

CHOTANAGPUR TENANCY ACT

A HANDBOOK

ON

TENANCY LAW IN JHARKHAND

HUMAN RIGHTS LAW NETWORK

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January 2015

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Compiled By : Ahmed Raza, Advocate

Researcher : Julufa Islam Choudhury, Advocate

Printed at Shivam Sundram, E-9 Green Park Ext. New Delhi

Published by Human Rights Law Network (HRLN)

(A division of Socio Legal Information Centre)

576, Masjid Road, Jangpura, New Delhi – 110014, India

Ph: +91-11-24379855/56

E-mail: publications@hrln.org

Website: www.hrln.org

Supported by OAK Foundation

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PREFACE

This handbook attempts to discuss a very important issue i.e. land rights of the tribals. In the name of development, land alienation, displacement, land acquisition are happening rampantly, despite the presence of some very strong and laudable land rights legislations, one among them is the Chotanagpur Tenancy Act, 1908. An off shoot of the Birsa Movement, this Act prohibits transfer of land to non tribals and ensures community ownership. But on the pretext of development and blaming the Act as a stumbling block in the path of economic growth the act is not being implemented in true letter and spirit. Even some political faction tried to gain support for amending the Act. But a closer examination of the various sections vis a vis the present socio-economic status of the tribal society stands testimony to the fact how much this Act is needed in its original form. Development is required and is lauded as well but not at the cost of the lives of those whose very existence is dependent on forest.

I am thankful to Mr. Colin Gonsalves, Sr. Advocate, Supreme Court of India and Founder Director, Human Rights Law Network and who encouraged me to start writing on the issue and Julufa Islam Choudhury, LL.M. Gold Medalist, for her

research and assisting me while preparing the contents of this book.

January, 2015

Ahmed Raza

Advocate

Human Rights Law Network

Ranchi, Jharkhand

CHAPTER 1: INTRODUCTION

In response to the repeated agrarian uprisings that occurred in Jharkhand throughout the 19th century a series of legislations were enacted culminating the Chotanagpur Tenancy Act (CNT Act of 1908), still a major tenure Act in force the region. The CNT Act provided not only for the creation and maintenance of land record, it also creates a special tenure category of “Mundari Khuntkattidar” (considered to be the original settler of the land among Mundas) and restricted the transfer of tribal land to non tribals. Most significantly the CNT Act provides for the recording of various customary community rights on the other resources Jal, Jungle and Zameen (water, forest and land) including the right to take produce from Jungle and to graze cattle as well as the right to reclaim “wastes” into Korkar (rice growing field).

Land, water & forest which together constitute the surroundings in the nature are not only the traditional key sources of livelihood of the indigenous communities, but their culture, lifestyle, customs, rites-rituals, folkways and even their whole life vibrates accordingly. They worship these natural constituents and ecosystem’s surrounding bodies like the hill (Buru Bonga), the sun (Sing Bonga), village spirit (Hatu Bonga) as their gods and goddesses. They even derive their identity by

belonging to their respective tribes in special relationship with nature and resources like ekka (tortoise), lakra (tiger), xess (rice or paddy), kujur (a creeper), panna (iron), soreng (rock), tete (a bird). Therefore obviously, intrusions or interferences of the outer world in to their lives had affected and does affect their entire traditional, social, cultural and natural resources based economy & other natural establishments in very painful manner. And it's very unpleasant that they are struggling to save their endangered existence in the capitalistic competitive neo-imperialistic world.

Chota Nagpur Tenancy Act popularly known as CNT Act was enacted in the year 1908. This was an Act to amend and consolidate certain amendments relating to the law of Landlord and Tenant and the settlement of rents in Chota Nagpur. The Act came into force on the 11th November, 1908, it was first published in the Calcutta Gazette. It received the assent of the Governor General on the 29th October 1908. The Chota Nagpur Tenancy Act, 1908 prohibits transfer of lands by sale, etc except with the previous sanction of the Deputy Commissioner. It also prohibits the alienation of land of the tribals. It also provides for restoration of alienated land to the tribals or when converted for urban use, to give them equivalent lands.

Jharkhand is known for its enormous mineral wealth. For the poor tribals, the original inhabitants of this region, the basic survival and dignity is associated with their land. The CNT Act was placed under the Schedule 9 of the Constitution to render it beyond judicial review. But it has been grossly violated since

it has been passed. The ruling party's hand in glove relation with the industrialist class appears to be the prime reason for such indiscriminate violation of the Act and the ruthless exploitation of the poor tribals.

Notwithstanding such a dismal condition in the state, glimpse of hope seems to exude the way Judiciary seems to be sensitive about this issue, On January 25th 2011, in a petition filed by Shalkhan Murmoo, Jharkhand High Court has asked the state government to follow the CNT Act in its true spirit. The order reads, *"the Courts are very strict in implementation of land reforms laws and in protecting the interest of the downtrodden and particularly the persons who are members of Scheduled Castes and Scheduled Tribes as well as the members of other backward class"*¹

Contrary to popular belief, the CNT Act also allows transfer of land from tribals to non-tribals under Section 49. This can be done only for industries or agriculture. Restrictions and procedures are specified in the relevant Sections of the Act. As per the Section 49 of the CNT Act, tribal land can be sold to non-tribals too but only for the purpose of putting up industries or for agriculture work - but in this case the permission requirement has been changed. Rather than deputy commissioners (as provided in the original Act), permission is needed from the revenue department.

¹ *Shalkhan Murmoo Vs. The State of Jharkhand & Ors., W.P (PIL) No. 758 OF 2011*

CHAPTER 2: WHY AND HOW CNT CAME INTO EXISTENCE?

The British Colonial Government passed this Act in the year 1908. To understand why this Act was passed and its main objective, we have to examine the extracts from the speech of the Mr. Slacke, the man who moved the Amending Bill of 1903, and the late Commissioner of Chota Nagpur:

“Owing to the non-recognition of their rights, the Mundaris for more 3/4th of the century have been in a state of agitation, which from the time has culminated in outbursts. In 1822 a horde of middlemen was let loose over the country by the then Maharaja of Chota Nagpur. These persons were up countrymen. They were ignorant of and oblivious to the rights and customs of the aborigines, among whom naturally much discontent arose. This found a vent in the great Munda rebellion of 1832-1833, the immediate cause of which was an attempt by the Thakur of the Sonpurgarh to destroy Khuntkatti rights in Bandgaon and Kochang in the district of Ranchi. The attempts to destroy the Khuntkattidars’ rights did not cease, and they were the cause of the disturbances between the Landlords and Tenants in that district in the year of the Mutiny. Both sides took advantage of the disorder that then prevailed – the landlords to oust the khuntkattidars who were holding at

low permanent rentals, the khuntkattidars who were holding at low permanent rentals, the khuntkattidars to recover the khuntkatti lands which the landlords had previously succeeded in making Rajhas or Manjihahas, i.e., Rayati or Sir.

Eventually the Chota Nagpur Tenures Act of 1869 was passed and effected some improvement. But it omitted to deal with the all the privileged lands, as it took no notice of instant khuntkatti villages. This omission left such villages at the mercy of the spoliator. The destruction of the khuntkatti tenancies went on, and the discontent thereby created brought about the outburst of 1888, when what is locally known as the SARDARI-LARAI began, and has not yet ceased. Utilizing the bitter feeling of the MUNDARIS, some of their fellow-clansmen-they came to be known afterwards as SARDARS-persuaded the people that the Hindus had no right to the lands that the lands belonged to the MUNDARIS, that no rent should be paid, and that the Sovereign had given a decree to this effect. The outburst that occurred at the time was put down, but it again broke out in 1899-1900 under the leadership of BIRSA, who styled himself as God."

Consequently, the prolonged disaffection is the reason that has led British Government to have a survey and record-of-rights made of the MUNDARI country (whole Chotanagpur Region). Mr. Slacke further said, "But if steps are not taken to safeguard by legislation the rights of those people and to secure the finality of the record-of-rights, the latter by itself will not suffice to quiet the agitation. As long as 1839 it was reported that unless those people are protected in the possession of

their lands, we never can be certain of the peace of the country. Once the necessary facts have been obtained, as is now the case, such legislation cannot be delayed, because the attacks which have been made on these rights so pertinacious and for so long a time will be carried on with a greatly increased vigor, owing to the need of acting before the law can intervene”.

A KHUNTKATTIDAR is the founder or the male descendant in the male line of the founder of the village in which are situated his khuntkatti lands. The tenancy is of two kinds, the difference between them merely one of area. It is either the tenancy of the whole brotherhood, the descendants of the original founder, or that of an individual member of the brotherhood over the lands in his immediate possessions.

The Settlement Officer, owing to the burial custom of the Mundaris, can easily ascertain whether the claim to hold certain lands as khuntkatti is true or not. No Mundari can rightly be buried save in the burial ground of the village of which his ancestor on the paternal side was the founder. When a MUNDARI wished to be found a new village he either alone or some of his kinsmen on the paternal side obtained the jungle tract he desired. The area so acquired was invariably large, in some cases extending descendants, portions of it under cultivation, but it was open to him or his male descendants acting jointly, to give portions to other MUNDARIS either to cultivate as RAIYATS or to establish other KHUNTKATTI villages. The system is one which originated long before the advent of the Hindus into Chota Nagpur. Originally no rent was payable, but this was changed. Rent and services came to

be demanded, and were given. This rental was and is in most cases a permanent one, and cannot be enhanced save under certain circumstances.

Colonial rule and the inherent elements of commercialization that brings along with itself affected the tribal societies in a number of ways. It strengthened penetration of tribal areas by the outsiders such as moneylenders, traders, land grabbers, labour contractors, etc of the plains. It brought about and enforced the alien concept of private property. It forced the sale of land out of sheer desperation of those engulfed in the vicious cycle of debt. It ruthlessly exploited indigenous people as cheap indentured laborers. It led to alienation that was not just economic or material, but cultural, spiritual and related to community identity as well. Birsa Munda and his followers spearheaded a number of revolts against the Forest Department to create pressure on the Colonial Government to lay down some safeguards for the protection of the native people and forest communities which cumulatively known as ULUGAN.

‘The Mundas’ and their fellow tribal brethren had been living in complete harmony with nature, until the British set foot on their lands, and changed not only the rules of ‘Munda’ governance but also their culture to an extent that today their very existence got shaken. Forest Department Act’ in 1868 was passed which inhibited the tribal dependency on the forests, curtailing their pasture areas, collection of firewood, fodder, herbs, and other forest produce in commercially rich forest land, whereas, the British Empire had the full

rights over those potent areas. During 1893-94 all waste lands in villages, the ownership of which were vested in the Government, were constituted into protected forests under the Indian Forest Act VII of 1882. In Singhbhum as in Palamau and Manbhum the forest settlement operations were launched and measures were taken to determine the rights of the forest-dwelling communities. Villages in forests were marked off in blocks of convenient size consisting not only of village sites but also cultivable and waste lands insufficient for the needs of the khuntkatti villages. The Colonial interference brought with them countless adversaries of the tribal cultures penetrating into their lifestyles, spirituality and identity. Concepts alien to the tribals such as ownership of land, accumulation of wealth, money and power began cropping up.

British Colonial Government tried to end the unending simmering discontent among the general population of Chota Nagpur Plateau by passing the CNT Act. Given the fact that people of Chota Nagpur were greatly attached to their land-assets, the CNT Act 1908 went a long way in establishing peace in the region.

CHAPTER: 3

POST INDEPENDENCE SCENARIO

Chhotanagpur Tenancy Act (CNT) prohibits transfer of land to non-tribals and ensures community ownership and management of rights of forest communities over Khuntkatti areas. In essence, the private forests under the zamindars (landlords) were reverted back to the Munda community. But, immediately after the independence, by dint of the Bihar Forest Act, 1948 (these areas of Jharkhand were within the State of Bihar till September 2000), the khuntkatti land was converted into private protected forests thereby depriving the Mundas of their ownership and management upon the forests. The entire land belonging to 600 villages was vested to the State Forest Department (FD). Although the subsequent Munda resistance forced the State Government to give back its land to the community. But, management still rested with the Forest Department.

These include immediate restoration of tribal lands to the tribals from illegal occupation by landlords & land mafias and other vested interests; not to dilute or exempt CNT Act, Santhal Pargana Tenancy (SPT) Act and Scheduled Areas Regulation; Replacement of 5th Schedule of the Constitution of India by 6th Schedule in 112 blocks in total 212 blocks in Jharkhand where the Fifth Schedule of the Indian Constitution

and Scheduled Areas Regulation apply and establishment of elected Tribal Autonomous Council under Sixth Schedule of the Indian Constitution to protect the tribal land and other tribal interests; education in mother tongue including the tribal languages to begin with, from primary education with establishment of schools and appointment of teachers; defense of central public sector units, which directly affects 60 per cent of 2.5 crore people of Jharkhand and on whose economic activities the further economic development of Jharkhand depends; Rehabilitations, compensation and jobs to the largest number of displaced persons in Jharkhand compared to any other state in India due to mining and developmental activities protection and advancement of distinct tribal cultures and maintenance of communal amity; immediate Panchayat and local self-governing bodies' election etc. The charter also includes the class and mass issue of the peasantry, agricultural workers, working class, women, youths, students and other oppressed and vulnerable sections.

Immediately after this, started the dismal story of the exploitation of the vast asset of the forest land by active connivance of forest officials and, this led to gradual alienation of the indigenous people from their forests. The primary forest cover was almost destroyed. The forest dependent indigenous community started asserting their rights over the forests. On many occasions the FD officials were not allowed to enter the forests and the villagers themselves initiated measures to save and regenerate forests. This movement was particularly strong in the khunkatti villages of Ranchi and West Singhbhum forests. Therefore, the forest communities in Jharkhand today,

have decided to oppose and resist the World Bank demanding:

- a) restoration of the khuntkatti system;
- b) implementing the khuntkatti model in other forest areas of the State; and
- c) vesting the management of the forests to the Gram Sabha (lowest tier of the village self-governance model) in the indigenous Fifth Schedule Areas as per the Central Act of 1996 (extension of Panchayati Raj in scheduled areas).

In 1969, the Bihar Scheduled Areas Regulation Act was enforced for prevention and legalization of illegal land transfer and of Adivasis. A Special Area Regulation Court was established and the Deputy Commissioner was given special right regarding the sell and transfer of Adivasis land. According to the provision, an Adivasi cannot sell or transfer land to another Adivasi without permission of the DC. When the special court started function, a huge number of cases were registered. According to the government's report, 60,464 cases regarding 85,777.22 acres of illegal transfer of land were registered till 2001-2002. Out of these 34,608 cases of 46,797.36 acres of land were considered for hearing and rest 25,856 cases related to 38,979.86 acres of land were dismissed.

But after the hearing merely 21,445 cases regarding 29,829.7 acres of lands were given possession to the original holders and rest remains with the non-Adivasis. Furthermore 2,608 cases of illegal land transfer were registered in 2003-2004, 2,657 cases in 2004-2005 and 3,230 cases in 2005-2006,

which clearly indicates that the cases of illegal land alienation is increasing rapidly. According to the Annual Report 2004-2005 of the Ministry of Rural Development of the Government of India, Jharkhand topped the list of Adivasi land alienation in India with 86,291 cases involving 10,48,93 acres of land.

Bandi Oraon has undertaken a study on the implementation of various legislative measures meant to protect illegal transfer of Adivasis lands to non-Adivasis in the State. The study was confined to 15,703 cases registered in the Ranchi Collectorate in respect of Adivasis living in and around Ranchi city. The study reveals that merely 41.46 percent cases were accepted for hearing, 26.82 percent cases were rejected and 31.72 percent cases were kept in pending. But interestingly, out of the hearing cases, actual possessions were given in 96 percent cases.

Since Independence, things began to change. The inherent and even unquestionable right of the Adivasis over forest land now began to be questioned. The nascent country was marching ahead with new dreams and hope towards a secure future. The distorted economy needed strong economic and industrial forces. Thus arose conflict between the forces of industrialization and the sentiment of the adivasis to retain their indigenous way of life, which essentially meant retaining forest land. Whose interest will it protect and to what extent? It was indeed a daunting and challenging task. Our country needed a development model, which focuses on the interests of these forest communities yet opens out the potential of the region to forces of modernisation

and puts in place a people-centric development. It is, however, easier said than done. Jharkhand is governed under the V Schedule of the Indian Constitution, which applies to states having a dominant tribal population. There exist a slew of measures, of Laws and Acts, inherited from the colonial period, and others passed by Parliament meant to augment, strengthen and protect interests of the adivasi, his link with the land, water and forests.

CHAPTER 4: PRESENT SITUATION

Undeniably, the vast potential land of the tribals has always been exploited by the non tribals through various mischievous means. The best way of buying Adivasis land is to get married to an Adivasi girl and register the land in her name. This trick was widely used by the non-Adivasis. Secondly, many Adivasis surrender their land to the money lenders after being trapped by them through loan. Illegal documents are also managed for acquiring land. Authorizing the Deputy Commissioner for land transfer also caused huge loss for the Adivasis as many non-Adivasi officers justified the land transfer to non-Adivasis. In many case, the court also defined the laws in the favour of non-Adivasis. Another major fact is that the CNT Act was amended in 1947 for the purposes of urbanization, industrialization and for development projects. This caused huge deprivation of Adivasis from the land. Law is what the judges say, the fate of any legislations depends how it is being interpreted. Its bwen found in many were utterly misused, violated and interpreted against the Adivasis by the policy makers, bureaucrats and other non-Adivasis.

With priorities of the ruling classes changing, with larger industrial and commercial interests taking predominance,

there has been over this period, dilution of the commitment towards protection of these forest communities. According to sources, there has been a loss of 22,00,000 acres of land due to breaches in the existing Laws ever since independence the ruling classes have unfortunately shown themselves as complicit in the crime. In 2003, a committee was formed to make amendments in CNT and SPT Acts. In a nutshell, the entire effort has been to push the people out from the forestland and make it available for the industrial and commercial lobby eyeing the land, the forest produce and what lies beneath the ground. What this government and any government need to unequivocally do is to ensure that this is protected and the Adivasis have unfettered rights to the forests, centered around their traditional relationship with the land. Instead, there has been a reversal, a violation of these rights in subsequent measures including through legislation. The Land Acquisition Act 1894 upholds the supremacy of the sovereign for total colonization of any territory in the name of 'public interest'. The 2007 Amendment to this historical Act dealt with the rehabilitation and compensation of communities having traditional rights over lands taken over by the government. The devastation that such measures have wreaked is all too obvious. The Torpa region, 90 km from Jharkhand's capital, Ranchi stretching over about 12,000 acres is home to the Munda Adivasis.

The National Advisory Council(NAC) constituted by the Government of India has sent a recommendation to the government of India on 19th January 2005 which has ample provisions to address the issues. According to the

recommendation, the state is required to play pro-active role in monitoring the restoration of lands to the Adivasis from the non-Adivasis. The transparency and access to land records (at the village level) to Adivasis in local languages, speedy disposal of cases where Adivasis are involved and oral evidence to be considered where records are not available. All pending land disputes should be settled at the earliest so that Adivasis do not face harassment from non-Adivasis, revenue officials and others. Regular updating of land records, regular Jamabandhi and display of revenue details at the village level. Where lands are restored to Adivasis, the non-Adivasis often obtain Stay Orders from the Courts which has to be obviated. All States with Scheduled Areas should have the prohibitory clause on transfer of lands from tribals.

The council strongly recommends that there should be no displacement of Adivasis for any project (mining, energy or any others) in the Scheduled Areas.

The Union Cabinet in Dec, 2014 approved an ordinance to amend the contentious land acquisition act and ease restrictions including a “consent clause” which was seen as obstacle for power, highways, housing, defence and infrastructure projects and holding up the economy’s growth potential.

The ordinance seeks to waive the “consent clause” - the requirement to secure specific consent of owners of 70% -80% of land owners if acquisitions are meant for defence and defence production, rural infrastructure including electrification, housing for poor and affordable housing, industrial corridors

and infrastructure projects including projects under Public-Private Partnership mode where ownership the land continues to be vested with the government. Multi-crop land can also be acquired for such purposes.

Such acquisitions will also be exempt from social impact assessment and the application of Food Security Act, two other requirements laid down under the Land Acquisition Act which have been widely identified as factors snagging projects and development. Nearly 80% of land acquired in the country is for such projects, officials say.

The setting up of industries in Scheduled Areas without assessing their impact on the Adivasis economy should stop forthwith. No agricultural land or land used for community purposes should be allowed to be transferred or purchased for setting up an industry. At no cost should the laws of the Fifth and Sixth Schedules of the Constitution be considered for amendment to open up the areas for control or ownership by private non-Adivasi individuals, industries or institutions. The honest implementation of legislations and recommendations would be panacea to address the issue.

The Chhota- Nagpur Tenancy Act, 1908 which prohibits the sale and transfer of tribal land to non tribals. But ostensibly for sake of the lands were snatched forcefully from the tribals. The constitutional rights, provisions in the Fifth Schedule for the Scheduled Areas and the Extension of Panchayat Act, 1996 have never been implemented in their true spirit.

CHAPTER: 5

TRIBAL WOMEN'S RIGHT ON THE LAND

Women in agriculture include women farmers, share croppers and farm laborers. Women's role and contribution to agriculture is immense but is not adequately recognized. This results in women suffering from long working hours, drudgery, poor nutrition and inadequate economic returns. Lack of land titles in women's names limits their access to credit. The collective rights of tribal women to land, water and forests should be recognized and mentioned separately in government plans and policy documents.

As far back as 1982, Madhu Kishwar (editor of the magazine *Manushi*), Sonamuni and Muki Dui challenged Sections 7, 8 and 76 of the Chotanagpur Tenancy Act as violative of the right to equality and the right to life. Juliana Lakra, an Oraon Christian tribal woman from the Chotanagpur area, also challenged these provisions through a writ petition in the apex court, in 1986. The two petitions raised the common issue of parity between female and male tribal members in the matter of intestate succession, and were heard together. Both petitions pertained to tribes (the Ho and the Oraon) in the state of Bihar, although customary laws excluding tribal women from inheritance of land or property are also found among tribals in other states.

The provisions challenged clearly specify that only descendants in the male line of the original founders of the village who reclaimed land from the jungle are to be considered raiyats with khunt-katti rights, ie, raiyats in occupation or having subsisting title to the land. Similarly, only male heirs and descendants in the male line of a Mundari, who has acquired a right to hold jungle land for the purpose of bringing portions of it under cultivation, are to be considered Mundari khunt-kattidar, having possession or subsisting title to the land. Section 76 declares that custom, usage and customary rights that are not inconsistent with the Act shall not be affected by the legislation. The case came up for hearing in 1986. The state of Bihar took the stand that it would take steps to amend the Act to remove discrimination, and the matter was adjourned.

In 1991, the state government informed the court that a state-level Tribal Advisory Board comprising the chief minister, cabinet ministers and legislators and parliamentarians representing tribal areas had been constituted to examine the desirability of amending the Act to give equal rights of inheritance to women. The board took the view that though tribal society was dominated by males, female members were not neglected. A female member has the right of usufruct in the property owned by her father till she is married, and in the property of her husband after marriage. However, she does not have any right to transfer her share to anybody. In case a widow dies issueless, the property will revert to the legal heirs of her late husband. The board felt that if the right of inheritance were granted to female descendants it would

increase the threat of alienation of tribal land to non-tribals. It said giving female members the right to transfer would give rise to malpractices like dowry prevalent in non-tribal societies.

The majority judgment of the court refused to strike down the provisions as violative of the right to equality, stating that this would bring about chaos in the existing state of law. The court took the view that it was undesirable to declare the customs of tribal communities violative of the right to equality under Articles 14 and 15, and the right to life under Article 21 of the Constitution. It felt that this would lead to a plethora of similar claims to bring personal laws in line with the Hindu Succession Act and the Indian Succession Act. However, the judgment observed that it is well established that the right to livelihood is part of the right to life. Elaborating, the court observed that widows would become destitute after the death of their husbands and lose their livelihood, as the land would revert to the male descendants. This would be violative of their right to life. The court declared that female relatives of the last male tenant could hold the land as long as they remain dependent on it for their livelihood. The exclusive right of male succession in Sections 6 and 7 of the Act was held to remain in suspended animation so long as the right to livelihood of female descendants remains valid.

However, it is the dissenting minority judgment of K Ramaswamy that makes for more interesting reading and could be a pointer to moving towards greater gender equality among tribal communities.

The law includes custom or usage that is ancient, well-established and has the force of law. Thus, tribal laws that prohibit inheritance to daughters fall within the law. After the coming into force of the Constitution, pre-constitutional laws inconsistent with fundamental rights are to be considered void. Article 14 of the Constitution guarantees the fundamental right to equality. Article 15 (1) prohibits gender discrimination. Referring to the directive principles, Justice Ramaswamy points out that Article 39 (a) enjoins the state to ensure that men and women equally have adequate means of livelihood. Article 38 directs the state to promote the welfare of people (men and women alike) by securing a social order in which justice -- social, economic and political -- informs all institutions of national life.

International conventions and protocols are a valid source of law and can be taken into account by courts in our country while adjudicating upon issues raised before them. The minority judgment notes that the United Nations General Assembly adopted a declaration, on 4-12-1986, on 'The Right to Development', which was ratified by India. The declaration assures the right to development as an inalienable human right. It also enjoins the state to observe all human rights and fundamental freedoms without any discrimination as to race, sex, language or religion. A duty is also cast to take all necessary steps to realise the right to development and to ensure equality of opportunity and an active role for women in the development process. Human rights for women, including the girl-child, were declared to be an inalienable, integral and indivisible part of universal human rights.

Justice Ramaswamy points out that the Vienna Convention on Elimination of all forms of Discrimination Against Women (CEDAW) was ratified by the UN on 18-12-1979. The Government of India ratified and acceded to CEDAW in 1993. The convention reiterates that discrimination against women violates the right to equality and acts as an obstacle to the participation of women on equal terms with men in political, social, economic and cultural life. Discrimination has been defined as any distinction, exclusion or restriction made on the basis of sex which impairs or nullifies the exercise by women (irrespective of their marital status) on the basis of equality of men and women, all human rights and fundamental freedoms. Article 2 (b) of CEDAW enjoins the state to take all appropriate measures, including legislation, to modify or abolish existing laws, regulations, *customs and practices which constitute discrimination against women*. Article 14 emphasises the elimination of discrimination faced by rural women. Article 15 (2) enjoins “to accord to women equality with men before law, in particular, to administer property...”.

The Protection of Human Rights Act, 1993, defines human rights as “the right to life, liberty, equality and dignity of the individual guaranteed by the Constitution or embodied in the International Covenants and enforceable by courts in India”. The principles embodied in CEDAW and the concomitant right to development thus become enforceable as part of Indian law. By operation of Article 2 (f) and related articles of CEDAW, the state is obligated to take appropriate measures including legislation and modification of the law to abolish gender-based discrimination in existing laws, customs and practices.

Article 21 of the Constitution reinforces the right to life. Life in its expanded meaning today includes all that gives meaning to a person's life including culture, heritage and tradition. Articles 51-A (h) and (j) enjoin a fundamental duty to develop scientific temper, humanism, inquiry and excellence in all spheres of individual and collective activity. The minority judgment notes that "property is one of the important endowments or natural assets to accord opportunity, source to develop personality, to be independent, right to equal status and dignity of a person".

The judgment observes that agriculture is the only source of livelihood for tribals, apart from the collection and sale of minor forest produce. It notes that land is the most important natural asset and an imperishable endowment from which tribals derive their sustenance, social status, permanent place of abode and work. The judgment holds that the reasons for denial of the right to succession to women, like the preservation of integrity of rural society, the unity of family life and the agnate theory of succession are irrelevant today.

Respective state laws throughout the country prohibit the sale of land in tribal areas to non-tribals. Clauses for the restoration of land to tribals, in case of transfers in violation of the law, have also been incorporated. Permission from the competent authority is an essential requirement for alienation. The minority judgment observes that if female heirs want to alienate their lands to non-tribals, these legislations would act as a check. In the event of any need for alienation by a tribal female, it would be subject to the operation of these laws and the first offer would be given to the brothers or agnates. In the

event of their refusal or unwillingness, a sale would be made to other tribals. Sale by female tribals to non-tribals can only be made subject to permission from the competent authority under the law. Justice Ramaswamy took the view that in light of these provisions the apprehensions expressed by the state-level Tribal Advisory Board, that giving the right to succession to female heirs would lead to alienation of tribal lands to non-tribals, were unfounded.

The minority judgment held that the general principles consistent with justice, equity, fairness and good conscience contained in the Hindu Succession Act and the Indian Succession Act would also apply to tribal communities. It declared that women from scheduled tribes would succeed to the estate of their parents, brothers, husbands, as heirs by intestate succession and inherit the property with a share equal to that of a male heir with absolute rights. In case a tribal woman wants to alienate the land she would first offer it for sale to the brother or, in his absence, to any male lineal descendant of the family. In case the brother or lineal descendant is unwilling to purchase the land, either by mutual agreement or as per the price settled by the civil court, then the female tribal would be entitled to alienate the land to a non-tribal, subject to the permissions and provisions of the law applicable in the area.

It is the majority judgment upholding the exclusive right of male succession, but giving a limited right of livelihood to tribal women in the land, which presently governs inheritance in tribal communities. Yet history is replete with examples

where the minority view has proven to be more enduring and in tune with moving towards a less discriminating society.

(<http://infochangeindia.org/women/analysis/succession-gender-equality-and-customary-tribal-laws.html>)

The widow of a Mundari in relation to Khunt –Kattidar interest has the same interest as it would be her position in regard to other properties of the husband, she is not excluded. This has been held in the case of *J.S.Munda v. Ramratan Singh* 1958 BLJR 373.

Further in the case of *Joseph Munda v. Most Fudi*², it has been held that the customary law of inheritance that only male descendants will inherit the land left by their ancestors cannot be applied in case of female heirs whose name has been entered into record of rights and she has already acquired the status of recorded tenant. The constitutional rights of livelihood of female will be violated.

A Munda widow has a right to surrender her agricultural lands inherited by her as a limited owner. Hence, a direction under section 71A for restoration of lands cannot be given on mere assertion that surrender made by Munda widow was illegal, without any assertion being made that surrender was obtained fraudulently.³The solitary decided case available under Section 8 of the Act and where personal law of the Mundari was allowed to intrude is *Jitmohan Singh Munda v.*

² JIJ 2009(2) 113

³ Jugal Mahto v. state of Bihar, 1990 (1) PLJR 650)

*Ramratan Singh and Anr.*⁴. There the learned Judges of the High Court comprising the Bench seem to have differed on the applicability of Section 8 but not on its scope. The case there established was that the Mundari Khunt Kattidar deceased was of Hindu religion and on that basis it was held that his widow could retain possession of the tenancy right of her deceased husband during her life time. The right of the male collateral to take possession was deferred by the intervening widow's life estate. This case could, in a sense, be taken as *stare decisis*, when none else is in the field, in order to take the cue that personal law of a female descendant of a Mundari Khunt Kattidar could steal the show and Section 8 would have to be read accordingly. But this case is decided on misreading of Section 8. The earlier part of it providing the meaning of Mundari Khunt Kattidar has been overlooked.

Further the case of *Jugal Mahto v. State of Bihar and Others*⁵ held that a hindu widow has the right to surrender a holding in favour of the landlord under the provisions of Section 72 (1) of the Chotanagpur Tenancy Act though there is no legal necessity and no legal benefit to the estate.

It was held in *Ajay Kumar Singh and others v. State of Jharkhand and Others* that widow of a coparcener belonging to Oraon community succession of which is governed by its customs is a legal representative of the deceased coparcener.

⁴ [1958] Bih LJR 373

⁵ 1988(36)BLJR127

CHAPTER : 6

DIFFERENT RIGHTS AS

ENSHRINED UNDER CNT ACT:

6.1 Community rights:

The main source of land and community rights for the cultivators in Chotanagpur still today are the “Khatians” or the record of rights that were created during initial and revisional survey and settlement operations carried out under the CNT Act. The original land records were published in three parts:

Part I: “Khewat” or the record of rights, which shows the order of rights or interest and share in the village and description of each plot is written.

Part II: Record of community rights, commonly known as Khatiyani Part II.

Part III: Village note, which provides a general description of social and economic organization of each village, the rights and duties of the village headman and community rights in land and resources.

The CNT Act specifies generally what kind of community rights are to be recorded but the specific customary law for each village were to be ascertained during the survey and recorded in the Khatiyani. While such community rights were recorded during the colonial settlement during surveys carried out

post independence, there has been a tendency to ignore these rights.

A history of the enactment of the CNT Act would reveal that its genesis lies in the Ulgulan revolution by Mundas (a tribal group) of Chotanagpur against the British Administration under the leadership of Dharti Aaba Birsa Munda, the British Government felt that there is a need of such Land Law in tribal areas that should be according to their custom and traditions. This need primarily arose in consideration of the fact that the tribal people mainly derive their livelihood from forest or minor forest products. Keeping this in mind, several laws were framed, one of which is the Chotanagpur Tenancy Act, 1908. This Act is to amend and consolidate certain enactments relating to the law of Landlord and Tenant and settlement of rents in Chotanagpur now Jharkhand. The extension of this Act is in the North Chotanagpur (Headquarter Hazaribagh), the South Chotanagpur (Headquarter Ranchi), Palamau Division (Headquarter Medini Nagar or Daltongunj), now it includes the newly formed Kolhan Division (Headquarter Chaibasa). Certain sections of the Act were extended to Santhal Parganas Barahabhum and Putkum in the District of Manbhum, by the local Government in exercise of the power conferred by clause (3) of section (1) the whole Act came into force in the district of Manbhum. It is relevant to mention here that there is another tenancy law for Santhal Pargana called as Santhal Pargana Tenancy Act. Indeed it was a positive step of British Government to provide the Land Rights to the tribes as well as other communities of Chotanagpur.

Over a period of time, there has been a growing demand for changes in the CNT Act. Changes are being demanded in order to accommodate the need for social and economic development in Jharkhand. However, an exhaustive study of the Act with a broader view will help us to appreciate the firmness embedded in the act. Further, it will leave us with an impression that the changes that have been brought in the Act in due course have well accommodated the needs of the tribal society as well as the economy, and the Act as it stands today is able to maintain a balance between the two. The Act has successfully kept up the customs of the tribal people, when it comes to their way of handling land. An in-depth analysis of the various provisions of the Act of 1908 will help us to understand the rights of the tribal.

In addition, the land rights of the tribal needs to be given prime importance because of the fact that the village forest are the most important part of the culture of the state of Jharkhand. “forest-produce” includes the following, whether taken from a forest or not, that is to say—

- (a) wood, charcoal, caoutehouc, catechu, wood-oil, resin, natural varnish, bark lac, mahua, flowers and myrobalans,
- (b) trees and leaves, flowers and fruits and all other parts or produce not hereinbefore mentioned of trees,
- (c) plant not being trees (including grass creepers, reeds and moss) and all parts or produce of such plants,

- (d) wild animals and skins, tusks, horns, bones, silk, cocoons honey and wax, and all other parts or produce of animals and
- (e) peat, surface-oil rock and minerals (including iron-stone coal clay, sand and lime-stone) when taken by any person for his own use.

Further while studying the tenancy law, it must be kept in mind that tradition and customs are the essential ingredients of Tenancy Laws. If the Tenancy Law does not intervene, the custom shall prevail. This has been given in section 76 of the act.

In the Act, Land holding has been termed as 'Tenancy'. The person holding the land are called as 'tenants' and have been defined in section 3(xxvi) as 'a person who holds land under another person and is, or but for a special contract would be liable to pay rent for that land to that person'. This act further in section 4 lays down the four classes of tenants:

- I. Tenure-holder, including under-tenure-holders;
- II. Raiyat, namely:-

i) Occupancy raiyat ii) Non-occupancy raiyatiii) Raiyats having khunt-katti rights

- III. Under-raiyats
- IV. Mundari khunt-kattidars

However, it has been held in the case of *Pratap Udai Nath v. Jagannath* ⁶ that the classification of tenant is not exhaustive, but the act deals only with the enumerated class of tenants. Others are governed by Transfer of Property Act.

The above mentioned classes of tenants, on the basis of their specific land holding pattern, have their own rights provided in the act. They have their rights in terms of holding, rent and ownership. Let us look into them one by one.

6.2 : LAND RIGHTS OF TENURE HOLDER:

According to section 5 of the CNT act: "Tenure-holder" means primarily a person who has acquired from the proprietor or from another tenure-holder, a right to hold land for the purpose of collecting rents or bringing it under cultivation by establishing tenants on it, and includes --

- (a) the successors-in-interest of persons who have acquired such a right, and
- (b) the holders of tenures entered in any register prepared and confirmed under the Chota Nagpur Tenures Act, 1869 (Ben. Act 2 of 1869).

but does not include a Mundari Khunt-Kattidar.

Further chapter III of the CNT act deals with the rights and various provisions available to tenure holders. No tenure-holder who holds his tenure (otherwise than under a terminable lease) at a fixed rent which has not been changed from the time of the Permanent Settlement shall be liable

⁶ AIR 1929 Pat.444

to any enhancement of such rent, anything in the Bengal Decennial Regulation, 1793, section 51, or in any other law, to the contrary notwithstanding.

