

(2023) 02 JH CK 0034

In the Jharkhand High Court

Case No : Writ Petition (C) No. 3164 Of 2005, 1141 Of 2015

Alamuni Hansda And Others

APPELLANT

Vs

State Of Jharkhand And Others

RESPONDENT

Date of Decision : 22-02-2023

Acts Referred:

Constitution Of India, 1950 — Article 14, 19, 31B
Santhal Pargana Tenancy Rules, 1950 — Rule 3, 3(1), 3(2), 3(3), 3(4), 3(5)
Santhal Pargana Tenancy Act, 1949 — Section 2, 4, 4(ix), 4(19), 4(23), 5, 6, 53, 71(2)
(i), 71(2)(ii), 71(2)(iii)

Citation : (2023) 02 JH CK 0034

Hon'ble Judges : Aparesh Kumar Singh, J; Ratnaker Bhengra, J; Anil Kumar Choudhary, J

Bench : Full Bench

Advocate : Indrajit Sinha, J.P. Jha, Sanjeev Thakur, Aishwarya Prakash, Shiv Prakash Jha, Sreenu Garapati, Suresh Kumar, Rajeeva Sharma, Nityanand Pd. Choudhary A.K. Sahani, Vikesh Kumar, Ajit Kumar

Judgement

Aparesh Kumar Singh, J

1. The instant matter has been placed before this Larger Bench on reference being made by the learned Division Bench vide order dated 9th March 2018. The learned Single Judge had earlier vide order dated 19th August 2016 passed in W.P.(C) No.3164 of 2005 referred the matter to the learned Division Bench taking note of divergent views expressed by the learned Division Benches on the procedure for appointment of a Pradhan under the SPT Act, 1949.

2. In W.P.(C) No. 3164 of 2005 by the impugned order dated 5th April 2005, passed in Revenue Misc. Revision No. 137/1998-99 preferred by the 16 Anna raiyats of the Mouza and Revenue Misc. Revision No. 370/2000-01 preferred by private respondent no.5 herein, the Divisional Commissioner, Santhal Pargana Division has set aside the orders passed by the Sub Divisional Officer, Jamtara and upheld by Deputy Commissioner, Dumka appointing the petitioner Alamuni Hansda as Pradhan of village Saharberia, P.S. Bindapathar, Sub-Division Jamtara,

District Dumka. Petitioner admittedly is the married daughter of the erstwhile Pradhan namely Maral Hansda and also his second wife Hopni Kisku, mother of the petitioner was also declared as Pradhan after death of Maral Hansda. The Divisional Commissioner, Santhal Pargana Division has held that in view of the serious dispute about the appointment of Pradhan by the raiyats of the Mouza, as per provisions contained in Schedule-V, Clause-1, the appointment of Headman should be made in accordance with village custom and before confirming any appointment Deputy Commissioner shall certify himself that the candidate is generally acceptable to the Raiyats. He accordingly directed initiation of a separate proceeding under Section 5 of the Santhal Pargana Tenancy Act (SPT Act hereinafter for short) as per the procedure of appointment of village Headman of Khas village, so that democratic institutions can be well maintained and the raiyats may decide their next village Pradhan.

3. The learned Single Judge framed two issues for consideration upon submission of the parties:

(i) Whether the petitioner being a female heir of the original deceased Maral Hansda does have the hereditary right to be appointed as a Pradhan of the said village ?

(ii) In view of the judgment rendered by learned Division Bench of this court in the case of Sogen Murmu Versus State of Jharkhand & Ors. reported in 2012 (2) JCR Page-1 (Jhr) in such circumstances, whether the post of Gram Pradhan can at all be held to be hereditary ?

4. Taking note of the divergence in views rendered by learned Division Bench judgment in the case of Sogen Murmu (Supra) vis-a-vis the judgments rendered in the case of Thakur Hembrom versus State of Bihar and others [1980 BLJR 448] and in the case of Baisakhi Harijan and Ghanshyam Mandal [1985 BBCJ 131] and Smt. Swarnlata Devi Versus State of Jharkhand and others [2003 (3) JLJR 724] learned Single Judge found it proper to refer the matter to the learned Division Bench; whether the issue requires consideration by a Larger Bench. Vide order dated 9th March 2018, the learned Division Bench referred the matter for consideration by the Full Bench of this Court inter alia observing as follows:-

"The point involved in the case is for appointment of village Pradhan. The petitioner, herein, being the daughter of the erstwhile Pradhan was appointed as Pradhan of the village, by the Sub-Divisional Officer, Jamtara, and that order was also confirmed by the Deputy Commissioner, Jamtara. However, in revision that order has been annulled by the Commissioner, Santhal Parganas, directing the Sub-Divisional Officer, Jamtara to initiate a separate proceeding under Section 5 of the Santhal Parganas Tenancy Act, for appointment of the village Headman of the Khas village, so that democratic institution can be well maintained and the raiyats may decide their next village Pradhan. The petitioner herein, being the daughter of the erstwhile Pradhan, is claiming her right, being the legal heir of erstwhile Pradhan, to hold the post on the basis of inheritance.

The order dated 19.8.2016 shows that Hon'ble Single Judge while deciding the matter, found two conflicting decisions of the Division Benches on the point, and accordingly, the Hon'ble Single Judge has referred the matter to the Division Bench of the Court for consideration whether the matter requires to be decided by a Larger Bench. In view of the two conflicting decisions of the Division Benches on the point, we think it appropriate to refer the matter to be decided by a Full Bench of this Court so that the point of law involved in the matter be set at rest. Let this matter be placed before a Full Bench, for deciding the issue.

In the order dated 19.8.2016, two points have been mentioned by the Hon'ble Single Judge, which are said to be involved in the matter. We, however, keep the matter open for consideration by the Full Bench of this Court, all the issues involved in the matter, without confining to the two points mentioned in the order dated 19.8.2016.

Let the matter be placed before Hon'ble the Acting Chief Justice for constituting the Full Bench for the purpose."

