

IN THE HIGH COURT OF JHARKHAND, RANCHI

W.P.(C) No. 129 of 2009

1A) Parimal Kumar Mahato, son of Upendra Nath Mahato

1B) Rasik Lal Mahato, son of Upendra Nath Mahato

1C) Utpal Kumar Mahato, son of Upendra Nath Mahato

All residents of Village Post Kantaboni, Kantabani, Chakulia,
District -East Singhbhum- 832 301

2. Sarvendu Mahato, son of late Nagendera Mahto, resident of
Village Katabani, via Dhalbhum Ghar, P.O. Katabani, P.S.
Chakuliya, District Singhbhum (East) **.... Petitioners**

-- *Versus* --

1. The State of Jharkhand, through the Deputy Commissioner,
East Singhbhum, Jamshedpur

2. Land Reform Deputy Commissioner, Ghatshila, Singhbhum
East

3A) Somai Murmu, son of Salkhan Murmu

3B) Ram Murmu, son of Salkhan Murmu

3C) Lakhan Murmu, son of Salkhan Murmu,

All residents of Village Kanimohali, P.O. Nuta Nagar, Thana
Dhalbhum Nagar, District East Singhbhum -832302

..... Respondents

4. Lokesh Mahto, son of late Hare Krishna Mahto, resident of
Village Katabani, via Dhalbhum Ghar, PO Katabani PS Chakuliya,
District Singhbhum (East)

5. Bhuneshwar Mahto, son of late Nagendra Mahto, resident of
Village Katabani, via Dhalbhum Ghar, PO Katabani PS Chakuliya,
District Singhbhum (East)

6. Kamlendu Mahto, son of late Nagendra Mahto, resident of
Village Katabani, via Dhalbhum Ghar, PO Katabani PS Chakuliya,
District Singhbhum (East)

7. Amlendu Mahto, son of late Nagendra Mahto, resident of
Village Katabani, via Dhalbhum Ghar, PO Katabani PS Chakuliya,
District Singhbhum (East)

8. Nirmalendu Mahto, son of late Nagendra Mahto, resident of
Village Katabani, via Dhalbhum Ghar, PO Katabani PS Chakuliya,
District Singhbhum (East)

9. Niharaindu Mahto, son of late Nagendra Mahto, resident of

Village Katabani, via Dhalbhum Ghar, PO Katabani PS Chakuliya,
District Singhbhum (East)

.....***Respondent Nos.4 to 9 as Proforma Respondents***

CORAM: HON'BLE MR. JUSTICE SANJAY KUMAR DWIVEDI

For the Petitioner(s) :-	Ms Amrita Sinha, Advocate Mrs.Shweta Suman, Advocate Ms. Pragunee Kashyap, Advocate
For the State :-	Mr. Prashant Kr. Rai, Advocate
For the Respondents :-	Mr. Jitendra Nath Upadhyay, Advocate

18/18.03.2026

Heard the learned counsel appearing on behalf of

the petitioners, the learned counsel appearing on behalf of the
respondent State and the learned counsel appearing on behalf of
the private respondents.

2. It has been pointed out that so far as the respondent
nos.4 to 9 are concerned, they are the proforma respondents and
they are supporting the case of the petitioners.

3. This petition has been filed under Article 226 of the
Constitution of India praying therein for quashing of the order dated
22.11.1994 (Annexure-2) passed by the learned Deputy
Commissioner, East Singhbhum, Jamshedpur in S.A.R Appeal No.28
of 1986-87 whereby the said authority has been pleased to dismiss
the appeals filed by the late father of the petitioners namely, Hare
Krishna Mahto and Nagendra Mahto respectively under the provision
of section 215 of Chhotanagpur Tenancy Act, 1908 and affirmed the
order dated 06.06.1986 passed by the learned Land Reforms Deputy
Collector, Ghatshila in R.P. Case No.68 of 1985-86 whereby the

petition filed under section 71 of Chhotanagpur Tenancy Act has been allowed by the learned Land Reforms Deputy Collector, Ghatshila.

4. Ms. Amrita Sinha, the learned counsel appearing on behalf of the petitioners submits that Kanu Santhal @ Kanu Murmu was the father of the respondent no.3 and for the tenure holder (Pradhan) of the Mouza Kani Mahali and his tenure/interest was recorded in revisional survey of 1937 in khewat No.2 under Jagdish Chandra Deo Dhabal Deb Zamindar of Dhalbhum Estate whose interest was recorded in khewat No.1 of the said village. She submits that the land in question formed part of the Khem land of Kunu Kanthal and he was holding the same for rendering service as Pradhan (Tenure holder) to the Zamindar of Dhalbhum Estate and he was entitled to retain the land and his khem land as long as he would be Pradhan of the village. The land was recorded in khata no.33 of mouza Kani Mahli and he was liable to pay rent for his tenure interest to the proprietor of Dhalbhum Estate and according to terms of Pradhani tenure, if at any time the Pradhan ceased to the Pradhan in that case, he will be evicted from this khem land. She further submits that kunu Santhal defaulted in making payment of the rent for the aforesaid tenure. The proprietor of Dhalbhum Estate filed a suit in the court of the Rent Suit Deputy Collector, Jamshedpur for ejectment of the Pradhan, Kunu Santhal from the Pradhani Tenure. The suit was registered as Rent Suit No.43/1937-38 and was decreed on 14.03.1938 and thereafter the

