fell and appropriate any trees or bamboos standing on such land :

Provided that no mahua tree shall be cut without the permission of the Sub-divisional Officer.

(c) Appropriate the flowers, fruits and other products of any trees or bamboos standing on such land:

<sup>1</sup>[Provided that if there is any specific entry in the latest record-of-rights regarding any tree or bamboo which was standing on any such land before the date of the final publication of such record-of-rights to the effect that any right in such trees or bamboos belongs to any person other than the landlord of such land, the right of the

raiyat in such tree of bamboo shall be exercised in accordance with, any subject to, any such entry.]

(2) A raiyat shall have the right to grow lac or rear silk cocoon free of charge on trees planted by him on his holding.

18. Raiyat's right to erect buildings – A raiyat may erect kutcha or pucca buildings on his holding for the domestic or agricultural purposes of himself and his family.

19. Division of holding and distribution of rent – (1) A holding may be sub-divided and the rent thereof distributed with the consent of the landlord and the village headman or mulraiyyat, if any.

(2) When a holding has been the subject of partition or sub-division by an order of a Court or otherwise and if the parties to the partition are unable to distribute the rent of the holding by agreement amongst themselves and with the consent of the landlord and the village headman or mulraiyyat, if any, any of the parties may apply to the Deputy Commissioner to distribute the rent of the holding.

(3) (a) On receipt of such an application, the Deputy Commissioner shall serve on each of the persons interested in the application, other than the applicant, a notice of the date on which he intends to hear the application.

Explanation. – For the purposes of this clause, the landlord and the village headman or mulraiyyat, if any, shall be deemed to be persons interested in the application.

(b) After serving the notice required by clause (a) and hearing the parties and holding such enquiry as he thinks fit, the Deputy Commissioner.

1. Ins, by kSec. 2 of the Santal Parganas (Supplementary Provisions) Amendment Act, 1951 (Bihar Act 11 of 1951), for the original proviso.

Shall distribute the rent of the holding calculated on the basis of settlement rate of rent, and his decision shall be final.

(4) The order of the Deputy Commissioner under sub-section (3) shall take effect from such date as the Deputy Commissioner may specify in his order.

(5) The Deputy Commissioner shall have power to award cost to any party to any proceeding under this section, and any sum ordered to be paid as cost shall be recoverable from the party by whom it is payable as a public demand payable to the Deputy Commissioner.

(6) The Deputy Commissioner shall pay any sum recovered as cost by him under sub-section (5) to the party to whom such costs are payable.

Provided, firstly, that in no case shall such holding be sub-divided if the rent of any portion of the holding will be less than three rupees.

Secondly, that the private holding of the village headman pledged as security shall in no case be split up if his share together with the official, if any, will not be adequate security for the village rent. And

Thirdly, that any sub-division or partition of the holding or the distribution of its rent shall not have the effect of splitting up the joint liability of faiyats for the payment of the rent of the holding as it stood prior to the sub-division or partition.

(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 sub-division 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 Santhal raiyat to a sister and daughter are permissible under the Santal Law, such a 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 any thing 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 bona fide cultivation aboriginal raiyat of the parganan 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 jami.

<sup>1</sup>[ Provided further that a raiyat who is a member of aboriginal tribes or aborigine 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 instituting or with a Company or a Corporation owned by or in which not less than fifty one percent 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 recognised 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.

<sup>2</sup>[Provided that a holding or a portion thereof an occupancy raiyat may be sold in accordance with the procedure laid down in Bihar and Orissa Public Demands Recover Act, 1914 (B and O. Act 4 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

1. Ins, by Sec. 2 (a) of the Santal Pargans Tenancy (Supplementary Provisions) Amendment Act, 1975 (Bihar Act 17 of 1976) Published in Bihar Gazette, Extraordinary, dated 4.10.1975 Received assent on 13.8.1976

2. Ins. Be Sec. 2(b) of Bihar Act 17 of 1976.

Financial institution, or a company or a corporation owned by or in which not less than fifty-one percent of share capital is held by the State Government or the Centre 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 portion thereof belongs to a raiyat who is member of 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.

<sup>1</sup>[(5) If at any time it comes to the notice of the Deputy Commissioner that a transfer of land belonging to a raiyat who is a member of 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

<sup>2</sup>[including decrees obtained in suits by fraud or collusion', he may, after giving reasonable opportunity to the transferees, 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 the 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 withing 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 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 amont of any

compensation for improvements effected to land which the Deputy, Commissioner may deem fair and equitable]

<sup>1</sup>[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.]

## COMMENTS

Section 20- Applicability of – Agricultural land changed to Basauri land- Became transerable- Such transfer do not fall within the mischief of Section 20 of the Act. [ Dhenasda and Ors. V. State of Jharkhand and Ors. 2003(3) JCR 230(jhr)]

Section 20- Eviction application- Eviction application-Rejected-Appeal against-Order became Revision against-Allowed-Evocation application stand rejected-Order became

final and conclusive-Land acquisition took place more than 60 years prior to the filing of eviction application-Transfer thereafter took place in 1938-Nature of land changed as basauri land-Not open for the settlement officer to declare the acquisition of land illegal merely as provision of Section 53 of the S.P.T. Act,1949 has been declared unconstitutional-Acquisition of land in year 1937-38 is valid. [Dhena Hansda and Ors. V. State of Jharkhand and Ors, 2003(3) JCR 130 (Jhr)].

Section 20 – Whether the Revenue Court has jurisdiction to evict a person who had come in possession of the land on the basis of a compromise decree of the civil court if that compromise was collusive. It is held, that a transferee cannot perfect his title on the basis of collusive decree of a civil Court. Revenue Court has jurisdiction to evict the person from the land which is obtained by fraud or collusion. [Rajo Mian v. Puram Mian, 1987 BLJR 91].

Section 20(1), 20(2) and 20(5) as amended by the Bihar Scheduled Areas Regulation, 1969 (Bihar Regulation 1 of 1969), State List of the Seventh Schedule to the Constitution is not volatile of being repugnant to the provisions of Limitation Act. The provisions do not ultra virus of the Articles 13,14,19(1) (f) and 31 of the Constitution as being the Section 42 of the Act is a legislation in respect of Entry No. 21 If List II. [Bhauri Lal Jain v. Sub-Divisional Officer, 1972 PLJR 415 (FB) : AIR 1973 Pat1].

Section 20(5) as amended by Bihar Scheduled Areas Regulation, 1971 Pat 1].

Regulation 1 of 1972)- Compromise decree obtained in a suit in contra-vention of the Acts comes under the ambit of sub-section (5) of Section 20 of the Act. Revenue authorities has jurisdiction to evict the person from the land which is a transfer by the fraudulent medhod. [Ram Narain Sahv. State of Bihar, 1976 BLJR 15].

Section 20- Before the enactment of Scheduled Area Regulation, 1969,

Deputy Commissioner has no jurisdiction to evict a transferee from the land who has perfected his right through continuous possession of 12 years but now under Section 20(5) the Deputy Commissioner has wide discretion to evict such transferee. [Kheyali Bhaiya v. Bisan Mahton, 1957 BLJR 821].

Sections 20 (5) and 42-  
There is a distinction between Section 20(5) and Section 42-Original raiyat will be put in possession under Section 20(5) by the competent authority. But under Section 42 no such power is given to the authority. [Deonarain Singh v. Commissioner, Bhagalpur Division, 1985 BLJR 185:

1985 PL JR 1 (FB)].

Sections 20(1), 20(5) and 42-  
Section 20(1) of the Act runs parallel to the scheme of earlier provisions of Section 27(1) of the Regulation, 1872. Therefore the authorities have no occasion to invoke the provisions of Section 20(1) or Section 20(5) of the Act read with Section 42 thereof in connection of this later transaction of the sale dated 26<sup>th</sup> June, 1950. [Deonarayan Singh v. Commissioner, Bhagalpur, 1997 (2) BLJR 1352: 1998 (2) P L J R (SC) 3].

Section 20- Family partition  
of the family property cannot hit by Section 20 of the Santal Parganas Tenancy (Supplementary Provisions) Act, 1949 and Section 27 of the Santal Parganas Settlement Regulation, 1872. Mutation order passed by the Circle Officer cannot be cancelled without giving opportunity of being heard. [Ramjiban Sahah v. State of Bihar, 1978 B L J 337].

Section 20- In contravention  
of the provisions of Regulation III of 1872 settlement was done, the person is coming in continuous possession may acquire title by adverse possession. Order of eviction cannot be passed against the person who is coming in possession prior to the coming into force of this Act. [Godo Mahto v. State of Bihar, 1980 BL J 72].

Sections 20- The provisions of  
sub-sections (1) and (2) of Section 20 of the Act are prospective in operation. The provision did not bar acquisition of title by adverse possession. The person came in possession through settlement in contravention of provision of Section 27 of Regulation iii of 1872, by remaining in possession over the land more than twelve years before the application of eviction was filed. [Most. Pairia v. Commissioner, Bhagalpur Division, 1978 B L J 272].

Sections 20- The land belongs  
to a female cannot claim the land inheritance. Land will revert to the heirs of her father. [Krishna Prasad Sharma v. State of Bihar, 1998 (3) P L J R 179].

Sections 20- Occupancy right can be acquired by a person by prescript of time on the expiry of said period. [Suryabansh Upadhyay v. Awdhesh Choudhary, 1999 (2) P L J R 173].

Sections 20- Limitation from 12 years to 30 years is only for the members of the non-tribal where there is a case between tribal to tribal, the limitation is twelve years. [Dhani Manjhi v. Ranga Manjhi, 1999 (1) PL J R 605]

Sections 20 and 42- The order passed by the Revenue Authorities without deciding the disputed points and without giving opportunity to the parties concerned is bad in law. The revenue authorities are bound to decide the points on the basis of evidence adduced by the parties. [Ram Lal Tatwa v. State of Bihar, 2000(1) P L J R 4888 (Pat)].

Sections 20 and 42- When the SDO himself was drawing with conclusion on the order of the dismissal for default in the title eviction suit he has committed an error without giving opportunity of hearing to either parties and without deciding the whole matter on the basis of the petition filed under Section 20 by the respondent No. 5 and reply to the show-cause given by the petitioner. The whole process by which the revenue authorities had decided the disputed point of fact and law is unwarranted and the same cannot be sustained. [Ram Lal Tatwa v. State of Bihar, 2000 (1) P L J R 488 (Pat)].