5. W.P.(C) No.1141 of 2015 was tagged along with W.P.(C) No. 3164 of 2005 vide order dated 9th December 2019 passed by the learned Single Bench as it was of the view that similar issue is involved herein. In W.P.(C) No. 1141 of 2015 the petitioner has prayed for quashing of the order dated 24th July 2014 passed by learned Commissioner, Santhal Pargana Division, Dumka (respondent no.4) in RMR No. 41/2001-02 (Annexure-3) whereby the order passed by learned Sub-Divisional Officer, Godda (respondent no.2) dated 17th April 2001 in PA Case No. 4/2000-01 (Annexure-1) and the order dated 26th December 2001 passed in Misc. Appeal No. 15 of 2001 (Annexure-2) by the Deputy Commissioner, Godda (respondent no.3) was set aside. Petitioner has prayed for a direction upon the respondents to allow him to continue on the post of Pradhan of Mouza Bari Sankhi bearing no.51 and Mouza Gourikita bearing no. 38, P.S. Pathargawan (now Basantrai), P.O. Mokachak, District Godda. In WPC No. 1141 of 2015 the respondent no.6 had contested the claim of the petitioner for appointment as a Pradhan. However, the Sub Divisional Officer, Godda on the basis of the report of the Circle Officer that the petitioner is generally acceptable to the raiyats of Mauza, appointed the petitioner as Pradhan on hereditary ground. This was affirmed by the Deputy Commissioner, Godda in Misc. Appeal No. 15 of 2001 preferred by the respondent no 6. However, the Commissioner, Santhal Pargana Division set aside the order of learned Sub-Divisional Officer, Godda by observing that the Deputy Commissioner under Schedule-V of the Santhal Pargana Tenancy Rules, 1950 was required to see the general acceptability of the candidate by the raiyats. Petitioner's contention is that in case of hereditary succession such a requirement is not there under Schedule-V Sub-Clause 3 and 4.

6. Considering the importance of the issue involved vide order dated 16th December 2022, this Court appointed learned Amicus Curiae to assist this Court. Learned Amicus Curiae has submitted his written submissions and compilation of decisions for assistance to this Court.

7. The issues for consideration have been argued primarily in WPC No. 3164 of 2005 by the learned senior counsel for the petitioner, Mr. J.P. Jha and Mr. Rajeeva Sharma, learned Senior Counsel for the private respondent and the counsel representing the state.

8. Learned Senior Counsel for the petitioner has taken this court to the background of the enactment of the Santhal Pargana Tenancy Act, 1949 And the Santhal Pargana Tenancy Rules, 1950 framed in exercise of the powers under Section 71 (2) (i) to (iii) of the SPT Act. It is also pointed out that the SPT Act enjoys the protection of Article 31B as it has been brought under the IXth Schedule to the Constitution of India. It has been submitted that the office of Pradhan can be traced back to the prevalent practice earlier in the region by recognition of Damini Koh and later on by different expressions such as Manjhi, etc. who were entrusted for collection of rent on behalf of the landlord in those villages out of which they used to get a share. As per Section 4 the SPT Act has been framed to amend and supplement certain laws relating to landlord and tenant in the Santhal Pargana. It extends to the whole of Santhal Pargana Division comprising Dumka, Sahibganj, Godda, Deoghar and Pakur District.

9. Learned counsel for the petitioner has taken us to the definition of Khas village as defined under Section 4(ix) which means a village in which there is no mool raiyat nor for the time being any village headman irrespective of whether there was or was not previously a mool raiyat or village headman in the village. The issue at hand revolves around the interpretation and application of the provisions of Chapter II Section 5 and 6 relating to village headman in a Khas village and in a Pradhani village. It is submitted that Section 5 of the SPT Act provides for appointment of a village headman of a Khas village on the application of a raiyat or of landlord of any Khas village with consent of at least two thirds of the Jamabandi raiyats of the village in the manner prescribed by the Deputy Commissioner. Section 6 provides that in case the village headman of a village which is not Khas, dies, the landlord of the village shall report the fact within three months of its occurrence to the Deputy Commissioner with a view to the appointment of a village headman in the prescribed manner. It is submitted that the manner has been prescribed under Rule 3 of the SPT Rules 1950. Learned Senior Counsel for the petitioner has referred to the provisions of Rule-3(1) which specifically provides that notice shall be given to the Jamabandi raiyats of the village and to the landlord in Form-A by the Deputy Commissioner on an application from Raiyat or a landlord under Section 5.

10. Taking us to the provisions of Sub Rule 2, 3 and 4, it is submitted that once the two-thirds of the Jamabandi raiyats have given their consent for appointment of headman for the village, the Deputy Commissioner has to invite nomination for appointment of headman and proceed to make the appointment. Under Sub-Rule 5, the Deputy Commissioner has been empowered to make the appointment of headman under Section 5 or Section 6 by following the rules prescribed in Schedule V as far as possible, except where these rules expressly or by

necessary implication, provide otherwise. It is submitted that under Schedule-V the headman must be a resident of the village or his permanent home must be within one mile of his village. Sub-clause 1 thereof relates to the appointment of headman in khas village where the Deputy Commissioner has to satisfy himself that the candidate is generally acceptable to the raiyats. Sub-rule 3 and 4 however apply to appointment of a Pradhan in a Pradhani village on the death of the Pradhan. Sub-rule 3 clearly provides that the office of headman being hereditary, the next heir should be the headman. Even if the heir is a minor, he has to be appointed with a Sarbrakhar to manage for him until he attains his majority. If no suitable Sarbrakhar can be found, then only the right of the minor lapses. Sub-clause 4 enumerates the condition under which a person may be refused succession on the death of his father/mother, for reasons to be recorded, if he or she is considered unfit for the post. The conditions for being declared unfit for the post are to be read in the same manner as the grounds which are laid down for dismissal of the headman under Sub-clause 4, such as personal unfitness through excessive age, defective intellect or physical infirmity or on account of proved fraud, violence, contempt of court or other grave misconduct, or such oppressive or inconsiderate treatment of the raiyats or gross neglect of their interests, as may be considered, to hold him unfit for the post. The headman can also be dismissed, if he indulges in destruction or damage or failing to guard the common property and recorded rights of the village or collecting excess rent from the raiyats. He is also liable to be dismissed on failure to pay the village rent punctually or for eliminating or attempting to eliminate without permission his Jot, which is security for the rent. He submitted that if a village headman can be dismissed on these grounds, then for the same grounds, the heir of the deceased headman can also be declared unfit by the Deputy Commissioner.

11. Learned Senior Counsel for the petitioner has also referred to a provision under clause 4 of Schedule-5, whereunder a headman during his lifetime may with the approval of the Deputy Commissioner appoint his heir to act for him in order to buttress the submission that the office is hereditary in nature.

12. Based on a conjoint reading of the provisions of Section 5 and Section 6, read with Rule 3 and its Sub-rules and Clauses of the Schedule-V, it is submitted that in matters of appointment of Pradhan in a village other than khas i.e. Pradhani village, there is no application of Clause 1 of Schedule-V as it relates to the appointment of a Pradhan in a khas village after two-thirds of the raiyats have declared their opinion before the Deputy Commissioner for change of the status of khas village to pradhani village. If it is otherwise held, then the provisions of Section 6 read with Clause 3 and 4 of Schedule-V would be rendered otiose as the office of the headman as conceived under Section 6 would not remain hereditary, but could be dependent upon the general acceptability of the raiyats. However, he submits that the next heir of the deceased Pradhan can be refused succession in case he is found unfit by the Deputy Commissioner on inquiries being made, on like grounds on which a headman can be dismissed.