Under the provisions of section 51, Regulation VIII of 1793, a zamindar cannot increase the rent of shikmi taluks or tenures unless on proof that he is entitled to do so-

- (a) by a special custom of the district; or
- (b) by the conditions under which the taluk or tenure is held; or
- (c) on proof that the talukdar or tenure-holder has by receiving abatements, from his joma, subjected himself to increase, and that the lands are capable of affording it.

Permanent tenure-holders holding tenures at a fixed rent from the time of the Permanent Settlement are declared to be not liable to pay any enhancement.

Section 9A of the act further gives the provisions under which rent of tenure holder can be enhanced. According to the section:

- (1) Where the rent of a tenure-holder or village headman is liable to enhancement during the continuance of his tenancy, such enhancement shall be made only by an order of the Deputy Commissioner passed upon an application made to him, or by an order of a Revenue-officer passed under Chapter XII or Chapter XV.
- (2) An enhancement, progressive or otherwise, may, subject to any valid contract between the parties, be ordered up to the limit of the customary rate payable by persons

- holding similar tenancies in the vicinity, or where no such customary rate exists up to such limit as is fair and equitable. In determining what is a fair and equitable rent, regard shall be had to the origin and history of the tenancy.
- (3) When the rent of a tenure-holder or village headman has been enhanced, it shall not again be enhanced for a period of fifteen years except by an order of a Revenue-officer passed under Chapter XII or Chapter XV.
- (4) Nothing in this section shall apply to a temporary tenure-holder, or to a tenure-holder the rent of whose tenure is subject to variation in accordance with principles expressed in the contract whereby the tenure was created.

According to section 10 of the Act no Bhuinhar whose lands are entered in any register prepared and confirmed under the Chota Nagpur Tenures Act, 1869, shall be liable to any enhancement of the rent of his tenure.

Further section 11 and 12 of the act, read together , says that when any tenure or portion of it is transferred by succession, inheritance, sale, gift or exchange, the transferee or his successor in title shall get the transfer registered. If the landlord refuses to register the transfer without giving any sufficient reason then the transferee or his successor in title may make an application to the Deputy Commissioner.

Provision for annulment of encumbrances on resumption of resumable tenure is provided for in section 14 of the act. Accordingly:

Upon the resumption of a resumable tenure, every lien, sub-tenancy, easement or any other right or interest created, without the consent or permission of the grantor or his successor in interest, by the grantee or any of his successors, on the tenure, or in limitation of his own interest therein, shall be deemed annulled, except the following, namely:-

- (a) any lease of land whereupon a dwelling-house, manufactory or other permanent building has been erected or a permanent garden, plantation, tank, canal, place of worship or burning or burying ground has been made or wherein a mine has been sunk under lawful authority;
- (b) any right of a raiyat or cultivator in his holding or land, as conferred by this Act or by any local custom or usage;
- (c) any right to hold land occupied by the sacred grove;
- (d) any Mundari khunt kattidari tenancy; and
- (e) any right of a headman of a village or group of village (whether known as Manki or Pradhan or Majhi or otherwise) in his office or land.

In case of under tenure holder, delivery of symbolic possession will have the same binding force on under tenure holder. This has been held in the case of *Maharaja Pratap Udai Nath Sah Deo v. Sunderbans Kuer*⁷.

6.3: LAND RIGHTS OF RAIYATS

“Raiyat” under Section 6 means primarily a person who has acquired a right to hold land for purposes of cultivating it

⁷ AIR 1923 Pat. 76

himself or by members of his family or by hired servants or with the aid of partners and include the successors-in-interest of person who has acquired such a right but does not include a “Mundari Khunt Kattidar.”

It has been held in the case of *Godwin Ekka Vs. The State of Bihar, now the State of Jharkhand, Additional Collector, Commissioner, South Chhotanagpur Division and Cyril Kharia*⁸ that Sections 4 and 6 read together make it clear that ‘Raiyat’ and ‘Under-raiyat’ are two different classes of tenants in the C.N.T. Act. A raiyat holds land either immediately under a proprietor or a tenure-holder or Mundari-Khunt-Kattidar, whereas an under-raiyat holds land immediately or mediately under a raiyat.

Though the provisions of the said Act do not provide the procedure for creation or incident of under-raiyati tenancy, a custom by which an under-raiyat acquires rights similar to those of an occupancy raiyat is not inconsistent with the provisions of the Act. Such custom and usage is saved by Section 76 of the said Act. Illustration (ii) of Section 76 of the Act makes it clear that any such custom by which an under Raiyat can obtain rights similar to those of an occupancy Raiyat is not inconsistent with and not expressly or by necessary implication modified or abolished by the provisions of this Act, and will not be affected by this Act.

Under Section 7 a raiyat having Khunt Katti rights means a raiyats in occupation of, or having subsisting title to land reclaimed from jungle by the original founders of the village

⁸ 2009 (57) BLJR 2459

or their descendents in the male line, when such raiyat is a member of family which founded the village or a descendant in the male line of any member¹ of such family.

In the case of *Smt. Bina Rani Ghosh v. Commissioner South Chotanagpur*⁹, it has been held that as long as Raiyati rights remain intact, the landlord merely has a right to claim rent from the raiyat and nothing more. With regard to rights of occupancy raiyat, section 16 of the Act says, Every raiyat who immediately before the commencement of this Act, has, by the operation of any enactment, or by local custom or usage or otherwise, a right of occupancy in any land, shall when this Act comes into force, have a right of occupancy in that land, notwithstanding the fact that he may not have cultivated or held the land for a period of twelve years. The exclusion from the operation of this Act by a notification under sub-section (2) of section (1) of any area or part of an area, which is constituted a municipality under the provisions of the Bihar and Orissa Municipal Act, 1922 (B & O Act 7 of 1922)] or which is within cantonment, shall not affect right, obligation or liability previously acquired, incurred or accrued in reference to such area.

Further Section 19 of the Act says that settled raiyats will have occupancy rights under the Act. In the case of *Ananga Bijoy Mitra v. Tata Iron and Steel Company Limited* the court held that if the land has been leased for agriculture or horticulture purpose, then the tenant acquires the occupancy raiyat right, under the CNT Act, 1908.

⁹ 1985 PLJR 732(FB)

Settled raiyats have further been defined under section 17 and 18 of the act, which includes Bhinhars and Khunt-Kattidars, along with others. However, section 19 is confined to land for the time being held by him as raiyat and in village of which he is a settled raiyat. This has been held in the case of *Jaichand v. Bhutanath*¹⁰.

Section 20(2) says that If the occupancy right in land is transferred to a person jointly interested in the land as proprietor or permanent tenure-holder; such person shall hold the land as proprietor or permanent tenure-holder, as the case may be, and shall not hold it by any subordinate right whatsoever. Such transferee shall pay to his co-sharers fair and equitable sum for the use and occupation of the land, and if he sub-lets the land to a third person, such third person shall be deemed to be a tenure-holder or a raiyat, as the case may be, in respect thereof.

Illustration.A, a co-sharer landlord, purchases the occupation holding of a raiyat X. A. sub-lets the land to Y who takes it for the purpose of establishing tenants on it: Y becomes a tenure-holder in respect of the land. Or A sub-lets it to Z who takes it for the purpose of cultivating it himself: Z becomes a raiyat in respect of the land.

In determining from time to time what is a fair and equitable sum under this sub-section, regard shall be had to the rent payable by the occupancy- raiyat at the time of the transfer, and to the principles of this Act regulating the enhancement

¹⁰ AIR 1930 Pat. 236

or reduction of the rent of occupancy-raiyats.

Section 21 of the Act then gives the rights of occupancy raiyat in respect of use of land.

- (1) When a raiyat has a right of occupancy in respect of any land, he may use the land --
 - (a) in any manner which is authorised by local custom or usage, or
 - (b) irrespective of any local custom or usage in any manner which does not materially impair the value of the land or render it unfit for the purposes of the tenancy.
- (2) Notwithstanding anything contained in any entries in the record-of-rights or any local custom or usage to the contrary the following shall not be deemed to impair the value of the land materially or to render it unfit for purposes of the tenancy, namely:-
 - (a) the manufacture of bricks and tiles for the domestic or agricultural purposes of the raiyat and his family;
 - (b) the excavation of tanks or the digging of wells or the construction of bandhs and altars intended to provide a supply of water for drinking, domestic, agricultural or piscicultural purposes of the raiyat and his family; and
 - (c) the erection of buildings for the domestic or agricultural purposes or for the purposes of trade or cottage industries of the raiyat and his family.
- (3) If an occupancy-raiyat, who pays for his holding rent in any of the ways specified in sub-section (1) of section 61,

excavates a tank on such holding for any purpose mentioned in clause (b) of sub-section (2), the landlord's share shall be nine-twentieths and the raiyat's share shall be eleven-twentieths in the produce of such tank.

This has been upheld in the case of *Hindustan Aluminium Corporation Ltd. V. State of Bihar*¹¹. It was said that provisions of section 21 protect and recognize certain inherent rights of occupancy raiyats in regard to use and enjoyment of their land. In the case of *State of Bihar and others v. Vijay Kumar Chowdhary* (2002), it was held that from bare perusal of the aforesaid provision it is clear that raiyat may use the land in any manner which does not materially impair the value of the land or render it unfit for the purpose of tenancy. Also the provisions of CNT Act, particularly does not confer any power to the Revenue Authorities to demand salami or commercial rent in the event raiyati holding is used for commercial purposes.

Section 21A goes ahead to give the rights of occupancy raiyats in trees on the land. As has been held in the case of *Nanda Manjhi v. Gokul Kamini* AIR 1951 Pat.385 that raiyats have a right to the trees on their holdings in the absence of anything contrary in the records of rights or custom. However, a landlord claiming a right in trees must establish his rights.

Raiyats cannot be evicted from their holding unless a decree for ejection has been passed on the ground that the land has been put to unauthorized use or there is a breach of contract

¹¹ 1991(2) PLJR 335

made between landlord and tenant (section 22). If a raiyat dies intestate in respect of a right of occupancy, it shall, subject to any local custom to the contrary, descend in the same manner as other immovable property. Provided that in any case in which, under the law of inheritance to which the raiyat is subject, his other property goes to the Government, his right of occupancy shall be extinguished.

Further, Section 23A of the Act says that when any occupancy raiyat transfers any of his holding in any form, then the transferee shall get it registered by the landlord for which some fees needs to be paid to the registering officer. However, if a gift to the husband or wife of the donor or a son adopted under the Hindu Law or to a relation by consanguinity within three- degrees of such donor is being given, it shall not require any registration fee to be paid to the landlord as mentioned above. If the landlord refuses to transfer it without any reasonable cause, the transferee may file an application before the Deputy Commissioner.

Section 24 and 25 read together says that it is an obligation over the occupancy raiyat to pay rent, however the rent must be fair and equitable. In this regard it is important to read the provision of section 26 of the Act, which deals with the rent enhanced before the commencement of the act. It says:

When the rent of any occupancy-raiyat whose rent is liable to enhancement has been enhanced before the commencement of this Act, otherwise than under section 24 of the Chota Nagpur Landlord and Tenant Procedure Act, 1879 (Ben. Act 1 of 1879), such enhanced rent shall be deemed to be lawfully

payable --

- (a) if it has been actually paid continuously for seven years before the commencement of this Act; and
- (b) if it is not proved to be unfair and inequitable:

Provided that, where the rent lawfully payable by an occupancy-raiyat for his holding has been made an issue in any suit for arrears of rent, and the Court has arrived at a finding on that issue, the rent to be found shall be deemed to be lawfully payable by the raiyat for the holding

Section 27 lays down that the rent of an occupancy raiyat can be enhanced only by an order of Deputy Commissioner under section 29, by revenue officer under chapter XII or under the provisions of section 62, section 94 and section 99.

In this regard, there is a provision of section 34, which gives the occupancy raiyat with an opportunity to file an application before the deputy commissioner for reduction of the rent, following the provisions of the said section.

However, when the rent of an occupancy holding in any area referred to in clause (a) of section 27 has been enhanced by order of the Deputy Commissioner passed under section 29, such rent shall not again be enhanced for a period of fifteen years except --

- (a) by order of the Deputy Commissioner, on the ground of landlord's improvement; or
- (b) by order of a Revenue-Officer, passed under Chapter XII.

- (2) When the rent of an occupancy holding in any such area has been reduced by order of the Deputy Commissioner under section 35 such rent shall not again be reduced for a period of fifteen years except --
- (a) by order of the Deputy Commissioner on one of the grounds specified in clauses (c), (d) and (f) of section 33A, or
 - (b) by order of a Revenue-officer passed under Chapter XII.

After talking about occupancy raiyats, let's turn our discussion to the rights of non-occupancy raiyat. This has been dealt in chapter VI of the act. Section 38 of the Act says that Subject to any local custom or usage, a non-occupancy raiyat shall when admitted to the occupation of land, become liable to pay such rent as may be agreed on between himself and his landlord at the time of his admission, and shall be entitled to a lease only at such rates and on such conditions as may be agreed on. Further provisions of Section 20 shall apply in case of acquisition by landlord of the right of a non-occupancy raiyat in his holding. Rent of non-occupancy cannot be enhanced except by registered agreement or agreement under Section 42 of the act. Section 41 also gives the grounds under which a non-occupancy raiyat may be ejected from his land. However Section 42(1) says that a suit for ejectment on the ground of refusal to agree to pay a fair and equitable rent shall not be instituted against a non-occupancy raiyat, unless the landlord has tendered to the raiyat an agreement to pay the rent which he demands and the raiyat has within six months before the institution of the suit, refused to execute the agreement.

Section 178A further states that a non-occupancy raiyat against whom decree or order of eviction has been made under Section 178 shall be entitled to cut and appropriate the crop grown by him on the holding or portion thereof before but not after the delivery of possession through the court.

6.4: PROVISION FOR TRANSFER OF RIGHTS BY RAIYATS

Section 46 of the act lays down restriction on the rights of raiyat to transfer their holding by mortgage or lease for a period exceeding five years, or by sale, gift or any other contract. There are several provision attached to this section, which have been held good in many a case. The intention of this section is to protect the rights of a raiyat only and not of an under raiyat. A person who does not claim to hold land under a proprietor, tenure holder, or a Mundari khunt kattidar cannot be held to be a raiyat and so cannot claim the benefit of section 46 and 47 of the act, though he is an under raiyat.¹² Several interpretations have been given to section 46 in a number of cases. For applicability of this section it must be shown that the person concerned was not a resident within the local limits of police station area where the land in suit is situated. This has been held in *Jaishri Sahu v. Dema*¹³. Also the disputed land must not belong to the municipal area as has been held in the case of *Smt. Purni Devi and others v. sibu mahto and others* AIR1971Pat24. However if a raiyati land was mortgaged in contravention of law, the fact that the nature of

¹² Rampratap Marwari v. Lachman Mistry AIR 1941 Pat. 485

¹³ AIR 1946 Pat. 423

land changed subsequently to chapparbandi would validate the mortgage. *Maksudan Lal Sahu v. Niranjan Nath Das*¹⁴.

For Section 46(2) it has been held that in spite of a prior sale or mortgage by a raiyat he is free to exercise his rights of surrender of the holding in favour of the landlord, for under clause (2) of Section 46 no transfer by a raiyat of his right in his holding or any portion thereof is binding on the landlord unless it is made with his consent in writing. A fraudulent surrender confers no right on the landlord. This was laid down in *Ram Oraon v. Doman Kalal*¹⁵. Further in the case of *Mohammed Hussain v. Mangilal Jaipuria*¹⁶ it has been said that notification by the govt. under section 46(6) only validates a transfer which would be invalid under clause 1. It does not affect clause 2. So a transfer by tenant whether the transferee is of the same caste or tribe as the transferor or both reside in the same village is not binding on the landlord, if made without his consent. Further in the case of *Mahendra Singh v. State of Jharkhand and Others*¹⁷, it has been held that If any transfer of land of a raiyat who is a member of Scheduled Tribe is made in contravention of the provisions of Sub-section (1) of Section 46 of the CNT Act, then such transfer shall be annulled by the Deputy Commissioner either of his own motion or on an application filed before him by the raiyat. However, the proviso to Sub-section (4-A) prescribes a period of 12 years

¹⁴ AIR 1940 Pat. 494

¹⁵ AIR 1924 Pat. 100

¹⁶ AIR 1932 Pat. 218

¹⁷ 2004(4) JCR254 (Jhr)

for entertaining the application by the Deputy Commissioner for the purposes of annulling the transfer.

The case of *Bingul Sawaiya Ho v. State of Jharkhand and Others*¹⁸, it was held that On reading of Section 46(1) with proviso (a), it is clear that an occupancy-raiyat who is a member of the Scheduled Tribes may transfer his right in his holding or a portion of his holding by sale, exchange, gift or Will to another person, who is a member of Scheduled Tribes and, who is a resident within the local limits of the area of the police station within which the holding is situated. Also Section 46(3) provides that no transfer in contravention of Sub-section (1) shall be registered or shall be in anyway recognized as valid by any Court, whatever in exercise, of Civil, Criminal or Revenue jurisdiction. Sub-section (3) of Section 46 of the CNT Act clearly provides that no transfer of land by a member of Scheduled Tribes in contravention of Sub-section (1) be in favour of non-tribal shall be registered.

The provision of Section 46(1) has also been affirmed in the case of *Mandu Prakhand Sahakari Grih Nirman Sahyog Samiti Ltd. and Anr. Vs. State of Bihar and Ors.*¹⁹ In the case of *Chinta v. Budhan*²⁰, it has been held that section 46(4) does not apply to tenancies for indefinite period. Where the landlord serves a notice to quit to an under raiyat and institutes a suit in the civil court, he cannot apply under section 46(4). This aspect

¹⁸ 2008(3) JCR689 (Jhr)

¹⁹ 2004(52)BLJR380, 2004(1)JCR402(Jhr)

²⁰ AIR 1928 Pat. 232

was further explained in the case of *Sita v. Kartick*²¹, wherein it was held that Section 46(4) provides the remedy to the landlord by way of an application within three years after the expiry of the period of lease to be put in possession before the Deputy Commissioner. The same has been affirmed in the case of *Jyotimoy v. Banmali*²².

Further the CNT Act does not lay down as the Bihar Tenancy Act does that an under raiyat cannot be ejected by a raiyat except by serving him a notice prior to the termination of the agriculture year. All lease are terminable either by an express agreement between the parties by fixing a term of period of the lease or if the term is not fixed, it terminates every year such as in the case of tenants from year to year. But the creation of an under raiyat tenant from year to year is strictly forbidden by section 46. This section does not recognize a lease exceeding five years. No notice is necessary to an under raiyat for his ejection²³. However even if a raiyat validly makes a will of occupancy holding, persons other than landlord cannot challenge it²⁴.

Further in the case of *Amin Mahto v. Commissioner South Chotanagpur*²⁵ it was held that there cannot be a lease of an agriculture holding for more than five years in terms of provision of section 46. Lease for longer period amounts to

²¹ AIR 1929 Pat. 577

²² AIR 1929 Pat.635

²³ *Jhagru Mia v. Ragunath Singh* AIR 1929 Pat. 630.

²⁴ *Kishuni v. Andu* AIR 1929 Pat. 734

²⁵ 1987 BLT 297

'transfer' within the meaning of section 46 and will therefore be hit by section 71 A. this decision was repealed in the case of *Amin Mahto v. Commissioner*²⁶, wherein it was laid down that the induction of a under-raiyat on an agricultural holding by the raiyat is 'transfer' within the meaning of section 46. In terms of section 46 there cannot be any valid lease of an agricultural holding for a period more than five years.

With respect to limitation for filling an application, it has been held in the case of *Ram Charan Mahto v. State of Bihar*²⁷ that the application under section 46(4A) for transfer in violation of section 46 must be made within twelve months, otherwise along with limitation , principle of res-judicata will also follow.

Several interpretations have also been given to the word transfer used in the act. In *Pandey Orson v. Ramchander Sahu*²⁸, their Lordships, after noticing that Section 71-A was a beneficial piece of legislation intended to extend the protection to a class of citizens who are not in a position to retain their lands to themselves in the absence of special legal protection held that the provision should be broadly and liberally construed. So construed, it would not be proper to confine the meaning of the expression 'transfer' in Section 71-A of the Act to the meaning given to transfer under the Transfer of Property Act.

Sec.20 of the Santhal Parganas Tenancy (Supplementary Provisions) Act, 1949 states that no transfer by a raiyat of

²⁶ 1988 PLJR (NOC) 16

²⁷ 1991 (2) PLJR 200

²⁸ 1992 (1) BLJ 427 (SC)

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. Sub-section (2) of Section 20, provides specifically that notwithstanding anything to the contrary contained in the record of rights, no right of an aboriginal raiyat in his holding or any portion thereof which is transferable shall be transferred in any manner to anyone, but to a bona fide cultivating aboriginal raiyat of a pargana or Taluk or Tappa in which the holding is situated. Section 41 of the above Act, prevented settlement of any vacant land or wasteland in a Pahadia village within the Damin-I-Koh Government Estate with a person who is not a pahadia. This has been held and affirmed in the case of *Narayan Soren and Others v. Ranjan Murmur and Others*²⁹.

6.5: RIGHTS OF TENANTS AGAINST UNLAWFULL EJECTION OR TRANSFER

Section 71 of the act lays down the provision for power to replace in possession tenant unlawfully ejected. It says that if any tenant is ejected from his tenancy or any portion thereof in contravention of Section 68 he may, within a period of one year (or, if he is an occupancy raiyat three years) from the date of such ejection, present to the Deputy Commissioner an application praying to be replaced in possession of such tenancy or portion.

²⁹ AIR2009Jhar23

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

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

Provided further that where the Deputy Commissioner is satisfied that the transferee has constructed a substantial structure or building on such holding or portion thereof before

coming into force of the Bihar Scheduled Areas Regulation, 1969, he may notwithstanding any other 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 the money as may be determined by the Deputy Commissioner having regard to the amount for which the land was transferred or the market value of the land, as the case may be, and the amount of any compensation for improvements effected to the land which the Deputy Commissioner may deem fair and equitable.

This section was discussed in the case of *Amrendra Nath Dutta and Others v. State of Bihar and Others*³⁰. The first proviso provides for restoration of the land without payment of compensation if any building or structure on such raiyati holding has been constructed within 30 years from the date of transfer. If 'adverse possession' in the third proviso shall mean 12 years, as contended by the petitioners, then there shall be apparent conflict between the first and the third

³⁰ AIR1983Pat151

proviso. In the former, even if the transferee is in possession of the land for more than then 12 years but less than 30 years, he shall not be entitled to any compensation either for the land or for any building or structure constructed thereon and under the latter, if the transferee is in possession for only 12 years he shall be entitled to compensation for the land and for the improvement effected on the same. Further, the second proviso provides for validating the transfer if the transferee has made a substantial structure or building in such holding op portion thereof, provided the transferee either makes available to the transferor an alternative holding or portion thereof of the equivalent value or pays adequate compensation. The first proviso and the second proviso both deal with building or structure constructed on the transferred land. In the first proviso there is no provision for payment of compensation if the building or structure is not substantial and in the second proviso there is provision for payment of compensation if the building or structure is substantial, in the second proviso there is no mention of any period of limitation. Since both the first proviso and the second proviso deal with structure or building, in the former unsubstantial and in the latter, substantial, it must be held that the second proviso covers the cases where construction was made within 30 years from the date of transfer. If, in the first proviso and the second proviso the period is 30 years, logical conclusion “will be that “adverse possession” in the third proviso must mean adverse possession for more than 30 years and not 12 years as contended by the petitioners.

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

However, there have been a number of cases with regard to violation of Section 71. These cases have, however, successfully explained the scope of the provision and defined several aspects of it. The case of *Jitu Oraon v. Commissioner, South Chota Nagpur Division*³¹, laid down the intention of this provision. In this case it was held that the provision of Section 71A are intended by the legislature to give protection to a number of schedule tribes who has to transfer his raiyati holding after being defrauded by a person who may or may not be a member of schedule tribes in violation of provision of the act. Although the expression 'transfer' has to a proceeding under Section 71A can be initiated only when conditions precedent for initiating such proceedings are satisfied.

Further it has been held in the case of *Jugal Mahto v. State of Bihar*³² that jurisdiction under section 71A can be invoked only if it is proved that surrender or transfer was made in contravention of section 46 or by adopting fraudulent methods.

³¹ 1987 PLJR (NOC) 51

³² 1987 BLT (Rep.) 272

However, only members of schedule tribes or schedule caste (enumerated in Constitutional schedule tribe order 1950) are competent to maintain an application for restoration under section 71A (*Sankar Sahu v. State of Bihar* 1988 BLT 271). This was affirmed in the case of *Lankeshwar Patar v. Feku Mahto and others* LPA No. 34 of 1999 (R).

Section 71A provides restoration of possession of land to a member of Scheduled Tribe in cases where it has been lawfully transferred to another person earlier in contravention of the provisions of C.N.T Act. Section 71A does not contemplate an application by a transferee. It only contemplated an application by a transferor who is an raiyat as well as a member of Scheduled Tribe. *Ram Chandra Sahu vs. State of Bihar*, 1990(1) PLJR 604.

It was held in the case of *Jageshwar Teli v. State of Bihar and Others*³³, in terms of Bihar Scheduled Areas (Amendment) Regulation, 1985 (Bihar Regulation No. 1 of 1986) even those Bhumidar who were tenure holders were sought to be brought within the purview of Section 71(A) of the Chotanagpur Tenancy Act. Thus, in terms of the said provisions, a new right has been conferred upon the Bhumidars, who were tenure holders.

In the case of *Ashok Marwaha v. State of Jharkhand*³⁴ it was held that the provisions of Section 71A of the CNT Act, would apply only in the case of agricultural land and not to the lands

³³ 1994(42)BLJR648

³⁴ W.P.(C) 1413/04 (JHC)

whose nature has been converted from an agricultural to non agricultural land and used for the purpose unconnected with the agricultural operations.

Also in the case of *Sukro Orain v. State of Bihar and Others*³⁵, it was held that the land in question was a “Kaimi” land and, therefore, without taking permission of the Deputy Commissioner no transfer of the said land could have been made.

Further no period of limitation is prescribed for exercising power under Section 71-A by Deputy Commissioner. But, the party affected is called upon to approach the appropriate authority or Deputy Commissioner has to exercise the power within a reasonable period of time. Gap of more than 50 years for challenging the illegal transfer cannot be said to be reasonable time for exercising the power even if it is not held in by a period of limitation. *Fulchand Munda vs. State of Bihar*³⁶. Claim of restoration of land cannot be allowed as the settlee was in possession of the land for over fifty years. The claim of possession is barred by the principle of adverse possession. In *Akhori Akhilesh Charan Lal vs. State of Bihar*,³⁷. In the case of *Jageshwari Teli v. State of Bihar*³⁸ it was held that the provisions of Section 48(4) vis-a-vis Clause 3 of the schedule appended to Bihar Scheduled Areas Regulation, 1969 has to be construed on the touch stone of the Section

³⁵ 2004(3)JCR424(Jhr)

³⁶ 2008(3) BLJ 16-SC

³⁷ JIJ 2009(1) 126

³⁸ 1994 (42) BLJR 648

27 of the Limitation Act. It, therefore, cannot be said that there is no period of limitation for filing an application under Section 71(A) of the Chotanagpur Tenancy Act. Although no period of limitation has been prescribed the provisions of Article 65 of the (Limitation Act) will apply in such a case, in view of Section 230 of the Chotanagpur Tenancy Act and thus the period of limitation will be 30 years. this aspect has been discussed in great details in C.W.J.C. No. 685 of 1987 (R) disposed of on 23-9-1991. In that decision, it has been held that the limitation provided for restoration of the land for violation of Section 48 of the Act would be 12 years. It has further been held that under the Schedule Area Regulation, 1969 as amended in 1986 will be prospective in nature and thus only in the event, the aforementioned period of limitation had not expired at the time when the aforementioned Schedule Areas (Amendment) Regulation, 1986 came into force, the period of limitation would be extended to 30 years. It has been clarified in the case of *Sarjung Sharan Singh and Others v. State of Bihar and Others*,³⁹ that the period of limitation for filing an application would be 30 years subject to the condition that prior to coming into force of the Schedule Area Regulation, 1969, the transferee has not acquired title by virtue of adverse possession by continuously remaining in possession for a period of 12 years from the date of transfer. Only in a case where the transferee has not acquired defeasible title on the date of coming into force of Schedule Area Regulation, 1969, the period of limitation would be extended to 30 years.

³⁹ Civil Writ Jurisdiction Case No. 1077 of 1990 (R)

Now we move ahead to see the meaning given to the word “transfer” in the act. In the case of “Transfer” as envisaged in section 71A must be understood as in the Transfer of Property Act, and therefore, a surrender by a raiyat would not be a transfer within the meaning of section 71A⁴⁰. This was repealed in a full bench decision in, *Smt. Bina Rani Ghosh v. Commissioner*⁴¹, wherein it was held that a surrender of land by a raiyat would amount to a ‘transfer’ and if it is done without the previous sanction of the deputy commissioner in writing, it would be in contravention of provision of section 72. The expression “transfer” must be given a wide meaning for the purpose of construing section 71A. *Amim Mahto vs. Commissioner*⁴²,

The question whether a petition under Section 71(A) of the CNT Act for restoration of land is maintainable in the case where transfer takes place pursuant to an execution case or by direction of the Court for auction fell for consideration before the Patna High Court in the case *Raj Sewak Singh and Anr. v. State of Bihar and Ors.*⁴³, . The Court held as follows :--“Plainly enough the word ‘transfer’ used in Section 71(A) of the Chhotanagpur Tenancy Act even if to be held to have an extended meaning, the same must be confined only to the cases of the voluntary transfer. A transfer which is made pursuant to an auction held in Execution of a rent decree,

⁴⁰ Bhagwan Das v. Koka Pahan 1980 BLT 35

⁴¹ 1985 PLJR 732(FB)

⁴² 1988 PLJR (NOC) 16

⁴³ 1988 BLT 172

in my opinion, being involuntarily transfer the same does not and cannot attract the provision of Section 71(A) of the Chhotanagpur Tenancy Act.

It may be mentioned here that involuntarily transfers or in other words 'transfers' which have been effected under the provision of the statute fall outside the scope of the provisions of the Transfer of Property Act.

Further in an auction-sale held in execution of a rent decree, no question of violation of the provision of Section 46 of the Chhotanagpur Tenancy Act or any other provision thereof arises; nor can it be said that a fraud has been committed by a Court in such a decree and directing holding of an auction for realization of the decretal amount."

It was reiterated by the Patna High Court in the case of *Abdul Salim v. Commissioner*⁴⁴, wherein the Court held that a transfer if affected by operation of law, such transfer is not covered by Section 71(A) of the CNT Act.

Further, a raiyat has a right not bound by lease or other agreement for a fixed period may at the end of the agricultural year surrender his holding with the previous sanction of the Deputy Commissioner in writing (Section 72). However in the case of *Akhilshwar Prasad Srivastava v. Commissioner*⁴⁵ it was held that surrender in respect of agricultural land can be made even during the middle of an agricultural year in view

⁴⁴ 1990 (2) PLJR 517

⁴⁵ 1990 (1) PLJR 707

of the provision of Section 72(5) so long as the purported transaction is not a sham transaction or made in contravention of provision of Section 46.

There is also a provision under Section 73 of the act which gives the landlord the right to possession of abandoned land. The object of enactment of this provision has been dealt with in the book "The Chota Nagpur Tenancy, 1908 by J. Reid" giving reference to the decision in the case of *Bhagaban Chandra Missir v. Bisseswari Debya* ⁴⁶ which reads thus :

"Aboriginal raiyats in Chota Nagpur frequently desert their holdings in periods of stress, and emigrate to the labour districts, without making any arrangements for the cultivation of the lands comprised within their tenancies, or for the payment of rent. They sometimes return in a year or two, and not un-commonly assert that they have not abandoned their tenancies. The object of the section is to safeguard the legitimate interests of the landlord in these cases, and per contra to protect the raiyats against fraudulent resumption."

The case of *Jamhir Ansari v. Ketna Organ and Others*⁴⁷, held that Section 73(3) of the said Act provides that when a landlord enters into the abandoned holding and resumed possession over it, the tenant has the right to apply to the Deputy Commissioner for the recovery of possession of the land at any time not later than the expiration of three years in the case of an occupancy raiyat, or in the case of a non-occupancy

⁴⁶ (3) CMN 46

⁴⁷ 2004(1) JCR 407(Jhr)

raiyat one year, and on such application being filed, the Deputy Commissioner may on being satisfied that the raiyat did not voluntarily abandon his holding, restore him to possession on such terms with respect to compensation to person Injured and payment of arrears of rent as to the Deputy Commissioner may seem just. It is, therefore, clear that if the landlord had entered into the land without following the procedure provided under Sub-section (2) of Section 73 of the said Act, the rule of law of limitation will apply for the tenant to get back the possession of the said land. It, therefore, appears that the provision contained in Section 73 of the said Act is self-contained in itself. Also in the case of *Kamal Prasad Singh and others v. Manrup Singh and Others*⁴⁸, it was held that In order to construe abandonment within the meaning of Section 73 of the said Act there must co-exist a voluntary abandonment of holding without notice to the landlord, absence of arrangement for payment of rent and cessation of cultivation of the said holding by the tenant.

6.6: LAND RIGHTS OF MUNDARI KHUNT KATTIDARS

Under Section 8, a *Mundari Khunt Kattidar*. means a mundari who has acquired a right to hold jungle land for purposes of bringing suitable portions thereof under cultivating by himself or by male members of his family, and includes-

- a. The heirs male in the male line of any such Mundari when they are in possession of such land or have any subsisting title thereto, and

⁴⁸ 2004(2) JCR555b (Jhr)

- b. As regards any portions of such land which have remained continuously in the possession of any such Mundari and his descendants in the male line, such descendants.

Further in the case of *Kamakhya Narain Singh v. Hira Mahton*⁴⁹, it has been held that the khunt khatti tenure holders are not consistent with the act. They are a sub-class of the first class of tenants enumerated in section 4. Their existence is recognized by section 7(2) as tenants other than raiyats. It has also been said that the interest of the tenant is not confined to the reclaimed land but may extend to unreclaimed land also.

Further Section 37 of the act lays down that all provisions relating to occupancy raiyat shall apply also to raiyat having Khunt- Khatti rights, provided that:

- a) subject to any written contract at the time of the commencement of his tenancy, the rent payable by a raiyat having khunt-katti rights for land in respect of which he has such rights shall not be enhanced if his tenancy of such land was created more than twenty years before the commencement of this Act: and
- b) when an order is made for the enhancement of the rent payable by a raiyat having khunt-katti rights for any land in respect of which he has such rights, the enhanced rent fixed by such order shall not exceed one half of the rent payable by an occupancy-raiyat for land of a similar description with similar advantage in the same village.

⁴⁹ AIR 1944 Pat. 348

The various other special provisions with respect to Mundai Khunt Kattidar have been given in chapter XVIII of the act.

6.7: LAND RIGHTS UNDER BHUINHARI TENURES

The various provisions for Bhuinhari tenure has been given in section 48, section 48A and section 49 of the act. This has been well discussed in the case of *Bharat Coking Coal Limited v. state of Bihar and Others*⁵⁰. The essential extracts from the discussions in the case are as follows:

It is manifest that Sub-section (1) of Section 49 provides that an occupancy raiyat or any member of Bhumihari family referred to in Section 48 may transfer his holding or tenure for any reasonable and sufficient purposes. Sub-section (2) provides inclusive definition of the words “reasonable and sufficient purposes”. According to this definition if a transfer is made by a Bhumihari family, the aforesaid terms mean building purposes generally. But, in case of transfer by occupancy Raiyat the terms reasonable and sufficient purposes’ includes charitable, religious or educational purposes. It also includes transfer of land for mining purpose or for any other purpose as the State Government may, by notification, declare to be a subsidiary thereto. Sub-section (3) puts a restriction that such transfer mentioned in Sub-sections (1) and (2) cannot be made without a written consent of the Deputy Commissioner. Sub-section (4) provides that the Deputy Commissioner before according sanction, shall satisfy himself that adequate compensation is offered to the landlord for the loss, if caused to him by such transfer. Sub-section (5) of Section 49 confers

⁵⁰ 2000(1) BLJR464

power to the State Government to proceed suo motu or on an application within 12 years from the date of such transfer and set aside the written consent and annul the transfer made by a raiyat who is a member of Scheduled Tribe if after inquiry, it is found that the consent of the Deputy Commissioner was obtained in contravention of Sub-sections (1) and (2) or by misrepresentation or fraud and further direct the Deputy Commissioner to proceed for eviction of such transferee from the holding in question.