Sections 20(5) and 42- Under Section 20(5) of S P T Act matter must be considered under proviso (ii) of sub-section (5) where there is substantial structure claimed to constructed by the party over the land in question prior to coming into force of the Bihar Scheduled Area Regulation, 1969. [Nandgope Bhadra v. State of Bihar, 2000 (3) B L J 738 (Pat)].

Section 42 and 20 (5)- The case of the petitioner is that they have go settlement of land in question under the provision of Section 20 of the Act and they have proved before the authority concern that they are in possession for more than 12 year prior to the coming into force of the Act, 1949 the status petitioner in that view of the matter must be held to be trespasser. The expression “any fraudulent method” also includes a collusive compromise decree

[Banshidhar Pal v. State of Bihar, 2000 (1) PL J R 994 : 2000 (2) B L J 1295 (Pat)].

Section 20 (5)- Transfer made even prior to coming into force of the Scheduled Area Regulation. [Amrendra Nath Dutta v. State of Bihar, AIR 1983 Pat 151: 1983 B L J R 609: 1983 BLT (Rep) 111: 1983 B B C J 254].

Section 20(5)- Forcible dispossession will come under the purview of Scheduled Area Regulation, 1969. The word transfer does not mean exactly the

Definition given under Transfer of Property Act. In fact transfer means possession passes from one person to another person as a physical fact. [Pandey Oraon v. Ram Chandra Sahu, AIR 1992 SC 195].

Section 20- Title by adverse possession cannot be acquired by a person after the enactment of S P T Act, 1949. Any such transfer shall be held in contravention of the Act. [Bhourilal Jain v. S D O, 1972 P L J R 415 (FB): AIR 1973 Pat 1].

Section 20- A purchaser cannot perfect his title by adverse possession after coming into force of S P T Act, 1949. Sub Divisional Officer has jurisdiction to ignore the compromise decreed passed by the Civil Court. [Raja Miyan v. Puran Miyan, 1986 P L J R 1013].

Section 20(5)- Section 71- of the CNT Act, 1908 is similar to sub-section (5) of Section 20 of S P T Act, 1949. A member of the Scheduled Tribe can invoke the jurisdiction of Deputy Commissioner to restore his land which is transferred in contravention of the Act or by fraudulent method. [Ram Chandra Sahu v. Commissioner, 1991 (1) P L J R 16 (F B) : 1990 (2) B L J R 929].

Section 20(5) – The provision of Scheduled Area Regulation is beneficial in nature and legislative intention is to extend protection to class of citizen who are not in a position to keep their property themselves in absence of protection, the Court has to give liberal construction to the protective mechanism which would work out the protection and enable the sphere of protection to be effective than limit the scope. [Pandey Oraon v. Ram Chandra Sahu, AIR 1992 SC 195].

Sections 20(1), 20(2) and Section 20(5) as amended by Scheduled Caste Regulation, 1969 and Section 42- Whether the provisions are ultra vires of Articles 13, 14, 19 (1) (f) and 31 of the Constitution. It is held that Section 42 of the Act is a legislation in respect of Entry 21, List 11- State list of several schedule of the Constitution and not violative of being repugnant to the provisions of Limitation Act. A central legislation dealing with acquisition of right by adverse possession Section 20 (5) of the Act is a valid piece of legislation and is not ultra vires the Constitutional provision. [Bhauri Lal Jain v. Sub-Divisional Officer of Jamtara, 1972 P L J R 415 : A I R 1973 Pat 1: 1972 B L J R 897 : I L R ( 1972) 51 Pat 533 (F B)].

Section 20- Bar to transfer raiyats rights- The suit, for the relief sought for is not maintainable in view of the bar created under Section 20 of the Act provided, of course the conditions, in terms of provisions of the Act and fulfilled. As the issue regarding maintainability of the suit has not been framed and, as such, the Court below had no occasion to deal with the question in hand. [Mithu Tanti v. Raghunath Prasad Tanti, 1996 (1) PL J R 132 (Pat)].

Section 20- Bar under- Statutory- Transfer of land within the municipal area where no record of rights have been prepared- Requirement of an inquiry as to whether the land is transferable or not- Demand of verification report of the Circle Officer in a prescribed format before the Registrar for the registration of deeds- Demand is for the purpose of giving effect to the statutory bar created under the provisions of the Act- No reason to interfere with such requirement/demand. [Shyam Sunder Barnwal v. State of Jharkhand and others, 2004 (3)

Sections 20, 3 and 59- Conversion of Water channels and water reservoirs- Water channels and water reservoirs for irrigation cannot be

Converted to other purposes. Revenue authorities having no jurisdiction to decide title of the land under Section 35. If such conversion is attempted the affected railways or the State may initiate appropriate legal proceedings. Respondent No. 2 evidently had no jurisdiction to decide a complicated question of title while



exercising his jurisdiction under Section 35 of the said Act. The respondents have contended that no sale of a tank can be made by a raiyat. If the tank is converted for the use of any other purpose or brought under cultivation, it would be open to the affected raiyats or the State to imitate an appropriate legal action against the petitioner. It is further made clear that the disputed question of title of the petitioners in respect of the aforementioned tank may be decided in an appropriate proceeding. [Ansar Ali v. State of Bihar, 1996, (2) P L J R 656 : (1) B L J 751 (Pat)].

Section 20(5)- The word “transfer” Meaning thereof- Held, the act of forcible dispossession of a raiyat belonging to Schedule Tribe by another person is not a transfer in violation of provisions of the Act-In such cases provision of Scheduled Area Regulation is not applicable- 1987 BL T ( Rep) 177 and 1988 BLT (Rep) 15 followed, Jalpa Tudu’s Case 1981 B B C J 296.- Under Section 71-A of the C N T Act the conditions precedent for invoking the jurisdiction of the Deputy Commissioner under the said Act is transfer of land belonging to a member of the Scheduled Tribes in contravention to the provisions of Section 46 or any other provisions of Act or by any fraudulent method. Therefore, the Deputy Commissioner may direct for restoration of the land in question only in the event if it is held that transfer has taken place in violation of the provision of the said Act or by any fraudulent method. When, if a wider meaning is assigned to the word ‘transfer’ forcible dispossession of raiyat by another person cannot be any stretch of imagination be held to be a transfer. Further, from a bare perusal of Section 71-A of the Act, it will be evident that transfer connotes an act on the part of the raiyat belonging to the member of the Scheduled Tribe himself in favour of another person. Therefore, an act of forcible dispossession of raiyat belonging to Scheduled Tribe by another person, being not a transfer in violation of the said Act, the provision of Section 71-A thereof cannot be said to have any application whatsoever.

The observation of the Patna High Court (Ranchi Bench) is overruled by Supreme Court in the Case of Pandey Oraon v. Ram Chandra Sahu reported in A I R 1992 S C 195, Supreme Court, now has defined the word “Transfer” in the following manner- “In the absence of definition of transfer and considering the situation in which exercise of jurisdiction contemplated, it would not be proper to confine the meaning of transfer under the Transfer of Property Act or a situation where

transfer has a statutory definition. What exactly is contemplated, in the provision is where possession has passed from one to another and as a physical fact the member of the Scheduled Tribe who is entitled to hold possession and a non-member has come into possession would be covered by transfer and a situation of that type would be amenable to exercise of jurisdiction within the ambit of Section 71-A of the CNT Act.

[Ram Chandra Salhu v. Commissioner, South Chotanagpur, Ranchi, 1990(2) BLJR 929:1991(1) PLJR 17(FB)].

Section 20(5) (As amended by Bihar Regulation 1 of 1969) – Forcible Dispossession from the land is not transfer—It is not the case of transfer by fraudulent means—Held—Section 20(5) of the Act does not attract. The observation of the Patna High Court is overruled by Supreme Court in the Case of Pandey Oraon v. Ram Chandra Sahu, reported in AIR 1992 SC 195. [ Jalpa tandu v. Commissioner of Bhagalpur Division, 1981 BLJR 473:1981 BBC] 296:1981 BLJ 499]

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 <sup>1</sup> [State] Government may by notification in this behalf published in the official Gazette, permit non-aboriginal raiyats, either of the whole of the Santhal 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 holding up to 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 <sup>2</sup> [State] Government, or

(ii) a grain goal recognised 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 recognised 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 process 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 evocation 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-section shall be deemed to be 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.

## COMMENT

Section 21 (1) (b).- No further transfer of the land by transferor raiyat is permissible for a period of six years, on the expiry of the period of first transfer. If it is not forlorned the transferees will be able to defeat the very object of the proviso. [Surya Gon v. Sub-divisional Officer, Jamtara, 1972 PLJR 632:AIR 1973 Pat 255:1973 BLJR 386 (Pat) (DB)].

22. A raiyat may make over his holding temporarily on trust for cultivation – (1) Notwithstanding anything contained in Section 20 and 21 in the event of,-

- (a) a raiyat's temporary absence from the village, or
- (b) his sickness or physical incapacity, or
- (c) loss of plough cattle due to any cause beyond his control, or
- (d) the raiyat being a widow or minor,

He may, after informing by registered post the village headman, mulraiyyat or landlord, as the case may be, and the sub-divisional Officer, make over his holding temporarily on trust for cultivation to a raiyat of the Santal Parganas.

(2) In cases covered by clauses (a) and (c) of sub-section (1), if no period has been stipulated, and the raiyat does not resume cultivation himself, the holding shall be presumed to be abandoned after the expiry of a period of ten years.

(3) Any transfer of a holding for cultivation, temporary or otherwise, made otherwise than under the provisions of sub-section (1) shall be deemed to be a transfer made in contravention of sub-section (1) of Section 20.

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 satisfy 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,

© The transaction is not a concealed sale but is a bona fide 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.

### COMMENT

Section 23 of the Act contemplates that 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. But the proviso to this Section makes it incumbent upon the Deputy Commissioner to make proper enquiry with regard to the matters contained in the proviso before according the said permission. Two of the important factors to be looked into before according permission are that the lands proposed to be exchanged should be of the same value and further that the transaction is not a concealed sale but is a bonafide exchange sought to be made for the mutual conveniences of the parties. It may be stated here that a notification issued by the Government has been produced before me, according to which, the Sub-divisional Officer has been empowered to exercise the powers of the Deputy Commissioner as provided under Section 23 of the Act. [Suraj Narain Mandal v. State of Bihar, 1992 (1) PLJR 80]

24. Registration of certain transfers of raiyati holdings-(1) When a raiyati holding or any portion thereof is transferred by sale, gift, will or exchange in accordance with the provisions of this Act and the record-of – rights, the transferee or his successor in title may cause the transfer to be registered in the office of the landlord of the village.