Based on these legal submissions, it is contended that the judgment in the case of Mrs. Swarnlata does not lay down the correct law as it has held that the opinion of the raiyats have to be ascertained for ascertaining the fitness of the heir of a deceased Pradhan for his appointment. Similarly, the learned Division Bench in the case of Sogen Murmu has at para- 17 erred in holding that Clause-1 of Schedule-5 is to be applied for appointment of a village Pradhan under Section 6. Learned Senior Counsel for the petitioner has also drawn the attention of this Court to a Division Bench judgment of the Patna High Court in case of Baisakhi Harijan (supra) and submitted that the ratio rendered therein is in consonance with the scheme of Chapter-II of the SPT Act where different procedures have been laid down for appointment of a Pradhan of a khas village and a pradhani village. It is submitted that the decision in the case of Babulal Hembrom rendered by learned Single Judge of Patna High Court is also apt as to fulfillment of the criteria by the heir of the deceased Pradhan of being a resident of the village and residing within one mile of the village as per Schedule-V. Learned senior counsel for the petitioner has also referred to the judgment rendered by this Court in Narayan Soren & Ors. Versus Ranjan Murmu & Ors. [2009 (1) JCR 262 (Jhr), Para 16 to 23. It is submitted that this Court is, therefore, required to lay down an authoritative pronouncement on the correct interpretation of Section 5 and Section 6 relating to appointment of a village headman/ Pradhan in a khas village and in a pradhani village as the decisions rendered earlier in the case of Smt. Swarnlata Devi Vrs. State of Jharkhand (Supra), Sogen Murmu (Supra) and Babu Lal Mandal (supra) do not lay down the correct law. It is submitted that the petitioner being the married daughter of the deceased Pradhan Hopni Kisku, was rightly appointed as the village Pradhan by the Sub Divisional Officer and affirmed by the Deputy Commissioner which has wrongly been set aside by the learned Commissioner in Revision. He has referred to the report of the Circle Officer (Annexure-2/C) where he has found that the petitioner though married outside, but resides in the village Saharberia of which the Pradhan is to be appointed. He submits that the reasoning of the learned Commissioner at Annexure-1 is completely erroneous as he has applied the provisions of Section 5 in the appointment of the headman as per Clause 1 of Schedule V totally ignoring the application of correct provisions of Sub Clause 3 and 4 of Schedule-V framed under the SPT Rules, 1950.

13. Learned Senior Counsel for the respondents Mr. Rajeeva Sharma has, at the outset, submitted that there is no divergence in any of the decisions rendered by this Court or Patna High Court on the proposition of law as far as it relates to the case at hand. It is submitted that the case of inheritance of a married daughter through a Gharjamai is however saddled with the condition that it should be acceptable to the 2/3rd raiyats of the village. Therefore, Clause 1 of Schedule V which provides for general acceptability of a candidate to be appointed as a village headman by the two-thirds of the raiyats has application in matters of appointment of a Pradhan/village headman in a Pradhani village under Section 6. It is submitted that the provisions of different clauses of Schedule V have to be

harmoniously construed. He further submits that under the constitutional scheme, any provision of Santhal Pargana Tenancy Act and the Rules framed there under have to stand the test of reasonableness, fairness and justice. In such circumstances, the office of a village headman cannot be purely said to be hereditary, unless it is generally acceptable to the raiyats of that village. He however, does not dispute the proposition that a female heir can be appointed as a village Pradhan in view of the clear indication under Clause 3 and 4 of Schedule V.

14. Learned State Counsel has drawn the attention to the provisions of Clause 3 and 4 of Schedule 5 in order to support the submission that a female heir can be appointed as a village Pradhan in a pradhani village under Section 6 of the Act. Learned Counsel for the State has also taken us to the definition of tenant under Section 4 Sub-clause (19) and Section 4 Sub-clause (23) which define village headman. In substance the submission of learned senior counsel for the State is that the post of Pradhan is hereditary in nature.

15. Learned Amicus Curiae has, in substance, adopted the broader submissions of learned senior counsel for the petitioner which aligns with the propositions and submissions submitted by learned amicus curiae in his written notes. He submits that Section 5 provides that the Deputy Commissioner has to take a decision on the application of the raiyats or the landlord for converting a khas village into a pradhan village upon the opinion of two-thirds of the majority of the raiyats. The process of appointment of a Pradhan has to be made thereafter by inviting nominations from candidates in the manner prescribed. Rule 3 provides for ascertaining the consent of jamabandi raiyats and appointment of headman under Section 5 of the S.P.T. Act. The Deputy Commissioner has to issue a notice to the jamabandi raiyats on receipt of application from a raiyat or a landlord under Section 5. Under Sub-rule 4, if two-thirds of the recorded jamabandi raiyats give their consent for appointment of headman for the village, the Deputy Commissioner shall at once invite nomination for the appointment of headman and proceed to make the appointment as per Schedule-V. However, learned Amicus Curiae has drawn the attention of this Court to Sub-rule 5 of Rule-3, as per which the Deputy Commissioner while making appointment of Headman under Section 5 or Section 6, shall as far as possible, follow the rules prescribed in Schedule-5 except where these rules, expressly or by necessary implication, provide otherwise. It is submitted that Clause 1 of Schedule V, which provides that the Deputy Commissioner shall satisfy himself that the candidate is generally acceptable to the raiyats, is confined to appointment of a village headman under Section 5 where a khas village has been converted into a pradhani village on the application and support of two-thirds of the recorded raiyats since there was no Pradhan existing and the question of hereditary succession would not arise. However, since Section 6 specifically provides of cases of appointment of a village headman of a village which is not khas that means a pradhani village, the office of Deputy Commissioner being hereditary in nature, the procedure for appointment of the Pradhan by his next heir is