Before analysing the provisions of Section 49 of the Act, it would be useful to discuss the preceding Sections 46, 47 and 48 of the Act. Section 48, in fact, has been enacted to put a restriction on the sale of the holdings of a raiyat and to restrict all forms of mortgage and to save the tribal population, from becoming sufferers of the Money Lenders and other such persons. The first proviso of Section 46, however, provides that an occupancy Raiyat who is the member of Scheduled Tribe may transfer his holding with the previous sanction of the Deputy Commissioner in favour of another person who is a member of Scheduled Tribe and who is the resident within the local limit of the area of the police station within which the holding is situate. In proviso (b), similar latitude has been given to an occupancy Raiyat who is a member of Scheduled Caste or Backward Class to transfers his holding with the previous sanction of the Deputy Commissioner to another person who is a member of the same class and who is the resident within the local limits of the district within which the holding is situate. However, Clauses (c) and (d) of

the first proviso deal with the transfer by an occupancy raiyat who is not a member of Scheduled Caste, Scheduled Tribe or Backward Class. For-better appreciation Clauses (c) and (d) of Section 46 are reproduced herein below:

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

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

Section 47 of the Act puts a restriction on the sale of raiyat's right in the holding under the order of the Court and provides that no decree or order shall be passed by any Court for the sale of the right of a raiyati in the holding. However, the proviso says that such raiyat's holding can be sold in execution of a decree of a competent Court to recover the arrears of rent which has accrued in respect of the holding.

Section 48 of the Act deals with the restriction on the transfer of Bhumihari tenure and provides that a member of the Bhumihari family may transfer his holding in the same manner and to the same extent as an aboriginal raiyat may transfer his right in his holding under Clauses (a) and (b) of Sub-section (2) of Section 46 of the Act.

On the analysis of the aforesaid provisions of Sections 46, 47, 48 and 49 of the Act, it is evident, that in all cases of transfer of land by an occupancy raiyat whether belonging to the member of Scheduled Castes, Scheduled Tribes and Backward Class or not, or any member of the Bhumihari family, can be effected only after obtaining written consent of the Deputy Commissioner. Even in a case of transfer under proviso (c) of Sections 46 and 47 of the Act, as originally stood, there was a restriction in the transfer by a raiyat not being the member of Scheduled Caste, Scheduled Tribe or Backward Class without the written consent of the Deputy commissioner and to a person who must be the resident of the same area where the holding situate. Proviso (c) of Section 46 and Section 47 putting such restriction on the sale of the lands by an occupancy raiyat was challenged as being unconstitutional and invalid and the matter was ultimately referred to a Full Bench. The Full Bench struck down such restriction in the case of *R. Sahu v. H.S.L. Sahu*⁵¹, where their Lordships held that the restrictive provision in Clause (c) of the proviso to Section 46(1) to the effect that transfer of the occupancy holding by a

⁵¹ 1967 BLJR 78

raiyat of the class other than Scheduled Tribe, Scheduled Caste or Backward Class, can be made only to a resident within the local limit of the district in which the holding is situate, is invalid under Article 19(1)(f) of the Constitution. Similarly, it was held that Section 47 in so far it puts restriction upon the power of Court to put to auction sale in execution of a decree even the agricultural land of the persons belonging to the classes other than Scheduled Tribe, Scheduled Castes and Backward Class is invalid and ultravires. Similar provision under the Bihar Tenancy Act has been struck down by the Full Bench of this Court in the case of *Thakur v. K. Singh*⁵².

6.8: RIGHTS FOR KORKAR LAND

According to section 3(xiii) of the Act, korkar means land by whatever name locally known such as *babhala khandwat jalsasan* or *ariat*, which has been artificially leveled or embanked primarily for the cultivation of rice, and

- a. Which previously was jungle, waste or uncultivated, or was cultivated upland, or which though previously cultivated, has become unfit for the cultivation of transplanted rice, and
- b. which has been prepared for cultivation by a cultivator or by predecessor-in-interest.

It has been held in the case of *Budhan Mahto v. Wazir Mian*⁵³ that the requirement of Section 3(13) with regard to 'korkar'

⁵² 1969 PLJR 134

⁵³ 1957 BLJR 637

right stands fulfilled where the area was amalgamated with the rice growing field and enclosed and prepared for rice growing.

The provision for conversion of and into korkar has been given in Section 64 of the act. It says that notwithstanding anything contained in any record-of-rights or any custom or usage to the contrary, every cultivator or landless labourers resident of village or a contiguous village shall have the right to convert land in that village into korkar with the permission of the Deputy Commissioner previously obtained:

Provided that no permission of the Deputy Commissioner shall be required under sub-section (1) to the conversion of land into korkar by a cultivator where he was entitled on the date of the commencement of the Chota Nagpur Tenancy (Amendment) Act, 1947 (Bihar Act 25 of 1947), by virtue of any entry in the record-of-rights or any local custom or usage to convert such land into korkar without the consent of the landlord. However, section 66 clarifies a point that the provisions of section 64 does not authorize any cultivator to convert into korkar any orchard or cultivated or homestead land in the direct possession of any other person.

The various rights have been brought clearly through case laws which provided interpretation to the section. The case of *Banwari Lal v. Ankurnath*⁵⁴ provided that the word 'cultivator' in section 64 must be understood in its dictionary sense as anyone who cultivates land either himself or with the help

⁵⁴ AIR 1952 Pat. 340

of his servants or labourers. Further the case of *Parbati v. Doman*⁵⁵ held that the concluding portion of Section 64(3) clearly means that if the person who has commenced kokar is a tenant or a resident of the village where the kokar is being done, he cannot be ejected otherwise than by an application to the Deputy Commissioner. Also when the land is concerted in korkar under Section 64(1) of the act, the consent of the landlord is necessary except when the land is included in the occupancy holding of the cultivator or whether by custom or usage of the village, tenure or estate such consent is not necessary⁵⁶. This case further held that where there is a customary right to convert land into korkar, right of occupancy in korkar is an inevitable corollary. Such customary right of occupancy is recognized by section 67 and not by section 64.

⁵⁵ AIR 1934 Pat, 680

⁵⁶ Digaber v. Sengra, AIR 1933 Pat. 52

CHAPTER: 7

DISPUTE SETTLEMENT WITH RESPECT TO LAND RIGHTS

It has been held in the case of *Paritosh Maity v. Ghasiram Maity*⁵⁷ that questions relating to title or interest in lands are matters of civil nature. The jurisdiction of civil court can only be barred if firstly, it is expressly excluded or secondly if it so done by necessary intendment.

Section 136 lists down the office for instituting suits and making applications. Suits and applications before the Deputy Commissioner under this Act shall respectively be instituted and made --

- (a) in the revenue-office of the district; or
- (b) when the cause of action has arisen within the local limits of the jurisdiction of a Deputy Collector who is empowered to receive such suits or application, then in the office of such Deputy Collector; or
- (c) in the office of the Revenue-officer having jurisdiction to entertain the same.

A suit may be instituted before a Revenue officer under section 87, at any time within three months from the date of the certificate of the final publication of the record-of-rights under

⁵⁷ 1987 PLJR 354 (FB)

sub-section (2) of section 83 for the decision of any dispute regarding any entry which a Revenue-officer has made in, or any omission which he has made from, the record, except an entry of a fair rent settled under the provisions of section 85 before final publication of the record-of-rights]whether such dispute be –

- (a) between landlord and tenant, or
- (b) between landlords of the same or of neighbouring estate, or
- (c) between tenant and tenant, or
- (d) as to whether the relationship of landlord and tenant exists, or
- (e) as to whether land held rent-free is properly so held, or (ee) as to any question relating to the title in land or to any interest in land as between the parties to the suit, or
- (f) as to any other matter,

and the Revenue-officer shall hear and decide the dispute:

Provided that the Revenue-officer may, subject to such rules as may be made in this behalf under section 264, transfer any particular case or class of cases to a competent Civil Court for trial:

Provided also that in any suit under this section the Revenue-officer shall not try any issue which has been, or is already, directly and substantially in issue between the same parties or between parties under whom they or any of them claim in proceedings for the settlement of rent under this Chapter, where such issue has been tried and decided, or is already, being

tried, by a Revenue-officer under section 86 in proceedings instituted after the final publication of the record-of-rights.

(2) An appeal shall lie, in the prescribed manner and to the prescribed officer from decisions passed under sub-section (1) and a second appeal to the High Court shall lie from any decision on appeal of such officer as if such decision were an appellate-decree passed by the Judicial Commissioner under Chapter XVI.

Application under section 139(3)(d) can be filled before the Deputy Commissioner when the rights of the raiyats have been interfered by the landlords. However, if the interference has not been caused by the landlord then the suit can be filled before the civil court. This has been held in the case of *Hindustan Aluminium Corporation Ltd. V. State of Bihar*⁵⁸.

In case of any ex-parte order, an appeal can be filed by provision of Civil Procedure Code read with Section 265 of the Chotonagpur TenancyAct, 1968. This has been held in the case of *Ira Deb @ Ira Aikat V. State of Jharkhand*.⁵⁹

Further , in the case of *Arun Kumar Singh, son of Shri Balgobind Prasad v. State of Jharkhand, Deputy Commissioner and Anchal Adhikari*⁶⁰ It was held that it ought to be kept in mind by the authority that whenever any order is illegally passed by any Officer under Section 71A of Chotanagpur Tenancy Act, 1908 then it ought to be quashed and set aside in the appeal or the said order can also be taken in revision by the Government

⁵⁸ 1991 (2) PLJR 335

⁵⁹ Citation missing

⁶⁰ MANU/JH/0324/2010

suo-motu but there must be a separate order for every case and after giving an opportunity of being heard to the affected parties.

CHAPTER: 8

LAWS RELATING TO MUTATION

In the case of *Durga Das v. Collector*⁶¹, *Balwant Singh v. Daulat Singh*⁶² and *Abdul Manan v. Mussaraf Ali*⁶³, it was held that mutation entries neither confer nor extinguish title nor it has any presumptive value of title.

In a judgment passed in the case of “*Dipan Ram etc. v. State of Jharkhand*⁶⁴ passed in 2001” and other analogous cases reported in “2002(1) JCR page 146” it has been held that an authority vested with the power of mutating a land cannot refuse to register the land on the ground that the sale deed of the land had been executed outside the State.

It is well settled that mutation of land does not create any right and title in favour of one or another. It merely allows a person to have his name entered in Register-11 for purposes of payment of rent. If any application for mutation is preferred, the competent authority cannot refuse. This Court also had the occasion to deal with a similar matter in the case of *Smt. Rita Chakraborty v. The State of Jharkhand and Others*⁶⁵.

⁶¹ AIR 1996 SC 2786

⁶² AIR 1997 SC 2719

⁶³ 2001 (1) PLJR 349

⁶⁴ WP (C) No. 5522 of 2001

⁶⁵ WP (C) No. 4847 of 2002

Besides the above, the Bihar Tenants' Holdings (Maintenance of Records) Act, 1973 has been enacted laying down the procedure to be followed by the Circle Officer before mutating the name of a person applies for mutation. The surveys which have been done post independence, somewhere community rights have been overlooked.

In Ranchi district two major land surveys were carried out during the colonial period, first in 1902-10 [Reid 2001 (1912)] and a Revisional Survey [Taylor 2001 (1938)]. In these surveys, two categories of community or non private lands were recorded (apart from Mundari Khuntkatti land, which was collectively held by the theory) uncultivated common lands "Gairmazarua Khas or malik", and other community lands put to specific uses such as graveyard, sacred groves, village road etc. "Gairmazarua Aam".

Uncultivated "waste" and jungle land accounts for the largest amount of common lands in Jharkhand, and is referred to by the term Gairmazarua khas (GM land). Although by custom such land was under local communities, during the settlement they were recorded in Gairmazarua khatas of the superior tenure holders (such as zamindar) of each of village or of the Mundari khuntkattidars in their areas.

CHAPTER: 9

THE SANTHAL PARGANA TENANCY ACT: A BRIEF

The Santhal Parganas are bounded on the north by the districts of Bhagalpur and Purnea of Bihar, on the east by Malda, Murshidabad and Birbhum of West Bengal, on the south by Burdwan and Manbhum of Bengal and in the west by Hazaribagh, Munger and Bhagalpur. It is an upland tract with a hilly backbone running from north to south, and the river Ganges on the north and east. The earliest inhabitants of whom there is any record appear to be the Maler (Sauria Paharia) who are to be found in the north of the Rajmahal Hills. However the authentic history of the Santhal Parganas is said to begin with the rule of the Mohammedans when their armies marched to and from Bengal through the Teliagarhi pass.

The insurrection of the Santhals was the direct reaction of injustice and oppression inflicted upon them. It was an uprising directed more against their oppressor (Mahajans and other non santhal settlers) than against the administration. Four Santhal brothers Sidhu, Kanhu, Chand and Bhairab of village Bhagnadih were leading spirits of this movement.

The creation of the district of Santhal Parganas was the direct result of the Santhal Rebellion of 1885. It was thought that the system under which the Santhals had been ruled was mainly

responsible for the uprising and it was decided that the General Regulations and acts of Government enforced in the Presidency of Bengal must not be applied to “the uncivilized race of people called Santhals” and that “it is therefore expedient to remove from the operation of such laws the district called Damin-E-Koh and other districts which are inhabited principally by that tribe”. The area comprising Santhal Parganas is mentioned in the Schedule to the Act of 1855. By Clause 1 of Section 1 of the Act of 1855, the Santhal Parganas was removed from the operation of general laws and regulations. Act XXXVII of 1855 removed Santhal Parganas from the operation of general laws with certain exceptions and it was laid down that no law shall extend to Santhal Parganas unless the same was expressly named therein. Regulation III Of 1872 contained a Schedule with a list of Acts applicable to this district .

Under the Government of India Act ,1935 Santhal parganas was declared to be a “partially excluded area” and section 92 of the said Act laid down that no Act of any Legislature shall apply to it unless the Governor by public notification so directs and the Governor may make such notifications or exceptions while extending any Act as he may deem fit. Under the present Constitution the President issued a notification published in Bihar Gazette, Extraordinary, dated the 11th February, 1950 declaring the Santhal Pargans to be a scheduled area excluding Godda and Deoghar subdivisions. The Order is known as “The Scheduled Areas (Part A State) Order,1950”. Clause 5(1) of the 5th Schedule to the Constitution lays down that the Governor may by notification direct that any

particular Act of any Legislature shall not apply to a scheduled area or a part thereof. Thus under the Constitution, all the Acts of the Legislature passed after 26th January, 1950 are applicable to Santhal Parganas unless its applicability has been barred or notified by the Governor by a public notification Under Clause 5(1) of the 5th Schedule.

Sec 13 of the SPT Act enumerates the rights of Raiyat in respect of use of land and provides that a raiyat may use the land of his holding in any manner of local usage and custom or irrespective of any local usage or custom, in any manner which does not materially impair the value of the land or render it unfit for the purpose of cultivation. In the case of *Smt Kalpana Pandey vs State of Jharkhand and Ors.* 2008 (4) JCR 389(jhr), Section 14 of the SPT Act was elaborated which mandates that raiyats shall not be ejected by the landlord from his holding on the ground that he has used his land in a manner not authorized by Sec 13 except in execution of an order of ejection passed by the DC.

Sec 20 prohibits transfer, settlement or lease in any manner, unless the right to transfer is recorded in the record of rights, in respect of any raiyati holding. Sec. 20(3), (4), (5) clearly contemplates that in the absence of any documentary evidence produced, the possession can not be legal. *Chakaram Mahato and Ors vs State of Jharkhand and Ors.* (2009 (4) JLR 1) is a leading case in this aspect. In connection with Sec 20, a reading of Sec 69(a) makes it clear that 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 any land held or acquired in contravention of the provisions of Sec20 of the Act. The above mentioned case also threw light on this aspect.

Sec 29 of the Act provides that the previous sanction in writing of the DC would be necessary in cases whether the village pradhan makes settlement of the waste lands either with himself or with any co-mul-raiyat but it is not the case of the respondents that the petitioner was a co-mul-raiyat .

Sec.32 which speaks about objection before the DC against settlement of wasteland and vacant holdings .Powers under Sec.32 can be exercised by the DC only when objections, if any, is received from any aggrieved person by any act of the Village headman or the mulraiyat or the landlord, as the case may be, in settling or refusing to settle the waste land or a vacant holding.

Sec.42 of the Act is one such provision which permits eviction and restoration of possession of encroached agricultural land. The power under this Section is not administrative but statutory and has to be exercised according to the right of the parties.

The Santhal Customary Law of inheritance does not recognize the female to succeed over the family property. The female does not claim in his property. The daughter can not succeed over the property of deceased unless she is married in the “Ghar jamai Form”. A Ghar jamai daughter for all tenets and purposes gets the reflection of the son. if the Ghar Jmaai daughter dies issueless, the property of the deceased will not

devolve on the Ghar Jamai or son in law. The son-in-law is joint owner with the wife and his son. In absence of these two, he has no claim in the property.

CHAPTER: 10

CNT VIS A VIS POLITICAL ASPIRATION IN JHARKHAND:

Social Issues India in an article, “Status of Implementation of the Chotanagpur Tenancy Act” (<https://socialissuesindia.wordpress.com/2012/09/18/status-of-implementation-of-the-chhotanagpur-tenancy-a>) revealed some truths. According to the Ministry of Rural Development’s Annual Report 2004-2005, Jharkhand topped the list of adivasi land alienation in the country, with 86,291 cases involving 10,48,93 acres of land. After independence and up to 1990 over 26 lakh people were displaced in Jharkhand due to “development” projects such as dams, industrial projects, etc – majority of them were tribal people. It has been estimated that about 22,00,000 acres of tribal land has been lost since independence. These statistics speak clearly that the CNT Act has failed to protect the interests of poor tribes.

In fact, the CNT Act was amended in 1947 to allow urbanization, industrialization and various “development” projects. Besides, the provisions of other laws such as the Land Acquisition Act of 1894 and the Indian Forest Act go against the spirit of the CNT Act. Therefore, the CNT Act has failed to provide any meaningful protection to the tribal community. The Bari Cooperative society case can be cited here to understand how the builders lobby try to manipulate the CNT Act in

their favour. "Tetulia" is an adivasi village situated nearby the steel city Bokaro in Jharkhand is a typical example of land alienation through tricks and breach of the laws. 45 Santhal families had been living in the village. They were tricked into giving away their lands. Now the village has completely lost its identity and has come to be known as Bari Cooperative, where 250 posh buildings have replaced the mud houses of non-Adivasis. Some of the tribal land owners still live in mud houses outside of the cooperative area. The 'Bari Cooperative Society' was established in 1980 by two property dealers, who approached the Adivasis with a proposal to establish a garment factory and promised them jobs apart from paying them Rs 1000 per acre for land. Thus, they acquired 50 acres of land from Adivasis in the name of Bari Cooperative but then backed on their promise. Interestingly, the garment factory was closed within days and a posh colony was built and the houses were sold at the market rate to non-tribals. When the matter was brought out into light, the deputy commissioner of Bokaro investigated it in 2005 and discovered the violations of the CNT Act. However, no action followed. The displaced tribal families are without justice even after over three decades. One Kari Manjhi who had 9.26 acres of land of which 4.24 acres were taken by the Bari Cooperative and 2.36 acres were captured by migrant Biharis, is now left with merely 2.66 acre land. He filed a case in Bokaro Civil Court against the Bari Cooperative in 2006 but nothing has happened yet.

The plight does not end here. The attitude of the bureaucrats towards the implementation of CNT is a sorry story. "Ranchi Land Scam" brings out the dark reality. In 1995 the

Jharkhand Vigilance Bureau unearthed a land scam where in collaboration with some bureaucrats and land mafia had sold more than 200 acres of tribal and Government Land at prime locations in Ranchi, which was worth over Rs 400 crores. These plots of land were illegally transferred to private housing co-operative societies and individuals in gross violation of the CNT Act. The culprits are still at large in 2012. “Deoghar Land Scam” years back to 2011 when it was discovered that about 800 acres of *non-transferable* private and government land worth over Rs 1000 crores was sold or transferred illegally. This was going on for the last three years by forging the original land records the land-mafia has managed to grab these *basauri* (residential category) plots in Deoghar. Active involvement of officials, responsible for maintaining land-records and registrations, is clearly indicated. The modus-operandi of the land-mafia in this land scam was really intelligent.

First, they prepared forged land documents to change the status of the non-transferable land to the acquired and transferable category.

Then, they replaced the original land documents lying in District Record Room with the forged land documents.

Next, they changed the name of the land-owners in the Register.

Then, they prepared bogus land receipts – some even dating back to 30 to 40 years. *Forged documents dating back to 1940s were prepared on computers, when computers did not exist!!*

Lastly, using the forged land-document, these private and government lands were sold to the buyers.

But Indian Judiciary which is the ultimate guardian of the rights and aspirations of the people of this country help to re-instill in our mind that though tough and long drawn and full of obstacles yet the journey towards justice helps to bring out fruit. In the case of Surendra Dehri⁶⁶, it was alleged that over 10,000 acres of “notified tribal land” had been usurped by mining contractors in connivance with the government officials. The Jharkhand High Court dismissed his petition on 03.01.2002 saying that “from a perusal of the petition it clearly transpired that some individual rights of some persons from the subject matter of this petition. No public interest is involved”.

In 2007, the apex court held that the High Court was wrong to dismiss the petition of Surendra Dehri. It stated that a clear violation of constitutional guarantees given to the tribals could not be held to be related to “private interest” and allowed the tribal petitioner to file a fresh petition before the Jharkhand High Court for recovery of his land from a mining company.

Given large-scale instances of forcible land-grabbing in city regions, no doubt Builders lobby is worried and nervous with the development following High Court’s ruling. Besides losing money, the strict implementation would mean certainly mean jail-time for many builders, who subverted the CNT Act to their advantage. The RRDA Scam and unplanned skyline of Jharkhandi city do point towards the scams, which could be bigger than anyone’s imagination.

⁶⁶ W.P.(PIL) 44 of 2002 order dated 03.01.2002 in Jharkhand High Court.

Jharkhand Chamber of Commerce wants CNT Act to be amended. As according to them the recent High Court order has brought section 21, 46, 49 and 71 of the CNT Act into sharp focus threatening to throw industrialization and real estate business off gear across the state. They too suffer from selective amnesia, and forget that large industrial units (SAIL, HEC, DVC, etc) were established within the provisions of the CNT Acts or SPT Acts.

Jharkhand is in the throes of a long-drawn-out anti-displacement battle between the state government and its adivasi farmers.

The conflict over 227 acres of land allotted by the government for the building of campuses for the Indian Institute of Management (IIM), Indian Institute of Information Technology (IIIT) and National University of Study and Research in Law (NUSRL) has hit the headlines. Approximately 500 families have been affected by displacement who claimed to be the lawful owner of this vast land which has helped them to eke out their livelihood since years.

The basic question is how the government could have acquired the land in the first place when neither they nor their forefathers had agreed to sell it. The families say they turned down compensation offered to them by the government in lieu of the land. In spite of such massive agitation, the government claims ownership of the disputed land, saying that it had acquired it way back in 1957-58 to build an extension and a seed farm for the Birsa Agricultural University.

In 1957, the then unified Bihar government had acquired the land and in turn offered total compensation of Rs 155,147.88 to 153 families. Of these 153 families, only 25 accepted the compensation which was at the rate of Rs 2,700 per acre. The remaining families refused to part with their land and declined compensation. The money went back to the government treasury that same year, and since then the issue has been hanging in the balance. Incidentally, the value of the same land after nearly 50 years has shot up to Rs 1.5 crore per acre, increasing its total present worth to about Rs 350 crore.

Deputy Commissioner, Ranchi, K K Soan refutes the claim saying: “The land revenue department did not receive any revenue money after 2007 and did not issue any receipts.” He further states that the land had been acquired by the government in 1957. “Just because 128 families refused to give away their land and did not take the compensation does not imply that the land was not acquired by the government.”

The Nagri residents’ petition asserting that the so-called land acquisition was not in line with legal provisions contradicts such claims by the district administration. It raises the basic question of how the government could acquire tribal land in Jharkhand under the Land Acquisition Act (1894) when the state was listed under the Fifth Schedule of the Constitution which is a historic guarantee to indigenous people to rights over land on which they reside.

In addition to this, the petition clarifies that even if the government had followed the provisions of Section 17 (4) of the Land Acquisition Act, 1894, where land is acquired

in case of urgent public requirement, possession must be taken within hours or at least within months. In this case, more than 50 years have passed and the government had not taken possession of the land, clearly indicating that there was no such urgency. Further, the villagers cite the Chotanagpur Tenancy (CNT) Act of 1908 which is in force in Jharkhand. Section 46 of the CNT Act restricts transfer of land belonging to scheduled tribes/scheduled castes and backward classes. The deputy commissioner refutes these contentions saying: "There are hundreds of acres of acquired land in the state where possession is yet to be taken."

The situation took a turn for the worse for these Oraon adivasi farmers in May this year. Based on a PIL filed by the Bar Association of Ranchi, the High Court, on April 30, ordered the government "to secure the construction of the buildings of the educational institutions within 48 hours". This stirred up massive opposition, with three farmers -- Mundri Oraon, Dashmi Kirketta and Poko Tirke -- dying of a heatstroke whilst protesting under the blistering summer sun.

The government's land acquisition claim was challenged by Nagri residents in the Supreme Court. But in June, the apex court turned down their special leave petition taking the plea that in the matter of land acquisition of 1956-57 it was not inclined to interfere with the orders of the high court.

Things came to a head when the government began constructing a boundary wall in July around the proposed campuses. Venting their ire, the residents demolished the wall leading to a scuffle between the police and villagers. Protesting

villagers laid siege to the chief minister's residence and Raj Bhavan to press their demands. When nothing happened they resorted to a hunger strike.

In September, the high court directed the state government to secure the university's construction against obstruction by locals. The government has imposed Section 144 (IPC) in Nagri three times since July, prohibiting farmers from gathering on the farmland. Paramilitary forces have been stationed in the area. The Jharkhand government continued arresting grassroots activists. Anti-mining activist Xavier Dias and five of his comrades were arrested on November 24. The arrests were made on the basis of a 21-year-old case for their alleged role in leading a protest against Tata's iron ore mine in Noamundi, West Singhbhum district.

Dias and his co-workers were granted bail on November 26. Ironically, when the state was formed, Dias was honoured by the government for his fight for tribal rights. He was also assured that all pending cases against him and his workers would be dropped. Meanwhile, support for the cause has poured in from various parts of the world. Social-activist-turned-politician Arvind Kejriwal, founder of the Aam Admi Party and leading the crusade for India Against Corruption (IAC), said: "We have extended moral and ideological support to tribal activist Dayamani Barla." He expressed concern at the way governments and establishments have been repressing public movements and people who dare raise their voices against them. American philosopher-activist Noam Chomsky too has written a letter to the Government of India demanding Barla's release.

(<http://www.theweekendleader.com/Causes/1478/battle-for-land.html>)

Governor Syed Ahmed is said to be upset with the Tribes Advisory Council (TAC), headed by the then Chief Minister Hemant Soren, who resolved to amend over a century-old Chhotanagpur Tenancy (CNT) Act in order to facilitate sale of land by tribals to their brethren, keeping him in the dark. A news published in Daily Pioneer dated 5 October 2014 (<http://www.dailypioneer.com/state-editions/ranchi/govt-keeps-guv-in-dark-over-cnt-law-changes.html>) states that the State Government hurriedly went ahead with setting the agenda for the TAC and adopting various resolutions to change the Act at a meeting on September 27 after the Governor approved nomination of the members of the Council on September 8. The decisions taken by TAC included relaxing the boundary of a police station to transfer tribal land, amending the Act to facilitate housing, educational and other loans from banks after mortgaging land and deleting of Section 71 (A) of the Act.

According to State Government sources, the Governor had referred just a memorandum, of CNT Act Bachao Morcha, demanding deletion of Section 71 (A) of the CNT Act and that too not for discussion by TAC. "The memorandum was referred to the welfare department in a routine manner," sources said. The Raj Bhawan has stuck to the Section 4 (2) of the Fifth Schedule of the Constitution, which clearly says, "It shall be the duty of the Tribes Advisory Council to advise on such matters pertaining to the welfare and advancement of the Scheduled Tribes in the State as may be referred to them by the Governor."

According to a legal expert, the provisions clearly say that the TAC will deliberate on such issues as referred to it by the Governor implying that the Governor will set the agenda for the meeting. "Let alone setting the agenda, the Governor had not even been informed of the meeting and resolutions adopted by the Council," sources said.

Political parties have already raised eyebrows over the TAC's hurried move to amend the Act when the term of the Government will end soon. "It is a long drawn process since the President's assent is required to amend the Act, applicable to Scheduled Areas. But the government is in a hurry to relax the police station's boundary so as to regularise all the illegal transfers of land by tribal politicians and bureaucrats with retrospective effect," they have alleged.

While the draft rules say that the Chief Minister will appoint the members to the TAC, except the ex-officio members, the existing rules bestow such powers on the Governor. The existing rules say that the Governor will set the agenda for the TAC, while the draft rules say that the agenda should be approved by the Chairman of TAC (means Chief Minister). The Raj Bhawan has returned the file pertaining to the rules amendment.

After the recent Vidhan Sabha election where BJP came as a winning party with a landslide victory, several amendments have been done hurriedly keeping in view the tacit interest of the party. Amongst this, the Land Ordinance Bill evoked widespread criticism as it ruled out compulsory consultation of Gram sabha in development projects in the state. A

news dated January 30,2015 says that The JMM and some other organizations have stepped up protests against centres ordinance amending the land acquisition act.The Narendra Modi Government's Ordinance making changes in the UPA governments Land Acquisition Act 2013 seeks to remove barriers in sectors like power,housing and defence to kick start stalled projects.The JMM campaign also focuses on early introduction of a policy for the locals ,no tinkering with the CNT and SPT Acts, increasing MGNREGA wages ,and pension to widows,physically challenged people irrespective of caste or ethnic identities.

The Jharkhand High Court order of January 25, 2012 made deputy commissioner's consent mandatory for transfer of land belonging to backward classes and Scheduled Castes in the context of the CNT Act. The authorities have been allowing land transfer without DCs approval assuming that it was required only for transfer of tribal lands. This Order affected land transferred of Adivasis, Dalits and OBCs. Undoubtedly, it had a huge impact on real estate business. The Builders lobby which got a huge setback way forwarded some suggestions so that their interest could be protected. Like, revisiting the list of backward class and modify the Amendment Act of 1981 which extended the ambit of the Act to Municipal Areas.

Raghuvar Das,the newly elected CM of Jharkhand recently demanded framing of a Tenancy Act for the 2000-carved state to protect the rights of its tribals, and criticised the Opposition's stand over the fine iron-ore issue leading to adjournment of the Assembly in the recent monsoon session.He asked the state

government to act quickly on the recommendations of the Deputy Commissioner to look into the land scam to the tune of Rs 1000 crores in Deoghar district. "The government should not waste time and order for a vigilance probe into the scam," said Das, a former state president of the ruling BJP. Referring to the decades-old Chhotanagarpur and Santhal Paragana Tenancy Act (CNT and SPT), he said the government should review it and frame a new Jharkhand Tenancy Act. The CNT, he noted, permitted a tribal landowner to sell land to another tribal living in the same district or block with the permission of the Deputy Commissioner, but the SPT had no such provisions. The senior BJP leader said politicians, bureaucrats were also involved in the scam and the government should look into it. Das accused the tribal leaders and bureaucrats for violating the act and purchasing tribal lands in low prices.

Claiming that he had raised the issue in the Assembly in the past, Das said CNT and SPT acts formed by Britishers in early 1900s was based on divide and rule policy for personal interests and had many discrepancies. Besides, the acts have lost its relevance now as it has miserably failed to protect tribal interest, he added.

At a press conference here, Das said the Opposition parties' stand on the fire iron ore was improper, particularly when the chief minister had assured to review it following their demand. The government was prepared to discuss the issue in the House, but the opposition continued to stick to its demand for the withdrawal of government decision allowing export of iron-ore fines, he said. About the performance of the Arjun

Munda-led coalition government, Das said it was carrying out development work despite differences on issues, which were “natural”.(<http://www.business-standard.com/article/economy-policy/bjp-demands-pro-tribal-jharkhand-tenancy-act-11109060>)

As a recent development in the political arena in the state, an attempt by all rival parties in Jharkhand against the ruling government seems to take shape. The Congress, the Bahujan Samaj Party, the Marxist Coordination Committee and other regional parties said yes to a call by the Jharkhand Mukti Morcha and Jharkhand Vikas Morcha-Prajatantrik against the Centre's recent land Acquisition Ordinance. The JMM alleges that the Centre's ordinance amending the land acquisition act will lead to land grab in the state protected by Chotanagpur Tenancy Act and Santhal Pargana Tenancy Act.

The Jharkhand high court took exception to the alleged transfer of several acres of tribal land in Ranchi to non tribal people, specially builders, against law. This came against the backdrop of a PIL. The Order dated 9th February, 2015, through which the Court directed the Principal Secretary of the Land and Revenue Department to furnish a detailed report mentioning what actions have been taken in response to the Commissioner's probe report. Reportedly the South Chotanagpur Commissioner had in 2013 submitted an exhaustive report to the Government, highlighting 116 cases in which land of the members of the Scheduled Tribes were transferred to non schedule members on payment of compensation in violation of CNT Act. A division bench of

Chief Justice Virendar Singh and Justice Aparesh Kumar Singh observed that South Chotanagpur Commissioner report is an eye-opener and the Court would monitor the case. The Court's order came in a PIL filed by CNT Suraksha Samiti. The Petitioner alleged the officers, in connivance with the Land Mafias, were facilitating the transfer of Tribal land to non tribal people in violation to the provisions of the CNT land.

The future of the Act remains questionable taking into account the recent moves by the Central Government. Does vested political interest would affect the sacred rights of the tribals which have been protected by such Acts since long.

CHAPTER: 11

CONCLUSION

Instituted by the British, the Chhota Nagpur Tenancy Act, 1908 is an important Act for the tribal population of Jharkhand. It restricts transfer of tribal land to non tribals. The CNT Act is effective in North Chhota Nagpur, South Chhota Nagpur and Palamau divisions, including areas under various municipalities and notified area committees. So far, the CNT Act has been amended as many as 26 times, latest in 1995. It is listed in the Ninth Schedule of the Constitution, so the act is beyond judicial review. It can only be repealed by the Parliament; the state government can only make amendments to it. Currently over 20,000 cases of land restoration are pending across Jharkhand, pointing to the blatant violation of the Act.

After going through the provisions and analysis given above it becomes clear that the various laws enacted for the tribal and for securing their land to them are quite apt. they are essential for giving the tribal a right over their land and for ensuring that their lands right are not violated.

Keeping in view the tribal living which is predominantly forest based, to deprive them of the benefits of forests would be sheer injustice, where most of the people are still living in

the forest area and dependent on the forest produce for their living. In such situations, it is important that stringent laws must be there for keeping the rights of the tribal upheld.

Every political party has its own say regarding the CNT, the vote bank policy, the appeasement factor all work cumulatively for these parties in framing their opinion. Varied opinions surrounding the CNT have made the situation worse for the ultimate beneficiaries. And also the fate of CNT remains dwindled. A holistic development of the state and tribals in particular demands a more uniform approach towards the much debated Act, the paramount interest of the tribals should subvert all underlying political differences.

Thus, any demand for amendment to existing laws as far as rights of tribal must not be entertained. Inclusion of section 76 in the Act which reads that local custom will prevail in the absence of any written law of the land further justifies this contention also is be justified through an additional ground that the Act itself provides a scope under section 76 of the Act by which the local customs will prevail in absence of any written law of the land. Thus, keeping in mind all these aspects that the existing laws need firm execution without any amendment for the welfare of the tribal society.

But critics often cite some provisions in the Act as acting against the interest of the tribal communities keeping in mind the changing scenario of the society. The banks in the state refrain from offering loans to tribes people due to legal provisions in both the CNT as well SPT banning transfer of immovable assets of a tribal to a non tribal member. The banks fear the

provisions prevent them from auctioning the mortgaged property of a tribal. Recently, at the 50th general meeting of the state level bankers committee, Chief Minister said the government would soon implement the recommendations of the Tribal Advisory Council to ease the CNT and SPT norms. He said even education and housing loans were not being disbursed to tribes people. The CM said the government would soon create a Corporate Social Responsibility trust in which companies would be asked to deposit 2% of CSR fund share in the trust. The trust will execute the schemes of the government.

TABLE -1

**Brief History of Movements relating to Land Rights in
Jharkhand:**

- 1765 - East India Company arrival in Chotanagur.
- 1772 - British Government arrival in Chotanagpur.
- 1772-80 - Paharia Revolution in Rajmahal, Santhal Pargana.
- 1780 - Establishment of Fauji Collectory in Ramgarh.
- 1784 - Rebellion in Santhal Pargana under the leadership of Tilka Manjhi.
- 1793 - Commencement of Permanent Settlement of Land.
- 1797 - Tamar revolution under the leadership of Thakur Bholanath Singh.

Bhumij Revolution in Manbhum.

