

IN THE HIGH COURT OF JHARKHAND, RANCHI

W.P.(C) No.5821 of 2013

- 1(a).Kayum Ansari, aged about 55 years
- 1(b).Kudush Ansari, aged about 53 years
- 1(c).Md. Manjur Ali, aged about 51 years
- 1(d).Anwar Hussain aged about 50 years
- 1(e).Mahtab Alam, aged about 38 years
- 1(f).Entaf Alam, aged about 36 years
- 1(g).Sabila Khatoon daughter of Sadik Mian
- 1(h).Zabida Khatoon daughter of Sadik

All residents of Village Ghutwa, PO Naya Nagar,
Barkakana, PS Patratu, Dist. Ramgarh Petitioner(s)

-- Versus --

- 1.The State of Jharkhand, through the Secretary, Department of Land and Revenue, Government of Jharkhand, Project Building, Dhurwa, PO and PS Dhurwa, District Ranchi
- 2.The Commissioner North Chhotanagpur Division, Hazaribagh PO and pS Hazaribagh, Dist. Hazaribagh
- 3.The Deputy Commissioner Rangarh, at PO Ramgarh, Dist. Ramgarh
- 4.The Additional Collector, Hazaribagh (Now Ramgarh) Dist. Ramgarh
- 5.The LRDC Ramgarh, PO, PS and Dist. Ramgarh
- 6.The Circle Officer, Patratu, PO, PS Patratu, Dist. Ramarh
- 7.Surpati Devi wife of Devaki Nandan Vediya, resident of Village Ghutwa PS Patratu, PO Nayanagar, Barkakana, Dist. Ramgarh, Jharkhand

..... Opp. Parties

CORAM: HON'BLE MR. JUSTICE SANJAY KUMAR DWIVEDI

For the Petitioner(s) :- Mr. Rajiv Nandan Prasad, Advocate
Mr. Sushant Kumar Sinha, Advocate
For the State :- Mr. Sanjay Kumar Tiwari, S.C.-I
Mr. Krishna Kumar Bhatt, AC to SC-I
For the Respondent No.7:- Mr. A.K. Sahani, Advocate

15/25.08.2026 Heard Mr. Rajiv Nandan Prasad, the learned counsel appearing on behalf of the petitioners as well as Mr. Sanjay Kumar Tiwari, the learned S.C.-I appearing on behalf of the respondent State and Mr. A.K. Sahani, the learned counsel appearing on behalf of the respondent no.7.

2. This writ petition has been filed under Article 226 of Constitution of India for quashing the order dated 10.05.2013 passed in Revision Case No.97 of 2005 passed by learned Commissioner, North Chhotanagpur Division, Hazaribagh who has been pleased to set-aside the order dated 30.08.2005 passed by learned Additional Collector, Hazaribagh in R.A.N. Case No.04/05 by which the learned Additional Collector has been pleased to set-aside the order dated 21.04.2005 passed by learned L.R.D.C, Ramgarh in Restoration Case No.12 /04-05 who had allowed the said restoration petition in favour of the private-respondent no.7. A prayer has also been made for quashing the order dated 21.04.2005 passed by

learned SAR Court/ learned LRDC, Ramgarh in Restoration Case No.12/2004-05.

3. Mr. Rajiv Nandan Prasad, the learned counsel appearing on behalf of the petitioners submits that the land of Khata No.42 Plot No.1273 measuring an area of 0.92 acres situated in Village Ghutwa, PS Patratu, District Hazaribag (now Ramgarh) was recorded in the record of rights in the name of Bhikhwa Bediya and Bepata Bediya, son of Madhuwa Bediya during the last survey settlement. He next submits that Bipate Bediya died issueless and after the death of Bepate Bediya, his brother namely Bhikhwa Bediya came in peaceful possession of the entire land of Khata No.42 of Village-Ghutwa. Bhikhwa Bediya died leaving behind his son Sukra Bediya who inherited the said landed property and came in possession thereafter as the successor of the said landed property. He next submits that Sukra Bediya sold the land of Khata No.42, Plot No.1273, measuring an area of 0.92 acre of Village Ghutwa, PS Patratu, District Ramgarh to the original petitioner, namely, Sadik Miyan by way of executing the Sale Deed dated 02.07.1970 vide Sale Deed No.6111 and put him in possession over the said land. After purchasing the aforesaid land in question the petitioner came in peaceful possession over the aforesaid land and started cultivating the same without any hindrance or objection thereof. He further submits that now the original writ petitioner has left for his heavenly abode and thereafter his legal heirs/ successors have been