proprietor obtained delivery of possession of the entire land of village Kani Mahali including the land in question recorded in Revisional Survey Khata No.33 on 16.01.1939 in Execution Case No.1312/1938-39 in the court of the Rent Suit Deputy Collector, Jamshedpur, Dhalbhum. She further submits that said land came through the process of the court to the Zamindar and he was in Khas possession of the said land and while in such possession of the land by a registered patta dated 31.12.1939 he settled the same in raiyati right to the grandfather of the petitioner. The total area settled with Gurucharan Mahto grandfather of the petitioners was 15.95 acre description of which have been given in the said patta and thereafter the possession of the property was delivered to the grandfather of the petitioners who was in possession of the same on payment of rent to the proprietor of the Dhalbhum Estate. She next submits that the photocopy of the rent receipt issued by the Dhalbhum Estate to the for grandfather of the petitioners are annexed herewith and marked as Annexure-1 Series forming part of the petition. She next submits that one Jit Rai Santhal and others have trespassed upon the land which were settled with Gurucharan Mahto for which Gurucharan Mahto filed a Title Suit being Title Suit No.25 of 1950 for declaration of title and confirmation of possession over the lands trespassed upon by the said Jit Rai Santhal and others and recovery of possession of the same. The suit was decided by the Additional Munsif at Jamshedpur and the judgment was delivered on 24.4.1952 and recovery of possession of the land was taken by the grandfather of the petitioners on 20.07.1952 in execution

case no.46 of 1952. She further submits that the property in question R.S. Plot No. 65 having an area of 0.24 acres was sold by the grandfather of petitioners to one Sashadhar Shit by registered sale deed dated 29.06.1954 and the same has been recorded in his name in R.S. Settlement. She next submits that respondent also filed an application for restoration of C.S. Plot No.65 against Purusottam Shit which was registered as R.P. Case No. 69/85-86. The L.R.D.C. Ghatsila, has been pleased to dismiss the same by order dated 06.06.1986.

5. On this background, she further submits that the grandfather of the petitioners have got Patta from the ex-landlord and he had raiyati right over the property and the aforesaid judgment passed by competent civil court has attained finality and that judgment and decree were not challenged by the respondents herein. She next submits that the father of the respondent no.3 has filed the restoration case in the year 1985-86 vide R.P. Case No. 68 of 1985-86 in which the grandfather of the petitioners has appeared and contested the proceeding and brought all relevant records with regard to the settlement by the Zamindar as well as the judgment of the Title Suit even then the learned Land Reforms Deputy Collector, Ghatshila has allowed the restoration case vide order dated 06.06.1986. She next submits that the same was allowed only on the ground that it was not maintainable saying that the compliance of section 46 of Chhotanagpur Tenancy Act, 1908 has not been made. She next submits that against the said order the father of the petitioners has filed appeal under section 215 of Chhotanagpur Tenancy Act before the respondent no.1

and the same was instituted as S.A.R. Appeal No.28 of 1986-87 and same was contested throughout by the father of the petitioners. She further submits that father of the petitioner no.1 has died and the father of the petitioner no.2 has also died and in view of that the petitioners were not knowing about the said S.A.R Appeal and they have come to know about the said Appeal later on and after obtaining the entire order sheets and the documents the present petition has been filed. By referring paragraph 19 of the writ petition he further submits that entire record of R.P.Case No.68 of 1985-86 was sent to the learned court of appeal and it was sent by the Memo No.1097 on 26.10.1999 and the record is not traceable. She submits that reply to paragraph no.19 is not made by the learned counsel for the respondent State on affidavit. She further submits that in the year 1939 itself the land was transferred in favour of the forefathers of the petitioners. She further submits that section 46 of Chhotanagpur Tenancy Act came in existence in the year 1947 and in view of that the said sections is not attracted so far as the case in hand is concerned. She further submits that in light of section 83(2) of Chhotanagpur Tenancy Act, the name of the forefathers of the petitioner has already been recorded. She further submits that the settlement Patta was registered on 27.2.1940 contained in Annexure-5 of the supplementary affidavit filed by the petitioner and thereafter the forefather of the petitioners had started making regular payment of the rent to the proprietor of Dhalbhum Estate. She next submits that in light of section 83(2) of Chhotanagpur Tenancy Act, the certificate of final