prescribed under Sub-clause 3 and 4 of Schedule V which applies to the appointment of headman. Therefore, in making appointment of a village headman in a pradhani village which is hereditary in nature, there is no question of seeking the general acceptability of the raiyats to such appointment. If that be so, Clause 3 and 4 would be rendered redundant. Reading application of Clause 1 in the appointment of a village headman of a pradhani village, which is hereditary in nature would lead to absurd results. That is why Sub Rule 5 of Rule 3 has empowered the Deputy Commissioner to apply the provisions of Schedule V as far as possible and except where these rules expressly or by necessary implication provide otherwise. It is submitted that the only condition which is required to be fulfilled by the next heir of the Pradhan is that he/she is a fit person. That inquiry has to be made by the competent authority or the Deputy Commissioner. The grounds for unfitness can be held to be alike to the grounds of dismissal of a headman enumerated under Sub-clause 4 of Schedule-V. It is submitted that a bare reading of Sub-clause 3 and 4 makes it clear that both male and female heirs are entitled for succession to the office of a village headman in a pradhani village. It is submitted that the interpretation of the relevant provisions of S.P.T. Act, the Rules and the Schedule-V made thereunder, should not be read to apply only to a particular community as the Rule applies to all raiyats and villages under the SPT Act, irrespective of the fact whether they are inhabited by scheduled tribes or minorities or general community or all. Learned Amicus Curiae submits that since the learned Division Bench while making reference, has made it clear that all the issues involved in the matter would be open for consideration by the Full Bench of this Court without confining to the two points mentioned in the order dated 19th August 2016, a correct interpretation of the provisions of Section 5 and 6 of the SPT Act needs to be laid down to set at rest the controversy forever arising out of different views expressed by learned Division Benches of this Court or Patna High Court earlier. Learned Amicus Curiae has also submitted that since the SPT Act is included in the IXth Schedule of the Constitution and is protected under Article 31B from interference, the provisions of this Act and the rules should not be scrutinized on the test of Article 14, 19, etc. In this regard, he has relied upon the Constitution Bench decision of the Apex Court in the case of Latafat Ali Khan & Ors. Vrs. The State of U.P. [(1971) 2 SCC 355] wherein at para 2 it has been held as under:-

"2. It seems to us that if a statutory rule is within the powers conferred by a section of a statute protected by Article 31- B, it is difficult to say that the rule must further be scrutinized under articles 14, 19, etc...."

16. Learned Amicus Curiae has then taken us to the judgments rendered in Jagdish Misra v. Chamaklall Misra [1965 BLJR 674], Smt. Swarnlata Devi v. State of Jharkhand [2003 (3) JLJR 724 (JHC) : 2003 SCC Online Jhar 341], Babu Lal Mandal v. State of Jharkhand [2008 (3) JLJR 455 (JHC): 2008 SCC Online Jhar 1151], Sogen Murmu v. State of Jharkhand [2012 (2) AIR Jhar 179: 2011 SCC Online Jhar 997] and Subhas Chandra Sah v. State of Jharkhand and others [2012 (3) AIR Jhar 760 : 2012 SCC Online Jhar 149] and submitted that these

decisions have incorrectly interpreted and applied the provisions of SPT Act and the rules made thereunder with regard to appointment of a village headman. Therefore, they are liable to be overruled. He further submits that this Court may also lay down the correct interpretation of Section 5 of the SPT Act as often the provisions of Section 5 relating to appointment of a village headman in a khas village has been misconstrued and applied incorrectly with the provisions of Section 6 which clearly provide for appointment of the village headman /Pradhan of a village other than khas village i.e. pradhani village where the office of village headman is hereditary in nature. It is submitted that it may happen that once a khas village is declared as a pradhani village after the first appointment of the village headman in terms of Clause 1 of Schedule-V by ascertaining the general acceptability of the raiyats regarding the candidate, the office would become hereditary in nature thereafter and the provisions of Sub-clause 3 and 4 of Schedule-V would similarly apply as the village then is treated as a pradhani village i.e. other than khas village.

17. I have given anxious consideration to the submissions of learned counsel for the parties. I have also gone through the provisions of the SPT Act and the rules framed thereunder which prescribe the procedure for appointment of a village headman in a khas village under Section 5 and in a village other than khas village i.e. pradhani village under Section 6 of the SPT Act.

18. The Learned Division Bench has, while referring the matter to the Full Bench, made it clear that all issues involved in the matter are open for consideration by the Full Bench of this Court without confining to the points mentioned in the order dated 19th August 2016 by the learned Single Judge. Therefore on consideration of the arguments made by learned counsel for the parties and learned Amicus Curiae and also the divergent views rendered by different Division Benches of the Patna High Court and this Court on the interpretation of Section 5 and 6 of the SPT Act, it is deemed proper to endeavour and find out the correct position in law as regards the question of appointment of a village headman under the SPT Act. The propositions formulated by the learned Amicus Curiae, if answered, would hopefully comprehensively settle the issues once and for all.

19. The background of enactment of the SPT Act, 1949 is being dealt with hereunder :-

The Santhal Pargana Tenancy (Supplementary Provisions) Act, 1949 ("SPT Act") was enacted to amend and supplement certain laws relating to landlord and tenant in the Santhal Parganas. Prior to passing of the SPT Act there was no self-contained codified law of tenancy for the area. Some of the tenancy laws were contained in Regulation III of 1872 and Regulation II of 1886. Some were to be found in the Settlements, Record of Rights and Duties of each village, the rulings of the Commissioner, Bhagalpur and the Deputy Commissioner and in the decisions of civil and revenue courts interpreting these records and also in the executive instructions of government and revenue authorities issued from time to

time. The SPT Act, 1949 codified some of the customary laws prevalent in the Santhal Pargana areas inter alia included the customary laws relating to exchange of raiyati lands, subletting of raiyati lands under certain circumstances, settlement of vacant and abandoned holdings, rate of landlord's fees on transfer, rights of raiyats relating to tanks and water reservoir, grazing land and jaherthan and the rights of raiyats on trees grown on his land etc.

By the Constitution (Sixty-sixth Amendment) Act, 1990 vide section 2 thereof, Santhal Parganas Tenancy (Supplementary Provisions) Act, 1949 except section 53 was inserted in the Ninth Schedule to the Constitution of India. Thus, the SPT would enjoy the immunity as provided by Article 31 B of the Constitution of India and can only be tested on the anvil of the basic structure [Kindly see *I.R.Coelho v. State of Tamil Nadu*; (2007) 2 SCC 1].

Likewise, the Rules made under the SPT Act i.e. the Santhal Parganas Tenancy (Supplementary) Rules, 1950 ("SPT Rules") cannot be scrutinised under Art. 14, 19, etc. in view of the judgment of the Supreme Court rendered in the case of *Latafat Ali Khan and Others v. The State of U.P.* [1971 (2) SCC 355] wherein at paragraph 2 it was, inter alia, held as under:

"2. It seems to us that if a statutory rule is within the powers conferred by a section of a statute protected by Article 31- B, it is difficult to say that the rule must further be scrutinised under articles 14, 19, etc...."

The two writ petitions referred to this Full Bench relate to the appointment to the office of village headman.