- 1800-02 - Choro Revolution in Palamu under leadership of Bhukhan Singh.
- 1806 - Establishment of Zamindari Police System.
- 1807 - Munda Revolution in Tamar under leadership of Dukhan Manki.
- 1819-20 - Munda Revolution in Tamar under leadership of Rugu and Konta.
- 1820-21 - Ho Revolution in Singhbhum.
- 1831-32 - Kol Revolution under the leadership of Singhrai and Windhrai.
- 1832 - Revolution under the leadership of Budho Bhagat in Silli.
- 1830-33 - Revolution in Manbhumand Singhbhum under the leadership of Ganga Narayan.

- 1833 - Demarcation of Damin-e-Koh in north-east Santhal Pargana.
- 1834 - Establishment of South west frontier agency .
- 1837 - Establishment of Singhbhum district.
- 1854 - Establishment of Chotanagpur Division.
- 1855-57 - Santhal Revolution.
- 1855 - Santhal Pargana Revolution.
- 1855-56 - Santhal Revolution in Hazaribagh.
- 1857 - Sepoy mutiny.
- 1858 - Attempt by British Government to prepare record of rights.
- 1859 - Enactment of Sale and Rent Laws.
- 1869 - Enactment of Chotanagpur Tenures Act (Act -II-1869) and Bhaihari Survey settlement
- 1872 - Santhal Pargana Settlement revolution.
- 1874 - Enactment of Scheduled District Act.
- 1878 - Indian Forest Act.
- 1880-91 - Resentment among Santhal.
- 1885 - Arrival of Fr. Luis and Fr. Holfman in Chotanagpur.
- 1895-1900 - Birsa Movement (Ulgulan)
- 1897 - Recognition of Chotanagpur Commutation Act.
- 1902-10 - Survey and settlement.
- 1903 - Transfer of land restrained by Chotanagur Tenancy (Amendment) Act.
- 11.11.1908 - Enactment of CNT Act.

Table-2

Bihar Scheduled Areas Regulation

List of Scheduled Tribes

Asur,
Baiga,
Banjara,
Bathudi,
Binjhia,
Birhore,
Bedia,
Birjia,
Chiro,
Chik-Baraik,
Gond,
Gorait,
Karmali,
Kharia,
Ho,
Kheewar,
Khonel,
Kisan,
Kora,
Karwa,
Lohara or Lohra,
Mahli,
Mal Paharia,
Munda,
Oraon,

Paharia,
 Santhal,
 Sauria Paharia,
 Savar

Bhumij In District of Ranchi , Singhbhum , Hazaribagh , Santhal Pargana and Manbhum.

Note- Any reference to a district or other territorial division of the state shall be contracted as a reference to a district or the other territorial division existing on 26th January, 1950.

List of Scheduled Castes

1. Throughout the State of Bihar-

Bauri,
 Bantar,
 Bhogta,
 Chamar or Mochi,
 Chaupal,
 Dhobi,
 Dusadh dhari or dhathi,
 Dom or Dhangar,
 Halal Khor,
 Hari Mehtar or Vangi,
 Ghari,
 Kanjar,
 Kuriar,
 Lalbegi,
 Dawpar,
 Mushar,

Nat,
 Pasi,
 Pan or khawasi,
 Rajwar,
 Turi.

2. In Palamau District “ Bhumij” and “Bhuiyan”

List of Backward Classes

(Vide Notification No.A./T.3043/61-5423- R. dated 23rd June, 1962 under Section 46 (b) of C.N.T Act, Which was published at page 971 (Part II)of Bihar gazette dated 18.7.1962)

Caste and Classes	Area in Which recognized
1. Bari	Throughout the State of Bihar
2. Banapar	“ “
3. Bediya	“ “
4. Beldar	“ “
5. Bhatiara	“ “
6. Bherihar (including Garer)	“ “
7. Bind	“ “
8. Chik (Muslim)	“ “
9. Dafali (Muslim)	“ “
10. Dhanuk (BC)	“ “
11. Dhobi (Muslim)(BC)	“ “
12. Gorbi (inchiding Chhabi)	“ “
13. Hazam	“ “
14. Kahar	“ “
15. Kasab(Kasai Muslim)	“ “
16. Kesat (Keut)	“ “

17. Khatik

“ “

Chota Nagpur Tenancy Act 1908

18. Mali(Malakar)

“ “

19. Dhunia (Muslim)

“ “

20. Mallah (Including Surahiya)

“ “

21. Madari (Muslim)

“ “

22. Mehtar, Lalbegi, Halkhor and bhangi, (Muslim) “ “

23. Miriasin (Muslim)

“ “

24. Nat (Muslim)

“ “

25. Noniya

“ “

26. Pamaria(Muslim)

“ “

27. Shikhara

“ “

28. Tantie (Tantwa)

“ “

29. Turhas

Chota Nagpur division

30. Bhar

“ “

31. Bhuinhar

“ “

32. Dhanwar

“ “

33. Gulgulia

“ “

34. Kwar

“ “

35. Khetauri

Throughout the State of Bihar

36. Kurmi (Mahto)

37. Majbwar.

“ “

38. Malar (Malahor)

“ “

39. Pradhan

“ “

40. Tamaris

“ “

41. Bhuinyan

Throughout Chota Nagpur
excepting the district of
Palamu.

- | | |
|--------------------|-----------------------------------|
| 42. Agarca | Latehar and Gumla
Subdivision |
| 43. Bagdi | District of Dhanbad |
| 44. Bhaskar | District of Palamau |
| 45. Kaibarta | District of Dhanbad |
| 46. Karora | District of Singhbhum |
| 47. Bahira | District of Dhanbad |
| 48. Bahira | District of Dhanbad and
Ranchi |
| 49. Pando | District of Ranchi |
| 50. Pangania | District of Ranchi |
| 51. Saunfa (Sauaa) | District of Singhbhum |

JUDGMENTS

IN THE SUPREME COURT OF INDIA

Writ Petition. (C) No. 5723 of 1982.

Decided On: 17.04.1996

Appellants:**Madhu Kishwar and others**

Vs.

Respondent: **State of Bihar and others**

Hon'ble Judges:

Kuldip Singh, Madan Mohan Punchhi and K. Ramaswamy, JJ*.

ORDER

K. Ramaswamy, JJ.

1. These two writ petitions raise common question of law: whether female tribal is entitled to parity with male tribal in intestate succession? The first petitioner is an Editor of a Magazine 'Manushi' espousing the causes to ameliorate the social and economic backwardness of Indian woman and to secure them equal rights. Petitioner Nos. 2 Smt. Sonamuni and 3 Smt. Muki Dui are respectively widow and married daughter of Muki Banguma, Ho tribe of Longo village, Sonua Block, Singhbhum District in Bihar State. The petitioner in Writ Petition No. 219/86, Juliana Lakra is an Oraon Christian Tribal woman from Chhota Nagpur area. They seek declaration that Sections 7, 8, and 76 of the Chhota Nagpur Tenancy Act, 6 of 1908, (for short, the 'Act') are ultra vires Articles 14 15 and 21 of the Constitution of India. They

contend that the customary law operating in the Bihar State and other parts of the country excluding tribal women from inheritance of land or property belonging to father, husband, mother and conferment of right to inheritance to the male heirs or lineal descendants being founded solely on sex is discriminatory. The tribal women toil, share with men equally the daily sweat, troubles and tribulations in agricultural operations and family management. Their discrimination based on the customary law of inheritance is unconstitutional, unjust, unfair and illegal. Even usufructuary right conferred on a widow or an unmarried daughter become illusory due to diverse pressures brought to bear brunt at the behest of lineal descendants or their extermination. Even married or unmarried daughters are excluded from inheritance, when they were subjected to adultery by non-tribals; they are denuded of the right to enjoy the property of her father or deceased husband for life. The widow on remarriage is denied inherited property of her former husband. They have elaborated by narrating several incidents in which the women either were forced to give up their life interest or became target of violent attacks or murdered. Petitioner Nos. 2 and 3 in the first writ petition sought police protection for their lives and interim directions were given.

2. When this court has taken up the matter for hearing, in the light of the stand of the respondents taken at that time to suitably amend the Act, by order dated December 16, 1986, the case was adjourned with the hope that the State Government would suitably amend Sections 7 and 8 of the Act. By further order dated August 6, 1991, this court after being apprised of

the State Government constituting a Committee to examine the desirability to amend the Act giving equal rights of inheritance to women, further adjourned the hearing awaiting the report of the Committee. The State-Level Tribal advisory Board consisting of the Chief Minister, Cabinet Ministers, legislators and parliamentarians representing the tribal areas, met on July 23, 1988 and decided as under :

The tribal society is dominated by males. This, however, does not mean that the female members are neglected. A female member in a tribal family has right of usufruct in the property owned by her father till she is unmarried and the same is the property of her husband after the marriage. However, she does not have any right to transfer her share to any body by any means whatsoever. A widow will have right to usufruct of the husband's property till such time she is issueless and, in the event of her death the property will revert back to the legal heirs of her late husband. In case of a widow having offspring the children succeed the property of the father and the mother will be a care taker of the property till the children attain majority. The Sub-Committee also felt that every tribal does have some land and in case the right of inheritance in the ancestral property is granted to the female descendants, this will enlarge the threat of alienation of the tribal land in the hands of non-tribals. The female members being given right of transfer of their rights in the origin of mal-practices like dowry and the like prevalent in the other non-tribal societies'

3. When the matter was taken up for final disposal and the resolution of the Board was brought to the notice of this Court,

by order dated October 11, 1991, this court further expressed thus:

Scheduled tribe people are as much citizens as others and they are entitled to the benefit of guarantees of the Constitution. It may be that the law can provide reasonable regulation in the matter of succession to property with a view to maintaining cohesiveness in regard to Scheduled Tribes and their properties. But exclusion from inheritance would not be appropriate. Since this aspect of the matter has not been examined by the State of Bihar and the feasibility of permitting inheritance and simultaneously regulating such inheritance for the purpose of ensuring that the property does not go out of the family by way of transfer or otherwise we are of the view that in the peculiar facts of the case the State of Bihar should re-examine the matter.

4. The State Government reiterated its earlier stand, as stated in an affidavit filed in this behalf. Sections 6, 7, 8 and 76 of the Act are as follows:

6. Meaning of raiyat.- (1) "Raiyat" means primarily a person 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, or with the aid of partners; and includes the successors-in-interest of persons who have acquired such a right, but does not include a Nundari Khunt-kattidar.

Explanation - Where tenant of land has the right to bring it under cultivation, he shall be deemed to have acquired a right to hold it for the purpose of cultivation, notwithstanding that

he uses it for the purpose of gathering the produce of it or of grazing cattle on it.

(2) A person shall not be deemed to be a raiyat unless he holds land either immediately under a proprietor or immediately under a tenure-holder or immediately under a Nundari Khunt-kattidar.

(3) In determining whether a tenant is a tenure-holder or a raiyat, the court shall have regard to-

- (a) local customs, and
- (b) the purpose for which the right of tenancy was originally acquired.

7. (1) Meaning of 'raiyat having khunt-khatti rights'.- "Raiyat having khunt katti rights" means a raiyat in occupation of, or having any subsisting title to, land reclaimed from jungle by the original founders of the village or their descendants in the male line, when such Raiyat is a member of the family which founded the village or a descendant in the male line of any member of such family:

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

(2) Nothing in this Act shall pre-judicially affect the rights of any person who has lawfully acquired a title to a khunt kattidari tenancy before the commencement of this Act.

8. Meaning of Mundari Khunt - kattidar.- "Mundari Khunti-

kattidar means a Mundari who has acquired a right to hold jungle land for the purpose of bringing suitable portions thereof under cultivation by himself or by male members of his family, and includes-

(a) the heirs male in the line of any such Mundari, when they are in possession of such land or have any subsisting title thereto; and

(b) as regards any portions of such land which have remained continuously in the possession of any such Mundari and his descendants in the male line, such descendants.

76. Saving of custom.- Nothing in this Act shall affect any custom, usage or customary right not inconsistent with, or not expressly or by necessary implication modified or abolished by, its provisions.

5. In *Ramalaxmi Animal v. Shivanandha Perumal Sheroyar*, (1872) 14 Moo Ind App 585, the judicial Committee had held that custom is the essence of special usage modifying the ordinary law of succession that it should be ancient and invariable; and it is further essential that they should be established to be so by clear and unambiguous evidence. It is only by means of such evidence that the courts can be assured of their existence and that they possess the conditions of antiquity and certainty on which alone the legal title to recognition depends. In *Abdul Hussain Khan v. Bibi Sona Dero*, (1917) 45 Ind App 10, when it was pleaded that by customs of the family, the sister of an intestate Mohammedan

was excluded from inheritance in favour of a male paternal collaterals, by operation of Section 26 of the Bombay Regulation IV of 1827, (a usage was in question in the suit), the Board held that the custom was not established to exclude the sister of the deceased from inheritance.

6. By operation of Article 13(3)(a) of the Constitution law includes custom or usage having the force of law. Article 13(1) declares that the pre-constitutional laws, so far as they are inconsistent with the fundamental rights shall, to the extent of such inconsistency, be void. The object, thereby, is to secure paramountcy to the Constitution and give primacy to fundamental rights. Article 14 ensures equality of law and prohibits invidious discrimination. Arbitrariness or arbitrary exclusion are sworn enemies to equality. Article 15(1) prohibits gender discrimination. Article 15(3) lifts that rigour and permits the State to positively discriminate in favour of women to make special provision, to ameliorate their social, economic and political justice and accords them parity. Article 38 enjoins the State to promote the welfare of the people (obviously men and women alike) by securing social order in which justice, - social, economic and political - shall inform of all the institutions of notional life. Article 39(a) and (b) enjoin that the State policy should be to secure that men and women equally have the right to an adequate means of livelihood and the ownership and control of the material resources of the community are so distributed as best to subserve the common good. Article 38(2) enjoins the State to minimise the inequalities in income and to endeavour to eliminate inequalities in status, facilities and opportunities

not only among individuals but also amongst groups of people. Article 46 accords special protection and enjoins the State to promote with special care the economic and educational interests of the Scheduled Castes and Scheduled Tribes and other weaker sections and to protect them from social injustice and all forms of exploitation. The Preamble to the Constitution charters out the ship of the State to secure social, economic and political justice and equality of opportunity and of status and dignity of person to every one.

7. The General Assembly of the United Nations adopted a Declaration on December 4, 1986 on "The Right to Development" to which India played a crusading role for its adoption and ratified the same. Its preamble cognises that all human rights and fundamental freedoms are indivisible and interdependent. All Nation State are concerned at the existence of serious obstacles to development and complete fulfillment of human beings, denial of civil, political, economic, social and cultural rights. In order to promote development, equal attention should be given to the implementation, promotion and protection of civil, political, economic, social and political rights.

8. Article 1(1) assures right to development - an inalienable human right, by virtue of which every person and all people are entitled to participate in, contribute to, and enjoy economic, social, cultural and political development in which all human rights and fundamental freedoms can be fully realised. Article 6(1) obligates the State to observe all human rights and fundamental freedoms for all without any

discrimination as to race sex, language or religion. Sub-article (2) enjoins that...equal attention and urgent consideration should be given to the implementation, promotion and protection of civil, political, economic, social and political rights. Sub-article (3) thereof enjoins that "State should take steps to eliminate obstacle to development resulting from failure to observe civil and political rights as well as economic, social and cultural rights. Article 8 casts duty on the State to undertake,...all necessary measures for the realisation of right to development and ensure, inter alia, equality of opportunity for all in their access to basic resources...and fair distribution of income. Effective measures should be undertaken to ensure that women have an active role in the development process. Appropriate economic and social reforms should be carried out with a view to eradicate all social injustice.

9. Human rights are derived from the dignity and worth inherent in the human person. Human Rights and fundamental freedom have been reiterated by the Universal Declaration of Human Rights. Democracy, development and respect for human rights and fundamental freedoms are inter-dependent and have mutual reinforcement. The human rights for woman, including girl child are, therefore, inalienable, integral and indivisible part of universal human rights. The full development of personality and fundamental freedoms and equal participation by women in political, social, economic and cultural life are concomitants for national development, social and family stability and growth, culturally, socially and economically. All forms of discrimination on grounds of gender is violative of fundamental freedoms and human rights. Vienna

Convention on the Elimination of all forms of Discrimination Against Women (for short “CEDAW”) was ratified by the U.N.O. on December 18, 1979. The Government of India who was an active participant to CEDAW ratified it on June 19, 1993 and acceded to CEDAW on August 8, 1993 with reservation on Articles 5(e) 16(1) 16(2) and 29 thereof. The Preamble of CEDAW reiterates that discrimination against women, violates the principles of equality of rights and respect for human dignity; is an obstacle to the participation on equal terms with men in the political, social, economic and cultural life of their country; hampers the growth of the personality from society and family and makes it more difficult for the full development of potentialities of women in the service of their countries and of humanity. Poverty of women is a handicap. Establishment of new international economic order based on equality and justice will contribute significantly towards the promotion of equality between men and women etc. Article 1 defines discrimination against women to mean “any distinction, exclusion or restriction made on the basis of sex which has the effect or purpose of impairing or nullifying the recognized enjoyment or exercise by women, irrespective of their marital status, on a basis of equality of men and women, all human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field.” Article 2(b) enjoins the state parties while condemning discrimination against women in all its forms, to pursue, by appropriate means, without delay, elimination of discrimination against women by adopting “appropriate legislative and other measures including sanctions where appropriate, prohibiting all discriminations

against women” to take all appropriate measures including legislation, to modify or abolish existing laws, regulations, customs and practices which constitute discrimination against women. Clause (C) enjoins to ensure legal protection of the rights of women on equal basis with men through constituted national tribunals and other public institutions against any act of discrimination to provide effective protection to women. Article 3 enjoins State parties that it shall take, in all fields, in particular, in the political, social, economic and cultural fields, all appropriate measures including legislation to ensure full development and advancement of women for the purpose of guaranteeing them the exercise and enjoyment of human rights and fundamental freedoms on the basis of equality with men. Article 13 states that “the State parties shall take all appropriate measures to eliminate discrimination against women in other areas of economic and social life in order to ensure, on a basis of equality of men and women”. Article 14 lays emphasis to eliminate discrimination on the problems faced by rural women so as to enable them to play “in the economic survival of their families including their work in the nonmonetized sectors of the economy and shall take... all appropriate measures...” Participation in and benefit from rural development in particular, shall ensure to such women the right to participate in the development programme to organize self groups and cooperatives to obtain equal access to economic opportunities through employment or self-employment etc. Article 15(2) enjoins to accord to women equality with men before the law, in particular, to administer property...”

10. The Parliament has enacted the Protection of Human Rights Act, 1993, Section 2(b) defines human rights to mean “the rights relating to life, liberty, equality and dignity of the individual guaranteed by the Constitution, embodied in the international Conventions and enforceable by courts in India”. Thereby the principles embodied in CEDAW and the concomitant Right to Development became integral parts of the Indian Constitution and the Human Rights Act and became enforceable. Section 12 of Protection of Human Rights Act charges the Commission with duty for proper implementation as well as prevention of violation of the human rights and fundamental freedoms.

11. Article 5(a) of CEDAW to which the Government of India expressed reservation does not stand in its way and in fact Article 2(f) denudes its effect and enjoins to implement Article 2(f) read with its obligation undertaken under Articles 314 and 15 of the Convention vis-a-vis Articles 13 6 and 8 of the Declaration of Right to Development. Though the directive principles and fundamental rights provide the matrix for development of human personality and elimination of discrimination, these conventions add urgency and teeth for immediate implementation. It is, therefore, imperative for the State to eliminate obstacles, prohibit all gender based discriminations as mandated by Articles 14 and 15 of the Constitution of India. By operation of Article 2(f) and other related articles of CEDAW, the State should by appropriate measures including legislation, modify law and abolish gender based discrimination in the existing

laws, regulations, customs and practices which constitute discrimination against women.

12. Article 15(3) of the Constitution of India positively protects such Acts or actions. Article 21 of the Constitution of India reinforces “right to life”. Equality, dignity of person and right to development are inherent rights in every human being. Life in its expanded horizon includes all that give meaning to the person’s life including culture, heritage and tradition with dignity of person. The fulfilment of that heritage in full measure would encompass the right to life. For its meaningfulness and purpose every woman is entitled to elimination of obstacles and discrimination based on gender for human development. Women are entitled to enjoy economic, social, cultural and political rights without discrimination and on footing of equality. Equally, in order to effectuate fundamental duty to develop scientific temper, humanism and the spirit of enquiry and to strive towards excellence in all spheres of individual and collective activities as enjoined in Article 51A(h) and (j) of the constitution of India, not only facilities and opportunities are to be provided for, but also all forms of gender based discrimination should be eliminated. It is a mandate to the State to do these acts. Property is one of the important endowments or natural assets to accord opportunity, source to develop personality, to be independent, right to equal status and dignity of person. Therefore, the State should create conditions and facilities conducive for women to realise the right to economic development including social and cultural rights.

13. Bharat Ratna Dr. B.R. Ambedkar stated, on the floor of the Constituent Assembly that in future both the legislature and the executive should not pay mere lip service to the directive principles but they should be made the bastion of all executive and legislative action. Legislative and executive actions must be conformable to, and effectuation of the fundamental rights guaranteed in Part III and the directive principles enshrined in part IV and the Preamble of the Constitution which constitute conscience of the Constitution. Covenants of the United Nation add impetus and urgency to eliminate gender based obstacles and discrimination. Legislative action should be devised suitably to constitute economic empowerment of women in socio-economic restructure for establishing egalitarian social order. Law is an instrument of social change as well as the defender for social change. Article 2(e) of CEDAW enjoins this Court to breath life into the dry bones of the Constitution, international Conventions and the Protection of Human Rights Act, to prevent gender based discrimination and to effectuate rights Act to life including empowerment of economic, social and cultural rights.

14. As per the U.N. Report 1980 “woman constitute half the world population, perform nearly two thirds of work hours, receive one tenth of the world’s income and own less than one hundredth per cent of world’s property”. Half of the Indian population too are women. Women have always been discriminated and have suffered and are suffering discrimination in silence. Self-sacrifice and self-denial are their nobility and fortitude and yet they have been subjected to all inequities, indignities, inequality and discrimination.

Articles 13 14 15 and 16 of Constitution of India and other related articles prohibit discrimination on the ground of sex. Social and economic democracy is the cornerstone for success of political democracy. The Scheduled Castes, Scheduled Tribes and women, from time immemorial, suffered discrimination and social inequalities and made them to accept their ascribed social status. Among women, the tribal women are the lowest of the low. It is mandatory, therefore, to render them socio-economic justice so as to ensure their dignity of person, so that they be brought into the mainstream of the national life. We are conscious that in Article 25 which defines Hindus, Scheduled Tribes were not brought within its fold to protect their customs and identity. We keep it at the back of our mind.

15. Agricultural land is the foundation of a sense of security and freedom from fear. Assured possession is a lasting road for development, intellectual, cultural and moral and also for peace and harmony. Agriculture is the only sources of livelihood for the tribes, apart from collection and sale of minor forest produce. Land is their most important natural asset and imperishable endowment from which the tribals derive their sustenance, social status, a permanent place of abode and work. The Scheduled Tribes predominantly live in Andhra Pradesh, Maharashtra, Bihar, Gujarat, Orissa, Madhya Pradesh, Rajasthan and North Eastern States, though they spread to other States sparsely.

16. The empirical study by Anthropologists and Sociologists reveals that the customary laws of the tribes are not uniform throughout Bharat. Even in respect of intestate succession,

they are not uniform. Though the customs of the tribes have been elevated to the status of law, obviously recognised by the founding fathers in Article 13(3)(a) of the Constitution, yet it is essential that the customs inconsistent with or repugnant to constitutional scheme must always yield place to fundamental rights. In *Sant Ram v. Labh Singh*, [1965] 7 SCR 756, this Court held that the, custom as such is effected by Part III dealing with fundamental rights. In *Baku Ram v. Baijnath Singh*, [1962] Supp. 3 SCR 724, it was held that law of pre-emption based on vicinage is void. In *G. Dasaratha Rama Rao* [1961] 2SCR931, this Court held that discrimination based on the ground of descent only offends Article 16(2).

17. In India agricultural land forms the bulk of the property. In most of the tenancy laws, women have been denied the right to succession to agricultural lands. The discernible reason in support thereof appears to be to maintain unity of the family and to prevent fragmentation of agricultural holdings or diversion of tenancy right. In *Atma Prakash v. State of Haryana*, [1986]1SCR399, testing the validity of Section 15 of the Punjab Pre-emption Act, 1930, for the aforesaid reasons, this Court held that the right of pre-emption based on consanguinity is a relic of the feudal past. It is totally inconsistent with the constitutional scheme. It is inconsistent with modern ideas. The reasons which justified its recognition, quarter of a century ago, namely, the preservation of the integrity of rural society, the unity of family life and the agnatic theory of succession, are today irrelevant. Classification on the basis of unity and integrity of either the village community or the family or on the basis of the agnatic theory of succession,

cannot be upheld. Due to march of history the tribal loyalties have disappeared and family ties have been weakened or broken and the traditional rural family oriented society is permissible. Accordingly Section 15(1), Clauses (1) to (3), violates fundamental rights and were declared ultra vires.

18. When male member has the right to seek partition and at his behest, fragmentation of family holding is effected, why not the right to inheritance/succession be given to a female? On agnatic theory, she gets a shadow, but not substance. Right to equality and social justice is an illusion. The denial is absolutely inconsistent with public policy, unfair, unjust and unconscionable. The reason of fragmentation of holding or division of tenancy right would hardly be a ground to discriminate against a woman from her right to inherit the property of the parent or husband. In *V. Tulasamma v. Sesha Reddy*, AIR (1977) SC 1944, this Court, cognizant to equality in intestate succession by Hindu woman, held that after the advent to independence old human values assumed new complex; women need emancipation; new social order need to be set up giving women equality and place of honour; abolition of discrimination based on equal right to succession is the prime need of the hour and temper of the times. In *Chiranjeev Lal v. Union of India* : [1950]1SCR869, this Court held that the guarantee against the denial of equal protection of the law does not mean that identically the same rule of law should be made applicable to all persons within the territory of India in spite of difference in circumstances or conditions. It means that there should be no discrimination between one person and another. It is with regard to the subject matter of the legislation. In

State of West Bengal v. Anwar Ali Sarkar : [1952]1SCR869 , it was held that the prohibition under Article 14 is to secure all persons against arbitrary laws as well as arbitrary application of laws. It applies to procedural and substantive law. Menaka Gandhi v. Union of India, [1978]2SCR621 , reiterates its creed on grounds of justice, equity and fairness lest law becomes void, oppressive, unjust and unfair.

19. Eugene Smith in his Indian Constitution has stated that secularisation of law is essential to the emergence of modern Indian State, foundation of which stands on twin principles of democracy and secularism. He further stated that “the existence of different personal law contradicts the principles of non-discrimination by the State”. Non-discrimination is based on the philosophy of the individual, not the group, as the focal point and the basic unit of the nation. The civilisation, culture, custom, usage, religion and law are founded upon the community life for man’s well being. The man will obey the command of the community by consent. The law formulates the principals to maintain the order in the society to avoid friction. Democracy brings about bloodless revolution in the social order through rule of law. Therefore, when women are discriminated only on the ground of sex in the matter of intestate succession to the estate of the parent or husband, the basis question is whether it is founded on intelligible differentia and bears reasonable or rational relation or whether the discrimination is just and fair. Our answer is no and emphatically no.

20. In *State of Bihar v. Kameswar Singh* [1952]1SCR889, this Court had held that in judging the reasonableness in imposing restrictions Court would take into consideration public purpose in Article 39. In *Kasturi Devi v. State of Karnataka*, : [1980]3SCR1338, this Court held that if law is made to further socio-economic justice it is prima facie reasonable and in public interest. In other words, if it is in negation, it is unconstitutional. In *Chandra Bhagvan Boarding House v. State of Mysore*, (1970)IILLJ403SC, it was held that “the mandate of the Constitution is to build a welfare society and aspirations aroused by the Constitution will be belied if the minimum needs of the lowest of our citizen are not met”. In *Narendar Prasad v. State of Gujarat*, [1975]2SCR317, it was held that no right in an organised society can be absolute. Enjoyment of one’s rights must be consistent with the enjoyment of the rights of others. In a free play of social forces, it is not possible to bring about a voluntary harmony; the State has to step in to set right the imbalance and the directive principles, though not enforceable; mandate of Article 38, to restructure social and economic democracy, enjoins to eliminate obstacles and prohibit discrimination in intestate succession based on sex.

21. In *Thota Sesharathamma v. Thota Manikyamma* : [1991]3SCR717, construing Section 14 of the Hindu Succession Act 1956 and its revolutionary effect on the right to ownership of the land by Hindu woman, this Court held that the validity of Section 14(1) drawn from the pre-existing limited estate held by a Hindu woman must be tested on the anvil of socioeconomic justice, equality of status and by overseeing whether it would sub-serve the constitutional

animation. Article 15(3) relieves the State from the bondage of Articles 14 and 15(1) and charges it to make special provision to accord socio-economic equality to woman.

22. The Hindu Succession Act revolutionised the status of a Hindu female and used Section 14(1) as a tool to undo past injustice to elevate her to equal status with dignity of person on par with man and removed all fetters of Hindu woman's limited estate which blossomed into full ownership. By legislative fiat the discrimination in intestate succession meted out to woman was done away with. The Court should, therefore, endeavour to find out whether the disposition clauses in the instrument will elongate the animation of Section 14 and would permeate the aforestated constitutional conscience to relieve the Hindu female from the Sashtric bondage of limited estate. Articles 14 15 and 16 frown upon discrimination on any ground and enjoin the State to make special provisions in favour of the woman to remedy past injustice and to advance their socio-economic and political status. Economic necessity is not a sanctuary to abuse woman's person. Section 14, therefore, gives to every Hindu woman full ownership of the property irrespective of the time when the acquisition was made, namely, whether it was before or after the Act had come into force, provided, she was in possession of the property. Discrimination on the ground of sex in matters of public employment was buried fathom deep and is now a relic of the past by decisions of this Court. In *C.B. Methamma v. Union of India*, [1980]1SCR668, *Air India v. Nagesh Mirza*, (1981)IILLJ314SC, and a host of other decisions are in that path. True that Clauses (h) and (j) of para

3 of Schedule 6 of the Constitution give power to District or Regional Councils in North Eastern States to alter law relating to inheritance and customs; they too are bound by the law declared under Article 141 of the Constitution to be consistent with Articles 15(3) 14 and Preamble of the Constitution.

23. The public policy and constitutional philosophy envisaged under Articles 38 39 46 and 15(1) & (3) and 14 is to accord social and economic democracy to women as assured in the preamble of the Constitution. They constitute core foundation for economic empowerment and social justice to women for stability of political democracy. In other words, they frown upon gender discrimination and aim at elimination of obstacles to enjoy social, economic, political and cultural rights on equal footing. Law is a living organism and its utility depends on its vitality and ability to serve as sustaining pillar of society. Contours of law in an evolving society must constantly keep changing as civilization and culture advances. The customs and mores must undergo change with march of time. Justice to the individual is one of the highest interests of the democratic State. Judiciary cannot protect the interests of the common man unless it would redefine the protections of the Constitution and the common law. If law is to adapt itself to the needs of the changing society, it must be flexible and adaptable.

24. Law is the manifestation of principles of justice, equity and good conscience. Rule of law should establish a uniform pattern for harmonious existence in a society where every individual would exercise his rights to his best advantage to achieve excellence, subject to protective discrimination. The

best advantage of one person could be the worst disadvantage to another. Law steps in to iron out such creases and ensures equality of protection to individuals as well as group liberties. Man's status is a creature of substantive as well as procedural law to which legal incidents would attach. Justice, equality and fraternity are trinity for social and economic equality. Therefore, law is a foundation on which the potential of the society stands. In *Sheikriyammada Nalla Koya v. Administrator, Union Territory of Laccadives*, AIR1967Ker259, K.K. Mathew, J., as he then was, held that customs which are immoral are opposed to public policy, can neither be recognised nor be enforced. Its angulations and perspectives were stated by the learned Judge thus :

It is admitted that the custom must not be unreasonable or opposed to public policy. But the question is unreasonable to whom? Is a custom which appears unreasonable to the Judge be adjudged so or should he be guided by the prevailing public opinion of the community in the place where the custom prevails? It has been said that the Judge should not consult his own standards or predilections but those of the dominant opinion at the given moment, and that in arriving at the decision, the Judge should consider the social consequences of the custom especially in the light of the factual evidence available as to its probable consequences. A judge may not set himself in opposition to a custom which is fully accepted by the community.

But I think, that the Judge should not follow merely the mass opinion when it is clearly in error, but on the contrary he should direct it, not by laying down his own personal and

isolated conceptions but by resting upon the opinion of the healthy elements of the population, whose guardians of an ancient tradition, which has proved itself, and which serves to inspire not only those of a conservative spirit but also those who desire in a loyal and disinterested spirit to make radical alterations to the organisations of existing society. Thus, the judge is not bound to heed even to the clearly held opinion of the greater majority of the community if he is satisfied that opinion is abhorrent to right thinking people. In other words, the judge would consult not his personal inclinations but the sense and needs and the mores of the community in a spirit of impartiality.

25. As in other parts of the country, in Bihar, most of the tribes like Munda, Oraom and Ho practised shifting cultivation along with the settled cultivation as it has not been popular with the tribe to combine various modern productive technology. But, by passage of time, when the land has become scarce, they too have settled down to ploughing cultivation on fixed tenures. Due to diverse reasons which it is not necessary for the purpose of this case to elaborate, major part of the land slipped out from their holdings.

26. Notable researchers, who spent their valuable time living among the tribals, are W.G. Archer, Dy. Commissioner, Santhal Pargana during 1939-40, Prof. Christopher Von Furer-Haimendorf, a German Sociologist appointed by Nizam of Hyderabad in 1940 who spent his life with the tribals in Nizam State in Andhra Pradesh as well as Arunachal Pradesh. Portrayed life style and customs operating among the Tribals,

Haimendorf says in his "Tribes in India, the Struggle for Survival" that Chenchoo women, tribals in Andhra Pradesh, enjoy equal status with men. They can own property, but they cannot inherit any substantial property. They abide by the decision of their husbands. They are equal companions with men doing as much, if not more, of the work in maintaining the common household. She and her husband, are joint possessors of the family property insofar as it is acquired by the daily labour. In South India, in particular Andhra Pradesh, after the grant of ryotwari pattas to the tillers of the soil including the tribes, they acquire permanent right to fixed land holdings and there does not exist any discrimination in matter of intestate succession between man and woman. "Issues in Tribal Development" by Prof P. Ramaiah of Kakatiya University, Andhra Pradesh, at page 9 it is stated that "hereditary rights rule the property distribution arrangements. If a man dies, his wife and sons get equal share of the property. Widow gets her husband's share from the property". At page 14 he has further stated, "land is a part of his spiritual as well as economic heritage."

27. Dr. L.P. Vidyarthi in his Tribal Development Act and Its Administration, published by Concept Publishing Co., (1986 Edn.), has stated at page 310 that the element of certainty and definiteness of customs in the tribal society is lacking because of divergent customs on the same issue adopted by different sections of the tribes. The element of antiquity is also of little aid in that behalf. In Tribal Society, custom is generally a product of dominating mind, nurtured in the belief of supernatural forces and taboos than a source of spontaneous

growth. It is mostly based upon the totem and taboos evolved in a particular family having the force of the family law. The custom in the tribal society is much influenced by the instinct of possessive authority and not on the basis of sociological origin but it has been carried, generation after generation, as being the family law. No scientific explanations are available, but if the custom is examined in detail it is found deep rooted in the element of totem and taboos. That is the reason that majority of the customs prevailing in the tribal society could not attain the status of law and there is no legal validity except in the cases of inheritance and some family laws like adoption and marriage. If the working and life of the tribal societies is minutely observed, it will be found that from morning till night, with the birth of a baby till death, agricultural operations are the sole occupation for livelihood; all are tagged, linked and based upon certain conduct and behavior reflecting, nearly custom and it may be said that entire tribal society is based upon the rigid rules of custom and any society still untouched by the influence of urbanisation exists in the phenomenon of religion mixed with magic custom.

28. Archer in his "Tribal Law and Justice - The Santhal View of Woman" has stated in 1939-40 that the unmarried daughter has ordinarily no right at all in land. She cannot ask for partition and if her brothers separate, some land may be kept by her father or brother for financing her marriage and maintaining her, but that is to fulfill their duties towards her and does not confer upon her any rights. At the partition, she is given no share. She has a right to maintenance. If her father or brothers or father's agnates are against discharging their duties, she

can claim enough land for keeping her till marriage. She can acquire the land of her own which is her absolute property. If her father dies leaving no other heirs or agnates, she will get his land until she is married. If she is married, her sisters will share equally with her. If she has no sisters, the property goes to the village community. With regard to married daughters, he stated, that two to three bighas of land would be given as "Stridhan" at the time of marriage. In respect of that property, right of the father, brother or agnates are extinguished. The property given is her absolute property. Her children inherit her property. In their absence, it passes on to the father, brother, mother or her male agnates. With regard to the right of married woman, at page 156, he has stated that at partition the wife and children get one share and the husband gets one share. He has given instances of one Safal Handsdeak of Tharia. With regard to the right to the widow, she is like a Hindu widow having right to maintenance. If her husband died while he was joint holder with his brothers she will continue to live in the family and the situation will not differ materially from what it was in her husband's lifetime. Her right to maintenance will continue and if her husband's family neglects her without cause, she can demand sufficient land to keep herself. If there is a complete family partition the widow and her children will get the share which would have gone to her husband had he been alive. She gets life estate like Hindu widow's estate, "The Mundras and their Courts" by Sarad Chandra Roy, 14th Ed. at p. 244 to 451 (1915). The Origins of Chotanagpur by Sarad Chandra Roy at p. 369 to 370 (1915 Ed.) dealt with inheritance on the same lines. So they need no reiteration.