substituted in the present writ petition by the order of the Court dated 25.02.2025. He next submits that the original writ-petitioner had applied for mutation of his name in the revenue record with respect to the land in question before the Anchal Adhikari/CO, Patratu and the Anchal Adhikari/CO has issued *Aam Ishtehar* stating therein that if any of the raiyat of the village or the claimer of the said land have any objection regarding the land in question, they can raise their objection till 10.7.1996, however, the mutation has not been done for one or another reason. He next submits that the petitioner is in peaceful possession over the said land since 1970 without any objection and hindrances of any of the raiyat or occupancy raiyat. He next submits that respondent no.7 claims that she has purchased an area measuring 0.67 acres of Plot No.1273 from the occupancy raiyat- Sukra Bediya on 13.05.2003 and she was dispossessed from the said land by the original petitioner. He submits that respondent no.7 was never in possession over the said land. He next submits that the learned Additional Collector has also observed in his order dated 30.08.2005 that, the name of the respondent no.7 was mutated in revenue records without verifying the actual possession over the aforesaid plot on the basis of the revenue records only. He submits in view of that, the respondent no.7 was never in possession.

4. In the aforesaid background, he submits that the respondent no.7 has filed an application for restoration of the land

in question under Section 46(4) of Chhotanagpur Tenancy Act, 1908 (hereinafter referred to as 'Act') claiming as a member of Scheduled Tribe caste and who has been dispossessed from the land in question. He submits that the respondent no.7 is not the member of Scheduled Tribe caste as per the Notification published in Bihar Gazette and the caste of Bedia has been put in the category of Backward Class in the said Schedule and he submits in view of that also, the petition was not maintainable. He next submits that the Additional Collector has rightly held that the said petition is barred by time in light of Proviso of Section 46(4-A)(a) of the said Act. He next submits that the learned Commissioner has wrongly set-aside the order of the learned Additional Collector holding that in light of the provisions of Section 46(4-A)(a) of the Act for barring by time, 12 years is the limitation period prescribed therein. He next submits that, however, the learned revisional authority without appreciating the possession of the petitioners, has set-aside the finding of the learned appellate authority/ Additional Collector upholding the finding of the order passed by the learned L.R.D.C passed in Restoration Case No.12/ 2004-05. He next submits that in light of the definition of 'raiyat' under Section 6 of the Act, 1908, the purchaser cannot be a raiyat and in view of that also, the petition filed by the respondent no.7 was not in accordance with law. He next submits that it is not clear that respondent no.7 was dispossessed from the land in question w.e.f which date. He next

submits that in absence of any finding with regard to the date of dispossession, the learned appellate authority/ Additional Collector has rightly passed the order saying that the petition was barred by time and suggested to go before the Civil Court. On these grounds, he submits that the order of the learned revisional authority may kindly be set-aside, and the order of the learned appellate authority/ Additional Collector may kindly be restored.

5. Mr. Sanjay Kumar Tiwari, the learned counsel appearing on behalf of the respondent State submits that the learned revisional authority has rightly appreciated the facts and law and thereafter has passed the order. He next submits that so far as the argument on the point that, 'Bedia' is not coming within the Schedule of Scheduled Tribe caste, is not tenable in view of the fact that 'Bedia' is there since 06.09.1950 in light of the Gazette Notification. He next submits that so far as Bediya in Backward Caste is concerned, as submitted by the learned counsel for the petitioners, that is another caste and the spelling of the same in Backward class is 'Bediya', wherein the Gazette Notification of 1950, the spelling of said caste is 'Bedia'. He also submits that even if the argument of the learned counsel for the petitioners is accepted, without permission the transaction has been made and that is barred under section 46 of the Act, 1908. He also submits that in light of Sub Section 3 of Section 46 of the Act, 1908, no transfer is said to be valid by any Court and on these grounds, he submits that

there is no illegality in the impugned order.

6. Mr. A.K. Sahani, the learned counsel appearing on behalf of the respondent no.7 submits that the petition was filed under section 46(4)(A) before the learned LRDC. He next submits that respondent no.7 is of the same caste and also happened to be the member of Scheduled Tribe and she has purchased the land in question by registered Deed dated 13.05.2003. He next submits that the said registration was made after taking permission from the learned Deputy Commissioner in Case No.40/2002 dated 13.01.2003 under section 46(1) of the Act, 1908. He next submits that the provision also provides for, that if the member of Scheduled Tribe of same caste is residing in the same area, can purchase the land. He next submits that respondent no.7 in terms of the provisions made in the Act, 1908, after taking permission, has purchased the land in question and thereafter has applied for mutation and mutation was also done in favour of the respondent no.7. He next submits that she has purchased 67 decimals of the said land. He also submits that within six months of the said purchase, she was dispossessed. He next submits in view of that the claim of the respondent no.7 under Proviso of section 46(4-A)(a) of the Act, which prescribes for limitation, is not applicable in the case of the respondent no.7 as it was filed within time. He also submits that so far as Bedia is coming in the Schedule of the Gazette Notification of 1950, that point cannot be assailed by the petitioners-herein, as the learned

appellate authority has also held that Bedia is coming within the said Schedule of Scheduled Tribe and that part of the order/finding has not been challenged by the petitioners-herein. He next submits that in light of Section 6 of the Act, which is definition of 'raiyat', the respondent no.7 is successor-in-interest and in view of that, respondent no.7 is a 'raiyat', and on these grounds, he submits that there is no illegality in the impugned order, and as such, this petition may kindly be dismissed.