(2) Notwithstanding anything to the contrary contained in the record-of-right or any law or anything having the force of law in the Santal Pargana, the landlord shall allow the registration of such transfers, and shall not be entitled, except in the case of a transfer by sale, gift or will, to levy any registration fee. In the case of a transfer by sale, gift or will, the landlord shall be entitled to levy a registration fee of the following amount, namely,-

(a) when rent is payable in respect of the holding or portion, a fee of two per centum on the annual rent thereof:

Provided that such fee shall not be less than eight annas or more than fifty rupees; and

(b) When rent is not payable in respect of the holding or portion, a fee of one rupee:

Provided that a gift to the husband or wife of the donor to a son adopted under the Hindu Law, or the daughter, sister, adopted son or adopted daughter of the donor under the Santal Law, or to a relation by consanguinity within three degrees of such shall not require any registration fee to be paid to the landlord.

(3) If any landlord refuses to allow the registration of any such transfer as is mentioned in sub-section (1), the transferee or his successor in the title may apply to the Deputy Commissioner and the Deputy Commissioner shall thereupon, after causing notice to be served on the landlord, make such enquiry as he considers necessary, and shall, if he is satisfied that the transfer is not contrary to the provisions of this Act or the record-of-right, pass an order declaring that the transfer shall be deemed to be registered, and may also pass order as he thinks fit in respect of the costs of any such enquiry.

{24-A Registration of certain transfers of homestead-(1) When a homestead or any portion thereof, which a raiyat holds otherwise than as part of this holding as a raiyat is transferred by sale gift will or exchange in accordance with custom or record-of-right, the transferee or his successor-in-interest may cause the transfer to be registered in the office of the landlord of the village.

(2) Notwithstanding anything to the contrary contained in the record-of-rights or in any law or anything having the force of law in the Santal Parganas, the landlord shall allow the registration of such transfer, and shall not be entitled, except in the case of transfer by sale, gift or will, to levy any registration fee and in the case of a transfer by sale, gift or will, the landlord shall be entitled to levy such registration fee as may be prescribed.

(3) If any landlord refuses to allow the registration of any such transfer as is mentioned in sub-section (1) the transferee or his successor-in-interest may apply to the Deputy Commissioner and the Deputy Commissioner shall after causing notice to be served on the landlord make such enquiry as he considers necessary and shall, if he is satisfied that the transfer is not contrary to custom or the record-of-rights, pass an order declaring that the transfer shall be deemed to be registered, and may also pass such order as he thinks fit in respect of the costs of any such enquiry.}

25. Payment of landlord's registration fee, etc. compulsory at the time of the registration of a deed of gift or sale of a raiyati holding or a portion thereof.-

(1) A registration officer shall not register any instruments purporting or operating to transfer a raiyati holding or portion of a raiyati holding by sale or gift unless there is paid to him, in addition to any fees payable under the Act for the time being in force for the registration of documents, a process fee of the prescribed amount and the landlord's registration fee payable under sub-section (2) of the section 24 together with the costs necessary for the transmission of the registration fee to the landlord.

(2) When the registration of any such instrument is complete, the registering officer shall send to the Deputy Commissioner the registration fee and the costs necessary for the transmission of the same to the landlord and a notice of the transfer and registration in the prescribed form, and the Deputy Commissioner shall cause the fee to be transmitted to, and the notice to be served on, landlord named in the notice in the prescribed manner.

26. Effect of registration- On registration of a transfer under sub-section (2), or on the passing of an order for registration by the Deputy Commissioner under sub-section (5) of Section 24, the landlord shall be deemed to have consented to the transfer and shall be bound by the terms and conditions thereof.

## CHAPTER VI

27. Settlement of waste land to be made by patta in prescribed form- Settlement of waste land shall be made by a patta or amalnama in the prescribed form. The patta or amalnama shall be prepared in quadruplicate, one copy shall be given to the raiyat concerned, one copy shall be sent to the Deputy Commissioner, one copy shall be sent to the landlord and the fourth shall be retained by the village headman or mulraiyyat, as the case may be.

Sections 27,28,59 and 61- Settlement of Waste land.- order passed by Sub-Divisional Officer in favour of non-jamabandi raiyat, after following procedure prescribed thereof in Section 27 and 28. Settlement of Waste land in favour of non –jamabandi raiyat is not against law. Cancellation of settlement by Revisional and Appellate Authority amount to failure to justice. The provisions are not mandatory under the Act. {Mihir kumar jha v. State of Bihar, 1997 (1) BLJR 172: 1997 (1) PLJR 716: 1997 BBCJ 364}.

Section 27 and 29-Mulraiyyat and village pradhan are similar words-

Village headman also same category- Mulraiyyat can retain raiyati lands, patta of land cancelled. Because petitioner was grandson of village pradhan. Held- Cancellation is invalid as petitioner was not retaining any raiyat.-

The word mulraiyyat is synonymous with the word “Village Pradhan” or “village headmand” and only difference is that mulraiyyat are entitled to retain their rayati lands. There was no material before Divisional Commissioner to hold that the petitioner was in any way retaining any raiyati land in the capacity of mulraiyyat or in capacity or co-mulraiyyat of the



village and merely because the petitioner happened to be Bhagina (Sister's son) of the village pradhanm he could not have been categorised a co-mulraiyat attracting the provisions of Section 29 of the Act. {Gadahar Mandal v. state of Bihar, 2000 (2) BLJ 784: 2000 (3) PLJR 756 (Pat)}.

28. Principles to be followed in settling waste land or vacant holding- In making settlement of waste land or vacant holdings regard shall be had to the following considerations in additions to the principles recorded in the record-or-rights,

(a) Fair and equitable distribution of land according to the requirements of each raiyat and his capacity to reclaim and cultivate;

(b) any special claim for services rendered to the village community, society or State:

(c) contiguity or proximity of the wste land to jamabandi land of the raiyat;

(d) Provision for landless labourers who are bona fide permanent residents of the village and are recorded for a dwelling house in the village.

#### COMMENTS

Section 28- Mandatory provisions-for settling waste land and vacant holding- These are to be followed necessarily- All the prerequisites for settling waste land and vacant holding cannot that the settlee must be a jamabandi raiyat or must be permanent raiyat or must be permanent resident of the village and they are recorded in the records of right. There was no any infirmity in the orders impugned passed by the Deputy Commissioner and the Divisional Commissioner.{Sheikh Allauddin v. State of Bihar, 2000 (3) BLJ 95 (Pat)}.

Section 28- Mandatory provisions- For settling waste land and vacant holdings- All the pre-requisites for settling waste land and vacant holdings for settlement must be a permanent raiyat or must be permanent resident of the village and they are recorded in the records of right. There was no any infirmity in the orders impugned passed by the Deputy Commissioner and the Divisional Commissioner.{ Sheikh Allauddin v. State of Bihar, 2000 (3) BLJ 95 (Pat)}.

Section 25- Settling of waste and vacant land- The petitioners were neither permanent resident of the villages nor they were jamabandi raiyats and therefore the power as envisaged under section 28 of the Act was not exercisable in respect of them. There was no any infirmity in the order impugned passed by the Deputy Commissioner and the Divisional Commissioner. {Sheikh Allauddin v. State of Bihar, 2000 BLJR 1084 (Pat)}.

Section 28- Settling of waste and vacant land- Petitioners neither permanent residents nor jamabandi raiyats- Decision not allowing the settlement- Not warrants any interference- The petitioners were neither permanent residents of the village nor they were jamabandi raiyats and therefore the power as envisaged under section 28 of the Act was not exercisable in respect of them. For the reasons aforementioned therefore, there was no any infirmity in the orders impugned passed by the Deputy Commissioner and the Divisional Commissioner.{Nandgopal Bhadra v. State of Bihar,2000 (3) BLJR 1084(Pat)}.

There are ceratian consideration as specified in Section 28 of the Santal Pargana Tenancy act which have to be kept in view in making any settlement of the waste land in the district of Santal Pargana but the remedy if any against the contravention of those consideration is to file an application under section 32 of the Act and not by way of any independent suit. The order passed on the application under section 32 subject to any appeal and revision under section 57,58 and 59 of the Act shall as operate as final. {Jahanbi Devi v. Bodi Mistry, 1965 BLJR Lxiv (Sum) }.

Section 27,28,59 and 61- Settlement of Waste land- Order passed by sub-Divisional Officer in Favour of non- jamabandi raiyat, after following procedure prescribed in Section 27 and 28 not illegal. Revisional Authority cancelled that settlement on a wrong notion of law and Appellate Authority affirmed that order of cancellation merely on ground that it does not amount to failure of justice- Committed manifest effort of law- Both these orders,

thus, unsustainable . Settlement of waste land in favour of non- jamabandi raiyat is not against law. {Mihir kumar jha v. State of Bihar, 1997 (1) BLJR 172: 1997 (1) PLJR 716: 1997 BBCJ 364}

29. A mulraiyyat, Pradhan or village headman not to settle waste land or vacant holding with himself or co-mulraiyyat without the sanction of the Deputy Commissioner.- A mulraiyyat, pradhan or village headman shall not settle any waste land or vacant holding with himself or any co-mulraiyyat without the previous sanction in writing of the Deputy Commissioner.

#### COMMENT

Mulraiyyat and village pradhan are similar words. Village headman is also of the same category. Muraiyyat retain raiyati land patta of the land cancelled-

Because petitioner was grandson of village pradhan- Held-Cancellation is invalid as petitioner was not retaining any raiyat- The word Mulraiyyat is Synonymous with the word “village Pradhan” or “Village Headman” and only difference is that Mulraiyyat are entitled to retain their raiyat lands. There was no material before Divisional Commissioner to retain raiyat lands. There was no material before Divisinal Commissioner to hold that the petitioner was in any way retaining any raiyati land in the capacity of Muraiyyat or in capacity of Co-mulraiyyat of the merely because the petitioner happened to be Bhagina (Sister’s son ) of the village pradhan, he could not have been categorized a co-mulraiyyat attracting the provisions of section 29 of the Act. {Gadahaar Mandal v.state of Bihar, 2000 (3) BLJ 784: 2000 (3) PLJR 756 (Pat)}.