The post of village headman was institutionalized during the Land Settlement of 1872-78 conducted by Mr. Brown Wood. He noted that locally the headmen were referred to as Manjhis, Pradhan and Mustagir. Although there was variance in the duties these headmen performed, Mr. McPherson while preparing the Settlement Report (1898-1907) stated that - "Mr. Wood took them all as he found them and moulded them after one and the same pattern". Mr McPherson in his report also noted that the distinction between Mustagir and Manjhi was abolished and common epithet of 'Pradhan' was applied. The first and foremost duty of the headman was to collect rents effectively and on the date fixed for them. Besides collection of rent the village headman had to perform certain other duties which included performance of police duties under the Yules Rule of 1856, which was framed before the introduction of the headman system and the Manjhi were given certain police rights.

The SPT Act and the Rules made thereunder also provide for the village headman and after coming into force of the SPT Act the law relating to appointment and duties of a village headman stands statutorily recognized and codified.

20. The relevant provisions of Sections 5 and 6 of the SPT Act, Rule 3 of the SPT Rules and Schedule-V are quoted hereunder :-

"5. Appointment of village headman of a khas village - On the application of a

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

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

"3. Rules regarding the manner of ascertaining the consent of jamabandi raiyats and appointment of headman under Section 5 -

(1) On receipt of an application from a raiyat or a landlord under Section 5, the Deputy Commissioner shall issue notice to the jamabandi raiyats of the village and to the landlord in Form A.

(2) The consent of at least two-thirds of the persons recorded as jamabandi raiyats of the village shall be ascertained by the Deputy Commissioner by show of hands.

Provided that if on the date so fixed at least two-thirds of the persons recorded as jamabandi raiyats of the village fail to be present the Deputy Commissioner shall fix another date and issue fresh notices in the manner prescribed in sub-rule 3(1), if on the date so fixed, at least two-thirds of the persons recorded as jamabandi raiyats again fail to be present the Deputy Commissioner shall summarily reject the application made under Section 5.

(3) The decision of the Deputy Commissioner as to whether a person is entitled vote or not shall be final.

(4) If at least two-third of the persons recorded as jamabandi raiyats give their consent for appointment of headman for the village, the Deputy Commissioner shall at once invite nomination for the appointment of headman and proceed to make the appointment.

(5) In making the appointments of headman under Section 5 or Section 6, the Deputy Commissioner shall, as far as possible, follow the rules prescribed in Schedule V except where these rules, expressly or by necessary implication, provide otherwise."

SCHEDULE V

THE APPOINTMENT OF HEADMEN

In appointing headmen the following rules should be taken into consideration:-

The headman must be a resident of the village or his permanent home must be within one mile of the village.

1. The appointments of headman shall be made in accordance with village customs, and before confirming any appointment, the Deputy Commissioner shall satisfy himself that the candidate is generally acceptable to the raiyats, and an opportunity shall also in every instance, be afforded to the proprietor to object to any candidate.

2. No sub-division of the office of headman can be allowed or recognized unless:-

(a) there are different classes of raiyats in the village who have always been managed separately:

(b) such sub-division has been recognized at the last settlement.

3. The office of headman being hereditary, the next heir, who is fitted, should be head man. If the heir be a minor, he may be appointed headman with a Sarbrakhar to manage for him until he attains his majority.

If no suitable Sarbrakhar can be found, the right of the minor lapses.

4. A person may be refused succession on the death of his father/mother if, for reasons to be recorded, he/she be considered unfit for the post.

The power of dismissal rests with the Deputy Commissioner subject to an appeal to the Commissioner, Santal Parganas. Headmen are liable to be dismissed for the following reasons, and the heir of the headman dismissed for misconduct shall have no claim to the office: -

1. On account of personal unfitness through excessive age; defective intellect or physical infirmity, provided that in cases of this kind a headman during his lifetime may with the approval of the Deputy Commissioner, appoint his heir to act for him. Any misconduct on the part of the heir will render him liable to lose his claim to succession on the death or resignation of the headman for whom he acts.

2. On account of any proved fraud, violence, contempt of Court or other grave misconduct or of such oppressive or inconsiderate treatment of the raiyats or gross neglect of their interest as may be considered to unfit him for the post.

3. For destroying, damaging or failing to guard the common property and recorded rights of the village, or for collecting from raiyats in excess of the settlement rates.

4. For failure without due cause to pay his village rents punctually or for alienating or attempting to alienate, without permission his jot which is security for the rent.

5. The interest of a headman manjhi or mustajir is not transferable by sale or otherwise.

But in case where such interest has been sold through the Courts and where the right of the purchaser has never since been questioned, recognition should not

be refused to the purchaser merely on the ground that the sale took place subsequent to the prohibition by Government of such sale.

CONSEQUENCE OF DISMISSAL

The dismissed headman loses his official jot.

His official jot means and includes-

- (1) all lands made over to him in his capacity of headman or appointment to office;
- (2) all lands recorded at the last settlement in the name of other raiyats and now found in his possession, except such lands as he may have legally acquired by inheritance,
- (3) all lands brought under cultivation since last settlement by other raiyats and now found in his possession.

21. In view of the referral order dated 9th March 2018 by learned Division Bench, the following substantial questions of law as suggested by the learned Amicus Curiae are framed for consideration by this Court :-

1. Whether the office of a village headman under the Santhal Pargana Tenancy (Supplementary Provisions) Act, 1949 ("SPT Act") is hereditary?
2. Whether a female can be appointed as a village headman / headwoman as a successor to the office in exercise of hereditary right in terms of the SPT Act?
3. Whether the process for appointment of a village headman of a khas village and a Pradhani village is the same?
4. Whether the Deputy Commissioner is required to satisfy himself regarding the general acceptability of the candidate in case of appointment of a village headman on the basis of hereditary right?
5. Whether the judgments rendered in cases of Jagdish Misra v. Chamaklal Misra [1965 BLJR 674], Baisakhi Harijan v. State of Bihar [1995 BBCJ 131], Smt. Swarnlata Devi v. State of Jharkhand [2003 (3) JLJR 724 (JHC) : 2003 SCC Online Jhar 341], Babu Lal Mandal v. State of Jharkhand [2008 (3) JLJR 455 (JHC): 2008 SCC Online Jhar 1151], Sogen Murmu v. State of Jharkhand [2012 (2) AIR Jhar 179: 2011 SCC Online Jhar 997] and Subhas Chandra Sah v. State of Jharkhand and others [2012 (3) AIR Jhar 760 : 2012 SCC Online Jhar 149] have laid down the correct law or require reconsideration?