7. In view of above submission of the learned counsels appearing on behalf of the parties and after going through the records, it is an admitted position that the petitioners-herein have purchased the land by registered Deed in 1970 and it is an admitted fact that the petitioners are not the members of Scheduled Tribe. It is clear finding of the learned courts that the land in question is in the nature of Adivasi land. The argument of Mr. Rajiv Nandan Prasad, the learned counsel appearing for the petitioners saying that Bedia community is not coming within the Schedule in terms of the Notification under Clause 1 of Article 342 of Constitution of India, is not tenable in view of the fact that, in Gazette of 06.09.1950, the Part -II is relating to Bihar, which clearly stipulates that Bedia is coming within Scheduled Tribes and the said Gazette Notification, for ready reference, is quoted hereinbelow:

The Gazette of India
EXTRAORDINARY

PART II-Section 3

PUBLISHED BY AUTHORITY

No. 40] NEW DELHI, WEDNESDAY, SEPTEMBER 6, 1950

MINISTRY OF LAW

NOTIFICATION

New Delhi, the 6th September 1950

S.R.O. 510. The following Order made by the President is published for general information:-

THE CONSTITUTION (SCHEDULED TRIBES) ORDER, 1950

C. O. 22. In exercise of the powers conferred by clause (1) of Article 342 of the Constitution of India the President, after consultation with the Governors and Rajpramukhs of the States concerned, is pleased to make the following Order, namely:-

1. This Order may be called the Constitution (Scheduled Tribes) Order, 1950,
2. The tribes or tribal communities, or parts of, or groups within, tribes or tribal communities, specified in Part I to XIV of the Schedule to this Order shall, in relation to the States to which those Parts respectively relate, be deemed to be Scheduled Tribes so far as regards members thereof resident in the localities specified in relation to them respectively in those Parts of that Schedule.
3. Any reference in the Schedule to this Order to a district or other territorial division of a State shall be construed as a reference to that district or other territorial division as existing on the 26th January, 1950.

THE SCHEDULE

1. Xxx xxxx

PART II-BIHAR

1. Throughout the State: -
- | | |
|-----------|------------|
| 1 Asur | 15 Kharwar |
| 2 Baiga | 16 Khond |
| 3 Bathudi | 17 Kisan |
| 4 Bedia | 18 Kora |

5 Binjhia	19 Korwa
6 Birhor	20 Lohara
7 Birjia	21 Mahli
8 Chero	22 Mal Paharia
9 Chik Baraik	23 Munda
10 Gond	24 Oraon
11 Gorait	25 Parhaiya
12 Ho	26 Santal
13 Karmali	27 Sauria Paharia
14 Kharia	28 Savar

2. In the districts of Ranchi, Singhbhum, Hazaribagh, Santal Parganas and Manbhum-Bhumij.

8. In view of above, it is clear that Bedia is Scheduled Tribe and that Notification is of 06.09.1950.

9. In view of that the argument of Mr. Rajiv Nandan Prasad, the learned counsel for the petitioners is not being accepted by the Court.

10. Section 6(1) of the Act, 1908, stipulates as under:
"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 success -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 of grazing cattle on it.”

11. On reading the aforesaid provision, it is crystal clear that the raiyat includes the successor-in-interest.

12. Admittedly, the respondent no.7 has purchased the land in question by the registered deed dated 02.07.1970 and that too, after taking permission from the Deputy Commissioner in the Case No.40/2002 dated 13.01.2003 and the same was also mutated in the Office of Circle Officer wherein the mutation of the said land purchased by the petitioners-herein has not been done till date in spite of inviting objection by the concerned Circle Officer which suggest that it has not been done as the land was found to be in the nature of Adivasi land.

Section 46(1) of the said Act, 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 mortgagee 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 ¹[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 ²[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 ³[Scheduled Castes or Backward Classes) may transfer with the pre-vious 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 4[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.

13. There is no doubt that in light of registered deed of 1970, the petitioners have purchased the said land, however, later on, the Deputy Commissioner in Case No.40/2002 by the order dated 13.01.2003 has granted the permission to purchase the land by the respondent no.7 which further suggest that in the record of revenue authority, the said land was still having Adivasi nature and that is why, the permission has been granted by the Deputy Commissioner and that is the provision made in the Act, 1908 under section 46(1) of the said Act.