30. Vacant holding not to be sub-divided for purpose of settlement- No vacant holding shall be sub-divided for the purpose of settlement without the consent of the landlord and the approval of the Deputy commissioner.

31. Two or more village headman, co-mulraiyyat or landlords to settle waste land jointly- Excepts as otherwise provided in this Act, where there are two or more village headman, co-mulraiyyat or landlords in a village held jointly by them and the settlement of waste land has not been made jointly by all such village headmen, co-mulraiyyats or landlords, as the case may be, the settlement may on objection be set aside or modified at the discretion of the Deputy Commissioner.

32. Objection before the Deputy commissioner against settlement of waste land and vacant holdings- (1) A person, if aggrieved by any act of the village headman or muraiyat or landlord, as the case may be, in setting or refusing to settle waste land or a vacant holding, or if aggrieved by any act of any other person in respect of such land or holding, may make an application before the Deputy Commissioner within one year from the year on which reclamation in pursuance of settlement was commenced or settlement was refused.

(2) (a) On receipt of such an application the Deputy Commissioner shall serve in the prescribed manner on the parties interested other than the applicant, notice of the date on which he intends to hear and decide the application.

Explanation.-For the purpose of this clause all the Jamabandi raiyats of the village and the village headman or mulraiayat if it is pradhani village or mulraiayate village or the landlord if it is khas village, shall be deemed to be parties interested.

(b) After serving the notice required by clause (a) and hearing the parties and the enquiry the Deputy Commissioner may, in cases where settlement has been made, either confirm or modify or set aside

The settlement, or, in cases where settlement has been refused, order the waste land or vacant holding to be settled. He may himself settle the land or holding in question with a jamabandi raiyat in accordance with the principles laid down in Section 28 and in the record-of-rights on such terms as he may think proper.

(3) No claim for compensation by any person evicted from land reclaimed or held in contravention of the provisions of this Act or any law or anything having the force of law in the Santal Parganas shall be admissible.

## **COMMENT**

Section 32.- Application of.- The provisions of Section 32 are applicable only in respect of such cases where settlements have been made after coming into force of the Act. The settlements which were made by the village Pradhan before coming into force of the Act cannot be modified or varied or set aside in term of Section 32 of the Act. The provisions of the said Act have a prospective operation. [Ghanshyam Pandit v. Commissioner, 1988 P L J R 140].

33. Settlement of waste land liable to be set aside if not cultivated within five years.- In the event of any land settled as aforesaid not being brought under cultivation within a period of five years from the date of settlement, it shall be open to the Deputy Commissioner on an application made by a jamabandi raiyat, the village headman, mulraiyyat or the landlord, as the case may be, to set aside the settlement and to make such resettlement as is permissible under this Act or any law or anything having the force of law in the Santal Parganas.

34. Deputy Commissioner may set apart village waste land jaherthan, or burning or burial ground is found at any time to be inadequate or unsuitable, the Deputy Commissioner may in consultation with the resident jamabandi raiyats and village headman or mulraiyyat, if any, set apart suitable portions of the village waste land for the purpose of being used in jaherthan or burning or burial ground, as the case may be.

35. Water reservoirs and channels for irrigation, etc. not be cultivated or converted to other purposes.- (1) Bandhas, aharas, tanks and other water reservoirs or channels, which are used either for the purposes of protection from flood or for irrigation, bathing, washing or drinking, shall not be settled for or converted to any other purpose without the consent of the raiyats and the village headman or mulraiyyat, or the landlord in khas village, and the approval of the Deputy Commissioner. No one shall bring under cultivation any such water reservoir or channel.

(2) No proprietor or landlord shall be entitled to levy any charge for the use of water reservoirs and channels mentioned in sub-section (1) for irrigation, bathing, washing or drinking purposes.

### **COMMENTS**

Section 35- conversion of tank into cultivated land- Affected raiyats or State may initiate legal action against petitioners. {Ansar Ali v.State of Bihar,1996 (1) BLJ 751 : 1996 (2) PLJR 656 (Pat)}.

Section 35,59(1) and 20- Water reservations not to be converted to any other purpose be brought under cultivation. – Section 35 puts two embargoes viz., (a) no settlement shall be made in respect of bandhsaharas, tanks and other water reservoirs or channel and the same cannot be converted to any other purposes without the consent of the raiyats and the village headman or mulraiyyat of the landlord in khas village and the approval of the Deputy Commissioner; and (b) such water reservoir or channel cannot be brought under cultivation by any person. [Ansar Ali v. State of Bihar, 1996 (1) B L J 751 : 1996 (2) P L J R 656(Pat)].

36. Rivulets or nals on the boundaries of villages, burning and burial grounds, camping grounds, boundary marks, roads, paths and places of worship not to be settled. – Rivulets or nals on the boundaries of village, burning and burial grounds, camping grounds, land bearing boundary marks,public roads, village paths, jaherthan and other places of worship shall not be reclaimed or cultivated or converted to any other purpose by any raiyat. No proprietor, landlord, village headman or muraiyyat shall appropriate these to their own use, nor shall they settle these with any raiyat.

37. Raiyat's right to graze cattle- All raiyats of the villages shall have the right to graze their own cattle within the village on the recorded grazing land and on grazing land set apart by the Deputy Commissioner under sub-section

(2) of Section 38 and on village waste land which is neither excluded from the village under the santal parganas settlement Regulation ( Reg.III of 1872) nor reserved or enclosed to promote growth of forest nor set apart under section 34:

Provided that nothing in this section shall affect the right of reclamation of waste land after due settlement:

Provided further that the right of grazing cattle shall be subject to such forest rules as may for the time being be in force for the Domin-I Koh Government Estate or other private forests taken under the management of Government.

(2) No cattle of persons other than raiyats of the village may graze within the village without the consent of the village community.

(3) No fee shall be chargeable by any person for the grazing of cattle within any village.

38. Grazing land shall not be cultivated. –(1) No land recorded as village grazing land or gochar shall be settled or brought under cultivation or utilised for any other than grazing by any one.

(2) If the area recorded as grazing land or gochar be less than five per centum of the total area of the village headman or mulraiyyat, and raiyats, set apart suitable area of village waste land for grazing. Such land when so set apart shall be governed by the provision of sub- section (1).

39. Raiyat's right to excavate tanks, etc., other than their holdings.-

Raiyats may, with the permission of the landlord, excavate on lands other than their holdings, tanks and other reservoirs required for drinking and other purposes, and may enjoy the fish and other produce of the same according to arrangement made with the landlord. Provided that such permission shall not be refused by the landlord without sufficient reason and on such refusal the Deputy Commissioner may, on the application of the raiyat, grant such permission on such conditions as he deems fit.

40. Right of fishery in a khas tank not to interfere with raiyat's rights.- Where any person is in enjoyment of the right of fishery in a khas tank or other water reservoir, the extent and nature of his right will depend on the terms of the lease under which he holds, But neither he nor the landlord shall interfere with any right irrigation that may be acquired by any person.

## **COMMENT**

There are certain considerations as specified in Section 28 of the Santal Pargana Tenancy Act which have to be kept in view in making any settlement of the waste land in the district of Santal Pargana but the remedy if any against the contravention of those considerations is to file an application under Section 32 of the Act and not by way of any independent suit. The order passed on the application under Section 32 subject to any appeal and revision under Section 57, 58 and 59 of the Act shall as operate as final. [Jahanbi Devi v. Bodi Mistry, 1965 B L J R [xiv (Sum)]].

41. No settlements of vacant holding and waste land in a Paharia village with a non-Paharia.- No vacant holding and no waste land in a Paharia village within the Damin-i-KOha Government Estate shall be settled with a person who is not a Paharia.

Explanation.- For the purposes of this section Paharia village is one which is recorded, recognised or declared as such by the Commissioner.

42. Ejectment of a person in unauthorised possession of agricultural land. – 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 anything having the force of law in the Santal Parganas.



## COMMENTS

Sub-divisional Officer can only receive complaints with respect to encroachments and forward them to the Deputy commissioner for passing order of the imposition of penalty for non-compliance of order for removal of encroachment made under Section 42. {Gobardhan Pandit v.S.D.O., 1985 PLJR 213}.

Review of order is permissible in law if the permission is obtained by the court. When the order is obtained by suppression of fact by one party.{Karan Murmu v. state of Bihar, 1994(2) BLJR 993}.

Section 42-Review- The Court has jurisdiction to review the order when it is obtained from the Court by suppression of fact by one party.{Karan Murmu v. state of Bihar, 1994(2) BLJR 993: 1994 (2) PLJR 684}.

Section 42- The Provision of the Limitation Act is applicable under the Regulation. The acquired under Regulation III of 1872 cannot be ignored. {Bhuri Lal Jain v. sub-Divisional Officer of Jamtara, 1972 PLJR 415: AIR 1973 Pat 1: 1972 BLJR 897: ILR (1972) 51 Pat 533 (FB)}.

Section 42- jurisdiction to evict- Evicted person could not substantiate His right and the title over the land in dispute-Acquisition of right by adverse possession- Not open to determine in writ jurisdiction-No declaration could be granted in exercise of writ jurisdiction-Liberty extended to approach court of competent jurisdiction for appropriate declaration and restoration of possession.{Amarnath Sen v.State of Jharkhand,2004(2) JCR 404}.

Section 42- There was no incidence of transferability of the raiyati holdings in Santhal Pargana on the date of the commencement of the Constitution, either because there was no right of transferability at any point of time in Santhal Pargana or even alternatively because section 27 of the Regulation had made them non-transferable, which section was placed by section 20 of the Act in 1949, Settlement officer as to offend against Article 19(1)(f) of the Constitution. {Bhuri Lal Jain v. Sub-Divisional Officer of Jamtara, 1972 PLJR 415: AIR 1973 Pat 1: 1972 BLJR 897: ILR(1972) 51 Pat 533 (FB)}.

Section 42-The expression Agricultural Land has not been defined anywhere in the Act and in the ordinary course it may mean a piece of land over which operation of husbandry may be carried on. In this connection it is better to refer section 69 of the Act. It bars acquisition of right inter alia over

the official holding grassing land, Jaherthan and Burning and Burial ground etc. Agricultural land includes all the land on which agricultural process are carried on. Land fit for cultivation or land required for persons or animals connected with the Agricultural operation required for persons or animals connected with the Agricultural operation usually carried on in the village. {Jhagru Mahto v. Ravan Hansda, 1972 BLJR XXvii (Sum)}.