22. A minute reading of the statutory provisions shows that the appointment of a village headman of a khas village and that of a pradhani village are distinctly provided under two different provisions Section 5 and 6 of the SPT Act. However, the procedure for appointment of the headman is laid down under Schedule-V read with Rule 3(5) of the SPT Rules. Section 5 deals with appointment of village headman of a khas village which is directly under the control of landlord and

there is no village headman of the village existing from before. Under Section 5 an application can be made by a raiyat or a landlord for appointment of a village headman. The Deputy Commissioner, on receipt of such application, shall issue notice to the jamabandi raiyats of the village/village community and to the landlord in Form-A in terms of Rule 3(1) of the SPT Rules. Thereafter, the Deputy Commissioner shall ascertain the consent of at least two-thirds of the jamabandi raiyats of the village by show of hands as per Rule 3(2). As per Rule 3(4), if at least two / two-thirds of the persons recorded as jamabandi raiyats, give their consent for appointment of headman for the village, then the Deputy Commissioner shall at once invite nomination for the appointment of headman and proceed to make the appointment. In terms of Rule 3(3), an application for appointment of a village headman is liable to be rejected if on two consecutive dates fixed by the Deputy Commissioner, the requisite number of people i.e. two-thirds of the recorded jamabandi raiyats fail to be present. Once the consent of two-thirds of the Jamabandi raiyats is ascertained, the Deputy Commissioner has to proceed for appointment of the village headman as per the provisions contained in Schedule-V of the Rules. Schedule-V at the outset provides that the headman must be a resident of the village or his permanent home must be within one mile of the village. This position has been affirmed by a decision of the Patna High Court in Babu Lal Hembrum versus State of Bihar & Ors., 1997 (2) BLJ 840. Clause 1 of Schedule-V provides that appointment of headman shall be made in accordance with the village customs. After an appointment is made by the village in accordance with the customs prevalent in the village, Clause 1 of Schedule-V further mandates that the Deputy Commissioner before confirming the appointment shall satisfy himself that the candidate is generally acceptable to the raiyats. Furthermore, the proprietor has to be granted an opportunity at every instance, to object to any candidate.

23. A cumulative reading of the aforesaid provisions shows that the Deputy Commissioner must ascertain the consent of two thirds of the recorded jamabandi raiyats/village community for appointment of a village headman of a khas village on receipt of an application for appointment by the raiyats or by the landlord and such mandate is to be obtained by show of hands. Thereafter, if the consent of the two-thirds recorded jamabandi raiyats is in favour of appointment of a village headman of a khas village, nominations are to be invited and appointment process in terms of village Customs has to be initiated and concluded. The Deputy Commissioner has to thereafter confirm the appointment after being satisfied that the candidate is generally acceptable to the Jamabandi raiyats and that the proprietor has no valid objections to such appointment.

24. I now proceed to examine the procedure for appointment of village headman/Pradhan of a pradhani village or a village other than khas village in terms of Section 6, read with Rule 3 and Schedule-V prescribed there under. Under Section 6, after the death of a village headman/Pradhan in a pradhani village, it is the duty of the landlord to report the same within a period of three months of its occurrence to the Deputy Commissioner, so that appointment of the next

village headman can be made in the prescribed manner. Rule 3(5) of the SPT Rules, in particular, specifically provides that in making the appointment of a headman both under Section 5 as well as Section 6 of the SPT Act, the Deputy Commissioner shall follow the rules prescribed in the Schedule as far as it is possible, except where the rules, expressly or by necessary implication, provides otherwise,. There are no other provisions except the above under the Act and the Rules regarding appointment of village headman of a pradhani village. Clause 3 of Schedule V provides that the office of headman is hereditary and the next heir, who is fit, should be appointed as the headman. The legal position that the office of headman is hereditary, is no more res-integra or open to question in view of the decision rendered by the Hon'ble Supreme Court in the case of Sheapujan Bhagat v. Thakur Hembrom [(1997) 1 SCC 529]. The right to be appointed to the post of village headman on the basis of hereditary rights have been also held in series of judgments of the Patna High Court as well as this Court. However, while dealing with the issue regarding hereditary right to be appointed to the post of village headman, certain observations have been made which do not appear to be in consonance with the provisions of the SPT Act and the SPT Rules. In terms of Schedule V Rule-3, the next heir who is fit should succeed to the post of village headman on the death or on resignation of the previous village headman. However, the said right is not absolute and a person may be refused succession on the death of his father/mother, if he/she is considered unfit for the post and reasons for such refusal are recorded in writing. A bare perusal of Sub-clause 3 of Rule 4 of Schedule-V leaves no iota of doubt that the line of succession flows both to the male and female gender in view of the specific expressions 'father/mother' and 'he/she' used in the said Clause. However, unlike the appointment of a village headman of a khas village in terms of Clause 1 of Schedule-V, while appointing a village headman in terms of Clause 3 read with Clause 4, the statutory provisions are silent as to whether any village custom is to be followed in case of hereditary appointment to the post of village headman.

25. A combined reading of the statutory provisions creates a clear impression that while considering the claim for hereditary appointment to the office of village headman, the prospective candidate must fulfill the criteria that (i) he/she must be a next heir; (ii) he/she must be fit to be appointed and (iii) the previous village headman was not dismissed for misconduct and in a case where heir was approved by the Deputy Commissioner to act for the headman, he had not mis-conducted himself.

26. Though the SPT Act and the Rules made thereunder do not specify the grounds under which the candidature of an heir can be rejected on grounds of unfitness, but by necessary implication the like grounds on which a village headman can be dismissed, can very well form the basis of the grounds for refusing succession to the office of village headman. Such grounds are personal unfitness through excessive age, defective intellect or physical infirmity. These grounds are illustrative and not exhaustive. The Deputy Commissioner may, for other good reasons, refuse succession of heir to the office of village headman,

for example criminal antecedents on account of proved fraud, violence, contempt of court or other grave misconduct or of such oppressive or inconsiderate treatment of the raiyats or gross neglect of their interest, as may be considered to unfit him for the post. He may also be dismissed for destroying, damaging or failing to guard the common property and recorded rights of the village or for collecting from raiyats in excess of the settlement rates. He may also be dismissed for failure without due cause to pay the village rents punctually or for alienating or attempting to alienate without permission of his Jot, which is security for the rent. The consequences of dismissal are also provided under Clause 4, which includes loss of official Jot. The exercise of power by the Deputy Commissioner to reject the candidature is hedged with checks and balances under Clause-4 and the reasons for declaring an heir unfit has to be recorded in writing. Since the act of rejection leads to adverse consequences and taking away of a vested right, the principles of natural justice can also be read into it. The candidate must also be afforded an opportunity of hearing and the reasons for rejection should be recorded in writing. In the scheme of the SPT Act read with Rule 3(5) and the different clauses of Schedule V, it is but apparent that Clause 1 does not fit into the scheme of appointment of a village headman of a pradhani village, which is by virtue of the language of Section 6 and the nature of the office, has been held to be hereditary in nature as per the decision of the Apex Court in the case of Sheapujan Bhagat (Supra). Clause 1 contemplates ascertainment of general acceptability of the candidate by the raiyats before the Deputy Commissioner confirms the appointment of headman, who has been appointed in accordance with village customs in a village which has been converted into a pradhani village after complying with the conditions of Section 5 of the SPT Act. If the requirement of ascertaining the general acceptability of the raiyats is read into before appointment of the next heir of a deceased Headman, as contemplated under Sub-clause 3 and 4 of Schedule V, it would lead to absurd results as the office of headman could be rendered non hereditary. It is all the more obvious from a complete reading of Clause 3 of Schedule V that even if the next heir is a minor, he may be appointed with a Sarbrakhar to manage for him until he attains the majority and only if no suitable Sarbrakhar is found, the right of the minor lapses. Therefore, the only condition hedged with the hereditary appointment of the next heir of a deceased Pradhan of a Pradhani village under Section 6 is the fitness of the candidate.