publication was signed on 28.8.1964 which is in favour of Guru Charan Mahato being the forefather of the petitioners. She submits that the respondent no.3 has not challenged the Khatiyani being the records of rights finally framed and published under section 83(2) of the Chhotanagpur Tenancy Act. She further submits that the settlement Patta and Khatiyani established the fact that the name of the forefather of the petitioners namely Guru Charan Mahto has been entered in the record of rights after the recent survey of the year 1962. She next submits that the Patta was executed in the year 1939 which was registered in the year 1940, however, section 71 of the Chhotanagpur Tenancy Act application has been filed in the year 1985, that is, after 45 years. She next submits that in light of Section 71 of the Chhotanagpur Tenancy Act if any right is accrued it was required to file within a year. She submits that so far as the section 46 of the Chhotanagpur Tenancy Act is concerned, that was considered by Hon'ble Supreme Court in ***Jai Mangal Oraon v. Smt. Mira Nayak and Others*** reported in ***AIR 2000 (SC) 2276*** and submits that it has been held that at the time of dispute with regard to that case, Section 46 of Chhotanagpur Tenancy Act was not introduced and the same will not be attracted and the relevant paragraph of the said judgment is quoted below:

"A perusal of the decision reported in 1992 suppl (2) SCC 77 (supra) would show that it did not deal with a case of surrender prior to 1947, as in this case and during the relevant point of time when surrender was made in this case there was no statutory provision in the CNT Act which

envisaged the obtaining of prior permission of the Deputy Commissioner before surrender of the tenancy rights. Though no factual details are available in the judgment this is obvious from the fact that what was considered therein was only the scope of Section 71A added by the Amendment in the year 1969. So far as the decision reported in 1996 (9) SCC 545 (supra) is concerned also the date of surrender in that case is not stated specifically. Even otherwise, in para 9 of the judgment it is stated, thus- In this case an application under Section 46 (4) (a) has been made. It is, therefore, not at all necessary whether Section 71A incorporated by amendment is applicable in respect of the land in question. Section 46 (4) (a) considered in this decision which envisaged a prior sanction of the Deputy Commissioner before effecting transfer in any of the modes stated therein was introduced only in the year 1947 with effect from 5.1.1948 and no such provision existed during the relevant point of time of surrender made in this case on 15.1.1942. For all these reasons, we are of the view that the two decisions relied upon for the appellant does not either apply to the present cases or support the contentions raised before us.

No doubt, the understanding of the High Court about the scope of Section 71A as interpreted by the earlier decisions of that Court noticed therein may not be good or correct in view of the later declaration of law by this Court but, the High Court did not proceed to rest its conclusion to uphold the claims of the contesting respondents who were writ petitioners before the High Court, only on that ground. The High Court has considered, at length, the further question as to whether Section 71A, introduced in 1969, was attracted to this case of surrender effected by a registered deed, on 15.1.1942, in the light of the then existing statutory provisions contained in Section 46 and 72 of the CNT Act. The nature of consideration and the other reasons assigned in support of the order made in CWJC No.118 of 1986 (R) makes it clear that the statutory provisions as they

stood in force on 15.1.1942 neither envisaged the obtaining of a prior sanction of the Deputy Commissioner before a surrender by a tenant could be made of his interest in favour of the landlord nor could such surrender be held bad merely because it was not at the end of the Agricultural Year but immediately before. Those issues seem to have been considered and decided, even dehors the controversy raised with reference to the character of the land, proceeding on an assumption of the basis that it involved a surrender of raiyati interest. We find nothing illegal or wrong in the said reasoning and the conclusions arrived at by the learned Judges in the High Court appear to be well merited and quite accordance with the statutory provisions in force, at the relevant point. Therefore, in our view, no interference is called for with the orders of the High Court, in this regard."

6. She further submits that the judgment and decree passed in Title Suit no.25 of 1950 has attained finality and the question of this document relied by the petitioners has not been raised. She also submits that even if the contention of the respondent no.3 is accepted that the documents were fraudulent, that will also not help the respondent no.3 in light of the judgment of the Hon'ble Supreme Court in the case of ***Situ Sahu and Others v. The State of Jharkhand and Others*** reported in ***AIR 2004 SC 4918***, relevant paragraph of which is given below:

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

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

7. On these grounds, she submits that the impugned order may kindly be set aside.

8. Lastly, she submits that still the petitioners are in possession of the land in question.

9. Learned counsel appearing on behalf of the respondent State submits that in the suit preferred by the forefather of the petitioners, the Deputy Commissioner was not made party and that is violation of Section 46 of the Chhotanagpur Tenancy Act.