Section 42-Eviction- Settlement made in 1949 contrary to the settlement report the settlee is not the 16 Ana raiyat he is liable to be evicted under section 42 of the Act. Deputy Commissioner can exercise his power under Section 42 and evict the person who is an unauthorised possession of the

Agricultural land without any time limit. {Nakul Chandra Mandal v. Commissioner, Bhagalpur Division, 1979 BLJR 201:1979 BLJ 26: 1979 PLJR 153 (Pat)}.

Sections 42, 63 and 64. – Jurisdiction under- only 16 ana raiyats are entitled for settlement in Santhal Pargana outsiders cannot take settlement. Deputy Commissioner can exercise his jurisdiction to annul the settlement made in favour of outsiders at any time without any restriction of time period, (Unless the person has perfected his right before the Act came into force).

Revenue Court has jurisdiction to set aside a compromise decree obtained by suppression of its previous decision. The validity of the order of the Deputy Commissioner cannot be challenged in the Civil Court. {Naku Chandra Mandal v. Commissioner, Bhagalpur Division, 1979 BLJR 201: 1979 BLJ 26: 1979 PLJR 153}.

The word 'may' in section 42 means 'must' in the scheme or background of the legislation. The Deputy Commissioner, whenever he comes across case of wrongful possession of land held in contravention of the provisions of the Act, is bound to order for eviction as envisaged in the Act. No question of discrimination within the meaning of Art. 14 of the constitution arises and the power under section 42 being not administrative but quasi-judicial, has to be exercised as a ground for infringement of Art. 14 and cannot be corrected in appeal, revision or review. {Bhauri Lal Jain v. Sub-Divisional Officer of Jamtara, 1972, PLJR 415 : AIR 1973 Pat 1: 1972 BLJR 897: ILR(1972) 51 Pat 533 (FB)}.

It is held unanimously that the prescriptive period of 12 years for perfecting the title by adverse possession (The original transfer being in contravention of Section 27 of the Regulation-III,1872) would stop running from the 1<sup>st</sup> of Nov 1949 being the date of enforcement of the Santal Pargana Tenancy (Supplementary Provisions) Act, 1949. Held, that where the original transfer is in contravention of the statute:-

- (i) A transfer in contravention of Sub-section (1) or (2) of section 20 of the Act- Obviously such a transfer would inevitably be after the enforcement of the Act on the 1<sup>st</sup> of November 1949.
- (ii) A transfer in contravention of section 27 of Regulation III of 1872 with regard to which the prescription period of 12 years has not elapsed on 1<sup>st</sup> November, 1949.- In such a case time for perfecting title by adverse enforcement of the Act on Nov 1, 1949, and if the prescriptive period of 12 years is not completed before that the right or title would remain inchoate and cannot be perfected thereafter by virtue of adverse possession.
- (iii) A transfer in contravention of section 27 or Regulation III of 1872 in which the transfer has been in continuous adverse cultivating possession for 12 years prior to the 1<sup>st</sup> November,1949.- In view of clause (a) of the proviso to sub-section (3) of section 27 of the said Regulation, the transferee herein became immune to eviction if they had been in continuous cultivating possession for 12 years. He was thus allowed to perfect his title by way of adverse possession.

Revision on account of any irregularity of procedure, unless the irregularity has occasioned or is likely to occasion failure of justice.

## **62. Control over Deputy Commissioner and Deputy Collectors-**

In the performance of his duties and the exercise of his powers under this Act, the Deputy Commissioner, shall be subject to the general direction and control of the Commissioner, and the Additional Deputy Commissioner, Sub-divisional Officers and Deputy Collectors exercising the functions of the Deputy Commissioner, shall be subject to the direction and control of the Deputy Commissioner.

63. Bar to suits.- No suit shall be entertained in any court to vary, modify or set aside, either directly or indirectly, any order of the Deputy Commissioner in any application which is cognizable by the Deputy Commissioner under this Act and every such order shall, subject to the provisions of this Act relating to appeal and revision, be final :

Provided that nothing contained in this section shall bar the jurisdiction of a Civil Court in matters in which it had jurisdiction immediately before the Commencement of this Act.

## **COMMENTS**

Section 63- If a title suit brought for avoiding the previous order of the Deputy Commissioner and affirmed by the Commissioner, which has become final under the Act is not maintainable. Section 63 will be a bar to the entertainment of such a suit. [Nakul Chandra Mandal v. commissioner, Bhagalpur Division, 1979 BLJR 201 : 1979 BLJ 26 : 1979 PLJR 153 Pat 41].

Section 63- No suit can be filed in Civil Court to set aside the order of the revenue Court . Suit can only be filed before the Civil Court when the order is ultra vires. [Nakul Chandra Mandal v. commissioner, Bhagalpur Division, 1979 BLJR 201 : 1979 BLJ 26 : 1979 PLJR 153 (Pat)].

Section 63 and 64-Jurisdiction under- Only 16 ana raiyats are entitled for settlement is Santhal Pargana outsiders cannot take settlement. Deputy Commissioner can exercise his jurisdiction to annul the settlement made in favour of outsiders at any time without any restriction of time period, (unless the person has perfected his right before the Act came into force).

Revenue Court has jurisdiction to set aside a compromise decree obtained by suppression of its previous decision. The validity of the order of the Deputy Commissioner cannot be challenged in the Civil Court. [Nakul Chandra Mandal v. commissioner, Bhagalpur Division, 1979 BLJR 201 : 1979 BLJ 26 : 1979 PLJR 153].

Section 63 read with Rule 3 of Bihar Board Miscellaneous Rules, 1958- SPT is complete Code in itself- NO authority has power or jurisdiction to decide any matter arising out of an order under the provisions of SPT Act. Who is not empowered by the Court in terms of rules of course Boards Misc. Rules, even

the Member Board of Revenue cannot exercise its power. The order passed by the Member, Board Revenue and all subsequent order are Without jurisdiction. [Prem Pandit v. State of Bihar, 1988 PLJR (NOC) 50 : 1988 BLJR 323 :BBCJ 301].

Section 60-Santhal Parganas Settlement Regulation Act, 1872, Section 5-Declaration of title-Civil Court empowered to entertain in suit against the order of Deputy Commissioner- From perusal of the Section 63 of the Santhal parganas Tenancy (Supplementary Provisions) Act, 1949, it is clear that this section bars the institution of suits which seek to vary, modify or set aside an order passed by the Deputy Commissioner in exercise of his revenue jurisdiction under the Act. It is, therefore, clear that suit does not seek to vary, modify or set aside the order of the Deputy Commissioner or to avoid such order, the Civil Court has jurisdiction to entertain suit. By implication it follows further that where an order of the Deputy Commissioner is in excess of the jurisdiction or without jurisdiction then it can certainly be challenged in a suit and the Civil Court has jurisdiction to entertain the suit. [Tarini Maradi v. Lakshmi Mahto, 1998 (3) BLJR 1662 : (2) All PLR 301 (Pat)].

Similarly Apex Court held that exclusion of jurisdiction of Civil Court cannot be readily inferred and that normal rule is that Civil Courts have jurisdiction to try all suits of a civil nature except those of which cognizance by them is either expressly or impliedly excluded. [M.P. Electricity Board v. Vijay Timber Co., 1997 (1) SCC 68].

## CHAPTER VIII

### LIMITATION

**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.

### COMMENTS

Section 64- The Santhal Parganas Tenancy Act, 1949 is a complete Code in itself. In matters arising out of an order passed under the 1949 Act where the Act is silent. No Authority is competent to exercise power or jurisdiction to pass any order whatsoever. Even the Board of Revenue is not competent to exercise its jurisdiction in terms of Rules of Board's Miscellaneous Rules, where finality has been given to any order by the Act. [Butani dusadh v. State of Bihar, 1988 PLJR (NOC) 50].

Section 64- where statute creates a right and also provides the remedy and forum for enforcement of that right, it is that remedy alone which can be availed of. [Suryabansh Upadhyay v. Awadhesh Choudhary, 1992 (2) PLJR 173].

65. Limitation for ejectment suits.- An application for ejectment of a raiyat on the ground mentioned in Section 14 shall be made within two years from the date of the misuse complained of.

<sup>1</sup>[**65-A. Limitation for suits for arrears of rent by or on behalf of Government.-** Notwithstanding anything to the contrary contained in any law for the time being in force, the period of limitation for a suit for recovery of arrears of rent brought by or on behalf of the State Government shall be ten years from the end of the agricultural year in which the arrears become due.]

**66. Limitation for appeals.-** Every appeal under this Act shall be presented,-

(a) to the tribunal appointed under clause (d) of Section 57 or to the Commissioner, within ninety days from the date of the order appealed against; and

(b) to the Deputy Commissioner or to the Sub-divisional Officer within sixty days of the order appealed against.

## CHAPTER IX

### MISCELLANEOUS PROVISIONS

**67. Penalties.-**(1) If any person-

(a) being a landlord, fails to repair and maintain any has bandhs, ahars dykes, dams, danrs, drains, tanks or any other water reservoirs or channels which he is bound, by the provisions of this Act or any law or

- anything having the force of law in the Santhal Parganas including any custom entered in the record-of-rights, to repair and maintain, or
- (b) being a landlord or an agent of a landlord, a village headman or mulraiyyat, fails to perform any of the duties imposed by this Act, or any law or anything having the force of law in the Santhal Parganas including any custom entered in the record-of-rights, or
- (c) being a landlord, or the agent of a landlord, village headman or a mulraiyyat, fails to repair, with the assistance of the raiyyat, any bandhs, ahars, dams, dykes, drains, tanks, any other water reservoirs and irrigation channels, village paths or boundary marks which he and they are bound, by the provision of this Act or any law or anything having the force of law in the Santhal Parganas including any custom entered in the record-of-rights to repair, or fails to preserve any of the recorded village paths or camping or grazing grounds, or
- (d) being a landlord, or the agent of a landlord, a village headman or a mulraiyyat, fails to report to competent authority any transfer of village land made in contravention of Section 20, or
- (e) being a landlord, or the agent of a landlord, fails to report to the Deputy Commissioner the death of a village headman as provided in Section 6, or
- (f) being a landlord, or the agent of a landlord, a village headman or a mulraiyyat, settles any village waste land or vacant holding or any other holding or land with a non-jamabandi raiyyat, or
- (g) being a landlord, or the agent of a landlord, fails to supply a newly appointed village headman either with original or with certified copies of the jamabandi and the record-of rights within the period specified in Section 8, or
- (h) being a raiyyat-

(i) fails to assist the landlord, or village headman or mulraiayat, as the case may be, in the repair of any village bandhs, ahars, dykes, dams, danrs, drains, tanks, any other water reservoirs and irrigation channels, village paths or boundary marks, which he is bound to do by the provisions of this Act or any law or anything having the force of law in the Santhal Parganas including any custom entered in the record-of-rights, or

(ii) encroaches on any of the recorded village paths, camping or grazing grounds, or

<sup>1</sup>[\* \* \* ]

<sup>2</sup>(iii) cuts down any village trees in contravention of the provisions of this Act or any law or anything having the force of law in the Santhal Parganas including any custom entered in the record-of-rights or otherwise uses, or prevents the use of, village forest in contravention of the provisions of this Act or any law or anything having the force of law in the Santhal parganas, he shall be liable to a fine which may extend

To two hundred rupees and in the case of a continuing offence to a further fine not exceeding five rupees for each day during which the offence continues.