27. As discussed above, the criteria of fitness can be of the same nature as are the grounds for dismissal of a headman specifically enumerated under Sub-clause 4 of Schedule V. Rule 3, Sub-Rule 5 also makes it clear that in the matter of appointment of headman under Section 5 or Section 6, except where the rules under Schedule-V expressly or by necessary implication provide otherwise, the Deputy Commissioner shall make the appointments as far as possible by following the rules prescribed in Schedule-V.

28. As discussed herein above, by necessary implication, application of Clause 1 of Schedule-V is excluded in the matter of appointment of a candidate/next heir

of a deceased Headman under Clause 3 and 4 of Schedule V. Clause 3 and 4 could be rendered redundant in case the procedure prescribed under Clause 1 of Schedule V is applied to the appointment of a headman / Pradhan even to the office of the village headman in a Pradhani village which is hereditary in nature. It is pertinent to note that in some of the judgments the learned Courts have come to a conclusion that before appointment of an heir to the office of village headman, the Deputy Commissioner shall satisfy himself that the candidate is generally acceptable to the raiyats. Such observations have been made in cases of Jagdish Misra v. Chamaklal Misra [1965 BLJR 674 (para 6)], Smt. Swarnlata Devi v. State of Jharkhand [2003 (3) JLJR 724 (JHC): 2003 SCC Online Jhar 341 (para 7)], Babu Lal Mandal v. State of Jharkhand [2008(3) JLJR 455 (JHC): 2008 SCC Online Jhar 1151 (para 5)]. Sogen Murmu v. State of Jharkhand (2012 (2) AIR Jhar 179: 2011 SCC Jhar 997 (paras 17 & 19)) and Subhas Chandra Sah v. State of Jharkhand and others' [2012 (3) AIR Jhar 760: 2012 SCC Online Jhar 149 (paras 15 to 21)].

In Jagdish Misra (supra) a Division Bench of the Patna High Court, while dealing with a case relating to appointment of a Pradhan of a Pradhani village held as under:

"6.... Taking all these facts into consideration it cannot but be held that the Pradhan is a representative of the raiyats and his appointment has to be made by the Deputy Commissioner according to the wishes of the raiyats as to the acceptability of a particular man being appointed as a Pradhan...."

In Smt. Swarnlata Devi (supra), the Division Bench of this Court, held as follows:

"7. There is considerable force in the submission raised on behalf of respondent No. 3. At the same time, we find that going by Schedule V with particular reference to clause 3 thereof, it has to be held that the office of the Headman relating to the village in question is a hereditary office. In that context, the primary question for consideration is whether the person claiming to succeed was in any manner disqualified or is to be held to be unfit for the post. In considering that question under Rule 3 of the General Rules, the Sub-Divisional Officer may be competent to ascertain the views of the Jamabandi raiyats of the village. The Sub-Divisional Officer cannot proceed, as if somebody has to be elected for the post of Headman on the death of the Headman even as regards a non-khas village. The order of remand passed in CWJC No. 7892 of 1994 has to be understood, as far as possible, consistent with the relevant rules governing the question and the provision under which the application is made. In this case, the application was made by the appellant under Section 6 of the Act and not under Section 5 of the Act. If so understood in the context, the direction by the learned Single Judge for compliance with Rule 3 can only be understood as compliance with that Rule consistent with Clauses 3 and 4 of Schedule V by giving notice for ascertaining the fitness of the appellant to succeed to the post."

In Babu Lal Mandal (supra), this Court has held as follows:

"5. The present writ petitioner Babu Lal Mandal claiming himself to be the eldest son of the last Pradhan claimed for appointment on the basis of the provision of hereditary as provided under Section 6 of the Santhal Pargana Tenancy Act. The Deputy Commissioner, in the impugned order, contained in Annexure-4, after considering the provisions of Section 5 as well as 6 of the Santhal Pargana Tenancy Act has come to the conclusion that the claim of the persons claiming right to the post of Pradhan on the basis of hereditary comes first and, therefore, it was essential for the Sub-Divisional Officer to consider the claim of Sugdi Devi, Basudev Mandal and Babulal Mandal at first instance and, thereafter, if one of them is not found acceptable by the villagers then as per Rule the S.D.O. should go for election. Accordingly, the Deputy Commissioner, remanded the matter back to the Sub-Divisional Officer to consider the claim of the heirs of the last Pradhan, i.e. his widow Sugdi Devi, his son Babu Lal Mandal, ie. the present petitioner and the son of the second wife of last Pradhan holding that if any one of the heirs of the last Pradhan are not acceptable to the Tetulbandha villagers, then the S.D.O. should make further arrangement of election."

Furthermore, this Court in the case of Sogen Murmu (*supra*) at paragraph 17 of SCC Online held as under:

"17. We have considered the submissions of the learned counsel for the parties and perused the facts of the case. So far as the provisions made in Santhal Parganas Tenancy (Supplementary Provisions) Act 1949 are concerned Section-5 thereof governs appointment of a village Headman of a khas village whereas Section 6 provides for appointment of headman for the village which are not khas village for which the vacancy may arise due to the death of the Headman Section-5 clearly provides that in the khas village, the headman can be appointed on an application of the raiyat or landlord of the said village and such appointment can be made with the consent of at least two-thirds of the jamabandi raiyats of the village, which is required to be ascertained by the Deputy Commissioner. Such consent is required to be obtained as provided under Rule 3 of the Rules of 1951 and it requires issuance of notice to the jamabandi raiyats of the village and to the landlord in Form A prescribed in the Rules of 1951 itself and the consent for appointment on the post of Headman. Under Section 5, consent is required to be obtained by the Deputy Commissioner himself and it is to be by show of hands and not by secret ballot voting. Though separate provision has been made under Rule 3 for appointment of the village Headman when vacancy occurs for a village which is not the khas village due to the death of the Headman. Sub-rule(5) of Rule 3 of Rules, 1951 provided that in making the appointments of headman under Sections 5 and 6 i.e. in both the cases, the Deputy Commissioner shall follow the rules prescribed in Schedule V except where these rules, expressly or by necessary implication, provide otherwise. This is nobody's case that the application of Schedule V has been excluded by expressly or by necessary implication. Clause (1) of Schedule V provides appointment of headman in accordance with village customs and it is made very specifically clear that before confirming any appointment, the Deputy

