

IN THE HIGH COURT OF JHARKHAND, RANCHI

W.P.(C) No. 3922 of 2012

Beni Madhav Jha, son of late Upendra Jha, resident of Village-Dumaria, PO Motia Dumaria, PS Godda(M), District -Godda

..... *Petitioner(s)*

-- *Versus* --

1.The State of Jharkhand, through the Commissioner, Santhal Pargana Division, Dumka, PO and PS and District-Dumka

2.The Commissioner, Santhalparagana Division, Dumka, PO, PS and District -Dumka

3.The Deputy Commissioner, Godda, PO, PS and District Godda

4.The Sub-Divisional Officer, Godda, PO, PS and District Godda

5.Narendra Jha, son of late Chhabikant Jha, resident of Village-Dumaria, PO-Motia Dumaria, PS-Godda (M), District-Godda

..... *Respondents*

CORAM: HON'BLE MR. JUSTICE SANJAY KUMAR DWIVEDI

For the Petitioner(s) :- Mr. Jay Prakash Jha, Senior Advocate

Mr. Aishwarya Prakash, Advocate

For the State :- Mr. Mukul Kumar Singh, AC to GP-III

For Resp.No.5 :- Mr. Kumar Nischay, Advocate

11/23.06.2026 Heard Mr.Jay Prakash Jha, the learned Senior counsel appearing on behalf of the petitioner, learned counsel appearing on behalf of the respondent-State as well as the learned counsel appearing on behalf of the respondent no.5.

2. This petition has been filed under Article 226 of the

Constitution of India for quashing the order dated 21.10.2011 passed in R.M.R Case No.197/86-87 by the learned Commissioner, Santhal Pargana Division, Dumka, whereby he has been pleased to set aside the judgment and the order passed by the Deputy Commissioner, Godda, in Revenue Misc. Appeal No.79/1983-84 dated 19.05.1986 and the Deputy Commissioner has been pleased to set aside the order of eviction passed by Sub Divisional Officer, Godda in R.E.R Case No.125/77-78 dated 27.06.1979.

3. Mr. Jha, the learned Senior counsel appearing on behalf of the petitioner submits that the application under section 20 and 42 of the Santhal Pargana Tenancy Act (Supplementary Provision), 1949 was filed by the respondent no.5 in the court of learned Sub Divisional Officer, Godda, against six persons including the father of the petitioner alleging that the petitioner's father had encroached upon the portion of plot No.640 and 641 area one Bigha 10 katha in Mauza Dumaria. He next submits that the respondent no.5 in the application has claimed himself to be adopted son of Tetru Jha. Mr. Jha, the learned Senior counsel further submits that the respondent no.5 has adopted the son of Tetru Jha when he was the boy of six years old and was given in adoption by his natural father Chhabikant Jha and a registered deed of adoption was executed and registered on 8.2.1965 and the same was duly executed and signed by Tetru Jha and Chhabikant Jha and thus, the registered deed of adoption carries the presumption of due and legal adoption. He also

submits that Tetru Jha was the sole owner of this land after death of his uncle Feku Jha who died issueless, Tetru Jha became the owner. He also submits that after the adoption, the respondent no.5 lived with his adoptive father Tetru Jha who maintained him in his house. According to him, Tetru Jha was an illiterate and simple person. He next submits that on the basis of Kurfanama, the land was acquired. In this background, the case was filed before the Sub Divisional Officer, Godda. The petitioner-herein has appeared in the said case before the Sub Divisional Officer, Godda stating that a story of adoption is completely bogus and false and he claimed to be the forefather of Tetru Jha and had created Kurfanama with regard to the landed property in question in the year 1941 and the father of the petitioner on the basis of said Kurfanama came in possession of the property in life time of Tetru Jha who continued to be in possession of landed property measuring one Bigha 10 katha situated in plot No.640 and 641 in Mauza Dumaria and the petitioner during the life-time of his father continued to remain in possession of cultivating the land regularly and after his death the petitioner came in possession of the land and continuously enjoying the possession of the landed property in question. Mr. Jha, the learned Senior counsel appearing for the petitioner further submits that learned Sub Divisional Officer had not appreciated the fact that filing of an application under section 20 and 42 of Santhal Pargana Tenancy Act (Supplementary Provision), 1949, the respondent no.5