29. In *Doman Sahu v. Buka* AIR1931Pat198, though Mundas and Mundari women in Ranchi District are akin to other tribals, since they regard themselves as Hindus, it was held that Hindu law of succession would apply to them. In *Ganesh Matho v. Shib Charan* AIR1931Pat305, Kurmi Mahtons of Chota Nagpur adopted Hindu religion. The Division Bench held that it must be presumed that ordinarily they are governed by Hindu law in matters of inheritance and succession except insofar as parties prove any custom obtaining among them which is at variance with it. It was held that Mitakshara Hindu law of succession was applicable to them. They did not prove any special custom alleged by them. In "Law Enforcement in Tribal Areas" by S.K. Ghosh, Director, Law Institute, Calcutta, published by Ashish Publishing House at page 89 it is stated that though the Hindu Succession Act 1956, Hindu Marriage Act 1954, Hindu Adoption and Maintenance Act 1956 did not apply, "because of their contacts with other advanced societies some changes have taken place among tribes in the observance of marriage, divorce, etc. In the event of any litigation, the tribal courts are unable to reach a definite conclusion as these customary codes as they are unwritten code. Therefore, it was recommended that a proper study of customary codes of the tribals should be made and the same may be codified property." "Some State governments have already action to codify the personal laws of important tribal groups. These laws can be gradually dispensed with or repealed when the tribals are fully assimilated with the main body of our national community." At pages 90-91 he explained the customs, among the Bhils living in Madhya Pradesh and Rajasthan who constitute largest tribal

group in the country, of a marriage by elopement or capture or by arrangement. They are very truthful people and they do not hesitate to speak against the culprits, though they may happen to be kith and kin.

30. The Garos, the Khasis and the Jaintias are the main inhabitants of Meghalaya State. They observe monogamy. The daughter (Nokma Dongipa Mechik) descendant from the ancestor is chosen for marriage for common ancestors. The husband goes and lives with the wife which in Hindu law known as Illatom son-in-law. The custom is that the senior-most household of the area maintains a line of inheritance from the mother to the chosen daughter and the husband of the inheritress mother, popularly known as Nokma is accepted as the constitutional head of the A'Khing. The lands are held in common ownership of the machong, the usufruct rights are granted to all the residents of the A'Khing. Mikirs, a populous tribe in Meghalaya is patrilineal. The sons inherit property and it is divided among them. In the absence of male heirs, the nearest agnate inherits that land. The daughters have been excluded. In the absence of sons and brothers, the widow retains the property provided she marries one of her husband's clan. The Gonds in Andhra Pradesh, Madhya Pradesh, Bihar and Orissa observe monogamy. At page 139, he has stated that the custom is heritable and transferable and right of inheritance is patrilineal. The male heirs would succeed and the females are completely excluded. The sons take equal shares, but among the Apa Tanis and the Nactes, the system of primogeniture prevails, i.e. the eldest son only inherits the father's landed property which has been softened

among Apa Tanis. In Manipur, the custom among Thandon Kukis is that the property is of the Chief of the village. The practice is of shifting cultivation and the Chief distributes the plots among the groups. The system of inheritance among the Naga groups is that at the death of the last owner, the succession is by matrilineal and the rules of primogeniture prevails among them. The practice is that during his life-time the father gives some land to the younger brother as well.

31. In a report on Codification of Customary Laws and Inheritance Laws in the Tribal Societies of Orissa by Dr. Bhupinder Singh and Dr. Neeti Mahanti of Jigyansu Tribal Research center, sponsored by the Ministry of Welfare, Government of India and submitted on May 19, 1993, it is stated at page 1 in last paragraph of his preface that to reduce tribal customary laws into formal, technical, straight-jacket frame is likely to rob it of its vitality and strength. It will expose the innocent, gullible tribals to the machinations of touts, middle-men etc. The customs which differ, in whatever magnitude, from one community to other would help exploitation of the tribals by application of the traditional law. Its relevance, freshness and vitality to a considerable extent, would get weakened. Whims and fancies in dispensation of justice would be avoided. They concluded that “we must proceed deliberately and wirely.” In chapter III at page 8 it is stated thus :

Customary law refers to rules that are transmitted from generation to generation through social inheritance. In a close-knit simple tribal society, the people themselves want to

live according to customs backed by social sanctions; to save them from objection and social ridicule of the society.

At page 9, it is stated that “the major areas of interest for a tribal community is inheritance of land, forest rights and social customs like marriage, divorce, desertion, child support, death, birth etc.” Santhals, one of the largest tribes of India Spread Over West Bengal, Orissa, Bihar and parts of Assam and Tripura. It is observed at page 30 on the “Chapter Succession to Property” that the succession is in favour of the son, in his absence to the daughter, in their absence to the relative. Even among Santhals, it is not strictly patrilineal. If they have no son, succession is open to the daughter and if they have neither son nor daughter then to the relative of the family. Some people among them preferred succession among son and daughter equally. On husband’s demise, the widow gets a share in the property, as life-estate. In their conclusion at page 37, they have stated that the Santhals and Saora tribals practice patrilineal as a mode of succession. At pages 38-43, after detailed discussion it is stated that though there is considerable “on-going acculturation process”, the tribes have not completely discarded the customs. At page 45, it was mentioned that though Santhal society is predominantly patrilineal, they do not strictly adhere to it. The inheritance in favour of the daughter has been softened but Saora society is conservative and less exposed to winds of change. They preferred sons to daughters only if there is no son in the family and other relatives of the family. However, the widow inherits the estate of her husband. The working group of the 7th Five Year Plan on the tribal development recommended

codification of customary laws prevalent among the tribals in its report at pages 323-24 of the Planning Commission documents. Dr. B.L. Maharde, a bureaucrat of Rajasthan Civil Services, in his "history and Culture of Girjans" in the State of Rajasthan, narrated the practices of tribals at page 84 stating that the property after the death of the father is equally divided among the sons by the village elders of Panchayat and in case of dispute, by the private Panchayat. The youngest son, since he lives with his father, is entitled to have an extra share. The grandson of his pre-deceased son is entitled to an equal share. Daughters are not entitled to inherit their fathers' property but they can share the animal wealth. The son-in-law is entitled to equal share. The widow has right to property which she loses on her remarriage. We do not get any material as regards succession among the tribals in Madhya Pradesh, Maharashtra and Gujarat and in view of the general trend we assume that in those States also patrilineal succession would be in vogue.

32. It would thus be seen that the customs among the Scheduled Tribes, vary from tribe to tribe and region to region, based upon the established practice prevailing in the respective regions and among particular tribes. Therefore, it would be difficult to decide, without acceptable material among each tribe, whether customary succession is valid, certain, ancient and consistent and whether it has acquired the status of law. However, as noticed above, customs are prevalent and being followed among the tribes in matters of succession and inheritance apart from other customs like marriage, divorce etc. Customs became part of the tribal

laws as a guide to their attitude and practice in their social life and not a final definition of law. They are accepted as set of principles and are being applied when succession is open. They have accordingly nearly acquired the status of law. Except in Meghalaya, throughout the country patrilineal succession is being followed according to the unwritten code of customs. Like in Hindu law, they prefer son to the daughter and in his absence daughter succeeds to the estate as limited owner. Widow also gets only limited estate. More than 80 per cent of the population is still below poverty line and they did not come at par with civilized sections of the non-tribals. Under these circumstances, it is not desirable to grant general declaration that the custom of inheritance offends Articles 14 15 and 21 of the Constitution. Each case must be examined and decided as and when full facts are placed before the Court.

33. Section 2(2) of the Hindu Succession Act, similar to Hindu Marriage Act, Hindu Adoption and Maintenance Act, excludes applicability of customs to the Scheduled Tribes as defined by Clause (25) of Article 366 of the Constitution unless the Central Government, by notification in the official Gazette otherwise directs. Explanation 11 to Article 25 does not include them as Hindus. The Chotanagpur Tenancy Act and the Santhal Parganas Tenancy (Supplementary Provisions) Act, 1949, the Bihar Scheduled Areas Regulation, 1969 intend to protect the lands of the tribals and their restoration to them. Sections 7 and 8 of the Act regulate the right of Khuntketti Raiyats. By operation of customary inheritance, the son and lineal descendants inherit the lands held by the tribes for the purpose of cultivation by himself or male members

of his family. Section 76 read with Section 6 gives effect to custom, usage or customary right provided thereunder not inconsistent with or not necessarily modified or abolished by the provisions of the Act. The law exists to serve the needs of the society which is governed by it. If the law is to play its allotted role of serving the needs of the society, it must reflect the ideas and ideologies of that society. As stated earlier, it must keep pace with march of time with the heart beats of the society and with the needs and aspirations of the people. As seen, even among the tribals in Bihar, the customs have now undergone advancement. They prefer both son and daughter alike though not uniformly. Succession is patrilineal; Santhals practically adapted the Mitakashara Hindu law of succession. The Hindu Succession Act modified the preexisting law and intestate succession gives right of succession to Hindu female. Section 14(1) has enlarged limited estate known to Sastric law into absolute right of property held by a female. In the Law of intestate and Testamentary Succession, (1991) Ed. at page 21, Prof. Diwan has stated that Section 2(2) does not mean that Scheduled Tribes which were, prior to the codified Hindu Law, governed by Hindu law will not, now, be governed by the Hindu law. If before codification, any Scheduled Tribe was governed by Hindu law, it will continue to be governed by it. However, it would be uncodified Hindu law that would apply to them. It is settled law that the procedural or substantive law which offend the fundamental right are void. Sections 7 and 8 of the Act exclude woman tribals from inheritance to the Khuntkutti raiyati rights solely on the basis of sex and confine succession and inheritance among male descendants only.

In *Maneka Gandhi v. Union of India*, MANU/SC/0133/1978 : [1978]2SCR621 , this Court held that reasonableness is an essential element of equality; non-arbitrariness pervades Article 14. The Court must consider the direct and inevitable effect of the action in adjudging whether the State action offends the fundamental right of the individual. This Court sustained the validity of Passport Act by reading down the statutory provisions. Justice, equity and good conscience are integral part of equality under Article 14 of the Constitution which is the genus and Article 15 is its specie. In *Harbans Singh v. Guranchatta Singh*, [1991]1SCR614 , this Court held that though the Transfer of Property Act did not per se apply to the State of Punjab at the relevant time, the general principles contained therein being consistent with justice, equity and good conscience would apply.

34. Under the General Clauses Act, male includes female. In *Jitmohan Singh Munda v. Ramratan Singh*, (1958) Bih LJR 373, interpreting *Mundari Khunt Kattidari* widow's right to remain in possession of *Mundari Khunt Kattidari* tenancy, after the death of her husband, the Bihar High Court held that the widow would have life estate in tenancy rights as they have adopted Hindu law of succession. There is no reference whatsoever to the exclusion of the widow of the particular *Mundari*. Therefore, in respect of *Khunt Kattidari* tenancy, the widow would be entitled to possession and Section 8 is not inconsistent with that position. In *Jani Bai v. State of Rajasthan* MANU/RH/0016/1989, interpreting *Rajasthan Colonisation Act, 1954*, the Division Bench held that male descendants would include female descendants and the adult

son and the daughter should be treated alike both being equally eligible for allotment under the rules under that Act. By operation of Section 13(1) of General Clauses Act, males include females, of course, subject to statutory scheme which by now is subject to the Constitution. In Sections 7 and 8 of the Act if the words “male descendants” are read to include female descendants, the daughter, married or unmarried and the widow are entitled to succeed to the estate of the father, husband or son. Scheduled Tribes are as much citizens as others and are entitled to equality. Sections 7 and 8 accordingly read down and so on that premise are valid.

35. The question then is: whether the interpretation is consistent with Sub-section (2) of Section 4 of the Hindu Succession Act, 1956? Entry 7 of List III of Seventh Schedule to the Government of India Act 1935 provided “Wills, intestacy and succession save as regards agricultural land.” Entry 5 of the Concurrent List in the Seventh Schedule of the Constitution omitted the words “save as regards agricultural lands” and provided merely “intestacy and succession; joint family and partition”. In *Basavani Gouda v. Smt. Channabasawwa* AIR (1971) Mys 151, a Division Bench of Mysore High Court in paragraph 11 had held that Entry 5 of the Concurrent List of the Seventh Schedule would apply to succession of agricultural lands under Hindu Succession Act. It followed the Judgment of *Amar Singh v. Baldev Singh*, AIR (1960) Pun 666 (Full Bench) in its support. The same view was taken by a Division Bench of the Orissa High Court, in a judgment rendered by B. Jugannadha Das, J., as he then was, in *Laxmi Debi v. S.K. Panda*, AIR1957Ori1 .

36. In *Gopi Chand v. Bhagwani Devi* AIR (1964) P&H 272, a Division Bench of Punjab High Court had held that Sub-section (2) of Section 4 of Hindu Succession Act does not apply to the Delhi Land Reforms Act conferring permanent tenancy rights of Bhumidar or asami, laid down in Section 50 of that Act. If it is otherwise, it would be inconsistent with Section 4(1) of the Hindu Succession Act and would be void. In *Phulmani Dibya v. State of Orissa*, AIR1974Ori135, a Full Bench has held that exclusion of woman from succession to any Brahmottar grant discriminates against woman under Article 15 on ground of sex and that, therefore, became void offending Article 15(1). In *Tokha v. Smt. Saman*, MANU/PH/0192/1972, a single Judge of that Court held that the occupancy rights held by a limited owner (widow) before the Hindu Succession Act had come into force, enlarged as absolute property under the Punjab Occupancy Tenants (Vesting of Proprietary Rights) Act and thereby she became an absolute owner and was entitled to gift over that land as an absolute owner which was upheld.

37. In *Mayne's Hindu Law and Usage* (13th Ed.), revised by Justice A, Kuppaswami, commenting on Sub-section (2) of Section 4 of Hindu Succession Act, in paragraph 17 at page 960, it is observed that the legislature can always provide that the devolution of tenancy rights shall be dependent upon personal law, i.e., Hindu Succession Act. The legislature can also lay down that in certain circumstances there would be one kind of succession and in different circumstances the holding shall devolve on different persons. Devolution in the case of a Bhumidari under the Uttar Pradesh Zamindari Abolition and Land Reforms Act, 1950, is not affected by Section 14 of the

Hindu Succession Act as tenures created by the Uttar Pradesh did not create proprietary interest but only tenancy right. In *Bajaya v. Gopaikabai*, [1978]3SCR561, a Bench of three Judges of this Court held that Bhumiswami and Bhumidari rights are two classes of tenure-holders of lands paying land revenue to the State and are governed by the provisions of the Hindu Succession Act. The tenancy rights having been separately dealt with by the Madhya Pradesh Land Revenue Code, the devolution of the rights of an ordinary tenancy and an occupancy tenant are in accordance with the personal law of the deceased tenant.

38. Sub-section 2 of Section 4 of the Hindu Succession Act, to remove any doubts, has declared that the Act shall not be deemed to affect the provisions of any law in force providing for (i) preventions of fragmentation of agricultural holdings; (ii) for the fixation of ceiling; and (iii) for the devolution of tenancy rights in respect of such holdings. It is the policy of the legislature that with a view to distribute the surplus land ceiling on agricultural land has been prescribed so that the surplus land would be distributed to the landless persons etc. Therefore, the operation of such law was excluded from the purview of the Hindu Succession Act. This Court in *Smt. Sooraja v. SDO, Rehli* AIR1995SC872, has upheld the ceiling law and held that married daughters are not entitled to intestate succession of the father nor a separate holding since the definition of "family" did not include married daughter. The devolution of the tenancy rights are governed by Entry 18 to the List II of the Seventh Schedule. Therefore, the Hindu Succession Act to that extent stands excluded. As regards the

prevention of fragmentation of agricultural land, it is already held that if at the instance of sons the agricultural lands are divisible and each son is entitled to hold and enjoy his share separately, daughters also would be entitled to a separate share at a partition and enjoyment therein. The fragmentation in that behalf, therefore, should not stand an impediment to the daughter's claiming an intestate succession and to claim a share in the agricultural lands. The Hindu Succession Act regulates succession of agricultural land and the word 'property' in Sections 6 to 8 14 and 15 and other sections in that Act would include agricultural land. Thus considered the operation of Sub-section (1) of Section 4 will have an overriding effect for Hindu female claiming parity with Hindu male for succession to the agricultural lands held by the father, mother, etc., and Sub-section (2) does not stand an impediment for such a right of devolution.

39. The reason assigned by the State level committee is that permitting succession to the female would fragment the holding and in the case of inter-caste marriage or marriage outside the tribe, the non-tribals or outsiders would enter into their community to take away their lands. There is no prohibition for a son to claim partition and to take his share of the property at the partition. If fragmentation at his instance is permissible under law, why the daughter/widow is denied inheritance and succession on par with son? In Kerala State, the Hindu Succession Act, 1956 was modified in relation to its application to the State of Kerala, by amendment of Devasthanam Properties (Admission of Temporary Management and Control and Hindu Succession) (Amendment) Act, 1958 and of the

(Kullaiamma Thumporan Korilakam Society Partition) Act, 1961. Kerala Hindu Joint Family Abolition Act, 1975 brought about change bringing female into the fold for succession per capita. Equally, the Hindu Succession (A.P. Amendment) Act, 13 of 1986, the Andhra Pradesh Legislature took lead and amended Section 6 of the Parent Hindu Succession Act and Section 29A conferred on the unmarried daughter the status of co-parcener by birth and has given her right to claim partition and equal share along with the sons. In the event of sale by the daughter of the property obtained at the partition Section 29C gives right to male heirs to purchase the property on payment of the consideration. In the event of disagreement on the consideration, the Court having the jurisdiction is given power to determine such consideration. In the event of non-payment by male heirs, the right has been given to the female heir to sell the property to outsiders. Karnataka and Maharashtra legislatures have followed the suit and suitably amended the Hindu Succession Act, 1956.

40. Throughout the country, the respective State Laws prohibit sale of all lands in tribal areas to non-tribals, restoration thereof to the tribals in case of violation of law and permission of the competent authority for alienation is a must and mandatory and non-compliance renders the sale void. The Acts referred to hereinbefore prevailing in Bihar State expressly prohibit the sale of the lands by the tribals to the non-tribals and also direct restoration or recommendation by equivalent lands to the tribals. Therefore, if the female heirs intend to alienate their lands to non-tribals, the Acts would operate as a check on their action. In the event of any need for alienation, by

a tribal female, it would be only subject to the operation of these laws and the first offer should be given to the brothers or agnates. In the event of their refusal or unwillingness, sale would be made to other tribals. In the event of a disagreement on consideration, the civil court of original jurisdiction should determine the same which would be binding in the partition. In the event of their unwillingness to purchase the same, subject to the permission of the competent officer, female tribal may sell the land to tribals or non-tribals. Therefore, the apprehension expressed by the State-level committee is unfounded.

41. The Christians in India are governed by the Indian Succession Act, 1925. It is stated that by operation of Section 1 notification issued under the Government of India Act of 1935, the operation thereof stood excluded to the tribal Christians residing in the State of Bihar. There is no such prohibition in other States. Even otherwise, though the principles of Indian Succession Act are strictly inapplicable, the general principles therein being consistent with justice, equity and good conscience should equally be applicable to the tribal Christians of the Bihar State.

42. I would hold that the provisions of Hindu Succession Act, 1956 and the Indian Succession Act, 1925 though in terms, would not apply to the Scheduled Tribes, the general principles contained therein being consistent with justice, equity, fairness, justness and good conscience would apply to them. Accordingly I hold that the Scheduled Tribe women would succeed to the estate of their parent, brother, husband, as heirs by intestate

succession and inherit the property with equal share with male heir with absolute rights as per the general principles of Hindu Succession Act, 1956, as amended and interpreted by this Court and equally of the Indian Succession Act to tribal Christian. However, the right of alienation will be subject to the relevant provisions like the Act, the Bihar Scheduled Areas Regulation, 1969, Santhals (Amendment) Act, 1958, Santhal Parganas Tenancy (Supplementary Provisions) Act, 1949 as amended from time to time etc. They would be applicable to them and subject to the conditions mentioned therein. In case the tribal woman intends to alienate the land, subject to obtaining appropriate permission from the competent authority under the appropriate Act, she should first offer the land for sale to the brother or in his absence to any male lineal descendant of the family and the sale will be in terms of mutually agreed consideration and other terms etc. In case of any disagreement on consideration, the consideration shall be determined on an application filed by either party before the competent civil court of original jurisdiction over the area in which the land is situated and the decision of the civil court after adduction of evidence and consideration thereof, shall be final and binding on the parties. In case the brother or lineal descendent is not willing to purchase either by mutual agreement or as per the price settled by the civil court, the female tribal woman shall be entitled to alienate the land to the non-tribal but subject to the provisions: of the appropriate Act.

43. The writ petitions are accordingly allowed and rule nisi is made absolute. The interim direction given for the protection

of the petitioner Nos. 2 and 3 in the first writ petition would continue until they voluntarily seek its withdrawal or modification in writing made to the District Superintendent of Police and an order in that behalf is passed and communicated to them.

44. In the circumstances, parties are directed to bear their own costs.

Punchhi, J.

45. In these two petitions under Article 32 of the Constitution, challenge is made to certain provisions of the Chota Nagpur Tenancy Act, 1908, (hereafter referred to as 'the Act') which go to provide in favour of the male, succession to property in the male line, on the premise that the provisions are discriminatory and unfair against women and therefore, ultra vires the equality clause in the Constitution. A two-member Bench hearing these matters at one point of time on soliciting was conveyed the information that the State of Bihar had set up a Committee to consider the feasibility of appropriate amendments to the legislation and to examine the matter in detail. It was later brought to its notice that the Committee ultimately had come to the opinion that the people of the area, who were really concerned with the question of succession, were not interested in having the law changed, and that if the law be changed or so interpreted, letting estates go into the hands of female heirs, there would be great agitation and unrest in the area among the scheduled tribe people who have custom-based living. The two-member Bench then ordered as follows :

Scheduled tribe people are as much citizens as others and they are entitled to the benefit of guarantees of the Constitution. It may be that the law can provide reasonable regulation in the matter of succession to property with a view to maintaining cohesiveness in regard to Scheduled Tribes and their properties. But exclusion from inheritance would not be appropriate. Since this aspect of the matter has not been examined by the State of Bihar and the feasibility of permitting inheritance and simultaneously regulating such inheritance for the purpose of ensuring that the property does not go out of the family by way of transfer or otherwise we are of the view that in the peculiar facts of the case the State of Bihar should re-examine the matter. In these circumstances, instead of disposing of the two writ petitions by a final order, we adjourn the hearing thereof for three months and direct the State of Bihar to immediately take into consideration our order and undertake the exercise indicated and report to the court by way of the affidavit and along with that a copy of the report may be furnished by the Committee to be set up by the State of Bihar.

46. In pursuance thereof, the State of Bihar has furnished an affidavit to the effect that a meeting of the Bihar Tribal Consultative Council was held on 31-7-1992, presided over by the Chief Minister and attended to by M.P.s and M.L.A.s of the tribal areas, besides various other Ministers and officers of the State, who on deliberations have expressed the view that they were not in favour of effecting any change in the provisions of the Act, as the land of the tribals may be alienated, which will not be in the interest of the tribal community at present.

The matter was not closed, however, because the Council recommended that the proposal may widely be publicised in the tribal community and their various sub-castes may be promoted to give their opinion if they would like any change in the existing law. It is in this backdrop that these petitions were placed before this three-member Bench for disposal.

47. We have read with great admiration the opinion of our learned brother K. Ramaswamy, J. prepared after deep and tremendous research made on the conditions of the tribal societies in India, leave alone the State of Bihar, and in drawing a vivid picture of the distortions which appear in the regulation of succession to property in tribal societies, when tested on the touchstone of the codified Hindu law now existing in the form of The Hindu Succession Act, 1956 etc.

48. It is worth-while to account some legislation on the subject. The Hindu Succession Act governs and prescribes rules of succession applicable to a large majority of Indians being Hindus, Sikhs, Buddhists, Jains etc. whereunder since 1956, if not earlier, the female heir is put at par with a male heir. Next in the line of numbers is the Shariat Law, applicable to Muslims, whereunder the female heir has an unequal share in the inheritance, by and large half of what a male gets. Then comes The Indian Succession Act which applies to Christians and by and large to people not covered under the aforesaid two laws, conferring in a certain manner heirship on females as also males. Certain chapters thereof are not made applicable to certain communities. Sub-section (2) of Section 2 of the Hindu Succession Act significantly provides that nothing contained

in the Act shall apply to the members of any scheduled tribe within the meaning of Clause (25) of Article 366 of the Constitution, unless otherwise directed by the Central Government by means of a notification in the official gazette. Section 3(2) further provides that in the Act, unless the context otherwise requires, words importing the masculine gender shall not be taken to include females. (emphasis supplied). General rule of legislative practice is that unless there is anything repugnant in the subject or context, words importing the masculine gender used in statutes are to be taken to include females. Attention be drawn to Section 13 of the General Clauses Act. But in matters of succession the general rule of plurality would have to be applied within circumspection. The (provision afore) appears to have been inserted *ex abundanti cautela*. Even under Section 3 of the Indian Succession Act the State Government is empowered to exempt any race, sect or tribe from the operation of the Act and the tribes of Mundas, Oraons, Santals etc. in the State of Bihar, who are included in our concern, have been so exempted. Thus neither the Hindu Succession Act, nor the Indian Succession Act, nor even the Shariat Law is applicable to the custom governed tribals. And custom, as is well recognized, varies from people to people and region to region.

49. In face of these divisions and visible barricades put up by the sensitive tribal people valuing their own customs, traditions and usages, judicially enforcing on them the principles of personal laws applicable to others on an elitist approach or on equality principle, by judicial activism, is a difficult and mind-boggling effort. Brother K. Ramaswamy,

J. seems to have taken the view that Indian legislatures (and governments too) would not prompt themselves to activate in this direction because of political reasons and in this situation, an activist Court, a political as it avowedly is, could get into action and legislate broadly on the lines as suggested by the petitioners in their written submissions. However, laudable, desirable and attractive the result may seem, it has happily been viewed by our learned brother that an activist court is not fully equipped to cope with the details and intricacies of the legislative subject and can at best advise and focus attention on the State polity on the problem and shake it from its slumber, goading it to awaken, march and reach the goal. For in whatever measure be the concern of the court, it compulsively needs to apply, somewhere and at sometime, brakes to its self-motion, described in judicial parlance as self-restraint. We agree therefore with brother K. Ramaswamy, J. as summed up by him in the paragraph ending on page 36 of his judgment that under the circumstances it is not desirable to declare the customs of tribal inhabitants as offending Articles 14 15 and 21 of the Constitution and each case must be examined when full facts are placed before the Court.

50. With regard to the statutory provisions of the Act, he has proposed to the reading down of Sections 7 and 8 in order to preserve their constitutionality. This approach is available from page 36 onwards of his judgment. The words "male descendants" wherever occurring, would include "female descendants". It is also proposed that even though the provisions of the Hindu Succession Act, 1956 and the Indian Succession Act, 1925 in terms would not apply to

the Scheduled Tribes, their general principles composing of justice, equity and fairplay would apply to them. On this basis it has been proposed to take the view that the Scheduled Tribe women would succeed to the estate of paternal parent, brother or husband as heirs by intestate succession and inherit the property in equal shares with the male heir with absolute rights as per the principles of Hindu Succession Act as also the Indian Succession Act. However much we may like the law to be so we regret our inability to subscribe to the means in achieving such objective. If this be the route of return on the Court's entering the thicket, it is far better that the court kept out of it. It is not far to imagine that there would follow a bee-line for similar claims in diverse situations, not stopping at tribal definitions, and a deafening uproar to bring other systems of law in line with the Hindu Succession Act and the Indian Succession Act as models. Rules of succession are indeed susceptible of providing differential treatment, not necessarily equal. No uniformities would not in all events violate Article 14. Judge-made amendments to provisions, over and above the available legislature, should normally be avoided. We are thus constrained to take this view, even though it may appear to be conservative, for adopting a cautious approach, and the one proposed by our learned brother is, regretfully not acceptable to us.

51. The Chota Nagpur Tenancy Act was enacted in 1908. It's preamble suggests that it was a law to amend and consolidate certain enactments relating to the law of landlord and tenant and the settlement of rent in Chota Nagpur. It extends to North Chota Nagpur and South Chota Nagpur divisions, except areas

which have been constituted as municipalities under the Bihar and Orissa Municipality Act, 1922. Chapter II, thereof providing classes of tenants containing Sections 4 to 8 is reproduced hereafter:

CHAPTER II

Section 4 :

CLASSES OF TENANTS - There shall be, for the purposes of this Act, the following classes of tenants, namely :

(1) tenure-holder, including under tenure-holders,

(2) raiyats, namely :

(a) occupancy-raiyats, that is to say, raiyats having a right of occupancy in the land held by them,

(b) non-occupancy raiyats, that is to say, raiyats not having such a right of occupancy, and

(c) raiyats having khunt katti rights.

(3) under raiyats, that is to say, tenants holding, whether immediately or immediately, under raiyats, and

(4) Mundar Khunt-kattidars.

Section 5:

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

- (a) the successors-in-interest of persons who have acquired such a right, and
- (b) the holders of tenures entered in any registered prepared and confirmed under the Chota Nagpur Tenures Act, 1869.

but does not include a Mundari Khunt-Kattidar.

Section 6 :

MEANING OF RAIYAT - (1) 'Raiyat' means primarily a person 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, or with the aid of partners; and includes the successors-in-interest of persons who have acquired such a right, but does not include a Mundari Khunt-kattidar.

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

(2) A person shall not be deemed to be a raiyat unless he holds land either immediately under a proprietor or immediately under a tenure-holder or immediately under a Mundari Khunt-kattidar.

(3) In determining whether a tenant is a tenure-holder or a raiyat, the court shall have regard to-

- (a) local custom, and
- (b) the purpose for which the right of tenancy was originally acquired.

Section 7:

(1) MEANING OF 'RAIYAT HAVING KHUNT-KHATT1 RIGHTS' - 'Raiyat having khunt katti rights' means a raiyat in occupation of, or having any subsisting title to, land reclaimed from jungle by the original founders of the village or their descendants in the male line, when such raiyat is a member of the family which founded that village or a descendant in the male line of any member of such family :

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

(2) Nothing in this Act shall prejudicially affect the rights of any person who has lawfully acquired a title to a khunt kattidari tenancy before the commencement of this Act.

Section 8:

MEANING OF MUNDARI KHUNT-KATTIDAR - 'Mundari Khunt-Kattidar' means a Mundari who has acquired a right to hold jungle land for the purpose of bringing suitable portions thereof under cultivation by himself or by male members of his family, and includes-

- (a) the heirs male in the line of any such Mundari, when they are in possession of such land or have any subsisting title thereto; and
- (b) as regards any portions of such land which have remained continuously in the possession of any such

Mundari and his descendants in the male line, such descendants.

52. At this place, Section 76 alongwith its illustrations would also need reproduction:

76. SAVING OF CUSTOM - Nothing in this Act shall affect any custom, usage or customary right not inconsistent with, or not expressly or by necessary implication modified or abolished by, its provisions.

ILLUSTRATIONS

I. A custom or usage whereby a raiyat obtains a right of occupancy as soon as he is admitted to occupation of the tenancy, whether he is a settled raiyat of the village or not, is inconsistent with, and is not expressly or by necessary implication modified or abolished by, provisions of this Act. This custom or usage, accordingly, wherever it exists, will not be affected by this Act.

II. A custom or usage by which an under raiyat can obtain rights similar to those of an occupancy raiyat is, similarly, not inconsistent with, and is not expressly or by necessary implication modified or abolished by, the provisions of this Act, and will not be affected by this Act.

III. A custom or usage whereby a raiyat is entitled to make improvements on his tenancy and to receive compensation therefore on ejection is not inconsistent with, and is not expressly or by necessary implication modified or abolished by the provisions of this Act. That custom or usage accordingly, where it exists, will not be affected by this Act.

IV. A custom or usage whereby korkar is held,
 (a) during preparation for cultivation, rent-free, or
 (b) after preparation, at a rate of rent less than the rate payable for ordinary raiyati land in the same village tenure or estate, is not inconsistent with, and is not expressly or by necessary implication modified or abolished by, the provisions of this Act. That custom or usage accordingly, wherever it exists, will not be affected by this Act.

53. A bare outline of these provisions goes to show that these have been enacted to identify classes of tenants. These provisions have no connection with the ownership of land. Section 3(XXVI) defines 'tenant' to mean a person who holds land under another and is, or but for a special contract would be, liable to pay rent for that land to that other person. Sub-section (1) of Section 4 is plainly tied up with Section 5. Sub-section (2)(a) & (b) of Section 4 is tied up with Section 6 and squally with Section 76. Local customs, as the illustrations under Section 76 show, are for the purpose of streamlining the tenancy rights and landlord-tenant relationship. Sub-section (2)(c) of Section 4 in the same pattern is tied up with Section 7. Lastly Sub-section (4) of Section 4 is tied up with Section 8 relating to "Mundari Khunt-kattidhar". All these tenants as classified, do not own the tenanted lands, but hold land under others. Their tenancy rights are identified and regulated through these provisions. The personal laws of the tenants nowhere figure in the set-up.

54. The solitary decided case available under Section 8 of the Act and where personal law of the Mundari was allowed to intrude is *Jitmohan Singh Munda v. Ramratan Singh* and

Anr. [1958] Bih LJR 373. There the learned Judges of the High Court comprising the Bench seem to have differed on the applicability of Section 8 but not on its scope. The case there established was that the Mundari Khunt Kattidar deceased was of Hindu religion and on that basis it was held that his widow could retain possession of the tenancy right of her deceased husband during her life time. The right of the male collateral to take possession was deferred by the intervening widow's life estate. This case could, in a sense, be taken as *stare decisis*, when none else is in the field, in order to take the cue that personal law of a female descendant of a Mundari Khunt Kattidar could steal the show and Section 8 would have to be read accordingly. But this case is decided on misreading of Section 8. The earlier part of it providing the meaning of Mundari Khunt Kattidar has been overlooked. It has been assumed, on the basis of the latter part that the expression has an inclusive definition and thus would not exclude the Mundari's widow governed by Hindu Law. The High Court at page 375 of its report observed as follows :

The contention based on Section 8 also terminologically cannot be accepted. In the first place, in defining Khunt Kattidar interest as quoted above, the word used in 'includes' whereafter occur Clauses (a) and (b) containing reference to the male line of a Mundari. The word 'includes' cannot be taken to be exhaustive.

55. Jitmohan Singh's case can not thus be a guiding precedent. It is at best a decision on its own facts. There is no scope thus in reading down the provisions of Section 8 and even that of

Section 7 so as to include female descendants alongside the male descendants in the context of Sections 7 and 8. It is only in the larger perspective of the Constitution can the answer to the problem be found.

56. Life is a precious gift of nature to a being right to life as a fundamental right stands enshrined in the Constitution. The right to livelihood is born of it. In *Olga Tellis and Ors. v. Bombay Municipal Corporation and Ors.* AIR1986SC180 this Court defined it in this manner in para 32 of the report :

... The sweep of the right to life conferred by Article 21 is wide and far-reaching. It does not mean merely that life cannot be extinguished or taken away as, for example, by the imposition and execution of the death sentence, except according to procedure established by law. That is but one aspect of the right to life. An equally important facet of that right is the right to livelihood because, no person can live without the means of living, that is the means of livelihood. If the right to livelihood is not treated as a part of the constitutional right to life, the easiest way of depriving a person of his right to life would be to deprive him of his means of livelihood to the point of abrogation. Such deprivation would not only denude the life of its effective content and meaningfulness but it would make life impossible to live. And yet, such deprivation would not have to be in accordance with the procedure established by law, if the right to livelihood is not regarded as a part of the right to life. That, which alone makes it possible to live, leave aside what makes life liable, must be deemed to be an integral component of the right to life. Deprive a person of his right to livelihood

and you shall have deprived him of his life, Indeed, that explains the massive migration of the rural population to big cities. They migrate because they have no means of livelihood in the villages. The motive force which propels their desertion of their hearths and homes in the village is the struggle for survival, that is, the struggle for life. So unimpeachable is the evidence of the nexus between life and the means of livelihood. They have to eat to live : Only a handful can afford the luxury of living to eat. That they can do, namely, eat, only if they have the means of livelihood. That is the context in which it was said by Douglas J. in Baksey (1954) 347 M.D. 442 that the right to work is the most precious liberty that man possesses. It is the most precious liberty because, it sustains and enables a man to live and the right to life is a precious freedom. "Life", as observed by Fields, J. in Munn v. Illinois, (1877) 94 US 113, means something more than mere animal existence and the inhibition against the deprivation of life extends to all those limits and faculties by which life is enjoyed. This observation was quoted with approval by this Court in Kharak Singh v. State of UP 1963CriLJ329 .