10. Mr. Upadhyay, the learned counsel appearing on behalf of the respondent no.3 submits that the document relied by the petitioners herein are doubtful and in view of that both the learned authorities have rightly passed the orders. He also submits that the contention has been made by the learned counsel for the petitioners that the Patta was executed in the year 1939 wherein the registered Patta was made in the year 1940. According to him, there is no illegality in the orders of both the learned authorities.

11. In view of the above submission of the learned counsel for the parties, the Court has gone through the materials on record including the impugned orders.

12. It is an admitted position that in light of the Patta the land in question was settled in the year 1939 by the then proprietor of Dhalbhum Estate which was registered in the year 1940 in the name of forefather of the petitioners. When the trace-passers have entered into the land of the petitioners, the forefather of the petitioners have instituted the Title Suit no.25 of 1950 which was decreed by the judgment dated 24.04.1952 and the recovery of possession was provided to the forefather of the petitioners in Execution Case No.46 of 1952. This judgment and decree have attained finality as neither the State nor the respondent no.3 has challenged the same in the higher Courts. The provisions have been made for publication of records of rights under Section 83 of the Chhotanagpur Tenancy Act. Section 83(1), 83(2) and 83(3) of

Chhotanagpur Tenancy Act are quoted hereunder:

"83. Preliminary publication, amendment and final publication of record-of-rights.-(1) *When a draft record-of-rights has been prepared under this Chapter, the Revenue Officer shall publish the draft in the prescribed manner and for the prescribed period and shall receive and consider any objections which may be made to any entry therein, or to any omissions therefrom, during the period of publication. (2) When such objections have been considered and disposed of in the prescribed manner, the Revenue Officer shall finally frame the record, and shall cause it to be finally published in the prescribed manner, and the publication shall be conclusive evidence that the record has been duly made under this Chapter. (3) Separate draft or final records may be published under sub-section (1) or sub-section (2) for different local areas, estates, tenures or parts thereof."*

13. In light of the above Sub Section (2) of Section 83 of Chhotanagpur Tenancy Act, the provision is made for final publication of records of rights and that will be the conclusive evidence that the record has been duly made under that Chapter and the rights of records has been brought on record by the petitioners by way of filing supplementary affidavit as contained in Annexure-6 in which it has been clearly recorded by the competent authority that the records of rights finally sent and published under section 83 of the Chhotanagpur Tenancy Act on 24.08.1964 and the certificate of final publication was signed on 28.08.1964 and in the said final publication the name of Guru Charan Mahato is recorded who is said to be forefather of the petitioners. In the Khewala Deed No.428 dated 27.02.1940 which was the registered Patta, the

descriptions and how the proprietor of the Dhalbhum Estate came into the possession has been depicted and by the said Patta the forefather of the petitioners was put in possession of the land in question. Thus, these documents clearly established the right, title and interest of the petitioners which has not been demolished by way of bringing any relevant documents either by the learned counsel for the respondent State or by the learned counsel appearing on behalf of the respondent no.3.

14. Section 71 of the Chhotanagpur Tenancy Act, 1908, clearly describes that if any ejection is there, within one year one is required to approach the learned Deputy Commissioner and in the case in hand, after 45 years the said application under section 71 of the Chhotanagpur Tenancy Act has been filed.

15. The argument of the learned counsel for the respondent no.3 with regard to fraudulent document is not being accepted by the Court in view of the proposition laid down by the Hon'ble Supreme Court in the case of ***Situ Sahu and Others v. State of Jharkhand and Others (supra)***.

16. Admittedly, the land in question was in favour of the petitioners through the Patta of the year 1939 registered in the year 1940 and in view of that Section 46 of the Chhotanagpur Tenancy Act is not attracted in light of the judgment of Hon'ble Supreme Court in the case of ***Jai Mangal Oraon and Others v. Smt. Meera Nayak and Others (supra)*** as Section 46 of the

Chhotanagpur Tenancy Act came into force in the year 1947.

17. In view of above reasons and analysis the Court finds that the learned courts have erred in passing the judgment under the appeal by way of affirming the order dated 06.06.1986 passed by the learned Land Reforms Deputy Collector, Ghatshila in R.P. Case No.68 of 1985-86, and as such, the order dated 22.11.1994 passed by the learned Deputy Commissioner, East Singhbhum, Jamshedpur in S.A.R Appeal No.28 of 1986-87, is hereby, set-aside. The order dated 06.06.1986 passed by learned Land Reforms Deputy Collector, Ghatshila is also merged in the order dated 22.11.1994 as it has been pointed out that the records of the said case has been misplaced which has not been replied by the learned counsel for the respondent State.

18. In view of setting aside the order dated 22.11.1994, order dated 06.06.1986 will also not come in the way in light of principle of merger.

19. This writ petition being W.P.(C)No.129 of 2009 is allowed in the above terms, and stands disposed of.

(Sanjay Kumar Dwivedi, J.)

Dated : 18th March, 2026
SI/ A.F.R.