wanted to settle the issue of his claim of adopted son of Tetru Jha and the learned Sub Divisional Officer has failed to discuss the documents, particularly, the Kurfanama and the rent receipts granted by Tetru Jha in favour of Upendra Jha, father of the petitioner and thereafter has passed the impugned order dated 27.06.1979 for eviction. He next submits that against the said order, the petitioner has preferred Revenue Miscellaneous Appeal before the learned Divisional Commissioner, Santhal Pargana which was numbered as R.M. No.79/83-84 and the learned Deputy Commissioner, Godda vide order dated 19.05.1986 has set aside the order of the learned Sub Divisional Officer and has held that "father of the petitioner on his death was in continuous possession on the basis of Kurfanama settlement made by Tetru Jha in favour of the father of the petitioner namely Upendra Jha by the judgment dated 19.05.1986". Against the said order of the Deputy Commissioner, the respondent no.5 has preferred the Revision under section 58(B) of Santhal Pargana Tenancy Act (Supplementary Provision), 1949 which was numbered as R.M.A No.197/86-87 and by the impugned order dated 21.10.2011 the Divisional Commissioner, Santhal Pargana has set-aside the order of the Deputy Commissioner and affirmed the order of the learned Sub Divisional Officer and has directed to evict the petitioner.

4. Mr. Jha, the learned Senior counsel for the petitioner further submits that the correctness of adoption of respondent no.5

was the subject matter in Title Suit No.6 of 1969 which was dismissed by the judgment dated 02.9.1969. Against that, an appeal has been preferred by the petitioner being Title Appeal No.4 of 1994 which was further dismissed by the judgment dated 10.3.1999. He next submits that against the said judgment, the petitioner-herein has preferred Second Appeal No.171 of 1999(P) which was dismissed in default and against that, the petitioner has preferred C.M.P. No.646 of 2025 for restoration of Second Appeal in which notices have been issued and the said C.M.P is pending.

5. Mr. Jha, the learned Senior counsel for the petitioner submits that the Kurfanama is of the year 1941 and the learned courts have not decided the possession of the petitioner and passed the impugned order. According to him, since the law of possession is there, the orders are bad in law. He also submits that the Kurfanama and the rent receipts have been annexed with the supplementary affidavit filed by the petitioner and in view of that, he submits that the impugned order may kindly be set aside and the matter may kindly be remanded back to decide the possession of the petitioner. On these grounds, he submits that the writ petition may kindly be allowed. He relied in the case ***Bhauri Lal v. S.D.O., Jamtara*** reported in ***AIR 1973 (Pat.)*** and also in the case of ***Asharfi Mahaton and others v. The State of Bihar and others*** reported in ***1978 PBCJ 572***.

6. On the other hand, learned counsel appearing on behalf

of the respondent State submits that the learned Divisional Commissioner has rightly considered the spirit of sections 20 and 42 of Santhal Pargana Tenancy Act (Supplementary Provision), 1949. He next submits that that the learned Commissioner has rightly held that after the enactment of the Act, if 12 years possession is not proved, the order of eviction can be passed. On these grounds, he submits that there is no illegality in the impugned order of the learned Divisional Commissioner, Santhal Pargana Division.

7. Learned counsel appearing on behalf of the respondent no.5 submits that adoption itself was a collusive one and no procedure has been followed of adoption in light of the provisions of Santhal Pargana Tenancy (Supplementary Provision), 1949, and in view of that, the title suit preferred for declaring the said adoption valid, has been dismissed by the learned trial court which has been affirmed by the learned first appellate court and further in the Second Appeal, however, the restoration application is pending. He next submits that the learned Sub Divisional Officer Court has rightly held that in absence of any declaration order of the court, this adoption cannot be found to be valid. He also submits that the learned Deputy Commissioner has erroneously passed the order dated 19.05.1986 which has been further corrected by the learned Divisional Commissioner by the order dated 21.10.2011. He next submits that on the basis of the Kurfanama of 1941, the petitioner has tried to prove his possession, however, the Act came into effect

from 01.11.1949 and in view of that, 12 years period is not completed of possession of the petitioner. He next submits in view of that, there is no illegality in the impugned order and the learned Divisional Commissioner has rightly passed the order.