57. And then in para 33 :

Article 39(a) of the Constitution, which is a Directive Principle of State Policy, provides that the State shall, in particular, direct its policy towards securing that the citizens, men and women equally, have the right to an adequate means of livelihood. Article 41, which is another Directive Principle, provides, inter alia, that the State shall, within the limits of its economic capacity and development make effective provision for securing

the right to work in cases of unemployment and of undeserved want. Article 37 provides that the Directive Principles, though not enforceable by any Court, are nevertheless fundamental in the governance of the country. The Principles contained in Articles 39(a) and 41 must be regarded as equally fundamental in the understanding and interpretation of the meaning and content of fundamental rights. If there is an obligation upon the State to secure to the citizens and adequate means of livelihood and the right to work, it would be sheer pedantry to exclude the right to livelihood from the content of the right to life. The State may not, by affirmative action, be compellable to provide adequate means of livelihood or work to the citizens. But, any person, who is deprived of his right to livelihood except according to just and fair procedure established by law, can challenge the deprivation as offending the right, to life conferred by Article 21.

58. Agriculture is not a singular vocation. It is, more often than not, a joint venture, mainly of the tiller's family members. Some of them have to work hard and the others harder still. Everybody, young or old, male or female, has chores allotted to perform; a share in the burden of toil. Traditionally and historically, the agricultural family is identified by the male head and this is what Sections 7 and 8 recognise. But on his death, his dependent family females, such as his mother, widow, daughter, daughter-in-law, grand-daughter, and others joint with him have, under Sections 7 and 8, to make way to a male relatives within and outside the family of the deceased entitled thereunder, disconnecting them from the land and their means of livelihood. Their right to livelihood in that

instance gets affected, a right constitutionally recognised, a right which the female enjoyed in common with the last male holder of the tenancy. It is in protection of that right to livelihood, that the immediate female relatives of the last male tenant have the constitutional remedy to stay on holding the land so long as they remain dependent on it for earning their livelihood, for otherwise it would render them destitute. It is on the exhaustion of, or abandonment of land by, such female descendants can the males in the line of descent take over the holding exclusively. In other words, the exclusive right of male succession conceived of in Sections 7 and 8 has to remain suspended animation so long as the right of livelihood of the female descendant's of the last male holder remains valid and in vogue. It is in this way only that the constitutional right to livelihood of a female can interject in the provisions, to be read as a burden to the statutory right of male succession, entitling her to the status of an intervening limited dependents/descendants under Sections 7 and 8. In this manner alone, and upto this extent can female dependents/descendants be given some succour so that they do not become vagrant and destitutes. To this extent, it must be so held. We would rather, on the other hand, refrain from striking down the provisions as such on the touchstone of Article 14 as this would bring about a chaos in the existing state of law. The intervening right of female dependents/descendants under Sections 7 and 8 of the Act are carved out to this extent, by suspending the exclusive right of the male succession till the female dependents/descendent chooses other means of livelihood manifested by abandonment or release of the holding kept for the purpose.

59. For the afore-going reasons, disposal of these writ petitions is ordered with the above relief to the female dependents/descendents. At the same time direction is issued to the State of Bihar to comprehensively examine the question on the premise of our constitutional ethos and the need voiced to amend the law. It is also directed to examine the question of recommending to the Central Government whether the later would consider it just and necessary to withdraw the exemptions given under the Hindu Succession Act and the Indian Succession Act at this point of time in so far as the applicability of these provisions to the Scheduled Tribes in the State of Bihar is concerned. These writ petitions would on these directions stand disposed of making absolute the interim directions in favour of the writ petitioners for their protection.

No costs.

IN THE HIGH COURT OF JHARKHAND

L.P.A. No. 328 of 2000(R)

Decided On: 23.08.2002

Appellants: **Waxpol Industries Ltd.**

Vs.

Respondent: **State of Bihar and Ors.**

JUDGMENT

Lakshman Uraon, J.

1. The petitioner-appellant, The Waxpol Industries Limited, a Company incorporated under the Companies Act, 1956, having its registered office at No. 9. Mittar House, 71, Ganesh Chandra Avenue, Calcutta and its Branch Office at 68. Kanke Road, Dist. Ranchi, has preferred this appeal being aggrieved by the order dated 28.8.2000, passed in CWJC No. 2676/2000(R) by the learned Single Judge, submitting therein that a piece of land of Plot No. 95, Khata No. 64 of village Haratu, P.S. Namkum, Dist. Ranchi, measuring 3.78 acres was owned and occupied by the petitioner-appellant. The total area occupied by him comes to 10.49 acres where the appellant-petitioner is running a factory for manufacturing various products since 1960 after obtaining requisite permission from the Chief Inspector of Factories, Government of Bihar and other concerned authorities. The petitioner-appellant has stated that the land in question is recorded in the Revisional Record of rights under Sikmi Khata No. 12 in the name of Gopal Kumhar, son of Nathu Kumhar, as "Naukrana" land. After the death of Gopal Kumhar his

two sons, Gandura Mahto and Chedia Mahto, inherited and possessed the said land. The petitioner-appellant has claimed that by custom and usage in the area Sikmi rights were and are heritable. The said Gopal Kumhar and his successor-in-interest became the settled raiyats with respect to the said plots. They sold the land to Parmanand Garg and Purnanand Garg by a registered Sale-Deed dated 11.4.61. Subsequently one Pandit Murulidhar Sharma claimed right, title and interest over the said plot of land. He claimed that he has purchased the said Plot No. 95 from the raiyats of Khata No. 64 several years back and he perfected his title through adverse possession. His title was confirmed by the Special Sub-Ordinate Judge, Ranchi in a decree dated 2.5.61 in Title Suit No. 43/61. The said P. Gargs purchased the said plot by registered Sale-deed dated 13.5.61 and subsequently sold 3 acres 28 decimals of land to Metal Packs Pvt. Limited by a sale-deed dated 30.9.61. The said company. Metal Packs. Pvt. Ltd., purchased the said land for establishment of factory. The appellant by separate sale-deed dated 30.9.61 purchased 50 decimals of land and amalgamated into his land. Subsequently in 1962 Metal Packs Pvt. Ltd. was amalgamated with the appellant and all the assets, liabilities, movable and immovable properties vested with the appellant and such amalgamation was confirmed by the Hon'ble High Court at Calcutta by an order dated 6.9.62 in Company Petition No. 156/1962. The said lands of Plot No. 95 are non-agricultural land and the petitioner-appellant is running factory since 1961-62, i.e., long prior to coming into force of Section 71A of the Chotanagpur Tenancy Act, 1908, vide Regulation 1/1969. The land ceased to be raiyati land

since then. While the appellant- petitioner was in possession of the land, the State of Bihar issued notification under Land Acquisition Act and certain land was acquired for M/s. Damodar Valley Refractories including the land. In this present appeal the award was also prepared and this petitioner-appellant was shown to be entitled to a sum of Rs. 33,959,50. However, the appellant-petitioner got the land deleted from the said land acquisition proceeding as such it can not be said that the appellant got the land by virtue of any illegal transfer as alleged by respondent No. 3. Ram Charan Pahan, son of recorded raiyat, Late Lattu Pahan.

2. The learned counsel for the petitioner-appellant has submitted that the land was not a raiyati land. In 1962 the land was non-agricultural and the said land was acquired in a land acquisition proceeding by the State. However, the said plot was deleted from the proceeding as the petitioner-appellant had already purchased the said land from the Sikmidar in the year 1961. Thus he acquired indefeasible right, title and interest.

3. The learned Special Officer (SAR), Ranchi, in SAR Case No. 152/87 ordered for restoration of the land in favour of respondent No. 3. The appeal was preferred before the respondent No. 4, Deputy Com missioner, Ranchi-cum-Appellate Authority. Ranchi in SAR Appeal No. 8R 15/95-96. The same was also dismissed by an order dated 20.11.96. Against that order the petitioner-appellant preferred a revision before the respondent No. 2, Commissioner of Chotanagpur Division, Ranchi in Ranchi SAR Revision No. 590/96. However, the said revision was also dismissed. Then the petitioner-

appellant filed CWJC No. 2676/ 2000(R) before this Court. The said writ petition was also dismissed by the learned Single Judge by order dated 28.8.2000.

4. The learned counsel appearing on behalf of the respondent No. 3 has submitted that the petitioner-appellant has not proved the usage and custom prevalent in the area that a Sirkmidar raiyat or a raiyat or under raiyat is heritable and transferable. Section 71-A is specific which provides that:

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

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

months from the date of the order, or within such extended time not exceeding two years from the date of the order as the Deputy Commissioner may allow, failing which the Deputy Commissioner may get such building or structure removed :

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 to the transferor where the transferee either makes available to the transferor an alternative holding or portion thereof as the case may be, of the equivalent value of the vicinity or pays adequate compensation to be determined by the Commissioner for rehabilitation of the transferor :

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

5. In this present case in absence of any evidence regarding heritable right of Sikmidar, which has not been proved and the plea regarding the custom has not established, hence Sikmidar

even if remains in possession for more than 12 years, can not acquire a heritable right by adverse possession. The appellant petitioner purchased the land in question in the year 1961 on 29.9.61 from Parmanand Garg and Purnanand Garg who claimed to have purchased the land from the recorded Sikmidar of Sikmi Khata No. 12, namely, Gandura Mahto and Chedia Mahto. Sikmidar had no right to transfer the land without obtaining permission of the Deputy Commissioner as provided under Section 46 of the C.N.T. Act. There was also a collusive title suit only to say that in title suit the Deputy Commissioner was not made a party and without the knowledge of the recorded raiyats who are the members of the Scheduled Tribes and Pahans their lands were transferred by registered deed. The compensation was also paid to Sikmidar and the petitioner-appellant but it was not known to the original recorded raiyats as to whether their lands were acquired in any land acquisition proceeding by the State of Bihar or any compensation was paid to any one as they were not paid any amount of compensation.

6. In this case I find that how a tribal land was firstly transferred from one hand to Sikmidar then Sikmidar transferred to Parmanand Garg and Purnanand Garg in the year 1961 and again one Pandit Murulidhar Sharma claimed his title on the ground that he had purchased the said plot No. 95 from the raiyats of Khata No. 64 several years back and claimed to have perfected his title by adverse possession. Thereafter Parmanand Garg who owned and possessed the land, sold 3 acres 28 decimals of land to Metal Packs Pvt. Ltd. by registered sale-deed dated 30.9.61. Thus, I find that within a year how

the title and possession has been transferred and possessed only to defraud the original recorded tribal raiyats.

7. It is now clear that the proceeding under Section 71-A of the C.N.T. Act was initiated on the report of the C.O., Namkum, the then Special Officer, by order dated 20.7.76, ordered for restoration for the land in question. Also in appeal and revision the said order remained affirmed by dismissing the appeal and revision of this petitioner-appellant. The land in question is recorded in the name of Sahdeo Pahan and Lattu Pahan. The respondent No. 3, Ram Charan Pahan, is the son of recorded tenant Lattu Pahan. One Gopal Kumhar was recorded as Sikmidar. The petitioner-appellant claimed that he purchased the land by registered sale-deed from the son of Sikmidar by registered sale- deed dated 3.5.61. The plea that the recorded tenant has lost the right over the land in question, was not sustained as the Sikmidar had no right to transfer a tribal land without obtaining permission to the Deputy Commissioner as provided under Section 46 of the C.N.T. Act.

8. In this present case, original recorded raiyats were never made any party in any proceeding either in land acquisition or in any proceeding under Section 46 of the C.N.T. Act. Without taking resort to Section 46 of the C.N.T. Act, any transfer of the tribal land is absolutely illegal and invalid as the right of a Sikmidar as a general law is neither heritable nor transferable. In view of this fact the appellant-did not come in possession of the land in question validly by registered deed of transfer as claimed by him.

9. The learned Single Judge while dismissing the CWJC No. 2676/2000(R) has quoted a case of Pandey Oraon v. Ram Chander Sahu and Ors., reported in AIR 1992 SC 195, as the Supreme Court observed:

“In Section 71A in the absence of a definition of transfer and considering the situation in which exercise of jurisdiction is contemplated, it would not be proper to confine the meaning of transfer to 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 has 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 71A of the Act.

The provision is beneficial and the legislative intention is to extend protection to a class of citizens who are not in a position to keep their property to themselves in the absence of protection. Therefore, when the legislature is extending special protection to the named category, the court has to give a liberal construction to the protective mechanism which would work out the protection and enable the sphere of protection to be effective than limit by the scope. In fact, that exactly is what has been said by a three-Judge Bench of this Court in almost a similar situation in Manchegowda v. State of Karnataka, reported in 1984(3) SCR 502 : AIR 1984 SC 1151 and what was said by a three Judge Bench followed by a later decision of this

Court in *Lingappa Pochanna Appelwar v. State of Maharashtra*, reported in 1984(2) SCR 224 : AIR 1985 SC 389. To the same effect is the observation of this Court in *Kamini Krishnayya v. Guraza Seshachalam*, AIR 1965 SC 639. The House of Lords in *D (a minor) v. Bcrsshire Country Council*, (1987) 1 All ER 20 (HL) said that broad and liberal construction should be given to give full effect to the legislative purpose. We would, therefore, in the facts and circumstances appearing in this case, hold that the authorities under the Act were justified in extending the provision of Section 71A of the Chhotanagpur Tenancy Act to the situation which emerged and the High Court took a wrong view in limiting the concept of transfer to the statutory definition in the T.P. Act and holding that Section 71A was not applicable in a case of this type. On this basis, it must follow that the action of the statutory authority was justified and the conclusion of the Full Bench must not be sustained. We accordingly allow the appeal and reverse the decision of the High Court.”

10. In view of my above considered facts that there is concurrent finding of facts of all the S.R. Revenue Courts, appeals and revision that the transfer of the tribal land was illegal as Section 46 of the C.N.T. Act was not followed, the learned Single Judge has dismissed the writ application of the petitioner-appellant. I do not find any reason to differ with the finding of the learned Single Judge.

11. In view of these observed facts this appeal is dismissed and the order passed by the learned Single Judge in CWJC No. 2676/2000(R) dated 28.8.2000 is hereby affirmed. However,

in the facts and circumstances of this case there shall be no order of cost.

S.J. Mukhopadhaya, J.

12. I agree.

Equivalent Citation: 2004(3)BLJR1998, [2004(4) JCR535(Jhr)]

IN THE HIGH COURT OF JHARKHAND

LPA No. 708 of 2003

Decided On: 05.10.2004

Appellants: **State of Jharkhand and Ors.**

Vs.

Respondent: **Arjun Das**

JUDGMENT

M.Y. Eqbal, J.

1. This appeal at the instance of the appellant- The State of Jharkhand is directed against the judgment and order dated 22.8.2003 passed in WP (C) No. 5126 of 2002 whereby the learned single Judge directed the appellants to mutate the name of the petitioner-respondent in respect of the land in question.

2. The fact of the case lies in a narrow compass.

3. Petitioner-respondent alleged to have purchased raiyati land measuring an are of 3 kathas appertaining to Mouza Dhैया No. 6. khata No. 119. Plot No. 4051 from one Mohan Manjhi son of Late Gangu Manjhi a scheduled tribe by registered sale-deed dated 2.12.1988. It is stated by the petitioner-respondent that after purchase he came in peaceful possession of the said land and continuing possession since the date of purchase.

Petitioner-respondent, therefore filed an application for mutation of the land in question by entering his name in the revenue register but the Circle Office, Dhanbad sat tight over the matter, The petitioner then filed a writ petition being WP (C) No. 3921 of 2001 for a direction to the respondent-Circle Officer, Dhanbad to mutate the land in his favour. The writ petition was disposed of on 24.8.2001 with a direction to the Circle Officer to pass appropriate order on the mutation application after hearing the parties. It is alleged that the Circle Officer without making any inquiry with regard to possession of the land rejected the application on the ground that transfer of the land itself was invalid and illegal and, therefore, mutation cannot be allowed. The petitioner challenged the said order by filing WP (C) No. 5126 of 2002 which was disposed of by the impugned Judgment and order dated 22.8.2003. Learned Single Judge held that the Circle Officer has no jurisdiction to see the right or title of the parties in respect of the land for which mutation application is filed. The relevant portion of the judgment of the learned Single Judge which is impugned in this appeal is quoted hereinbelow ;

“In a judgment passed in the case of Dipan Ram etc. v. State of Jharkhand passed in WP (C) No. 5522 of 2001” and other analogous cases reported in “2002(1) JCR page 146” it has been held that an authority vested with the power of mutating a land cannot refuse to register the land on the ground that the sale deed of the land had been executed outside the State.

It is well settled that mutation of land does not create any right and title in favour of one or another. It merely allows a

person to have his name entered in Register-11 for purposes of payment of rent. If any application for mutation is preferred, the competent authority cannot refuse. This Court also had the occasion to deal with a similar matter in the case of Smt. Rita Chakraborty v. The State of Jharkhand and others, WP (C) No. 4847 of 2002.

For the foregoing reasons it is held that the first ground taken to the extent that there cannot be mutation on account of land having been registered outside the State, it is held that the Circle Officer had no authority or jurisdiction to make such observation. So far as the second reason is concerned, i.e. prior permission of the Deputy Commissioner not having been obtained, it is held that the mutating authority has no jurisdiction to see right or title in favour of the parties as the same can be done by any aggrieved person in an appropriate proceeding before an appropriate forum.

Consequently, the Writ Application is allowed and the impugned order is set aside and a writ of mandamus is issued upon the Circle Officer, Dhanbad to mutate.”

4. Mr. Shamim Akhtar, learned S.C.-II submitted that the Circle Officer while considering the application for mutation is empowered to consider *atlas* the *prune facie* title of the petitioner besides possession of the land. According to the learned counsel, when transfer itself is illegal and void mutation of the land in favour of the transferee can be refused. Learned counsel relied upon the decision of the Supreme Court in the case of *Lincari Garmango v. Dayanidhi Jena* reported in 2004 (3) PLJR 212

5. First I would like to discuss the decision referred to by the learned Single Judge in the impugned Judgment, in the case of *Dipan Ram v. State of Jharkhand* reported in 2002 (1) JCR 146 the question for consideration was whether mutation of land can be refused on the ground that the sale-deed in respect of the land was executed and registered outside the State. The Single Bench of this Court held that mutation of land cannot be refused on that ground. In the case of *Smt. Rita Chakraborty v. State of Jharkhand and Ors.* WP (C) No. 4847 of 2002 the land was purchased from Pranab Kumar Mitra a non-tribal by registered sale-deed dated 4.2.1994 registered at Kolkata and after the purchase petitioner came in possession of the land. The Circle Officer refused to mutate the land in favour of the purchaser on the ground that the sale-deed was registered at Kolkata. On these facts, a Bench of this Court held that mutation cannot be refused on the ground that registration was done outside the State.

6. There is no dispute with regard to the legal proposition of law that mutation proceedings is not judicial proceeding and the right, title and interest cannot be determined in such proceedings. It is a fiscal inquiry only for the purpose of collection of revenue.

7. In the case of *(Thakur) Nirman Singh and Ors. v. Thakur Lal Rudra Partab Narain Singh and others.* AIR 1926 PC 100 it was held that it is an error to suppose that the proceedings for the mutation of names are judicial proceedings in which the title to and the propriety rights in immovable property are determined. They are nothing of the kind as has been pointed

out times innumerable by the Judicial Committee. They are much more in the nature of the fiscal inquiries instituted in the interest of the State for the purpose of ascertaining which of the several claimants for the occupation of certain denominations of immovable property may be put into occupation of it with greater confidence that the revenue for it will be paid,

8. Orders in mutation proceedings are not evidence that the successful applicant was in possession as sole -legal owner in a propriety sense to the exclusion, for example, of all claims for the other member of the family as co-owners or for maintenance or otherwise as revenue authorities have no Jurisdiction to pronounce upon the validity of a such a claim,

9. In the case of *Nand Kishwar Bux Roy v. Gopal Bux Rai and Ors.*, AIR 1940 PC 93 it was held that mutation proceedings are merely in the nature of fiscal inquiries. instituted in the interest of the State for the purpose of ascertaining which of the several claimants /or the occupation of the property may be put into occupation of it within the greater confidence that the revenue for it will be paid.

10. In the case of *Depta Tewari and Ors. v. State of Bihar and Ors.* 1987 PLJR 1037 it was held as follows :

“6. From a perusal of the impugned order it appears that the respondent Nos. 2 and 3 have rightly decided the case of the respective parties on the basis of the possession. It is not disputed nor can it be in law, that an order with regard to mutation has to be passed on the basis of possession only inasmuch as the authorities concerned cannot decide in such a

case a disputed and complicated question of title. The findings of facts by aforementioned respondents having been arrived after taking into consideration all relevant facts and as such I am not in a position to interfere therewith.

9. In my view the Officers passing the orders on mutation matter do not exercise any Judicial, or quasi-judicial function. They arrive at a decision, of possession on the basis of the evidences placed before them including the reports of the officers concerned. Respondent Nos. 2 and 3 in my opinion, cannot be said to be a 'Court' within the meaning of Section 3 of the Evidence Act and as such it was not necessary for them to follow the procedure laid down under the Evidence Act for the purpose of proving any document or otherwise."

11. In the light of the settled proposition of law laid down by various Courts we are also of the view that in a mutation proceedings the Circle Officer is not supposed to determine the title and the proprietary right in immovable property for the reason that orders in mutation proceedings are not evidence that the successful applicant is in possession as sole legal owner in a proprietary sense to the exclusion of others. But at the same time the Circle Officer is not precluded from considering the evidence on the basis of which applicant is claiming possession, (emphasis given)

12. The doctrine that possession follows title is well recognized. That means that when rightful owner is not in actual physical possession, he would in the eye of law be deemed to be in possession. The benefit of such presumption can accrue in favour of the rightful owner but not in favour of wrong doer. If

the applicant wants deletion of name of the tribal being rightful owner from the revenue record and entering his name on the basis of document of transfer which is illegal, void and non-existent in the eye of law then in our view the Circle Officer cannot and shall not mutate the name of the applicant-purchaser in respect of the land owned by tribal.

13. Besides the above, the Bihar Tenants' Holdings (Maintenance of Records) Act, 1973 has been enacted laying down the procedure to be followed by the Circle Officer before mutating the name of a person applies for mutation,

14. Section 12 of the said Act is substituted by Bihar Act 1973 reads as follows :

“Persons claiming interest by partition effected either privately or through Court or intestate or testamentary succession, transfer, exchange, agreement, settlement, lease, mortgage, gift or by any other means to file application before the Anchal Adhikari-After the commencement of this Act in any area every person having interest in a holding or part thereof in that area by partition effected either privately or through Court, or intestate or testamentary succession, transfer, exchange, agreement, settlement, lease, mortgage, gift of by any other means, shall within three months or accrual of such interest file application in the prescribed form before the Anchal Adhikari or the area in whose jurisdiction that Land is situated for mutation of his name in respect of that holding or part thereof in the continuous Khatian and the Tenant's Ledger Register and on receipt of such application, the Anchal Adhikari shall grant a receipt to such person.”

15. Section 14 of the said Act provides manner of disposal of mutation cases. Section 14 read as under :

“Requisition and disposal of mutation cases.-(1) On receipt of notice under Sections 4, 5, 6, 7, 8, 9 and 10 or an application under Sections 11 and 12 or a report under Section 13. the Anchal Adhikari shall start a mutation proceedings and after entering it in the mutation case register which shall be maintained in the prescribed form, shall cause such enquiry to be made as may be deemed necessary.

(2) The Anchal Adhikari shall issue a general notice and also give notice to the parties concerned to file objection. if any, within fifteen days of the issue of the notice. On receipt of objection, if any, the Anchal Adhikari shall give reasonable opportunity to the parties concerned to adduce evidence, if any, and of being heard and dispose of the objection and pass such orders as may be deemed necessary,

(3) In cases in which no objections are received the Anchal Adhikari shall dispose them of within one month of the date of expiry of filing objection and in cases in which objections are received, the Anchal Adhikari shall dispose them of in not more than three months from the date of expiry of the period of filing objections”

16. Sections 15 and 16 lays down the provisions of appeal and revision against the order passed by the Circle Officer.

17. From bare perusal of the aforesaid provisions, it is manifest that before passing order of mutation the Circle Officer is required to give notice to the person whose name is

running in the revenue record and also general notice inviting objections. On receipt of objection the Circle Officer shall give opportunity to the parties to adduce evidence for the purpose of ascertaining which of the claimant for the occupation of the property may be put in occupation of it with great confidence for the recovery of revenue being made feasible. In our considered opinion, therefore, the Circle Officer is not supposed to recognize possession of a person on the basis of a void and illegal sale deed as against a rightful owner who is member of tribal community. It is not in all cases but in cases where at the first hand a person purchased the property from a tribal person in contravention of the provisions of law then it would be unjust and improper to enter the name of the purchaser in revenue record by deleting name of the tribal person. At this stage, I would like to quote Section 46 of the Chotanagpur Tenancy Act.

“Restrictions on transfer of their rights by raiyats.-(1) No transfer by a raiyati of his right in his holding or any portion thereof-

- (a) by mortgage of lease for any period expressed or implied which exceeds or might in any possible event exceed five years, or
- (b) by sale, gift or any other contract or agreement,

shall be valid to any extent:

Provided that a raiyati may enter into a bhugut bundha mortgage of his holding or any portion thereof for any period not exceeding seven years or if the mortgage be a society registered or deemed to be registered under the Bihar and

Orissa Co-operative Societies Act, 1935 (B. & O. Act VI of 1935} for any period not exceeding fifteen years :

Provided further that.....”

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

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

(3-A)

18. Sub-section (3) of Section 46 of the C.N.T. Act clearly provides that no transfer of land by a member of Scheduled Tribe in favour of non-tribal shall be registered and even if such transfer is made in contravention of Section 46(1). of the Act then the same shall not be recognized as valid by any Court of law exercising civil, criminal or revenue, jurisdiction.

19. Recently in the case of Amrendra Pratap Singh v. Tej Bahadur Prajapati, 2004 AIR SCW 403, the Supreme Court was considering the question whether a non-tribal can claim right by adverse possession in respect of tribal land which was governed by the Orissa Scheduled Areas Transfer of immovable Property by Scheduled Tribe (Regulation). 1956. Their lordships held that the right in the property ought to be one. which is alienable and is capable of being acquired by the competitor. The right stands alienated by operation of law, for,

it was capable of being alienated voluntarily and is sought to be recognized by the doctrine of adverse possession as having been alienated voluntarily by default and inaction on the part of the rightful claimant. It was further held that acquisition of title in favour of any tribal by invoking the doctrine of adverse possession over immovable property belonging to tribals is prohibited by law and cannot be countenanced by Courts.

20. Similarly in the case of *Lincai Gamango v. Dayanidhi Jena* (supra) their lordships held that when transfer of land of a tribal in favour of non-tribal is prohibited in law then possession of non-tribal on the basis of illegal transfer cannot be recognized .

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

22. Taking into consideration the entire facts of the case, we have not hesitation in holding that the learned Single Judge is not correct in law in holding that even if the petitioner claims mutation on the basis of transfer made by a member of Scheduled Tribe in contravention of the provisions of the Act, the Circle Officer has not authority to see the right or title of the parties,

23. This appeal is, therefore, allowed and the impugned judgment passed by the learned Single Judge is set aside. Before parting with the Judgment, it is clarified that this judgment is confined only to those cases where first hand transfer is made by tribal to a member of non-tribal in contravention of the provisions of Section 46 of the C.N.T. Act and the purchaser claims mutation of his name in the revenue records on the basis of such transfer.

H.S. Prasad, J.

I agree.

IN THE HIGH COURT OF JHARKHAND AT RANCHI.

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

Felix Tamba Petitioner

Versus

The State of Jharkhand and others Respondents

CORAM: THE HON'BLE MR. JUSTICE M. Y. EQBAL

THE HON'BLE MR.JUSTICE D.K.SINHA

For the Petitioner: M/s. Manoj Tandon, S.S.Kr.,N.K.Singh

For the Respondents: M/s. P.K. Prasad, (A.G.), Dr. J.P. Gupta,
G.Kr.

Reserved on: 16.10.2008
on: 25th October, 2008

Pronounced

M.Y. Eqbal, J. This application by way of public interest litigation has been filed by a member of Schedule Tribe for quashing the circular of the Govt. of Jharkhand as contained in letter No.7/Bhumi/Bandhak-Ranchi- 08/07/2623Ra. dated 30.7.2007 issued under the signature of respondent

no.2, Secretary, Revenue and Land Reforms Department, Government of Jharkhand, Ranchi whereby it has been notified that no person who is a member of Schedule Tribe community can obtain loan for construction of his house and for the purpose of education by mortgaging his land.

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

3. Petitioner's case is that such notification has been issued on the basis of opinion given by Mr. S.B. Gadodia, learned Advocate General, Jharkhand in the light of the decision of Single Bench of this Court in the case of "**Mandu Prakhand Sahakari Grih Nirman Sahyog Samiti Ltd & Anr.Vs.State of Biharr**"(2004)1 JCR-402. Petitioner's further case is that as a result of the impugned circular of the Government, no person belonging to Tribal Community is entitled to take loan from any bank for educational purposes or for construction of his house against mortgage of his land.

4. No counter affidavit has been filed by the respondent-State. However, Mr. Gadodia, learned Advocate General, as he then was at the first hearing, submitted that the impugned notification/circular was issued on the basis of opinion given by him. Learned Advocate General submitted that he has

already given fresh opinion suggesting the Government for withdrawal of the impugned circular and the Government has decided to withdraw the aforesaid circular. By order dated 18.9.2008, at the request of the petitioner many Banks were impleaded as party –respondents. One of them, namely, Bank of India filed counter affidavit wherein it is stated that in the light of the provisions of the Chota Nagpur Tenancy Act as well as the impugned circular issued by the Government of Jharkhand, respondents-Banks have been strictly following the same and are not allowing any loan to the members of the Schedule Tribe against mortgage of their lands except providing housing loan to the staff belonging to the tribal community.

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

“झारखंड सरकार”

राजस्व एवं भूमि सुधार विभाग

पत्रांक-भूमि बंधक-रॉची-08/2007 2623/रा0

प्रेषक,

विष्णु कुमार,

सचिव।

सेवा में,

सभी उपायुक्त,

झारखंड।

विषय:- गृह निर्माण के एवज में भूमि बंधक रखने के संबंध में।

प्रसंग:- उपायुक्त, रॉची का पत्रांक - 1647 दिनांक - 16.1.07

महाशय,

उपर्युक्त विषय के संबंध में कहना है कि अनुसूचित जनजाति के सरकारी सेवकों एवं गैर सरकारी अनुसूचित जनजाति के सदस्यों को गृह निर्माण के एवज में भूमि बंधक रखने का मामला उक्त प्रसंग के क्रम में विचाराधीन था जिस पर विधि विभाग के परामर्श के क्रम में विद्वान महाधिवक्ता की स्पष्ट राय निम्नलिखित है: —

“I have gone through the notings as well as papers available in the file. I may indicate that identical issue was raised in the case of Mandhu Prakhand Sakharn Grih Nirman Sahyog Samiti Ltd. Vrs.State pf Bihar and Ors, judgment of which is reported in 2004(1) JCR 402(Jhr.) In the said judgment, various provisions of C.N.T.Act have been take into consideration including sections 46,47 and 49 of the said Act. After considering various aspects of the matter, it has been held that a member of the schedule tribes cannot take loan either for education and/or construction of house either by-mortgaging his raiyati land and/or by transferring his such land in favour of any Bank, Cooperative societies etc.”

2. उक्त विधि सम्मत मन्तव्य के आलोक में विभागीय पत्रांक 1802 /रा0 दिनांक – 01.06.05 को इस सीमा तक संशोधित किया जाता है कि अनुसूचित जनजाति के सदस्य भूमि बंधक रख कर गृह निर्माण शिक्षा हेतु बैंक से ऋण प्राप्त नहीं कर सकते हैं।

3. यह आदेश तत्कालिक प्रभाव से प्रभावी होगा।

विश्वासभाजन,

ह0/—

(विष्णु कुमार)

सचिव

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

7. On reading of the decision of the learned Single Judge vis-à-vis the aforesaid notification, prima facie we are of the view that learned Single Judge has not held that a raiyat belonging to a member of Scheduled Caste or Scheduled Tribe cannot

mortgage their raiyati lands in favour of the banks or financial institutions and secure loan for education purposes or for construction of their houses.

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

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

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

“46. Restrictions on transfer of their right by Raiyat.

- (1) No transfer by a Raiyat of his right in his holding or any portion thereof -

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

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

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

Provided further that –

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

(b) an occupancy-Raiyat who is a member of the Scheduled Castes or Backward Classes may transfer with the previous sanction of the Deputy Commissioner his right

in his holding or a portion of his holding by sale exchange, gift, will or lease to another person who is a member of the Scheduled Castes or, as the case may be, Backward Classes and who is a resident within the local limits of the district within which the holding is situate.

(c) any occupancy-Raiyat may, transfer his right in his holding or any portion thereof to a society or bank registered or deemed to be registered under the Bihar and Orissa Co-operative Societies Act, 1935 (Bihar and Orissa Act VI of 1935), or to the State Bank of India or a bank

specified in column 2 of the First Schedule to the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1970 (5 of 1970) or to a company or a corporation owned by, or in which less than fifty-one per cent of the share capital is held by the State Government or the Central Government or partly by the State Government, and partly by the Central Government, and which has been set up with a view to provide agricultural credit to cultivators; and

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

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

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

(4)

(5)

(6)

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

“Experience has shown that the present limit of seven years for a bhugut bundha mortgage of a holding is too short to enable the raiyat to pay off to a registered co-operative society the principal and interest of a loan made to him by the society on such a mortgage, and at the same time to maintain himself from the produce of the holding of which he is retained in possession under the mortgagee, and we have accordingly extended the maximum period in such a case from seven to fifteen years. There is evidence that efforts, not wholly unsuccessful, at any rate in the more advanced areas, have been made to evade the most salutary prohibition under Section 46 (1) against transfer by a raiyat of his right in his holding or part thereof, the usual method being by surrender by the raiyat to the landlord, on terms agreed upon, of the land which it is desired to transfer. The right of free transfer was restricted from considerations of public policy and of the advantage to the raiyat, and the result was not contemplated that a part of the tenant’s property would thereby be transferred to the landlord who omniun consensu had no manner of claim to it. Opinions are not unanimous but among non-officials at least the prevalent view is in favour of relaxing the prohibition against transfer of holdings, and we have come to the conclusion that some degree of relaxation of a very conservative character is expedient.”

The difficulties are, however, very great, and in our view the position can best be met by the cautious provisions which we have introduced in the new sub-section (6). Conditions in Chota Nagpur, though everywhere comparatively backward, present considerable variation. For instance, whereas the utmost relaxation of the prohibition of transfer which could be contemplated in the case of Hos, Mundas and their congeners, or of Oraons or Bhuiyas might well be transferred, or even restricted transfer, between members of the tribe, the restriction which, after full inquiry under the safeguards provided, the Local Government will ascertain to be necessary in the case of non-agricultural castes or the more advanced agricultural castes or communities, may well be considerably less and may well vary from caste to caste or even in respect of the same caste in different areas.

Accordingly, power is conferred on the Local Government, which has access to the best information and may be relied upon to proceed with caution and with due regard to local and tribal conditions, to declare by rules that specified forms of transfer may be made by special raiyats subject to specified restrictions, and it is laid down that sub sections (1), (3) and (4) will not apply to such transfers. It is, however still essential to maintain intact the statutory bar to transfer by an aboriginal to a non-aboriginal, and

it is necessary to provide, as has been done in clause (b) of the sub-section, a speedy method of modifying rules or portions thereof, from which have emanated results contrary to expectation or otherwise disquieting, and of coming to the rescue where

experience shows the original safeguards or restrictions to be inadequate.”

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

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

the mortgagee is a bank, then it will not violate the provisions of Section 46(1)(c) of the Act.

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

47. Restriction on sale of raiyat's right under order of Court.—

No decree or order shall be passed by any Court for the sale of the right of 'raiyat' in his holding or any portion thereof nor shall any such right be sold in execution of any decree or order :

Provided as follows : -

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

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

(bb) any holding or portion of a holding, belonging to any occupancy-raiyat may be sold, under the procedure provided by the Bihar and Orissa Public Demands Recovery Act, 1914 (Bihar and Orissa Act IV of 1914), for the recovery of loan granted by a society or bank registered or deemed to be registered under the Bihar and Orissa Co-operative Societies Act, 1935 (Bihar

and Orissa Act VI of 1935), or by the State Bank of India or a bank specified in column 2 of the First Schedule to the Banking Companies (Acquisition and Transfer of Undertaking) Act, 1970 (5 of 1970) or by a company or

a corporation owned or in by which not less than fiftyone per cent of the share capital is held by the State Government or the Central Government or partly by the State Government and partly by the Central Government and which has been set up with a view to provide agricultural credit to cultivators so, however, that if such holding or portion thereof belongs to a member of the Scheduled Tribes or Scheduled Castes, it

shall not be sold to any person who is not a member of the Scheduled Tribes, or, as the case may be, of the Scheduled Castes.”