14. Section 46(3) of the said Act reads as under:

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

15. Sub Section 3 of Section 46 of the said Act, stipulates that any deed in violation of Section 46(1) of the said Act will not be recognized as valid by any Court; either Civil, Criminal or Revenue, and further, it is well settled that the collusive transaction by way of even registered deed in light of Sub Section 3 of Section 46 of the said Act, 1908, cannot be said to be a valid transaction in light of the provisions made in the Act, 1908.

16. Section 46(4-A)(a) of the said Act reads as under:

*(4-A) (a) The Deputy Commissioner may, of his own motion or on an application filed before him by an occupancy-Raiyat, who is a member of the Scheduled Tribes, for annulling the transfer on the ground that the transfer was made in contravention of clause (a) of the second proviso to sub-section (1), hold an inquiry in the prescribed manner to determine if the transfer has been made in contravention of clause (a) of the second proviso to sub-section (1):
Provided that no such application be entertained by the Deputy Commissioner unless it is filed by the occupancy-tenant within a period of twelve years from the date of transfer of his holding or any portion thereof:
Provided further that before passing any order under clause (b) or clause (c) of this sub-section, the Deputy Commissioner shall give the parties concerned a reasonable opportunity to be heard in the matter.*

17. The respondent no.7 has purchased the said land in the year 2003 and the said land was also mutated in her name and within six months of the same, she was dispossessed and in view of that, limitation aspect in light of Proviso of Section 46(4-A)(a) is not coming in the way in the case of respondent no.7.

18. In the judgment of the Full Court of Patna High Court rendered in the case of ***Bina Rani Ghosh v. Commissioner,***

South Chota Nagpur Division, reported in ***1988 Supreme (Pat.) 195***, it has been held at paragraph nos.11 and 24, which reads as under:

"11. Coming now to S.71A, what first meets the eye is the fact that here exceptional protection has been given to the raiyati rights of persons who are members of the Scheduled Tribes. Apparently, the working of the Act had shown that the existing protection generally afforded by the statute were inadequate with regard to the majority of the unsophisticated members of the Scheduled Tribes and, therefore, by serial No. 3 of the Bihar Scheduled Areas Regulation, 1969, this section was specially inserted for their benefits. Again, the protection given here is in wide ranging terms against all unlawful transfers. It embraces in its wide sweep not only the contraventions of S.46 or of any other provisions of the Act but equally transfers by any fraudulent method including decrees obtained in a suit by fraud and collusion. It is plain that the protection has been given in the widest amplitude. Yet again the power to set aside such illegal transfer is given to the Deputy Commissioner without any limit of time when it comes to his notice. Obviously enough the Deputy Commissioner can here act suo motu.

24. If we analyse S.71A we will notice that the Deputy Commissioner has been given power to restore raiyati land of a member of the Scheduled Tribes, if a transfer has taken place 1.

(i) in contravention of Sec. 46;

(ii) in contravention of any other provisions of the Act;

(iii) by any fraudulent method including decree obtained in suit by fraud and collusion.

Decree of a Court by which the title of person is declared is not transfer as generally understood; but by Cl.(iii) it has also been included as a mode of transfer, albeit if the decree was obtained by fraud and collusion. There is no difficulty in understanding Cl.(i) because what is transfer within the meaning of Sec. 46 has been enumerated in that Section. Clause (ii) speaks about transfer in contravention of any other provisions of the Act. In other words, besides S.46, there are sections, transactions under which may amount to transfer. It is well settled that each word of a section must be given effect and so the words in Cl.(ii) must have full play. Section 72 mandates that a raiyat whose lease is not for a fixed period, may surrender his holding or part thereof with the previous

sanction of the Deputy Commissioner in writing. Any surrender made in contravention of S.72 must be held to be bad in law. By surrender, right to hold land is given up by a raiyat in favour of another, who becomes entitled to hold the same. In effect, by surrender the raiyat loses his title in the land. The Legislature, therefore, provided that surrender may be made only with previous sanction of the Deputy Commissioner in writing. It must, therefore, be held that provisions referred to in Cl. (ii) is S.72. Surrender of right by a raiyat in his land must be held to be transfer within the meaning of Section 71A and statute provides that if it was made in contravention of S.72, the surrender may be annulled.

19. Although the above judgment was considered under Section 71A of the Act also, however, finding on Section 46 of the Act and fraudulent aspect is applicable in the present case.

20. In view of above facts, reasons and analysis, the Court finds that there is no illegality in the order of the learned Revisional Authority, and accordingly, this writ petition being W.P.(C) No.5821 of 2013 is, hereby, dismissed.

21. Pending petition, if any, also stands disposed of.

(Sanjay Kumar Dwivedi, J.)

Dated : 25.08.2026
SI/ **A.F.R**