8. In view of the submissions of the learned counsels appearing on behalf of the parties, the Court finds that the dispute is whether, the effect of the effectiveness of the Santhal Pargana Tenancy Act, (Supplementary Provision), 1949, twelve years period of the possession of the petitioner has been completed or not?

9. The petitioner herein has claimed that the possession on the basis of Kurfanama of the year 1941 wherein the Act came into effect from 01.11.1949. Thus, 12 years period of possession of the petitioner was not completed with effect from 1949 to 1961 and only eight years was completed. Further the Kurfanama appears to be collusive as it is not fulfilling the criteria of valid Kurfaname in light of *Tasdik Niyamawali* under the Santhal Pargana Tenancy Act, which is as under:

1-कुर्फा, 2-आपसी समझौता का टाइटल सूट, 3-विल द्वारा सम्पत्ति का हस्तान्तरण, 4-सादा दान पत्र द्वारा सम्पत्ति का हस्तान्तरण, 5-सादा कागजात पर आपसी बदलेन, 6-..... अस्पष्ट जमाबन्दी रैयत के साथ फौती-फिरारी या अनावाद जमीन की प्रधान द्वारा दी गई बन्दोवस्ती, 7-प्रधान द्वारा अपने साथ फौती-फिरारी या अनावाद जमीन की बन्दोवस्ती, 8-प्रधान या अन्य व्यक्तियों द्वारा बिना बन्दोवस्ती के दखल की गई फौती या फिरारी जमीन।

19:-कुर्फा में दी गई जमीन:-

ऐसे बहुत से मामले हैं जिसमें खाता रैयत ने सादा कागज लिखकर जमीन का हस्तान्तरण किया है। इन लोगों ने रैयतों को लिखित रसीद भी दिया है या बहुत मामले में ये माफरती रसीद भी सरकार से प्राप्त कर रहे हैं। इस तरह का हस्तान्तरण संथाल परगना रैयती कानून 1949 की धारा 20 का उल्लंघन करता है।

जिस मामले में दखल की पुष्टि 1-11-49 के पूर्व न हो सके तो वैसे दखलकार को जमीन से उच्छेद किया जायगा एवं इस सम्बन्ध में सहायक बन्दोवस्त पदाधिकारी अपना प्रतिवेदन देंगे एवं बन्दोवस्त पदाधिकारी का आदेश प्राप्त कर उच्छेदी की कार्रवाई करनी होगी।

कुर्फा लिखने की तिथि की विष्वसनीयता की जांच में बहुत

सावधानी बरतने की आवश्यकता है। इसके निर्धारण के लिए निम्नलिखित निदेश का अनुपालन किया जायगा:-

1. यदि कुर्फा पंजीकृत हो तो पंजीयन की तिथि को कुर्फा की तिथि समझा जायगा।

2. यदि कुर्फा सादा हो एवं किसी न्यायालय द्वारा उसकी तिथि की मान्यता दी गई हो तो उसके अनुसार ही कुर्फा की तिथि समझी जायगी।

3. यदि कुर्फा सादा हो और किसी न्यायालय द्वारा उसे प्रदर्श के रूप में स्वीकृत किया गया हो तो उस स्वीकृति की तिथि ही कुर्फा की तिथि मानी जायगी न कि उस कुर्फा में दर्ज तिथि को। यह स्मरण रखना होगा कि कुर्फा अपने आप में जमीन पर व्यक्ति का स्वत्व स्थापित करने में महत्वहीन है। यह केवल एक साक्ष्य के रूप में दखल के सम्बन्ध में व्यवहार किया जा सकता है। दखल की अवधि सम्बन्धी जांच विस्तृत रूप में होनी चाहिए जिसमें थोड़ी भी शंका की गुंजाईष न हो।