<sup>1</sup>[(2) If any land is transferred in contravention of the provisions Section 20 or any other provision of this Act or by fraudulent method and is held or cultivated by any person with knowledge of such transfer, he shall be punished with imprisonment of either description for a term which may extend to three years or with fine which may extend to one thousand rupees or with both, and in the case of a continuing offence, to a further fine not exceeding fifty rupees for each day during which the offence continues.]

<sup>2</sup>[(3) Such fine shall be imposed by the Deputy Commissioner after such enquiry as the Deputy Commissioner may hold either on his own motion or on information received or upon the complaint of the party aggrieved made within three months from the date on which the offence was committed.

<sup>2</sup>[(4) An appeal shall lie to the Commissioner against any order of the Deputy Commissioner imposing a fine under sub-section (2) and the order passed by the Commissioner on such appeal shall be final.



**68. Service of notice on landlord.-** Every notice required by this Act to be served on a landlord shall, if served on an agent empowered by a written authority under the hand of the landlord to accept service of or receive the same on behalf of the landlord, be as effectual for the purposes of this Act as if it had been served on the landlord in person.

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

(a) land held or acquired in contravention of the provision 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, mulraiayat and members of their family, or a landlord, or

(e) village headman's official holding, grazing land, jeharthan and burning and burial grounds.

### **COMMENT**

**Section 69 and Santhal Parganas Settlement Regulations (No. III of 1872).**

**Sec. 18-**Section 18 of the Regulation does not permit acquisition of title by adverse possession. This become evident because two provisions of Section 69 of the Act (B and C) have been taken from provisos (A) and (B) of Section 18 of Regulation. When the Act came into force on the first day of November 1949 it stopped acquisition of right in such land by any one.

Meaning of Agriculture land the expression "Agriculture Land" has not been defined any where in the Act, in the ordinary course it may mean the piece of land over which operation of husbandry may be carried on. In this

connection it is better to refer on more Section 69 of the Act. It bars acquisition of right inter alia over the official holding grazing land, jeharthan and Burning and Burial ground. To make the sensible reading of the expression "Agriculture Land" includes all the lands on which agriculture process are carried on. [Jhagru Mahto v. Ravan Hansda, 1972 BLJR xxvii (Sum)].

70. Recovery of dues.-(1) All costs, interest, damages and compensation awarded under this Act, shall be recoverable unless otherwise provided in this Act in the manner provided for the recovery of money due under a decree.

(2) All fines and penalties imposed under this Act shall be recoverable in the manner prescribed by any law for the time being in force for recovery of a public demand.

71. Power to make rules.-(1) The <sup>1</sup>[State] Government may, by notification, make rules for carrying out the objects of this Act.

(2) In particular and without prejudice to the generality of the foregoing power, the <sup>2</sup>[State] Government may make rules with respect to all or any of the following matters,-

- (i) the manner of ascertaining the consent of resident jamabandi raiyat under Section 5;
- (ii) the manner in which a village headman shall discharge his duties;
- (iii) the manner in which copies of jamabandi will be certified under Section 8;

The Prescriptive period of 2 years for perfecting the title by adverse possession (in case of a transfer which was originally in contravention of Section 27 of Regulation III of 1872) would stop running on the date of the enforcement of the Act i.e. the 1<sup>st</sup> November, 1949. [Deo Narayan Sing v. Commissioner, Bhagalpur Division, 1985 BLJR 185: 1985 PLJR 1 (FB)].

Sections 20(5) and 42- There is a distinction between Section 20(5) and Section 42-Original raiyat will be put in possession under Section 20(5) by the

competent authority. But under Section 42 no such power is given to the authority. [Deonarian Singh v. Commissioner, Bhagalpur Division, 1985 BLJR 185 :1985 PLJR 1 (FB)].

Section 20 and 42- The order passed by the Revenue Authorities without deciding the disputed points and without giving opportunity to the parties concerned is bad in law. The revenue authorities are bound to decide the points on the basis of evidence adduced by the parties. [Ram Lal Tatwa v. State of Bihar, 2000 (1) PLJR 488 (Pat)].

Sections 20(5) and 42- Under Section 20(5) SPT Act matter must be considered under proviso (ii) of sub-section (5) where there is substantial structure claimed to be constructed by the party over the land in question prior to coming into force of the Bihar Scheduled Area Regulation, 1969.

[Nandgopal Bhadra v. State of Bihar, 2000 (3) BLJ 738 (Pat)].

Section 42 and 20(5)\_Fraudulent method also includes collusive compromise decree and it is a violation of Section 20(5) of the Act. It is a collusive decree. The case of the petitioner is that they have got settlement of land in question under the provision of Section 20 of the Act and they have proved before the authority concerned that they are in possession for more than 12 years prior to the coming into force of the Act, 1949 the status of petitioner in that view of the matter must be held to be trespasser. The expression "any fraudulent method" also includes a collusive compromise decree. [Banshidhar Pal v. State of Bihar, 2000 (1) PLJR 994: 2000 (2) BLJR 1295 (Pat)]

## **CHAPTER V**

### **RENT**

43. Rent in the kind not to be realised or recognised by any Court. –(1) Nothing in contract, express or implied, between a landlord, a village headman or a mulraiyyat and a raiyat made before or after the commencement of this Act, shall entitle the landlord or the village headman

or the mulraiyyat to rent in kind whether known as bhaoli, batai, krisani, danabandi or otherwise.

(2) No rent in kind shall, in any way, be recognised as valid by any Court whether in the exercise of civil, criminal or revenue jurisdiction:

Provided that if the Deputy Commissioner directs that a holding given in khas possession to a decree-holder for satisfaction of decree under the provision of the Santal Civil Rules be made over for cultivation to the evicted raiyyat or his heirs, the decree-holder shall be entitled to take not more than half the produce as his share by division.

<sup>1</sup>[43-A., Time for payment of rent.-(1) Notwithstanding anything to the contrary contained in the Santal Paraganas Settlement Regulation, 1872 (Reg.III of 1872) or the village record- of-rights prepared there under, a money rent payable by a tenant shall be paid in four equal instalments falling due on the last day of each quarter of the agricultural year.

(2) Every tenant or the mortgagee of his holding or tenure shall pay each instalment of rent before sunset of the day on which it falls due.

(3) Any instalment or part of an instalment of rent not duly paid at or before the time when it falls due shall be deemed to be an arrear:

Provided that where rent is payable to the State Government, any instalment or part of an instalment not duly paid at or before the time when it falls due shall be deemed to be an arrear only at the end of the agricultural year.

44. Raiyyat, village headman and mulraiyyat not liable to transferee of landlord's or mulraiyyat's interest for rent paid to former landlord or mulraiyyat, without notice of the transfer.- (1) When the interest of the landlord or mulraiyyat is transferred, no raiyyat, village headman or mulraiyyat, as the case may be, shall be liable for rent which became due after the

transfer and was paid in good faith to the landlord or mulraiyyat, as the case may be, whose interest was so transferred unless the transferee has before the payment served notice of the transfer on the raiyat, village headman or mulraiyyat.

(2) Where there is more than one raiyat, village headman or mulraiyyat paying rent to the landlord or mulraiyyat, as the case may be, whose interest is transferred, a general notice from the transferee to the raiyats, village headmen or mulraiyyats, published in the prescribed manner, shall be a sufficient notice for the purpose of this section.

45. Payment of rent by postal money order. – Payment of rent by a raiyat to his landlord, village headman or mulraiyyat, as the case may be, in respect of his holding in any village may be made by remitting the amount of the rent by postal money order in the prescribed form. A village headman or a mulraiyyat may be like money-order remit the amount of rent due from him to his landlord.

46. Maintenance of account of rent of each raiyat by village headman, mulraiyyat or landlord.-(1) A village haddman or a mulraiyyat in a pradhani or mulraiyyati village, land a landlord in a khas village, shall maintain a statement of account in the prescribed form for each village showing the rent due, payments made by each raiyat

During each agricultural year, the manner in which such payments have been credited in the accounts, the balance, if any, remaining unpaid by such raiyat at the end of the said year and the interest claimed thereon.

**47. Receipts for rent and interest thereon.**-(1) Every raiyat, village headman or mulraiyyat who makes a payment on account of rent, or interest due thereon, or bothm, to his landlord, village headman or mulraiyyat, as the case may be, shall be entitled to obtain forthwith from the landlord or his agent, village headman, or mulraiyyat, as the case may be, free of charge, a signed receipt for the same, in the prescribed form.

(2) The landlord or his agent or the village headman, or mulraiyat, as the case may be, shall prepare and retain a counter-foil, in the prescribed form, of the receipt.

(3) If a receipt does not contain substantially such of the particulars to be entered in the prescribed form of receipt as can be specified by the rent-receiver at the time of payment, it shall be presumed, until the contrary is proved, to be an acquittance

in full of all demands for rent and interest thereon up to the date on which the receipt was given.

(4) If any landlord or his agent, village headman, or mulraiyat fails to grant such a receipt or to prepare and retain such a counterfoil or to maintain and deliver to a raiyat, a statement of account as prescribed in Section 46 then on proof thereof, the Deputy Commissioner may, in summary proceeding, by order, impose on the landlord, village headman, or mulraiyat, as the case may be, a fine which may extend to fifty rupees in respect of each such failure; and may, in his discretion, award to the raiyat or village headman or mulraiyat, as the case may be, by way of compensation, such portion of the fine as the Deputy Commissioner may think fit.