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

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

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

15. From reading of the aforesaid provision, it is manifestly clear that this Section put a bar in the sale of a right of raiyat in

his holding in execution of any decree or order. This Section is corollary to Section 46 which put a restriction in the transfer of right of a raiyat in his holding subject to certain exception.

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

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

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

Full Bench of the Lahore High Court in Sardarni Datar Kaur Vs Ram Rattan and others. It was held by the Full Bench in that case that the Civil Court in execution of a decree can order a temporary alienation of

the land of a judgment-debtor who is a member of an agricultural tribe, because Sec.16 of the Punjab Alienation of Land Act prohibited only a sale and not a temporary alienation of such land. For these reasons we hold that the Civil Court has properly appointed a Receiver in the present case by way of equitable execution of a decree; but in view of Sec.46 of the Chota Nagpur Tenancy Act the Civil Court cannot appoint a Receiver for a period exceeding seven years which is the period beyond which the raiyat is unable to enter into a mortgage by virtue of that Section."

18. In the case of **Ramdayal Sahu Vs Hari Shankar Lal Sahu & Ors** [(1967) BLJR 78], a Full Bench of the Patna High Court considered the following the question of law :

(1) Whether the restrictive provision in clause © of the second proviso to Sec.46(1) of the Chota nagpur Tenancy Act to the effect that a transfer of his occupancy holding by a raiyat of a class other than schedule tribes, Scheduled castes or backward classes can be made only to a resident within the local limits of the district in which the holding is

situate is valid and legal in view of Art.19(1)(f) of the Constitution?

(2) If Sec. 46(1)(c) is struck down as invalid to the above extent whether Sec.47 can stand as valid in general terms relating also

to the occupancy raiyati interest of persons who are other than members of scheduled Tribes, scheduled castes or backward classes ?

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

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

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

19. In the case of **“Sasthi Pado Sekhar and Anr.Vs.Anandi Chaudhary and Ors”(1967) AIR Patna-25**, a Division Bench of the Patna High Court while hearing the appeal considered a question raised at the Bar. It was urged that after commencement of the Constitution of India the provisions of S.46 of the Chota Nagpur Tenancy Act, 1908, hereinafter referred to as ‘the Act’ or, in any event proviso (c) to sub-Section (1) of S.46 of the Act

was ultra vires provisions of the Constitution in so far as it was inconsistent with the fundamental right to property enshrined in Art.19 (1)(f) of the Constitution and the restriction on the right of transfer imposed under the said proviso not being in the interests of the general public was not saved by Art.19(5) of the Constitution and was thus liable to be struck down, and, therefore, even if it were assumed that the plaintiff was not a resident of any place within the local limits of the district of Hazaribagh on the date when Ex.1 was executed in his favour, yet the sale deed conferred good title on him and his suit should have been decreed.

Answering the question, their Lordship observed :

“9. Before examining the reasonableness or otherwise of the restriction imposed on the right of transfer under proviso (c) to sub-Section (1) of Section 46 of the Act, it may be pointed out that the expression “interests of the general public” in Cl.(5) of Art. 19 is very wide, and the State is always competent to impose restrictions under Cl.(5) on grounds of social and economic policy.

The right to freedom of citizens to acquire, hold and dispose of properties may thus be circumscribed on such grounds as well. It may further be clarified that the mere fact that the impugned provision does not directly affect the citizens of other States of the Republic of India or even on the other divisions of the State of Bihar itself does not, in any opinion, necessarily imply that the restrictions imposed thereunder are not in the interests of the general public. Legislation affecting a particular class or a particular area would, quite obviously, directly affect the

members of that particular class or the inhabitants of that particular area only, but if the object of the legislation was the protection and safeguarding of the interest of a particular class or of persons residing in a particular area, or, the object was the removal of some serious abuse or grievance or discontent of that particular class or particular area, it must be held that such a legislation indirectly affects the public in general. It can hardly be disputed that a legislation for securing one or another of the objects referred to in Clauses (b) and (c) of Article 39 of the Constitution must be held to be a legislation in the interests of the general public.

(9A) Now, one of the objects behind the impugned provision and the restriction contend therein appears to be to shut out and eliminate absentee or outside owners of agricultural lands situate in Chota Nagpur. Such persons, not being residents of the district within the local limits of which the holding concerned was situate, are extremely unlikely to take the optimum interest necessary for the agricultural development of those lands. Once, however, they become residents of the district or of contiguous police stations, it may be presumed that they have thrown in their lot with the other permanent agricultural tenants of the area concerned and will be as much interested in the development or Conservation of those lands as the other residents. This is quite clearly in the interests of the general public. Further, it is common knowledge that the rich mineral resources of Chota Nagpur, particularly its Mica and Coal deposits, have attracted a large number of persons with ample resources from different parts of India with the primary object of exploiting those minerals. Such persons are generally equipped with greater resources

than the indigenous population; and in order to protect the comparatively weaker Section, namely, the

indigenous population, from the stronger, namely, the persons who have come in Chota Nagpur with large resources, a restriction of the type laid down in the impugned proviso serves, in my opinion, to a large extent to prevent the latter Section of the people from grabbing the agricultural lands of the area by taking advantage of

the comparative poverty of the indigenous Section and thus in the result reducing the agricultural occupancy raiyats into a mass of landless labourers. From this point of view as well, the restriction imposed and challenged in the present case must be held to be in the interest of the general public.

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

namely, proviso(c) to sub-sections (1) of Section 46 of the Act is not ultra vires the Constitution and is fully saved under Article 19(5) of the Constitution.”

20. In the case of **Lakhia Singh Patra & Others Vs Jotilal Aditya Deo and others** [(AIR) 1968 Patna 160], a Division Bench of the Patna High Court while discussing the object and purpose of enactment of Section 46 of the Chota Nagpur Tenancy Act, held as under :

“10. Several decisions were cited in support of the respective contentions. In Barie Santhal.Vs. Fakir Santhal, AIR 1924 Pat 793 (2) Bucknill, J. held that it was open to a tenant under the Chota Nagpur Tenancy Act to surrender his holding for a pecuniary consideration to the landlord and, inasmuch as a surrender is not a transfer within the meaning of section 46, even where a third party had paid consideration to a tenant as a result of which the tenant had agreed with the landlord to surrender his holding while the landlord had agreed to re—settle the property with the person who had given the consideration to the outgoing tenant, this circuitous arrangement could not in law be regarded as definitely illegal. This decision was considered by Kanhaiya Singh J. in Golap Gaddi v. Rampariksha, AIR 1958 Pat. 553, and his Lordship took a different view. It was held by his Lordship that a surrender under section 72 of the Act was lawful and that, after having accepted the surrender, the landlord is perfectly at liberty to re-settle the holding with some other person or take the land into cultivation himself. But his Lordship further observed that in the case where both the surrender and the subsequent settlement of the land

amount to one transaction, the main object of which was to by-pass the statutory provisions of section 46, the transaction becomes intrinsically Invalid, although considered separately the surrender and the settlement may have the appearance of legality. In this connection, his Lordship relied on the decision of the Judicial Committee in Moti Chand v. Ikram Ullah Khan, AIR 1916 P.C. 59. In that case, the defendants had sold certain zamindari to the plaintiffs and in the sale deed the defendants contracted to relinquish their sir and khudkasht lands and give possession thereof to the plaintiffs or in default the defendants would be liable to damages. In pursuance of the agreement contained in the sale deed, the defendants executed a deed of relinquishment in favour of the plaintiffs of their claim and right in all their sir lands in the mauzas conveyed. They, however, refused to file the deed of relinquishment in the Revenue Court and refused to quit possession of the sir lands of which they continued in possession as x-proprietary tenants. Hence, a suit for damages and breach of the contract was brought. The main question before their Lordship of the Judicial Committee was whether the agreement to relinquish and surrender their sir lands was lawful. Sub section (1) of section 10 of U. P. Act II of 1901 provided that, on transfer of the proprietary rights by sale, the ex-proprietor shall become a tenant with a right of occupancy in his sir lands and in the land which he had cultivated continuously for twelve years at the date of the transfer and shall be entitled to hold the same at a rent determined in the manner laid down therein. By sub-section (4) of section 10, such a tenant was called an "ex—proprietary tenant. Section 20 of the Act prohibited transfer of the interest of an exproprietary

tenant in execution of a decree of a Civil or Revenue Court or otherwise than by voluntary transfer between persons in

favour of whom as co-sharers in the tenancy such right originally arose or who have become by succession co-sharers therein.

Section 83 of the said Act conferred upon the tenant a right to surrender his holding to the landlord at the end of an agricultural year. Sub section (3) of section 83 provided that nothing in that section shall affect any arrangement by which a tenant and his landlord might agree to the surrender of the whole or any portion of the holding. On these facts their Lordships of the Privy Council observed inter alia:

“The policy of the Act is not to be defeated by any ingenious device, arrangements or agreements between a vendor and a vendee for the relinquishment by the vendor of his ‘sir land or land which he has cultivated continuously for twelve years at the date of the transfer for a reduction of purchase money on the vendors failing of refusing to relinquish such land. All such devices, arrangements and agreements, are in contravention of the policy of the Act and are contrary to law and are illegal and void, and cannot be enforced by the vendee in any civil court or in any court of revenue”. Kanhaiya Singh, J observed therefore that the policy of the Legislature in enacting section 46 of the Chota Nagpur Tenancy Act was, more or less, the same, namely to secure to the tenants inhabiting the area to which the Act applied their rights in their occupancy holding and to protect them from the avaricious money-lenders: and with due respect we agree with him.”

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

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

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

banks against creating mortgage for a limited period, they shall be deprived of their right to enjoy their property.

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

"The ideas underlying the welfare State are derived from many

different sources. From the French Revolution came notions of liberty, equality and fraternity. From the utilitarian philosophy of Bentham and his disciples came the idea of the greatest number. From Bismarck and Beveridge came the concepts of social insurance and social security. From the Fabian Socialists came the principles of the public ownership of basic industries and essential services. From Tawney came a renewed emphasis on

equality and rejection of avarice as the mainspring of social activity. From Webbs came proposals for abolishing the causes of poverty and cleaning up the base of society.”

Robson stated at p. 192:

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

citizen, leisure and social justice.” According to George Watson, quoted by Robson, “welfare State implies a redistribution of incomes for the achievement of basic standard of living for all.”

M.P. Hall in his The Social Services of Modern England, 1952 Edn., has stated at p. 303 that:

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

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

26. The Declaration on the Right to Development to which India is a signatory recognising that development is a comprehensive economic, social, cultural and political process, which aims at the constant improvement of the well-being of the entire population and of all individuals on the basis of their active, free and meaningful participation in development and in the fair distribution of benefits resulting therefrom.

Article 1 assures that “The right to development is an inalienable human right by virtue of which every human person and all peoples are entitled to participate in, contribute to, and

enjoy economic, social, cultural and political development, in which all human rights and fundamental freedoms can be fully realized.” Article 2 assures right to active participation and benefit of his right to development. Article 3 enjoins the State as its duty to formulate proper national development policies that

aim at the constant improvement of the well-being of the entire population and of all individuals, on the basis of their active, free and meaningful participation in development and in the fair distribution of the benefits resulting therefrom. Article 3(1) states that it is a primary responsibility of the State to create conditions favourable to the realization of the right to development. In particular, Article 4(1) directs the State as its duty to take steps individually and collectively for providing facilities for full realisation of right to development. Article 8(1) enjoins that the State should undertake necessary measures for the realisation of the right to development. Article 10 says that steps should be taken to ensure the full exercise and progressive enhancement of the right to development, including the formulation, adoption and implementation of policy, legislative and other measures for legislative and executive measures.

27. Illiot Dodds in his book ‘Liberty and Welfare’ 1957 Edn. at p. 17 stated that “welfare is actually a form of liberty inasmuch as it liberates men from social conditions which narrow their choices and brighten their self development”. Article 46 of the Constitution mandates the State “to promote with special care the educational and economic interests of the weaker sections

of the people, and, in particular, of the Scheduled Castes and the Scheduled Tribes, and shall protect them from social injustice and all forms of exploitation.” Dr B.R. Ambedkar, while winding up the debates on the Draft Constitution, stated on the floor of the Constituent Assembly that the real reason and justification for inclusion of the directive principles in the Constitution is that the party in power, in disregard of its political ideologies, will not sway away by its ideological influence but “should have due regard to the ideal of economic democracy which is the foundation and the aspiration of the Constitution”.

28. Article 21 of the Constitution assures right to life. To make right to life meaningful and effective, this Court put up expansive interpretation and brought within its ambit right to education, health, speedy trial, equal wages for equal work as fundamental rights. Articles 14, 15 and 16 prohibit discrimination and accord equality. The Preamble to the Constitution as a socialist republic visualises to remove economic inequalities and to provide facilities and opportunities for decent standard of living and to protect the economic interest of the weaker segments of

the society, in particular, Scheduled Castes i.e. Dalits and the Scheduled Tribes i.e. Tribes and to protect them from “all forms of exploitations”. Many a day have come and gone after 26-1-1950 but no leaf is turned in the lives of the poor and the gap between the rich and the poor is gradually widening on the brink of being unbridgeable.

29. Economic empowerment to the poor, Dalits and Tribes, is an integral constitutional scheme of socio-economic democracy and a way of life of political democracy. Economic empowerment is, therefore, a basic human right and a fundamental right as part of right to live, equality and of status and dignity to the poor, weaker sections, Dalits and Tribes. The State has evolved, by its legislative and executive action, the policy to allot lands to the Dalits and Tribes and other weaker sections for their economic empowerment. The Government evolved two-pronged economic policies to render economic justice to the poor. The Planning Commission evolved policies like DRDL for economic empowerment of the weaker sections of the society; the Dalits and Tribes in particular. There should be short-term policy for immediate sustenance and longterm policy for stable and permanent economic empowerment. All the State Governments also evolved assignment of its lands or the lands acquired under the ceiling laws to them. Appropriate legislative enactments are brought on statute books to prevent alienation of the assigned lands or the property had under the planned schemes, and imposed prohibition thereunder of alienation, declaring any conveyance in contravention thereof as void or illegal and inoperative not to bind the State or the assignee. In case the assignee was disqualified or not available, on resumption of such land, the authorities are enjoined to resume the property and assign to an heir or others eligible among the Dalits and Tribes or weaker sections in terms of the policy. The prohibition is to effectuate the constitutional policy of economic empowerment under Articles 14, 21, 38, 39 and 46 read with the Preamble to the Constitution. Even

in respect of private sales of the lands belonging to tribes, statutes prohibit alienation without prior sanction of the competent authority.

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

31. The second and the last question that falls for consideration is as to whether the impugned circular restricting the members of scheduled caste and scheduled tribe from mortgaging their lands with the bank for securing education loan is justified?

32. In this regard the Ministry of Tribal Affairs was constituted in October, 1999 with the objective of providing more focused attention on the integrated socio-economic development of the most under privileged Sections of the scheduled tribes. The Ministry of Tribal Affairs undertakes activities that flow from the subjects allocated under the Government of India (Allocation of Business) Rules, 1961. These include (1) social security and social insurance to the scheduled tribes (2) tribal welfare planning, project formulation, research, training etc. (3) promotion and development of voluntary efforts on tribal welfare for scheduled tribes, including scholarship to students belonging to such tribes.

33. The National Scheduled Tribes Finance and Development Corporation has been set up in April, 2001 as a Government Company under Section 25 of the Companies Act, 1956, a fully Government of India owned undertaking under Ministry of Tribal Affairs for the purpose of providing financial assistance for the economic development of Scheduled Tribes. The objectives of the Corporation, inter alia are identification of economic activities of importance to the Scheduled Tribes so as to

generate employment and raise their level of income, up gradation of skills and processes used by the Scheduled Tribes for providing job training, providing financial support for undertaking procurement and marketing of minor forests produce etc. These benefits are available to the members of scheduled tribes whose income should not exceed double the poverty line i.e Rs.39500/- per annum for the rural areas and Rs.54500/- for the urban areas.

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

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

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

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

SCC 545], the Supreme Court observed: -

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

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

"30. The Human Rights Conventions have imposed a duty on the contracting States to set up institutions of higher education which would lead to the conclusion that the citizens thereof should be afforded an effective right of access to them. In a democratic

society, a right to education is indispensable in the interpretation of right to development as a human right. Thus, right to development is also considered to be a basic human right.

39. In the leading case of on reservation policy, the Supreme Court in the case of **Ashok Kumar thakur Vs. Union of India**

and others [(2008) 6 SCC 1], observed that ultimate object of reservation is to bring those who are disadvantaged to a level where they no longer continue to be disadvantaged. The ultimate objective is to bring people to a particular level so that there can be equality of opportunity.

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

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

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

2. With a view to making right to free and compulsory education a fundamental right, the Constitution (Eighty-third

Amendment) Bill, 1997 was introduced in the Parliament to insert a new article, namely, Article 21-A conferring on all children in

the age group of 6 to 14 years the right to free and compulsory education. The said Bill was scrutinised by the Parliament Standing Committee on Human Resource Development and the subject was also dealt with in its 165th Report by the Law Commission of India.

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

** * **

4. The Bill seeks to achieve the above objects.”

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

total compliance with Article 21-A.

41. Besides the above, persons having sufficient means have been availing education loan under the schemes floated by the nationalized banks and other financial institutions. Those banks and financial institutions are giving education loan to the candidates for their higher studies in different institutions in India and abroad by taking collateral security of land and the personal guarantee of parents. In our opinion, those persons belonging to the members of scheduled caste or scheduled

tribe are also entitled to such financial assistance for higher education. If any restriction is put like the impugned circular restraining the members of scheduled caste and scheduled tribe from availing education loan from the banks, that will amount to depriving them from their legal right to bring them and their children at the level of others who, by reason of higher education, have developed their standard of living. Such restriction, therefore, shall be wholly unreasonable and unjustified.

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

(M. Y. Eqbal, J)

(D.K.Sinha,J.)

AIR2009Jhar23

IN THE HIGH COURT OF JHARKHAND AT RANCHI

Decided On: 12.12.2008

Appellants: **Narayan Soren and Ors.**

Vs.

Respondent: **Ranjan Murmu and Ors.**

JUDGMENT

M.Y. Eqbal, J.

1. This second appeal is directed against the judgment and decree dated 21.7.87 passed by 3rd Additional District Judge, Dumka in Title Appeal No. 4/83 affirming the judgment and decree passed by 2nd Additional Subordinate Judge, Dumka in Title Suit No. 34/78 whereby the suit filed by the plaintiffs-appellants was dismissed.

2. At the time of admission of the appeal the following substantial question of law was formulated:

Whether the courts below have erred in law in placing the onus on the plaintiff to prove that there was no custom of adoption by females among the Santhals?

3. The facts of the case lie in a narrow compass.

The plaintiffs-appellants filed the aforementioned suit for declaring that defendant No. 3, Rani Hansda, wife of Sundar Soren has no right to adoption and Balak Murmu is not the adopted son of Rani Hansda. The plaintiffs' case is that the

plaintiff No. 1 is the agnate of Chandar Soren, husband of Rani Hansda. Other defendants are members of the same family being agnates and claiming inheritance in the property of Sundar Soren. Sundar Soren died leaving behind his widow Rani Hansda, who allegedly was maintained by the plaintiffs. During life time Chandar Soren alleged to have executed a Jimmanama on 5th March, 64 with respect to his entire properties and since then the plaintiffs-appellants are in possession of the property of Sundar Soren. It is alleged that taking advantage of complicity and oldness of Rani Haasda, the defendant No. 1 who is grandson of the common ancestors, got a deed of adoption executed on 17.5.77. The plaintiffs' case is that in Santhal community a widow is not entitled to adopt any child and if her husband died issueless the properties are inherited by other surviving agnates.

4. The defendants contested the suit by filing written statement on the ground that according to Santhal custom a widow is also competent to adopt a child. It is pleaded that formal ceremony like Donga Tola and Nim Da Mari were duly performed. Subsequently a deed of adoption was also registered. The defendants' case is that after the death of Sundar Soren the plaintiffs started creating trouble, which resulted in initiation of criminal proceedings and after the plaintiffs failed in their attempt, the instant suit has been filed.

5. The trial court framed five issues including the issue with regard to Santhal custom of widow adopting a child. The trial Court recorded a finding that a widow can adopt a child and all ceremonies were performed while defendant No. 1 was

adopted by the widow. The trial Court, after considering both oral and documentary evidence, recorded a finding that a Santhal widow is fully competent to adopt a child. The Court further recorded a finding that all customs and ceremonies were performed at the time of taking delivery of a child from the mother.

6. Aggrieved by the said judgment and decree passed by the trial court, the plaintiffs-appellants preferred appeal before the District Judge, Dumka being Title Appeal No. 4/83. The appellate court after re-appreciation of the entire evidence affirmed the finding of the trial court and held that the defendants by adducing positive evidence proved that a Santhal widow is competent to adopt a child in absence of her husband.

7. Mr. Rajiv Sharma, learned Counsel appearing for the appellants, assailed the impugned judgment and decree mainly on the ground that the courts below have wrongly shifted the onus upon the plaintiffs to prove by evidence that the widow had not adopted the child. Learned Counsel submitted that a Santhal widow has no legal right under the custom to adopt a son.

8. Before deciding the substantial question of law, I would like to discuss the customary law of Santhal and the right of female under their customary law with regard to adoption, although the finding has been conclusively recorded by two courts. It is worth to mention here that the counsel for the appellants has confined his argument on the question of law formulated at the time of admission of the appeal.

9. The Santhals are justly described as the largest, most integrated and possibly the most resilient tribe in eastern India. They made the Santhal Parganas their home early in the colonial period and spilled over the Ganges into Purnea. They have played a crucial role as a reclaimers of land and excellent at the transplantation of paddy.

10. W.G. Archer, a renowned officer during British period, spent most of his administrative career in Bihar. He stayed many years in Santhal Parganas as Deputy Commissioner and as a Special Officer of judicial department to record the Santhal laws. He also became Joint Editor with Verrier Elwin of *Men in India* founded by S.C. Roy. Archer had close link with scholars and administrator who were active in the area of tribal studies. He has spent many years to know the customs and other history of Santhals. In the introductory chapter of adoption among the Santhal Communities, the author, W.G. Archer, in his book *Tribal Laws and Justice*, said:

IN HIS paper on Santal rules of succession, Campbell says: 'Adoption is not practised by the Santals' and Bodding while dissenting remarks, 7 have heard of one or two instances'. Sir Robert Russell, on the other hand, made enquiries in 1924 from 'an assembly of parganails in the Dumka Detrain, the parganait of Amrapara, the Sardars of Sikaripara, Rajbandh, Banspahari, Masanjour and a number of others' and found that such a custom existed from very early times. At the present day there is no uncertainty for the practice is not only a Santal custom but is a common expedient in Santal life.

The most usual situation which results in adoption is when a

Santal has no son. 'It is for love and joy that we want sons' said Salku Soren, deshmanjhi of Durgapur. But beyond this delight in male children is the knowledge that a son is the main support in old age. A Santal ploughs so long as his health and strength remain but sooner or later these must end and then if he has no son there is only the decrepitude of old age, its weak helplessness, the plight of 'an old man, a dull head among windy spaces'.

It is in circumstances such as these that a Santal often resorts to adoption-sometimes only to secure a son but more usually to gain a prop in his fading years.

IV. THE PERMANENT WIDOW IN A JOINT FAMILY

If this is the position when a widow remarries what are her rights if she does not take another husband but remains a widow? In such cases she is virtually a substitute for her husband. She steps into his place, acts as his representative and exercises almost all his rights and duties.

If her husband was joint with his brothers she will continue to live in the family and the situation will not differ materially from what it was in her husband's lifetime. Her right to maintenance will continue and if her husband's family neglects her without cause she can demand sufficient land to keep her. If there is a complete family partition the widow and her children will get the share which would have gone to her husband had he been alive.

11. So far adoption made by a widow, the author says:

In almost all cases adoption is done only by men but there is

no bar to a widow adopting a son or daughter for her dead husband'. As in all cases of adoption village approval is a necessary condition but such cases almost always occur only when there are no agnates to oppose or where the husband's brothers fully approve. Moreover it is generally accepted that if a widow so adopts she will do so from her husband's greater family. There have so far been no cases in which the village has overruled the agnates and has allowed adoption by a widow against their will.

The widow of Sital Soren of Raghunathpur adopted the son of her dead husband's brother's son.

In Jhanjhko the widow of Bhondo Murmu took a son of her husband's brother as posu putra and the same was done by the widow of Tilak Marandi of Dahua and the widow of Jiban Soren of Litipara.

In a case from Birgaon the widow of Chandra Soren adopted an outsider. Her dead husband had left no agnates and the boy was adopted from outside the family with the approval of the village.

12. In an article "Contextual Need for Change in Santhal Customary Law of Inheritance", the author of the article, Mr. Ramesh Chandra has gone in detail and said:

As mentioned earlier, the Santhal customary law provides for movement of landed property in the male line. Other immovable property also gets restricted at that level. As per local understanding, there is no codified law in this respect for Santhali women. However, according to Gantzer's Settlement Report (1935) a clear picture of customary law is visible. A few

of expressions derived from Santhali oral traditions to give some understanding about the position of women in Santhali society are “Jinis Knako” meaning ‘they are things’ indicating women as object and their position not more than any other object owned by Santhali men and she is taken as an appendage along with other commodities. “Sashhamrao Hivali” meaning ‘wife is the property of her husband’.

The Santhals are patriarchal and patrilineal people. The inheritance of property moves in male line; in exceptional cases it can also go in hands of females, but only temporarily. In case of inheritance of landed property the Santhali customary law does not provide safeguarding the interest of landed property. However, some westernized interpretation of Santhal Customary Law is available from Gantzer’s Settlement Report which portrays the customary law favouring Santhal women.

According to Santhal tribal law only males can inherit land, some jointly succeed their father, if brothers are co-sharer in a holding and one brother dies without issue, the surviving brothers and the sons of predeceased brothers inherit his share. The Hindu or Muhammadan laws of succession do not apply to Santhals. Santhal tribal law is quite definite in not allowing females to inherit. But this law is gradually undergoing a change.

As regards widows, the entries have tendered to be even less uniform. There have been not a few cases in which no objection has been raised to the recording of the widow in her own right, and in such cases, she has been described as wife of so and so. As in the case of Hindu widow, this entry is intended to indicate that she has inherited the property from her late husband and

that when she dies it will revert to those male relations who would ordinarily have inherited it at once under Santhal Law. In other cases, the widow, like the daughter, has been recorded only in the remarks column as a Khorposhdar for certain plots sufficient to maintain her until her death.

For the sake of interpretation of ongoing practice of customary law it may clearly be said that in relation to their landed property the situation is that where a Santhal woman has been recorded as wife of so and so, she holds a widow's right as if she were a Hindu widow or she may be taken to have full rights of inheritance somewhat in the manner of a woman inheriting Stridhan property under the Hindu Law. The question of succession in such cases still remains in doubt as they system is new, but there seems little doubt that the property should revert to her nearest male relatives.

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, expressed 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.

13. In the final report on the 'Revision Survey and Settlement Operations in the district of Sonthal Parganas, 1922-35 J.F. Gantzer said:

45. Females, - Entry of Women's names in the records:- The relevant portion of Khanapuri Rule No. 16 reads its follows:

If a female is the cultivator of a field her name should be accompanied by that of her father if she inherited the property

from him, or by that of her husband if she inherited from him. It may be assumed, therefore, that the revision settlement records have been prepared in accordance with the prescribed rule, but in the absence of any definite finding on (he point at issue embodied in a dispute list or other order passed by an Assistant Settlement Officer, the value to be attached to the entry of father's name or a husband's name, as the case may be, is open to challenge when the exact nature of the woman's title is under consideration in a subsequent suit. The position may be summed up in Mr. Dain's observation in his judgment dated 9th April 1934 in Commissioner's Santal Parganas Settlement Appeal No. 128 of 1933-34:

When a woman holds land, it has not been the practice in the Santal Parganas to make any entry indicating the exact, nature of the right by which she holds it and any observations made on the subject at this stage would not bind a court before which the issue may be directly raised at some future time.

46. Santal Tribal Law of Inheritance.- According to Santal tribal law only males can inherit land Sons jointly succeed their father. If brothers are co-sharers in a holding and one brother 'lies without issue, the surviving brothers and the sons of predeceased brothers inherit his share per stripes.

The Hindu or Muhammadan laws of succession do not apply to Santals Santal tribal law is quite definite in not allowing females to inherit, but this law is gradually undergoing a change and the situation created by this change is discussed in a separate paragraph below. According to tribal custom, it is permissible for a man with daughters and no sons to take

a son-in-law into his house as a Gharjamai and to give him thereby all the rights of a son. The adoption of a Gharjamai is a formal proceeding leaving no room for doubt as to the father-in-law's intention and resulting in the Gharjamai cutting off all connection with his own family as far as his rights to property are concerned, and becoming to all intents and purposes the son of his father-in-law. When such adoption has been formally made the Gharjamai can succeed as a son and oust other male relatives. It is of importance to note that a Gharjamai can be adopted only by a deliberate public act in the presence of the village community at the time of the marriage, and that according to tribal law a father-in-law cannot at a later stage convert an ordinary son-in-law into a Gharjamai. A widow cannot in any circumstances, create a Gharjamai. There is a distinction between a Gharjamai and a Ghardi-jamai. In both cases the bridal party goes from the bride's house to fetch the prospective husband and no dowry (pan) is given, but whereas the gharjamai is adopted permanently as a son, a ghardi-jamai merely lives and labours in his wife's home for a previously stipulated period which may extend up to five years. He thereby works off the debt due on account of the non-payment of pon. A ghardi-jamai is not entitled to get anything from his wife's family, but the woman herself is usually given a small present (arpa) annually at the harvest season, and this is utilized for setting up her new home. At the expiry of the stipulated period, the Ghardi-jamai is free and may return to his own home with wife.

14. In the final report on the 'Survey and Settlement Operations in the district of Sonthal Parganas, 1898-1907', H. McPherson

said:

One of the most interesting sections of Mr. Bompas' note is that which sets forth Sonthal customary law on the subject of partition, inheritance and marriage, subjects which perhaps in view of Clause (c), Section 23 of Regulation III of 1872, should have been dealt with more fully in the settlement record-of-rights of Sonthal villages than has been done. As the principles set forth by Mr. Bompas in his note were followed in disputes about inheritance that arose during the settlement in Sonthal villages, it will make this report more complete if I quote below those portions of Mr. Bompas' note which are pertinent to the subject.

(1) Sonthal Partition. When there are many grandsons or the sons do not live happily together, the father and mother will make a partition, a panchayat will be called and the father will divide all the land and cattle and will keep one share for himself; and the son with whom the parents live, will retain possession of their share during their lifetime. When the father and mother cannot get about, the sons will have to support them, as, when they were little and could not support themselves, the father and mother supported them with great trouble. Daughters get no share. Often at marriage they give them one calf each; and so at a partition if there are unmarried daughters they get one calf each. At a partition unmarried sons get a double share of the live stock, one share for their marriage expenses. Cattle which the daughters-in-law got from their father and brothers and father-in-law at the time of marriage will not be divided but the cattle which the sons got at marriage will be divided.

(2) Inheritance. - If a woman dies while her sons are unmarried, they cannot demand a partition even if their father takes a second wife, but they can do so if they like after marriage. The father gets one share and the sons one share each. If the second wife has no children, when the father dies, the sons of the first wife can take the share their father got, but if they take it they will have to pay for the funeral of their step-mother.

If a woman is left a widow without sons, her husband's father or brothers will get the whole property. The woman will get only one calf, one bandi of paddy, one bad and one cloth, and will return to her parents' house. Some men under these circumstances will keep their elder brother's widow and not let her return to her parents. This is considered very praiseworthy. The brother who keeps the widow will get his own share of the deceased brother's property, he will not take the whole.

If a widow has daughters, their paternal grandfather and uncles will take charge of mother and daughters, and the property will remain in their possession. When the daughters grow up, they will marry them, and at their marriage they will give them what presents they would have got from their father, and they will support the mother until her death. When all the daughters are disposed of, the widow will get the perquisites of a childless widow and go to her father's house or will go and live with her daughters.

The widow with a son will keep all the property in her own possession; the grandfather and uncles can only properly look on to see that the wife does not waste the property. If a widow remarries before her sons are married, the grandfather and

uncles will take possession of all the property and the mother of the children has no right to get anything. Sometimes a calf is given her out of kindness and is called bhandkar.

15. Although patrilineal system amongst the Santhals is under stress, the author W.G. Archer himself had noticed the growing trend towards the change whereby a landless widow inherited her late husband's land until she remarried. He had also observed how the settlement operation in deference to local custom recognized right of a women by recording them as owner. In Ganger's Settlement Record, it is mentioned that settlement confers right of widows and daughters beyond the customary law. In the ***Bihar District Gazettes of Santhal Parganas***, by P.G Roy Choudhary, the status of a woman has been described as under:

A Santal woman plays a very important role in Santal community. Seemingly she occupies an inferior position but she has her rights along with obligations according to custom and tradition. The civil condition of a Santal woman has been undergoing changes along with the impact of modernism. There have been some investigations into the position of a Santal woman by several scholars. Mr. W.G. Archer who was a Deputy Commissioner of Santal Parganas some years back has also made some investigations.

The joint family system of the Santal has undergone a great change. E.G. Man in his book "Santhalia and the Sonthals" (1867) had mentioned that a Santal is "blessed with large families...nine olive branches being a common number to one man's quiver...". But from investigation it was found that the

joint family system has become now a rarity. Hardly a son after marriage lives jointly with his father. The marriage ipso facto creates a separation and a Santal family now consists of the married couples and their unmarried children. Poverty due to small holding of the Santal cultivators seems to be the main cause of breaking the joint family lie. Joint family system envisages property, particularly landed property to create a co-partnership. The spread of literacy and education, especially among the Christian Santals seems to be also a factor for separation. There is a tendency among the educated service-holders to live separately. Sometimes the father is himself responsible for separation in case of re-marriage.

16. From the aforesaid discussions, it is evidently clear that custom • prevailing in the Santhal community has undergone a great change. The rules against female succession among santhals whether christen or non-christens are changing owing to the force of public opinion. The change which is occurring is in the direction of uplifting the condition of women and giving them right in the family as also in the property. From the books of the great scholars who are the authors of many books including the books in **Survey and Settlement** quoted herein before, it is manifestly clear that there are instances where a sonless male or female have taken in adoption a grandson or any of the agnates of the family.

17. In the case of **Madhu Kishwar and Ors. v. State of Bihar and Ors.**: AIR1996SC1864, provisions of Chotanagpur Tenancy Act, 1908 which provide succession to property in the male line was challenged as discriminatory and unfair against

women and, therefore, ultra vires to equality clause in the Constitution. In the said case, the Supreme Court observed:

37. The public policy and constitutional philosophy envisaged under Articles 38, 39, 46 and 15(1) and (3) and 14 is to accord social and economic democracy to women as assured in the Preamble of the Constitution. They constitute the core foundation for economic empowerment and social justice to women for stability of political democracy. In other words, they frown upon gender discrimination and aim at elimination of obstacles to enjoy social, economic, political and cultural rights on equal footing. Law is a living organism and its utility depends on its vitality and ability to serve as sustaining pillar of society. Contours of law in an evolving society must constantly keep changing as civilization and culture advances. The customs and mores must undergo change with the march of time. Justice to the individual is one of the highest interests of the democratic State. Judiciary cannot protect the interests of the common man unless it would redefine the protections of the Constitution and the common law. If law is to adapt itself to the needs of the changing society, it must be flexible and adaptable.

38. Law is the manifestation of principles of justice, equity and good conscience. Rule of law should establish a uniform pattern for harmonious existence in a society where every individual would exercise his rights to his best advantage to achieve excellence, subject to protective discrimination. The best advantage of one person could be the worst disadvantage to another. Law steps in to iron out such creases and ensures equality of protection to individuals as well as group liberties.

Man's status is a creature of substantive as well as procedural law to which legal incidents would attach. Justice, equality and fraternity are trinity for social and economic equality. Therefore, law is the foundation on which the potential of the society stands.

Their Lordships further observed:

28. As per the U.N. Report 1980

women constitute half the world population, perform nearly two-thirds of work hours, receive one-tenth of the world's income and own less than one-hundredth per cent of world's property.

Half of the Indian population too are women. Women have always been discriminated against and have suffered and are suffering discrimination in silence. Self-sacrifice and self-denial are their nobility and fortitude and yet they have been subjected to all inequities, indignities, inequality and discrimination. Articles [13](#), [14](#), [15](#) and [16](#) of the Constitution of India and other related articles prohibit discrimination on the ground of sex. Social and economic democracy is the cornerstone for success of political democracy. The Scheduled Castes, Scheduled Tribes and women, from time immemorial, suffered discrimination and social inequalities and made them accept their ascribed social status. Among women, the tribal women are the lowest of the tow. It is mandatory, therefore, to render them socio-economic justice so as to ensure their dignity of person, so that they be brought into the mainstream of the national life. We are conscious that in Article 25 which defines Hindus, Scheduled

Tribes were not brought within its fold to protect their customs and identity. We keep it at the back of our mind.