20-आपसी समझौता का टाईटिल सूट:-

बहुत से मामले में अवैध रूप से हस्तांतरित भूमि पर खाता रैयत ने दखल वापसी के लिए व्यवहार न्यायालय में मुकदमा दायर किया था। उसके बाद एक समझौता आवेदन देकर द्वितीय पक्ष की लम्बी अवधि का दखल स्वीकार कर लिया गया है एवं उसी आधार पर मुकदमे खारिज किए गए हैं। कुछ मामलों में राजीनामा शर्तों के अनुसार भी मुकदमा खारिज किया गया है। कुछ मामलों में एक या दो गवाह का बयान लेकर अधिक दिनों का द्वितीय पक्ष का दखल बहाल रखते हुए मुकदमे को खारिज कर दिया गया है। ऐसे मुकदमों के आधार पर दाखिल खारिज हो गए हैं एवं रसीद भी राज्य से कट रही है।

ये मामले भी अवैध हस्तान्तरण की श्रेणी में ही आते हैं एवं इसका भी निस्तार नियम-19 में उल्लिखित प्रक्रिया के अनुसार किया जायगा।

21-सादा कागज के द्वारा या मौखिक आपसी बदलैः-

संताल परगना रैयती कानून 1949 के प्रावधानों के अन्तर्गत जमीन बदलैः की स्वीकृति के लिए धारा 23 के अनुसार उपायुक्त ही सक्षम हैं। इसके पूर्व लोग आपस में जमीन बदलैः करते थे या 1-11-1949 के बाद भी लोगों ने आपसी बदलैः सादा कागज या मौखिक रूप में किया है।

ऐसे मामले में यह देखना है कि बदलैः वाले पक्ष जमाबन्दी रैयत हैं। बदलैः की गई जमीन का समान मूल्य है। बदलैः आपसी सुविधा के लिए किया गया है एवं यह छिपी बिक्री नहीं है तथा जमीन एक ही मौजा या सन्निकट मौजा में अवस्थित है। इन बातों को सुनिश्चित कर लेने के बाद यह देखना होगा कि दोनों पक्ष बदलैः की गई जमीन पर दखलकार हैं एवं दोनों का दखल खानापुत्री अभिलेख में प्रविष्ट है तथा किसी भी पक्ष को इस बदलैः से कोई आपत्ति न हो तो सहायक बन्दोवस्त पदाधिकारी को ऐसे बदलैः की सम्पुष्टि का आदेश बन्दोवस्त पदाधिकारी से प्राप्त करना होगा। पर यदि इन बातों की पुष्टि न हो तो यह अवैध हस्तान्तरण का मामला माना जायगा एवं नियम-19 के अनुसार उच्छेदी की कारवाई की जायगी।

22-गैर जमाबन्दी रैयत के साथ अनावाद, फौती, फिरारी जमीन की बन्दोवस्ती:-

बहुत से मामले में गैर जमाबन्दी रैयत के साथ प्रधान ने जमीन की बन्दोवस्ती की है। बहुत से ऐसे मामले में अनुमंडल पदाधिकारी द्वारा सम्पुष्टि भी की गई है। ऐसे मामले में यदि बन्दोवस्तदार जमीन पर दखलकार हों एवं कोई आपत्ति न हो तो खाता बन्दोवस्तदार के नाम से बनाया जायगा। आपत्ति एवं बिना दखल वाली जमीन के सम्बन्ध में सहायक बन्दोवस्त पदाधिकारी अपना प्रतिवेदन बन्दोवस्त पदाधिकारी को आदेश के लिए भेजेंगे। आदेश प्राप्ति के पश्चात ही कारवाई होगी।

10. In view of above, there are three conditions to consider regarding a Kurfanama. First, if it is registered, then it will take effect from the date of registration. Secondly, if the Kurfanama is Sada and if it has been considered by any court of law, then from the date of giving consideration of the kurfanama

by the court of law and that they will be considered of that kurfanama and lastly, if kurfanama is exhibited by any court of law. All those conditions are not being fulfilled so far as the Kurfanama of the present case is concerned.