(5) If, in a proceeding instituted under sub-section (4), the Deputy Commissioner discharges any landlord, village headman or mulraiyat and is satisfied that the complaint or allegation of the raiyat, village headman or mulraiyat on which the proceedings were instituted is false or vexatious, the Deputy Commissioner may, in his discretion by his order of discharge, direct the raiyat, village headman or mulraiyat, as the case may be, to pay to the village headman or mulraiyat or landlord, as the case may be such compensation, not exceeding fifty rupees, as the Deputy Commissioner may think fit.

(6) An appeal shall lie to the Commissioner against any order of the Deputy Commissioner imposing a fine under sub-section (4) or

Awarding compensation under sub-section (4) or sub-section (5); and the order passed by the Commissioner on such appeal shall be final.

(7) Any fine imposed or compensation awarded under this section may be recovered in the manner provided by any law for the time being in force for the recovery of public demand.

(8) For the purpose of an enquiry under this section, the Deputy Commissioner shall have power to summon, and enforce the attendance of, witnesses, and compel the production of documents in the same manner as is provided in the Santal Civil Rules.

(9) If, in any suit or other proceeding under this Act any other law in force, the Court or Presiding Officer (not being the Deputy Commissioner) finds that any landlord or his agent, village headman, or mulraiyyat, has failed-

(a) to deliver to a raiyat, village headman or mulraiyyat a receipt in the prescribed form, or

(b) to prepare and retain a counterfoil, in the prescribed form, of a receipt delivered to a raiyat, village headman or mulraiyyat as aforesaid, or

(c) to maintain and deliver to a raiyat or village headman, as the case may be, a statement of account as prescribed in Section 46,

Such Court or Officer shall report the fact to the Deputy Commissioner.

**48. State Government to prepare forms of receipts and statement of accounts.**-(1) The <sup>1</sup>[State] Government shall cause to be prepared and kept for sale to village headman, mulraiyyat and landlords at all sub-divisional offices forms of receipts with counterfoils and of statements of accounts suitable for use under the foregoing sections.

(2) The forms may be sold in books with the leaves consecutively numbered or otherwise as the <sup>2</sup>[State] Government thinks fit.

**49. Rent to be first charge on holdings.-** Where a raiyat's holding is transferable, the rent of the holding shall be a first charge on the holding and, in the case of a village headman or mulraiyat, the village rent shall be first charge on the holding of the village headman or mulraiyat pledged as security for payment of such rent:

Provided that, if a holding or a portion thereof is sold in execution of a decree for arrears of rent, the purchaser shall acquire the holding free of all liability for rent for any period prior to the date of the sale,

and rent due for any such period shall be a first charge on the sale proceeds of the holding or portion thereof.

**50. Reduction of rent for special reasons.-** (1) Notwithstanding anything to the contrary contained in any law or anything having the force of law in the Santal Parganas, the Deputy Commissioner may, if specially authorised by the <sup>1</sup>[State] Government in that behalf, reduce by order in writing the rent of holdings of recorded raiyats in any area or village or of any class of land belonging to such raiyats, which has been settled by the Settlement Officer under the provisions of the Santal Parganas Settlement Regulation or which is entered in the rent-roll, as the case may be, on any one or more of the following grounds,-

- (a) that the soil of a portion or the whole of such holdings of area has without the faults of the raiyats become permanently deteriorated by a deposit of sand by sub-mersion under water or by any other specific ground, sudden or gradual;
- (b) that the landlord of such holdings or area has failed in spite of due notice to carry out within a period of six months from the date of service



of notice the arrangements in respect of irrigation which he is bound to maintain;

- (c) that there has been a fall not due to temporary cause in the average local Prices of staple food crops during the currency of the present rent.

Explanation.-(1) The expression “permanently deteriorated “in clause (a) means deteriorated for a period of seven years or more, such period being determined by the Deputy Commissioner.

(2) in the case referred to in clause (a) the reduced rent shall bear to the previous rent the same proportion as the current prices bear to the prices prevailing at the time when the previous rent first became payable.

(2) No proceeding under sub-section (1) shall be initiated on applications made by raiyat individually; but the initiative may be taken by the Deputy Commissioner himself if he is satisfied after due enquiry and after hearing all interested persons that there are sufficient grounds for such action.

(3) No proceedings under sub-section (1) shall be initiated until after the expiry of a period of seven years from the date on which the rent settled under the Santal Parganas Settlement Regulation, or the rent specified in a rent-roll published under the Santhal Parganas Rent Regulation, 1886, took effect.

(4) An order of the Deputy Commissioner under this section shall take effect from such date as may be specified in that order.

(5) The powers conferred on the Deputy Commissioner under this section shall be exercised in accordance with the prescribed procedure.

### **COMMENT**

In a rent suit regarding lands governed by the Santal Parganas Regulation, the defendants pleaded but failed to prove a contract for remission of rent for the period during which the lands remained under water, it was contended that they were not entitled to the benefit of the general laws. It was held, that the failure of the defendants to establish a contract to that effect did not in any way prevent their getting the relief to which they were entitled under the law. [Fauzilal Kurmi v. Srimati Dhana Kumari Devi, (1938) 19 PLT 658 : 5 Bihar Reports 193].

**51. Duration of reduction of rent.**-Where rent has been reduced under Section 50, no further reduction of rent shall be granted on the same ground until a fresh record-of-rights is prepared under the Santal Parganas Settlement Regulation, or until fresh table of rates and rent-roll are published under Santal Parganas Rent Regulation, 1886.

### **COMMENT**

Section 51- matter involving a disputed question of fact as to who is in possession over the land in question confirmation of Patta by SDO- Petitioner may avail alternative remedy to appeal as provided under the Act.(Chandersekher Singh v. State of Jharkhand, 2002 (1) JCR 438: 2002 (3) JLR 216].

**52 Penalty for exaction by landlord, etc., from tenant of anything in excess of the rent payable.**- (1) If a landlord or his agent exacts or levies from a raiyat, village headman, or mulraiyyat under such landlord, or if a village headman or mulraiyyat exacts or levies from a raiyat under such village headman or mulraiyyat, any toll, abwab, salami, Kayali, or forced labour or, except as provided in this Act or any special enactment for the time being in force, any sum of money or anything in excess of the rent or local cess lawfully payable by such raiyat, village headman or mulraiyyat and the interest payable on an arrear of such rent or cess, such landlord or his agent, or village headman, or mulraiyyat, as the case may be, shall be punishable with simple imprisonment for a term which may extend to six months, or with fine, which may extend to five hundred rupees, or with both.

(2) An offence under sub-section (1) shall be bail able , and shall be compoundable with the leave of the Court.

### **COMMENT**

Section 52- Mutation fee. –Exaction of anything in excess of rent by landlord from the tenant is made penal. Ex-landlord (Rohini Estate), which later on vested in State of Bihar, realised  $\frac{1}{4}$  of consideration money as “Chouth” as mutation fee and similar demand made by State under Section 52 of the

Act, when it came into force, is illegal. State has no legal authorigty to ask transferee of Basouri lands to pay  $\frac{1}{4}$  of consideration money as mutation fee.

[Ashish Mukherjee v. State of v Bihar, 1988 PLJR 266].

## **CHAPTER VI**

### **ACQUISITION OF LAND BY LANDLORD**

#### **FOR CERTAIN PURPOSES**

#### **53. Acquisition of land by landlord for building and other purposes-**

(1) (a) The landlord of village who is desirous of acquiring the holding or part of the holding or any land over which the inhabitants of such village have any common right for any reasonable and sufficient purpose having relation to the good of the holding, village or estate, or for the erection of buildings or for any religious, educational or charitable purpose; or for the purposes of mining, manufacture or irrigation, or effecting any agricultural or horticultural improvement or giving effect to any national policy of the Government may apply to the Deputy Commissioner for sanction to acquire the same.

(b) The Deputy Commissioner may, on the application of a village headman, mulraiayat or raiyat of the village or of his own motion, sanction acquisition proceedings to be started with respect to such land as is referred

to in clause (a), if he is satisfied after due enquiry that the acquisition is to be made for any of the purposes specified in the said clause.

(c) On receipt of such application as is referred to in clauses (a) and (b), the Deputy Commissioner shall scrutinise it with a view to see that it satisfies the conditions of acquisition prescribed by the 1[State] Government in this behalf. If on such scrutiny of Deputy Commissioner considers the application to be not maintainable on the face of it, he may reject the application summarily.

(2) If the application is not rejected summarily under clause © of sub-section (1), the Deputy Commissioner shall issue notice to the raiyats and other persons interested to appear before him and to file objections, if any. If after due enquiry the Deputy Commissioner is satisfied that the purpose stated in the application is as specified in clause (a) of sub-section (1) and that the objection, if any taken to the application are such that they may fairly be disregarded, the Deputy Commissioner may by order sanction acquisition proceedings to be started.

(3) On the passing of an order under sub-section (2), the Deputy Commissioner shall, after issuing notice to the raiyats and other persons interested, decide claims and objections as to compensation, and may

authorise the landlord, village headman, mulraiyyat or raiyat, as the case may be, to take possession of the land on such terms and on payment to the raiyat whose land is acquired or other persons interested of such compensation as he thinks fit and reasonable.

(4) If the applicant landlord, village headman, mulraiyyat or raiyat, as the case may be, tenders to the raiyat whose land is acquired or other interested persons such sum as the Deputy Commissioner has approved under sub-section (3) as compensation and the latter refuses to receive the same, the Deputy Commissioner may, on the landlord, village headman, mulraiyyat or

raiyat, as the case may be, depositing the said sum with the Deputy Commissioner, give possession of the land to him in the prescribed manner and may execute a lease in the prescribed form in his favour.

(5) The raiyat whose land is so acquired shall be entitled to receive proportionate reduction of rent in addition to compensation.

(6) If the land so acquired is not utilised for the purpose for which it was required within five years of taking possession, the Deputy Commissioner may pass an order restoring the land to the original raiyat or his heirs or to the persons interested on such terms as he thinks fair and reasonable and, on the failure of such persons to take back the land, the Deputy Commissioner may settle the land as if it were village waste land.