18. The customary law of adoption prevailing in the Santhals has been recognized in the *Santhal Pargamis Tenancy (Supplementary Provisions) Act, 1949*. Section 20 of the said Act put a restriction in the transfer of raiyati holdings by a raiyat except with the written permission of the Deputy Commissioner. Section 20 of the Act however, provides some relaxation in the transfer of raiyati land by way of usufructuary mortgage to Bank and the Society registered under Bihar and Orissa Co-operative Societies Act, 1935. Section 24 of the Act makes registration of certain transfers of raiyati holdings mandatory. Section 24 reads as under:

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-rights or any law or anything having the force of law in the Santal Parganas, 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 donor 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-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.

19. From reading of proviso 2 of Sub-section (2) of Section 24, it is evidently clear that it gives relaxation by providing that in case of gift of adopted son or adopted daughter of the donor under the Santhal Law, no registration fee is required to be paid. There is sufficient indication about the custom of

adoption amongst the Santhals.

20. Be that as it may, the only substantial question of law needs to be answered in this appeal is as to whether the Courts below have erred in law in placing the onus on the plaintiff to prove that there was no custom of adoption by females among the santhals.

21. In my considered opinion where plaintiff asserts that adoption of a child by female is not customary in Santhals and the defendant discharged the onus by adducing evidence to show that adoption of child by female santhal is customary then heavy onus lies on the plaintiff for proving that such custom of adoption of a child is not customary in Santhals.

22. In the case of **“Mt. Barkar Bibi v. Mohd. Amin and Anr”** A.I.R. 1935 Lah 325, a Division Bench of Lahore High Court while dealing with the customary law observed:

We may say at once that the decision of the case has proceeded on entirely erroneous grounds. Even since their Lordships of the Privy Council have decided 1917 P C181 (1), the law has been very clear that when a person asserts that he is governed by custom it is incumbent upon him to prove that he is so governed and further to prove what that custom is. There is no uniform custom applicable to the whole of the Punjab nor has it so far been codified It is well known that custom differs from place to place and from tribe to tribe and it is also recognized by authority that it may differ from family to family. In words of Robertson, J.. In 110 P R 1906 which have been quoted with approval by their Lordships of the Privy Council in 1917 P C 181(1):

It is not the spirit of Customary law, nor any theory of custom or deductions from other customs which is to be the rule of decision, but only any custom applicable to the parties concerned.

23. In the instant case, it was specifically pleaded by the defendants/respondents that according to Santhal custom a widow is also competent to adopt a child. The defendants asserted that formal ceremonies like Bonga Tola and Nim Da Mariwere were duly performed. Subsequently, a deed of adoption was also registered. Witnesses of the same community were examined by the defendants who have consistently deposed about the custom prevalent in Santhal Community for adoption of a child by a widow. Not only that one of the witnesses D.W.5 Misil Soren has deposed that he was taken in adoption by Maino Tudu a widow after the death of her husband Jiwan Besra.

24. Both the trial Court and the Appellate Court after recorded a concurrent find about the custom of adoption of a child by a female santhal and the finding is based on oral evidence coupled with registered document of adoption. The finding of fact recorded by two courts cannot and shall not be held to be perverse in law. The impugned judgment and decree passed by the Trial Court and affirmed by the Appellate Court, therefore, cannot be disturbed in Second Appeal.

For the reasons aforesaid, there is no merit in this appeal, which is, accordingly, dismissed.

IN THE HIGH COURT OF JHARKHAND AT RANCHI

L.P.A. No. 61 of 2004

Decided On: 03.03.2009

Appellants: **Godwin Ekka**

Vs.

Respondent: **The State of Bihar, now the State of Jharkhand, Additional Collector, Commissioner, South Chhotanagpur Division and Cyril Kharia**

Hon'ble Judges:

Narendra Nath Tiwari and Ajit Kumar Sinha, JJ.

JUDGMENT

Narendra Nath Tiwari, J.

1. The main point sought to be answered in this appeal is as to whether Dar-raiyati settlement made in the year 1934 without permission of the Deputy Commissioner is violative of Section 46 or any other provisions of Chhotanagpur Tenancy Act (hereinafter to be referred as the "Act"), attracting mischief of Section 71A of the said Act.

2. The appellant claims to have validly possessed land of Revisional Survey Khata No. 257, measuring an area of 23.07 acres of village Gotra, P.S. Simdega, District Gumla. The said land of Khata No. 257 was recorded as KAIMI in the names of Mana Kharia and Suleman Kharia in the Revisional Survey Record of Rights as tenants in common with note of specific possession of the plots in the remarks column.

3. Mana Kharia was also known as Emmanuel Kharia. He mortgaged the land of his share to Manonit Ekka, mother of the appellant, on 14th March, 1934.

4. Suleman Kharia, another co-tenant, made a Dar-raiyat Settlement in favour of Manonit Ekka in respect of the land, measuring 14.29 acres of Khata No. 257 by unregistered deed dated 19th March, 1934.

5. During subsistence of the mortgaged period, Mana Kharia too made Dar-raiyat Settlement in favour of Manonit Ekka in respect of the land, measuring 8.78 acres of Khata No. 257 on accepting Salami by unregistered deed dated 8th April, 1936.

6. Since thereafter, the land is being held and possessed as Dar-raiyat by the predecessor-in-interest of the appellant and subsequently by the appellant continuously on payment of rent.

7. Manonit Ekka died leaving behind two sons, namely, Kushal Maya Ekka and the appellant. They in exercise of their right of ownership and possession sunk a Pucca Well on a portion of Plot No. 5022 and reclaimed upland (Tanr land) and converted the same into paddy land. At the relevant time, the cost came between Rs. 30,000-40,000/-. They made further improvement in the land and have been coming in continuous cultivating possession of the land.

8. According to the appellant, as a confirmatory step, an indenture of sale was unilaterally executed by Suleman Kharia on 18th July, 1946, though the same remained dormant and inoperative and the land all along is held as Dar-raiyat.

9. After about more than 40 years Cyril Kharia, son of Mana Kharia (Respondent No. 4 herein) filed an application under Section 71A of the said Act before the Special Officer, Scheduled Area Regulation, praying for restoration of the said land.

10. Section 71A of the said Act has been enacted by Bihar Scheduled Areas Regulation, 1969 (Bihar Regulation 1 of 1969) in order to make provision for restoration of possession to the members of the Scheduled Tribes over the land unlawfully transferred.

11. The Special Officer registered the aforesaid application as SAR Case No. 283 of 1979-80. Notice was issued to the appellant. He had appeared and contested the case. In his reply, it was, inter alia, contended that the application is not maintainable in law and is liable to be rejected. There has been no violation of Section 46 or any other provision of the said Act. The land was validly acquired by virtue of Dar-rायati Settlement long back in the year 1936. It was further contended that the application seeking restoration of the land after more than four decades is also barred by limitation.

12. The Special Officer after hearing the parties passed order dated 20th October, 1981 holding that the appellant himself is a member of the Scheduled Tribes. The land was given as Dar-rायati settlement on payment of Salami more than 30 years ago. He has acquired valid right title and possession and that the application for restoration under Section 71A of the Act is not maintainable. He, thus, rejected the application.

13. Respondent No. 4 preferred appeal against the said order before the Additional Collector, Gumla, being S.A.R. Appeal No. 321 R 15 of 1981-82.

14. Learned Additional Collector allowed the appeal and set aside the order of the Special Officer, observing that the claim of the appellant being based on unregistered deed is fraudulent and the land has been transferred in contravention of the provisions of the said Act.

15. The appellant, thereafter, preferred statutory revision before the Commissioner, South Chhotanagpur Division, Ranchi. The same was registered as Ranchi Revenue Revision No. 91 of 1984. The Commissioner by his laconic order dated 19th June, 1984 refused to admit the revision.

16. The appellant, challenging the said order, filed a writ petition, being CWJC No. 910 of 1984 (R). By order dated 25th May, 1989, the said writ petition was disposed of by setting aside the order of the Commissioner and directing him to admit the revision application and hear the parties on merit.

17. The Commissioner, thereafter, heard the said revision application and dismissed the same by order dated 7th June, 1997.

18. The appellant assailed the said order in this Court in CWJC No. 2586 of 1997(R). By the impugned order, the learned Single Judge disposed of the writ petition, upholding the order of the revisional authority and dismissing the petition. It has been, *inter alia*, held that the appellate as well as revisional authorities have passed concurrent orders holding that no

right was created either by mortgage deed or by Dar-raiyati deed and the ground of limitation was not raised before the concerned authority. The writ petition has, thus, no merit.

19. The appellant, in this appeal, has sought to challenge the impugned order of learned Single Judge mainly on the following grounds:

(i) The appellant's predecessor-in-interest acquired the land by virtue of Dar-raiyati Settlement. By the said settlement a subsidiary right has been created by the raiyat. The Chotanagpur Tenancy Act does not debar creation of Dar-raiyati right by any of its provisions.

(ii) Dar-raiyat or under-raiyat is a class of tenant recognized and defined in Section 4 of the Act.

(iii) Dar-raiyati tenancy is well recognized age old customary tenancy. Custom of acquisition of occupancy right and/or right equal to raiyati right has been said to be not inconsistent with any provision of the C.N.T. Act. Such custom is saved by Section 76 of the said Act.

(iv) There is no contravention of law in the said transaction and the same does not come within the ambit of Section 71A of the said Act.

(v) The appellant and before him his predecessor-in-interest had/have been in continuous cultivating possession of the land for more than four decades; they have acquired right of occupancy even by operation of statutory provision.

(vi) The application for restoration of land preferred after more than four decades is barred by limitation.

(vii) The appellate authority and the revisional authority without taking into consideration the said legal provisions and the well recognized customs saved by Section 76 of the said Act have erroneously upset the finding and the order of the Special Officer, Scheduled Areas Regulation. He had rightly held that the application under Section 71A of the said Act is not maintainable.

(viii) Learned Single Judge has upheld the said erroneous orders without taking into consideration the points taken in the writ petition. Learned Single Judge has also committed an error of record in observing that the appellant has not raised the point of limitation earlier and the said ground cannot be entertained at that stage. As a matter of fact, the appellant had raised this point at the very outset in his show cause reply before the Special Officer, Scheduled Areas Regulation and the Special Officer had taken note of the same and rejected the application of Respondent No. 4, also taking into consideration of the point of limitation.

20. The respondents, on the other hand, contested the appeal and submitted that the initial mortgage as also the claim of under raiyati settlement was fraudulent and contrary to the provision of Section 46 of the said Act and the power under Section 71A has been rightly exercised by the appellate and the revisional authorities.

21. Mr. B.B. Sinha, learned senior counsel, appearing on behalf of Respondent No. 4, submitted that even if it is accepted that the under raiyati tenancy was created in favour of Manonit Ekka, the said right is not heritable by the descendants of Manonit Ekka and possession of the land has been rightly restored in favour of the descendants of the transferor. Learned Counsel referred to and relied upon a decision of learned Single Judge of Patna High Court in the case of ***Haripada Mahato and Anr. v. State of Bihar and Ors.*** 1988 BLT (Rep.) 258. He further submitted that there is no prescribed period of limitation for exercising power under Section 71A of the said Act by the Deputy Commissioner and power can be exercised at any time without any limitation. The points raised by the appellant were considered by the learned Single Judge and the same were rightly rejected. No interference with the impugned order is warranted.

22. We have heard learned Counsel for the parties and considered the facts and materials on record. We also examined the relevant legal provisions and the decisions referred to and relied upon in course of hearing of this appeal.

23. Section 71A of the said Act] has been introduced by Bihar Scheduled Areas Regulation, 1969 (Bihar Regulation 1 of 1969). The said section is reproduced herein below:

71-A. Power to restore possession to member of the Scheduled Tribes over land unlawfully transferred- *If at any time, if comes to the notice of the Deputy Commissioner that transfer of land belonging to a raiyat or a Mundari Khunt-Kattidar or a Bhuinhari who is a member of the Scheduled Tribes*

has taken place in contravention of Section 46 or Section 48 or Section 240 or any other provisions of this Act or by any fraudulent method, including decrees obtained in suit by fraud and collusion he may, after giving reasonable opportunity to the transfer, who is proposed to be evicted, to show cause and after making necessary inquiry in the matter, evict the transferee from such land without payment of compensation and restore it to the transferor or his heir, or, in case the transferor or his heir is not available or is not willing to agree to such restoration, re-settle it with another Raiyat belonging to Scheduled Tribes according to the village custom for the disposal of an abandoned holding:

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

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 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 of the vicinity or pays adequate compensation to be determined by the Commissioner for rehabilitation of the transferor:

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

24. From the said provision, it is clear that in order to bring a case within the fold of this provision- (i) there must be transfer of land belonging to a raiyat or Bhuinhar or Mundari Khunt-kattidar, who is a member of Scheduled Tribes; (ii) the transfer is in contravention of Section] 46 or any other provision of the said Act or by any fraudulent method.

25. In the instant case, the Kaimi raiyats by virtue of the settlement of the land, made in favour of Manonit Ekka created a subsidiary right under them called under-raiyat. No provision has been brought before us to show that any provision of the Chotanagpur Tenancy Act prohibits creation of under-raiyati tenancy.

26. Section 4 of the said Act specifies classes of tenants. In

Clause (3) of the Section Under-raiyat' has been included as one of the classes of tenant. The said section runs thus:

4. Classes of tenants.- *There shall be, for the purposes of this Act, the following classes of tenants, namely:*

(1) tenure-holders, including under-tenure-holders;

(2) raiyat, namely:

(a) occupancy-raiyats, that is to say, raiyats having a right of occupancy in the land held by them,

(b) non-occupancy raiyats, that is to say, raiyats not having such a right of occupancy, and

(c) raiyats having khunt-katti rights;

(3) under-raiyats, that is to say, tenants holding, whether immediately or mediately, under raiyats; and

(4) Mundari Khunt-kattidars.

27. Again Section 6 of the said Act defines the meaning of 'raiyat', which reads as follows:

6. Meaning of "raiyat"- *(1) "Raiyat" means primarily a person who has acquired a right to hold and for the purpose of cultivating it by himself or by members of his family, or by hired servants or with the aid of partners; and includes the successor-in-interest of persons who have acquired such a right, but does not include a Mundari-Khunt-kattidar.*

(2) A person shall not be deemed to be a raiyat unless

he holds land either immediately under a proprietor or immediately under a tenure-holder or immediately under a Mundari-khunt-kattidar.

(3) In determining whether a tenant is a tenure-holder or raiyat, the Court shall have regard to,-

(a) local custom, and

(b) the purpose for which the right of tenancy was originally acquired.

28. Sections 4 and 6 read together make it clear that 'Raiyat' and 'Under-raiyat' are two different classes of tenants in the C.N.T. Act. A raiyat holds land either immediately under a proprietor or a tenure-holder or Mundari-Khunt-Kattidar, whereas an under-raiyat holds land immediately or mediately under a raiyat.

29. Mana Kharia and Suleman Kharia, who had made settlement in favour of Manonit Ekka, admittedly were raiyats within the meaning of Section 6 of the Act. The settlement in favour of Manonit Ekka by the said raiyats created a tenancy, namely, under-raiyati tenancy, which is a recognized class of tenant under the said Act.

30. Though the provisions of the said Act do not provide the procedure for creation or incident of under-raiyati tenancy, a custom by which an under-raiyat acquires rights similar to those of an occupancy raiyat is not inconsistent with the provisions of the Act. Such custom and usage is saved by Section 76 of the said Act. Section 76 of the said Act reads as follows:

76. Saving of custom- *Nothing in this Act shall affect any custom, usage or customary right not inconsistent with, or not expressly or by necessary implication modified or abolished by its provisions.*

Illustrations

(i) A custom or usage whereby a 'Raiyat' obtains a right of occupancy as soon as he is admitted to occupation of the tenancy, whether he is a settled 'Raiyat' of the village or not, is not inconsistent with, and is not expressly or by necessary implication modified or abolished by, the provisions of this Act. That custom or usage, accordingly, wherever it exists, will not be affected by this Act.

(ii) A custom or usage by which an under 'Raiyat' can obtain rights similar to those of an occupancy 'Raiyat' is similarly, not inconsistent with, and is not expressly or by necessary implication modified or abolished by the provisions of this Act, and will not be affected by this Act.

(iii) A custom or usage whereby a 'Raiyat' is entitled to make improvements on his tenancy and to receive compensation therefore an ejection is not inconsistent with, and is not expressly or by necessary implication modified or abolished by the provisions of this Act. That custom or usage, accordingly, wherever it exists, will not be affected by this Act.

(iv) A custom or usage whereby 'Korkar' is held,-

(a) during preparation for cultivation, rent-free, or

(b) after preparation, at a rate of rent less than the rate payable for ordinary 'Raiyati' land in the same village tenure or estate.

is not inconsistent with, and is not expressly or by necessary implication modified or abolished by the provisions of this Act. That custom or usage, accordingly wherever it exists, will not be affected by this Act.

31. Illustration (ii) of Section 76 of the Act makes it clear that any such custom by which an under Raiyat can obtain rights similar to those of an occupancy Raiyat is not inconsistent with and not expressly or by necessary implication modified or abolished by the provisions of this Act, and will not be affected by this Act.

32. From the said clear provision in the said Act, creation of an under raiyati tenancy and custom of acquisition of right even similar to those of an occupancy raiyat cannot be said to be in violation or inconsistent with any other provisions of the Act.

33. It is a different question that in all cases, an under-raiyat does not acquire occupancy right in the land held by him. Acquisition of such right is subject to custom or usage prevalent in the area. The claim of such custom raises a factual question and the same is required to be pleaded and proved.

34. It is not the case of the respondents that the appellant has not pleaded and proved such custom of acquisition of occupancy right, which as per the provision of Section 23 of the Act is a heritable right like any other immovable properties subject to local custom to the contrary. However, under raiyati,

being a recognized class of tenancy under law, cannot be held to be per se illegal or violative of any provision of the Act so as to bring the same within the fold of Section 71A of the Act.

35. The appellate/revisional authority as well as learned Single Judge have not taken into consideration the said legal aspects and erroneously maintained the claim of the respondents under the provisions of Section 71A of the Act.

36. In view of the said legal provision, we are unable to us hold the view of the learned Single Judge in the case of ***Haripada Mahato and Anr. (Supra)*** that the creation of under raiyati settlement is a lease and such lease is restricted only for a period of five years. An under-raiyat is a class of tenant, holding the land under a Raiyat recognized by the custom and the tenancy law. Moreover Section 44 of the Act speaks about the Raiyat's right to entitle to receive land on a lease but it does not include under-raiyat. Section 46 of the Act also does not speak about any restriction for creating a subsidiary under raiyati tenancy. The fact of the case of ***Haripada Mahato and Anr. (Supra)*** is also different and the same has got no application to the facts of the instant case.

37. That apart, in the instant case, under raiyati tenancy was created in the year 1936. Since thereafter the ancestors of the appellant were in continuous cultivating possession. After the death of Manonit Ekka, the appellant and his brother have been coming in continuous possession of the land. There is a claim of improvement of land on investing considerable amount. Even in absence of a custom of acquisition of occupancy right, the appellant having been in continuous cultivating

possession for more than 40 years to the knowledge of the recorded tenants/their successor-in-interest acquires title by adverse possession.

38. By Bihar Regulation 1 of 1969, Article 65 of the Schedule of Limitation Act, 1963 has been amended and the period of limitation has been extended to 30 years in respect of the immovable property belonging to the members of Scheduled Tribe. Settlement in this case is of the year 1936 and the claim of restoration has been made in the year 1979-80 i.e. after more than the prescribed period of thirty years.

39. Though the third proviso to Section 71A of the Act confers power on the Deputy Commissioner to restore the land and resettle it to the transferor or his heir or another raiyat even after acquisition of title by adverse possession. Such power has to be exercised for reasons to be recorded as to why it should be restored or resettled after acquisition of title by adverse possession. That too can be ordered subject to further condition of depositing the fair and equitable sum as may be determined by the Deputy Commissioner, having regard to the market value of the land or the amount for which the land was transferred, coupled with compensation for improvements effected to the land. From the said proviso to Section 71A of the Act. it is clear that if after an enquiry, the Deputy Commissioner is satisfied that the transferee has acquired title by adverse possession and that the transferred land should be restored or re-settled, he shall require the transferor or his heir or another raiyat, as the case may be, to deposit with the Deputy Commissioner such sum of money

as may be determined by the Deputy Commissioner having regard to the amount for which the land was transferred or the market value of the land, as the case may be and the amount of any compensation for improvements effected to the land which the Deputy Commissioner may deem fair and equitable.

40. The said provision, therefore, contemplates that in order to exercise the power of restoration after expiry of more than thirty years, the Deputy Commissioner has to peruse and ponder: whether the land should or should not be restored to the transferor or his heir. The legislature intended that for restoration of land after acquisition of title by adverse possession by the transferee, the test of reasonableness has to be applied keeping also in view the object of social justice underlying in Section 71A of the Act.

41. One of the considerations in such cases may be the visible presence of element of evil and dishonest design to wrongfully deprive the ignorant/unprivileged tribal of his raiyati land by some one having better social and economic background which was misused to occupy the land of the tribe without legally unexplainable and reasonable excuse and further that denial of restoration would defeat the object sought to be achieved by enacting the special provision of Section 71A.

42. In the instant case, there is no such visible element of deceit. The original settlee was herself an aboriginal having same social background and the under-raiyati settlement made in her favour is a well recognized kind of tenancy under the said Act.

43. The concerned authorities ignored the same and have also not recorded any specific reason for restoration of land in favour of Respondent No. 4 as required by third proviso to Section 71A in spite of acquisition of valuable right, title by the appellant.

44. Even if the Deputy Commissioner found reasons and decided that the land should be restored in spite of lapse of more than four decades, he had to determine fair and equitable amount of compensation as envisaged in the said provision. The order of restoration passed without meeting the said legal requirements is not in conformity with law and is illegal and unsustainable.

45. Learned Counsel for the appellant submitted that in view of the amendment in Article 65 to the schedule of the Limitation Act, the application for restoration filed beyond 30 years is barred by limitation.

46. Mr. B.B. Sinha, learned Senior Counsel, appearing on behalf of Respondent No. 4, on the other hand, argued that there is no limitation for filing application for restoration under Section 71A of the Act. The opening line of the provision of Section 71A of the Act starts with "If at any time, it comes to the notice of the Deputy Commissioner". It does not prescribe any period of limitation for approaching the concerned authority.

47. Whether 30 years limitation is strictly applicable to restrict the revenue authority to entertain application and exercise power under Section 71A is no longer *res integra*.

48. In the case of *Situ Sahu and Ors. v. State of Jharkhand and Ors.* (2004) 8 SCC 340 , the Apex Court has held that the use of the words “at any time” in Section 71A is evidence of the legislative intent to give sufficient flexibility to the Deputy Commissioner to implement the socio-economic policy of the Act viz. to prevent inroads upon the rights of the ignorant, illiterate and backward citizens. Thus, where the Deputy Commissioner chooses to exercise his power under Section 71A it would be futile to contend that the period of limitation under the Limitation Act has expired. The period of limitation under the Limitation Act is intended to bar suits brought in civil courts where the party himself chooses to exercise his right of seeking restoration of immovable property. But, where, for socio-economic reasons, the party may not even be aware of his own rights, the legislature has stepped in by making an officer of the State responsible for doing social justice by clothing him with sufficient power. However, even such power cannot be exercised after an unreasonably long time during which third-party interests might have come into effect. Thus, the test is not whether the period of limitation prescribed in the Act of 1963 had expired, but whether the power under Section 71A was sought to be exercised after unreasonable delay.

49. In view of the above, it cannot be held that the expiry of period of limitation takes away the power of the concerned officer to restore the land in favour of the transferee under Section 71A. The object not to bar the said power by law of limitation is also clear from the third proviso to Section 71A, as discussed above. The Deputy Commissioner

can exercise power of restoration even after acquisition of right by adverse possession by the transferee subject to the conditions appended to the said proviso.

50. In the case of *Situ Sahu and Ors. (Supra)*, it has been held by the Apex Court that lapse of 40 years is certainly unreasonable time for exercising such power even if it is not hedged in by a period of limitation.

51. In the instant, case, there is lapse of more than 43 years which cannot be said to be reasonable time for exercising power under Section 71A of the Act and that too without recording reasons and fulfilling the conditions imposed by third proviso to Section 71A of the Act.

52. The appellant from the very beginning has been objecting the maintainability of the restoration proceeding on the said grounds. The first revenue court, the Special Officer, considered the same and rejected the application of the Respondent No. 4. The appellate as well as the revisional authorities without taking into the said legal aspects erroneously reversed the order of the Special Officer. Learned Single Judge upheld the said erroneous orders, holding the said unfounded and perverse orders as concurrent findings and also rejected the ground of limitation erroneously observing that it was raised for the first time at the writ stage, which apparently appears to be an error of record.

53. For the reasons aforesaid, the order of learned Single Judge cannot sustain. This appeal is, thus, allowed. The impugned order of the learned Single Judge as also the orders of the

revisional and appellate authorities are set aside.

54. However, there is no order as to costs.

IN THE HIGH COURT OF JHARKHAND AT RANCHI

C.W.J.C. No. 150 of 2000

Durga Charan Sardar Versus The State of Bihar & Ors.

ORDER

Dated: 27.04.2009

Ajit Kumar Sinha, J.

1. The present writ petition has been preferred for setting aside the order dated 11.8.98 passed in Singhbhum Revenue Revision No. 347 of 87 by the Respondent No. 2, the Commissioner, South Chotanagpur Division, Ranchi contained in Annexure-6 and the order dated 17.8.87 passed in S.A.R. Appeal No. 75 of 85-86 by the respondent No. 3 the Deputy Commissioner, Singhbhum West contained in Annexure-5 and the order dated 26.8.85 passed in S.A.R. Case No. 85 of 79-80 by the respondent No. 4 the S.D.O. Saraikella, Singhbhum West contained in Annexure-4 and further directing the respondents not to disturb the possession of the petitioner over the lands in question.

2. The facts in brief are stated as under:

The petitioner filed a petition S.A.R. Case No. 85 of 79-80 before Sub Divisional Officer, Saraikella, Singhbhum West for restoration of lands bearing plot No. 339 (of area 0.22 acres) plot No. 340 (Area of 1.53) plot No. 343 of area 0.73 acres and plot No. 354 (of area 0.83 acres) of total area 3.31 acres under Khata No. 37 of village Sanjar within Rajnagar Police

Station, Dist. Singhbhum West against Chinibas Mahto father of the opposite party on the ground that the said Chinibas Mahato is in possession of the aforesaid lands on the basis of an illegal compromise decree obtained by practicing fraud on the petitioner's father Tanu Sardar and on his uncle Panjam Sardar and also by suppressing the facts and law in the court of the Munsif at Saraikella. The aforesaid case was registered as S.A.R. case No. 85/79-80 before the Sub-Divisional Officer, at Saraikella. During the pendency Chinibas Mahato died and he was substituted by his two sons namely Yadav Mahato and Suren Chandra Mahato and they were made parties and they filed their show-cause stating therein that the O.P. purchased the land from the grandfather of the applicant petitioner more than 30 years ago on payment of valuable consideration and since then they are in cultivating possession. They have also contended that they had valid right, title by adverse possession in the land long before S.A.R. Act came into force in the locality.

3. The respondents herein stated that the land in question was wrongly recorded in the name of the applicant's father and its co-sharer in the last Revisional survey. The Opposite party filed a Title Suit No. 46/74 for the land in question for declaration of his title and possession with a prayer that the survey entry in the name of Tuna Sardar and others are wrong. The Title Suit ended in compromise decree in favour of the Opposite party wherein Tuna Sardar and others ancestors of the applicant have admitted the right, title and possession of the respondent Nos. 5 & 6 with regard to the land in question. They have admitted that the survey entry of the proceeding land in question is wrong.

After hearing both sides the learned Sub-Divisional Officer allowed the restoration application S.A.R. No. 85/79-80 of the petitioner and directed to restore the land in question to the applicant vide its order dated 25.10.80 and the land was restored to the petitioner and since then the petitioner is in possession of the land in question till today. Thereafter, the opposite party preferred an appeal against the aforesaid order of restoration which was registered as T.A. Misc. Appeal No. 76 of 1980-81 and the learned Appellate Court after hearing the matter remanded the case for disposal again to the Sub-Divisional Officer, Saraikella. Upon remand, the learned Sub-Divisional Magistrate after hearing both sides was pleased to dismiss the prayer for restoration of the lands vide its order dated 26.8.85. The petitioner being constrained preferred an appeal against the order of learned Sub-Divisional Officer which was registered as S.A.R. case No. 74/85-86 and the learned Dy. Commissioner after hearing the parties was pleased to dismiss the said appeal vide its order dated 17.8.87. Thereafter, a revision was preferred before the Commissioner, South Chotanagpur Division, Ranchi challenging the aforesaid order being Singhbhum Revenue Revision No. 347 of 1987 which was also dismissed vide impugned order dated 11.8.98.

4. The main contention raised by the learned Counsel for the petitioner is that there was no obligation of limitation in a proceeding under Section 71A of the Chotanagpur Tenancy Act. It has further been contended that the compromise decree is a fraudulent transfer since it was based on an oral transfer. It has further been contended that Deputy Commissioner was a necessary party in any suit and since he was not impleaded,

the compromise decree has no value in the eyes of law in view of Section 46(3) of the C.N.T. Act.

5. The respondents have contended that the restoration application was obviously barred by limitation. It has further been contended that the compromise decree has not been challenged. It has further been contended that the actual possession was much more than 30 years old and that the Deputy Commissioner was not a necessary party when the suit was filed in 1974 since that requirement was brought about under Section 46 of the C.N.T. Act only after introduction of C.N.T. Act, 1975 and thus the authorities below rightly gave a concurrent finding that the land in question was admittedly transferred in the year 1938 and provision of Section 71A does not apply in any case since C.N.T. Act was not made applicable to Saraikela and it was introduced in the Saraikela State only in the year 1951.

6. I have considered the rival submissions, arguments and the pleadings. The admitted fact remains that the transfer took place in the year 1938 and C.N.T. Act was not applicable at that point of time in Saraikela State and it was only introduced in 1951, even the suit was filed in 1974 whereas the requirement of Deputy Commissioner to be impleaded was introduced by way of an Amendment Act, 1975 in Section 46. There is no dispute about the fact that the compromise decree was never challenged or questioned and the possession of the land in question with the father of the opposite party was for over 30 years and the Civil Court passed the decree declaring the settlement entry as wrong and erroneous and declared the

title and possession of the father of the opposite party. The fact remains that the father of the petitioner did not prefer any appeal and as such the petitioners cannot say that the land should be restored to him. The transfer by sale was effected in 1938 when the provisions of C.N.T. Act was not applicable in Saraikela State. Another fact which needs consideration that even assuming that the period of limitation was 30 years, still then the restoration case was hopelessly barred by limitation and even under Section 71A which refers to the words 'if at any time' the same has been interpreted time and again both by this Court and the Hon'ble Supreme Court as reasonable time.

7. It cannot be taken to mean that the powers could be exercised without any time limits. The Hon'ble Supreme Court considered this issue in AIR2000SC2276 **titled as Jai Mangal Oraon v. Mira Nayak** and at para-16 held that the period of 40 years could not be condoned in view of the rights of parties having been acquired in the mean time under the ordinary law as well as law of limitation. This issue was again considered in 2004 (8) SCC (**Situ Sahu v. State of Jharkhand and Ors.**) with reference to Article 65 of the Limitation Act, 1963 which provided 30 years under the Limitation Act for moving application for restoration and the Hon'ble Supreme Court held that the lapse of 40 years is certainly not a reasonable time for exercise of power and in that view held that Special Officer had not exercised its power correctly under Section 71A of Chotanagpur Tenancy Act after such lapse of unreasonable long time. Again in a recent judgment as reported in AIR2008SC1139, the Hon'ble Supreme Court

again reiterated the view by holding that the power should be exercised within a reasonable period of time. In the present case also more than 41 years had lapsed in challenging the transfer and the same cannot held as a reasonable time for exercising the power. Even this Court vide its order in a similar matter as reported in **Akhouri Akhileshwari Charan Lal v. State of Bihar** while relying upon the aforesaid Judgment reiterated the view of reasonableness and held that application for restoration has to be moved and/or the power has to be exercised by the Deputy Commissioner within a reasonable period of time.

8. Considering the aforesaid settled law and the concurrent finding by all the three authorities below, I find no merit in this writ petition and the same is accordingly dismissed.

IN THE HIGH COURT OF JHARKHAND, RANCHI

W.P (PIL) No. 758 OF 2011

Shalkhan Murmoo Vs. The State of Jharkhand & Ors.

CORAM HON'BLE THE CHIEF JUSTICE

HON'BLE MR.JUSTICE APARESH KUMAR SINGH

Dated 25th January, 2012

Heard counsel for the parties.

2. The writ petitioner is a former Member of Lok Sabha. However, according to learned Advocate General, the writ petitioner was never a Member from any constituency of the State of Jharkhand and he was a Member of Lok Sabha from the State of Orissa. Be that as it may, the writ petitioner has prayed for a declaration that holding of the post of Chief Minister by Sri Arjun Munda, respondent no.7, and of the post of Minister of Revenue and Land Reforms by Sri Mathura Mahto, respondent no.8, is completely unconstitutional, illegal and in violation of the oath of office taken by them as prescribed in the IIIrd Schedule of the Constitution of India and further prayed for a declaration that in view of the blatant violation of the Constitution and stopping and frustrating enforcement of law, the aforesaid respondent nos.7 and 8 are not entitled to continue in the office even for a day.

3. In the writ petition, it has been stated that one order was issued on 4th December, 2010, asking the authorities to implement the provisions of Section 46(1) proviso (b) of the Chhotanagpur Tenancy Act, restricting transfer of the land belonging to the members of the Scheduled Caste and Scheduled Tribes and other backward classes but immediately within a period of one week, on 11th December, 2010, another order was issued suspending the order dated 4th December, 2010 and thus, they have acted in derogation of the statutory provisions of law and that too, by this they have violated the oath of office taken by them as provided in IIIrd Schedule of the Constitution. The petitioner thereafter submitted I.A No.561/2011 seeking permission to add yet another prayer for quashing letter no.3752 dated 11.12.2010, Annexure - 2, whereby operation of the letter dated 4th December, 2010, has been kept in abeyance.

4. The State has filed counter and submitted that in Notification dated 4th December, 2010, in stead of giving reference of other backward "class", reference has been given of other backward "caste" and therefore, to avoid confusion, the said Annexure 1 dated 4th December, 2010, was withdrawn by issuing letter dated 11th December, 2010. However, it is submitted that so far as enforcement of law is concerned, law is being enforced and law is not being enforced by virtue of the orders referred above.

5. We are of the considered opinion that the writ petitioner, who was himself a Member of Parliament, would not have stressed the issues set at (A) and (B) seeking a declaration

that holding of the post of Chief Minister by Sri Arjun Munda and of Minister of Revenue and Land Reforms by Sri Mathura Mahto is completely unconstitutional, illegal and in violation of the oath of office taken by them and for seeking the relief of declaration that they are not entitled to continue on the posts.

6. From the pleadings and prayer referred above, we are further of the considered opinion that this writ petition cannot be said to be a bona fide writ petition at all. Law remain in force because they are enacted in accordance with law and are not dependent upon any direction issued by the authorities for implementation of law, nor withholding such direction or staying such direction will make the law inoperative in any manner. The Courts are very strict in implementation of land reforms laws and in protecting the interest of the downtrodden and particularly the persons who are members of Scheduled Caste and Scheduled Tribe as well as the members of other backward class. Therefore, it appears that much has been said to be achieved for no issue at all and the petitioner, if would have any bona fide intention, would not have sought the relief set at (A) and (B) of the writ petition and the relief, which he sought subsequent to filing of the writ petition, would have been granted in any writ petition other than P.I.L.

7. Be that as it may, learned Advocate General submits that he has no objection, if Annexure – 2 is set aside by making it clear that in the order dated 4th December, 2010, Government meant other backward “class” and not other backward “caste”.

8. Even if that was not the stand of the State Government and even if the order dated 4th December, 2010, remained in force,

the authorities were bound to act in accordance with law and not to follow the directions contrary to law and no harm could have been caused by any of the instructions issued.

9. However, we are making it clear for clarity of all the Officers dealing with matters under the Chhotanagpur Tenancy Act that they have to follow the laws in its true spirit and to protect the rights of the citizens.

10. Taking a liberal view, we dismiss this writ petition without imposing any cost, though it could have been imposed considering the status of the person of being a former Member of the Parliament.

(Prakash Tatia.,C.J.)
(Aparesh Kumar Singh,J.)