11. In view of above, the said Kurfanama itself appears to be a collusive one.

12. So far as one of the aspects contended by the learned Senior counsel appearing for the petitioner in light of the Santhal Pargana Tenancy Manual is concerned, it is argued that if the Kurfanama exists, it cannot be said to be invalid and cannot be evicted and it cannot be registered. The said argument of Mr. Jha, the learned Senior counsel for the petitioner can be accepted once the Kurfanama is found to be valid, however, in view of the above findings, the Kurfanama is doubtful. One of the contention was also made by Mr. Jha, the learned Senior counsel that a Kurfanama cannot be said to be registered and even if this submission is being accepted by this Court, under the said *Niyamawali*, how the Sada Kurfanama is to be considered, that has also been disclosed therein and other two conditions are also not being fulfilled so far as the Kurfanama of the present case is concerned. Therefore, in this view as well also, the argument of Mr. Jha, the learned Senior counsel with regard to non-registration of the Kurfanama, cannot be accepted by this Court. It is an admitted position that 12 years period of possession has not been

proved by the petitioner.

13. Section 42 and Sub Section 5 of Section 20 of the said Act, authorizes the Deputy Commissioner to evict the person having acquired the land in contravention of the above provision.

14. There are customs of adoption of son in Santhal Paragana. The customary laws of adoption prevailing in Santhal Pargana has been recognized in Santhal Pargana Tenancy Act (Supplementary Provision), 1949. The collusive compromise even in a title suit is said to be invalid in light of the provisions of Santhal Pargana Tenancy (Supplementary Provisions) Act, 1949 and it has been held by the Hon'ble Supreme Court in the case of ***Ram Kisto Mandal and Another vo. Dhankisto Mandal*** reported in ***AIR 1969 SC 204*** and also considered in ***Jyoti Thakur and Others v. Tarakant Jha and Others*** reported in AIR 1963 SC 605 and held that, the prohibition against the transfer of Raiyati land situated in Santhal Pargana has its root in the peculiar way of life of Santhal villages which favours the emergence of powerful village community with its special rights over all the lands of the village. It was also held that once the land was allowed to lose their Raiyati character which was certain that village may find, in the course of a few years the total stock of land available for settlement to residents, Raiyats dwindling before they arise, it was this state of thing that the alienation of Raiyati holding in any form has been interdicted by the

Government orders since 1887. These orders had the effect of checking the practice of open transfers. But transfers in disguised form and collusive manner continue which will be clear from the notice of the Macpherson in the settlement report of the Santhal Pargana wherein he warns any disguised transfer. His note was accepted by the Government and the result was the amendment of the Regulation by which initially Section 27 was inducted followed by Section 20(1) of the Santhal Pargana Act, 1949. Thus, it will be evident that even the collusive compromise in a title suit to get an illegal transfer regularized by Court of law was in contravention to Section 20 of the Santhal Pargana Tenancy (Supplementary Provisions) Act, 1949.

15. In the instant case, the petitioner has not been able to prove that he was in possession of the land in question for 12 years prior to coming into force of the 1949 Act, and thus, it was liable to be rejected under section 42 of Santhal Pargana Tenancy Act (Supplementary Provision), 1949. Further, Section 69 of the Act, even restricts the decision on the adverse possession.

16. So far as the judgment relied by Mr. Jha, the learned Senior counsel appearing on behalf of the petitioner in the case of ***Bhauri Lal v. S.D.O., Jamtara (supra)*** is concerned, in that case, the Kurfanama settlement was of the year 1941 wherein the Act came in the year 1949 and in view of that the condition put has been fulfilled and in that background the said judgment has

been passed by the Hon'ble Supreme Court, however, the facts of the resent case is otherwise as has been discussed hereinabove and even 12 years possession has not been proved.

17. So far as the Division Bench judgment in the case of ***Asharfi Mahaton and others v. The State of Bihar and others(supra)*** is concerned, the Court finds that the Niyamawali and the Kurfanama have not been placed before that Court and that has not been considered the Niyamali, and in that view of the matter as discussed hereinabove, the said judgment is also not helping the petitioner.

18. In light of above facts, reasons and analysis, and considering the totality of the facts of the present case, the Court finds that the learned Commissioner has rightly passed the order and there is no illegality in the impugned order and as such, this writ petition, being W.P.(C) No.3922 of 2012, is hereby, dismissed, and I.A., if any, also stands disposed of.

(Sanjay Kumar Dwivedi, J.)

Dated : 23.06.2026

SI/, **A.F.R,**