### **COMMENT**

**Section 53.-** Section 53 of the Act provide for payment of compensation so acquired under the Act but it does not fix either the amount of compensation or specify the principle and the manner in which the compensation is to be determined and given as laid down in Section 299 (2) of the Government of India Act, 1935, and Article 31(2) of the Constitution. This provision is intended to safeguard the interest of the person whose land is going to be acquired by the executive authorities from the arbitrariness and whims of the authorities. Therefore it cannot be held that provision of Section 53 of the Act fulfil the condition laid down in Section 299 (2) of the Government of India Act, 1935. Section 53 of Santhal Pargana Tenancy (Supplementary Provision) Act, 1949 are violative of the provision of Section 299 (2) Government of India Act, 1935 as well as Article 31 (2) of Constitution. Section 53 of the Act makes naked encroachment on the fundamental right guaranteed to the petitioner under the Constitution to hold their property and their properties could not be acquired to save for public purposes under the process of law. Which are in conformity with the provisions of Article 31 (2) of the Constitution.

[Budhinath Mishra v. State of Bihar, 1969 PLJR 373: AIR 1970 Pat 358].

**Sections 53-** Section 53 of the Santhal Parganas Tenancy (Supplementary Provisions) Act, 1949 has been held to be void and

unconstitutional in the case of Budhinath Mishra v. State of Bihar, reported in AIR 1970 Pat 358, no further

Relief can be given to the petitioner. As indicated above the original case was started on the application under Section 53 of the Act and the Section no longer exists on the statute book. [Tarini Prasad Sharma v. Commissioner, Bhagalpur Division, AIR 1973 Pat 41].

Section 53(6)- Land acquired and subsequently settled with plaintiff before the Bihar Act, 14 of 1949 came into force- Deputy Commissioner has no jurisdiction to exercise power of restoration under the Act- It is well established principle that retrospective construction to an amending Act cannot be given so as to affect past transactions and vested rights which sprang up before the Amending Act came into force. Bihar Act 14 of 1949 has no retrospective effect. It is held, that old law, vested right before the Amending Act came into force, as it stood before th Amending Act, namely Bihar Act XIV of 1949 because the plaintiff had taken settlement of the disputed land before the promulgation of the Amending Act and had acquired a vested right before the Amending Act came into force, and hence the Deputy Commissioner had no jurisdiction under Section 53(6) Bihar Act XIV of 1949 to order restoration of the land to the original tenants.[Sugia Debi v. Chando Kapri, 1959 BIJR 95 (DB)].

## **CHAPTER VII**

### **JUDICIAL PROCEDURE**

#### **54. Power of State Government to make rules regarding procedure.-**

(1) the <sup>1</sup>[State] Government may make rules prescribing the procedure to be followed by the Court of the Deputy Commissioner and Courts of other officers invested with the powers of the Deputy Commissioner in dealing with applications and other proceedings under this Act and by the courts

exercising appellate and revisional jurisdiction in dealing with appeals and revisions and other proceedings arising from such applications in respect of matters for which a procedure is not provided hereby; and may by any such rules direct that any provisions of the Santal Civil Rules shall be followed with or without modifications in dealing with all or any classes of such cases.

(2) Until rules are made under sub-section (1) and subject to those rules when made and the other provisions of this Act, the provisions of the Santal Civil Rules shall, far as may be and so far as they are not inconsistent with this Act, be followed in dealing with cases referred to in sub-section (1).

**55. Successive suits against raiyat for recovery of rent.-** Where a landlord has instituted a suit against a raiyat for the recovery of any rent of his holding, the landlord shall not institute another suit against him for the recovery of any rent of that holding until after six months from the date of the institution of the previous suit.

**56. Ejectment.-** No person shall be ejected from agricultural land, except by an order of the Deputy Commissioner passed under the provisions of this Act:

Provided that where a raiyat is ejected from his entire holding, the Deputy Commissioner may, in his discretion, permit him to remain in possession of his dwelling house only which may thereupon be assessed to rent if the Deputy Commissioner thinks fit.

**57. Appeals.-**Except as otherwise provided in this Act, from every order passed under this Act, an appeal shall lie, when the order was made,-

(a) by a Deputy Collector exercising powers of the Deputy Commissioner, to the Sub-divisional officer vested with the powers of the Deputy Commissioner in this behalf:

Provided that the Deputy Commissioner shall have power to order any such appeal to be transferred to his own file or to the file of the Additional Deputy Commissioner empowered in this behalf;

(b) by a sub-divisional Officer exercising powers of the Deputy Commissioner, to the Deputy Commissioner:

Provided that the Deputy Commissioner shall have power to order any such appeal to be transferred to the file of the Additional Deputy Commissioner empowered in this behalf;

(c) by the Deputy Commissioner or the Additional Deputy Commissioner, to the Commissioner;

(d) by the commissioner confirming the order of the Deputy commissioner dismissing a mulraiya or co-mulraiya under Section 11 of the Record-of-rights of Mulraiya village, to a tribunal appointed by the 1[State] Government in this behalf.

### **COMMENTS**

Where appellate order under Section 57 or revisional order under Section 59 of Santal Parganas (Supplementary Provisions) Act, 1949 against an order under Section 23 of the Act is liable to be quashed by the High Court in exercise of its writ jurisdiction if the appellate or revisional order, as the case may be is not based on or justified by the materials on record. [Suraj Narain Mandal v. State of Bihar, 1992 (1) PLJR 80].

Lack of jurisdiction is a ground which may be raised in writ jurisdiction, but where an authority having jurisdiction decides it as rightly or wrongly, the error, if any, may be corrected by resorting to statutory remedy of appeal or revision.[Tata Iron & Steel Circle Officer v. State of Bihar, 1999 (1) PLJR 309].

**58 Second Appeal.-** (1) Subject to the provisions of Section 59 with respect to revision, an appellate order shall be final in all cases



where the decision of the lower Court is affirmed, and no second appeal shall be allowed except when the Sub-divisional Officer, the Additional Deputy Commissioner has varied the decision of the lower Court, in which case an appeal shall lie,-

(a) When the appellate order was made by a Sub-divisional Officer vested with appellate power, to the Deputy Commissioner:

Provided that the Deputy Commissioner shall have power to order any such appeal to be transferred to the file of the Additional Deputy Commissioner empowered in this behalf;

(b) When the appellate order was made by the Deputy Commissioner or the Additional Deputy Commissioner, to the Commissioner.

(2) No second appeal shall lie from any order passed on appeal by the Commissioner or by the tribunal appointed under clause (d) of Section 57.

**59. Revision.**-(1) The Commissioner or the Deputy Commissioner may, on his own motion or otherwise, call for the record of a case decided by Court under his control in which an appeal does not lie or in which for cause shown to his satisfaction an appeal has not been preferred within the time limit there for, and may pass such order in the case as he thinks fit:

Provided that the Commissioner shall not pass such order on an application by a party until the Deputy Commissioner or the Additional Deputy Commissioner, as the case may be, has heard the matter in revision or appeal and passed an order.

(2) The Deputy Commissioner may, by order in writing, empower any Sub-divisional Officer under his control to exercise the powers conferred on the Deputy Commissioner by sub-section (1) with respect to the decisions of all or any of the Courts of Deputy Collectors not in

charge of a sub-division, under the Control of the Deputy Commissioner.

## COMMENTS

Sections 59- Commissioner has wider jurisdiction in revision and such power can exercise suo moto High Court cannot interfere in the jurisdiction of the Commissioner. [Karan Murmu v. State of Bihar, 1994 (2) BLJR 993].

Section 59- Deputy Commissioner, of Santal Pargana is competent to exercise the revisional power under Section 59. Though at the time of initiation of the impugned proceedings and issuance of the notice Santal Pargana had already been bifurcated in four districts, namely, Dumka, Godda,

Sahibganj and Deoghar but the Deputy Commissioner of the districts had not been conferred with the aforesaid revisional power under Section 59 of the Act. This power conferred by Bihar Santal Parganas (Bifurcation) Bill, 1984 (Bihar Act, 1984) which came into force on 26<sup>th</sup> May, 1984.

[Hari Ballabh Narain v. State of Bihar, 1991 (1) PLJR 632: 1991 (1) BLJR 643].

Section 59- Commissioner has wide powers under Section 59 of the Act to revise any order on his own motion or otherwise, decided by a Court under his control in which appeal does not lie or in which for cause shown to his satisfaction and appeal has not been preferred- There is no time limit prescribed for the Commissioner to revise any order passed by his subordinate Court. [Jhagru Mahto v. Ravan Hansda, 1972 BLJR xxvii (sum)].

Section 59- Settlement operation- Powers of Commissioner- Interference by High Court- Scope of Revisional powers of Commissioner is very wide and it can be exercised even 'suo moto' High

Court, cannot exercise of its jurisdiction under Article 227. [karan Murmu v. State of Bihar, 1994 (2) BLJR 993: 1994 (2) PLJR 684: 1994 (2) BLJ 141].

Sections 59 and 4, Clause (vii)- Notice under Section 69 of the Act by Deputy Commissioner of Deoghar dated 03/02/1984- Quashing of- Power conferred on 26<sup>th</sup> May, 1984- Notice without jurisdiction quashed. [Hari Ballabh Narain v. The State of Bihar, 1991 (1) BLJR 643].

Sections 27, 28, 59 and 61- Settlement of Waste land- Order for passed by Sub- Divisional Officer- In favour of non- jamabnandi raiyat, after following procedure prescribed therefore in Sections 27 and 28- Not illegal- Revisional procedure prescribed therefore in Sections 27 and 28- Not illegal- Revisional Authority affirmed that other of cancellation merely on ground that it does not amount to failure of justice- Committed manifest effort of law- Both these orders, thus, unsustainable-Settlement of wase land in favour of non-jamabandi raiyat- Not against law. [Mihir Kumar Jha v. State of Bihar, 1997

(1)BLJR 172: 1997 (1) PLJR 716: 1997 BBCJ 364].

**60. Review.**-(1) The Commissioner may, fore sufficient reasons to be recorded in writing, review any order which has been passed by himself or a predecessor in exercise of any power conferred by this Act.

(2) An officer subordinate to the Commissioner shall not review any order made by him or by a predecessor, except for the purpose of correcting a clerical error other error or, manifestly the result of an oversight, without previously obtaining,-

(a) in the case of a Deputy Collector or a Sub-divisional Officer, the permission of the Deputy Commissioner; and

(b) in the case of the Deputy Commissioner or the Additional Deputy Commissioner, the permission of the Commissioner.

61. Order not revisable on technical grounds alone. – An order passed by the Deputy Commissioner in exercise of any of the powers conferred by this Act shall not be reversed or varied on appeal or