Commissioner shall satisfy himself that the candidate is generally acceptable to the raiyats. Sections 5 and 6 as a whole as such nowhere provide that post of Gram Pradhan shall be hereditary, nor so has been provided in clause (1) of Schedule V. However, Clause (3) of Schedule V, mentioned that the office of Headman being hereditary, the next heir, who is fitted, should be headman Here, in the Rules, for the first time, it has been mentioned that office of headman is hereditary. Therefore, from the conjoint reading of Sections 5 and 6 with sub-rule (3) and (5) of Rule 3 read with clauses (1) and (3) of Schedule V, it comes out that the procedure for appointment of the Headman for both the villages Le. khas village and the village which is not the khas village is the same. It is required to be appointed in the case of khas village, specifically with the consent of at least two-thirds of the jamaband raiyats of the village and so far headman for the villages, which are not khas village, then in that case on the death of headman as per sub-rule (5) of Rules 3 of 1951, in accordance with the Schedule V and clause (1) of Schedule V the appointment of headman shall be made in accordance with the village customs and it also says that the candidate must be generally acceptable to the raiyats. Therefore, the dispute cropped up in this case whether a person, who is heir, can be appointed on the post of headman of the village by virtue of his being heir or is required to be acceptable to the raiyats."

In the case of Subhash Chandra Sah (supra) this Court held as follows:

"15. On conjoint reading of Section 5. Rule 3 and Schedule V, it becomes clear that for appointment of a headman, the following considerations are required: (i) The headman must be a resident of the village or his permanent home must be within one mile of the village,

(ii) The appointment has to be made in accordance with the village customs, (iii) The Deputy Commissioner before confirming any such appointment shall satisfy himself that the candidate is generally acceptable to the Raiyats. (iv) An opportunity should be given to the proprietor to object to any candidate. (v) The Deputy Commissioner must satisfy himself that the candidate to be appointed must be a fit candidate.

16. In the instant case, it is not in dispute that by order dated 13.7.1999, the Deputy Commissioner, Godda found that initially there were three applicants for the headmanship i.e. the petitioner, who is the grandson of the then village headman and his two uncles namely, Bishwanath Sah and Neeraj Kumar Sah. Bishwanath Sah, subsequently, withdrew his application in favour of Neeraj Kumar Sah. By order dated 24.12.1996, the Sub-divisional Officer, Godda appointed Neeraj Kumar Sah, who is an employee of the Eastern Coalfield Limited (a Government of India undertaking) and does not reside within one mile, which is a condition precedent as per the provisions of Schedule-V. It was further found that the Circle Officer, who happens to be the proprietor of the village, recommended appointment of the petitioner as village headman.

17. By order dated 13.7.1999, the Deputy Commissioner, Godda, thus, remitted the matter to the Sub-divisional Officer to pass a fresh order for appointment of Village Pradhan. In view of the aforesaid observation, by order dated 27.4.2001, the Sub- divisional Officer, Godda heard all the interested parties and found that out of the applicants, the petitioner's claim for appointment as Village Pradhan is tenable, as there was no consent or recommendation of the proprietor in favour of the other applicants, whereas the proprietor had recommended the name of the petitioner. On that ground the Sub-divisional Officer appointed the petitioner as the village headman.

18. It is relevant to mention here that neither the Deputy Commissioner in his order dated 13.7.1999 nor the Sub-divisional Officer in his order dated 27.4.2001 has recorded that the Jamabandi Raiyats have given their consent for appointment of the petitioner or any of the claimants as village headman.

19. There is no specific finding of the said authorities that the views of the Jamabandi Raiyats were ascertained by the Deputy Commissioner regarding the said applicants.

20. In the impugned order, the Deputy Commissioner has again ignored the said mandatory requirements of law and has erroneously set aside the order of the Sub- divisional Officer and has passed the impugned order for appointing Bishwanath Sah only on the ground that he is the son of the then village Pradhan Late Trideo Sah and that there is no adverse comment against him from any quarter.

21. The Deputy Commissioner lost sight of the fact and the requirement of law that there was no consent of Jamabandi Raiyats and proprietor in favour of Bishwanath Sah for his appointment as village Pradhan, which is a condition precedent for appointment of village headman."

29. The quoted observations from the aforesaid judgments on a deeper scrutiny do not find support from the provisions of the SPT Act, Rules or Schedule V to the Rules. If such an approach is commended, it would be contradictory to and destructive of the concept and mandate of hereditary appointment. Once a right to be appointed on hereditary basis has been provided statutorily, then such rights cannot be taken away save and accept on the grounds provided expressly by the statute. Such a requirement cannot be read into the statute, if it is neither provided expressly nor can be inferred by necessary implication. As I have observed herein above, Rule 3(5) of the SPT Rules which provides that in making the appointment of headman under Section 5 or Section 6, the Deputy Commissioner shall as far as possible, follow the rules prescribed in Schedule-V cannot be interpreted to mean that all the provisions contained in schedule have to be invoked in both cases i.e. under Section 5 and Section 6. Such an interpretation would render the process unworkable and would not conform to the settled principles of statutory interpretation. Schedule-V makes separate provisions for appointment under Section 5 and 6 of the SPT Act. By applying the

literal rule of interpretation, separate provisions for appointment under Section 5 and 6 of the SPT Act as provided under Schedule V cannot be read together. In such a case, the rule of harmonious interpretation cannot be applied as that would be offending the intent of the statute. Clause 1 and Clause 3 of Schedule 5 operate in different fields and are mutually exclusive. In the case of a hereditary appointment the procedure prescribed at Clause 3 and 4 would be applicable whereas in the case of appointment of headman of a khas village, the procedure prescribed by Clause 1 would be applicable. If such a construction of the procedures prescribed in the Schedule V is accepted, the requirements of Rule 3(5) of the SPT Rules would also stand satisfied. The above judgments to the extent whereby it has been held that even in cases of hereditary appointment, the Deputy Commissioner must satisfy himself regarding the acceptability of the candidate by the raiyats are liable to be overruled.

30. From a combined interpretation of the provisions of Section 5 and Section 6 of the SPT Act, Rule 3 and in particular Rule 3(5) of the SPT Rules and Clause 1 to 4 of Schedule V of the SPT Rules, it can be safely inferred that the office of village headman of a pradhani village or other than a khas village is hereditary in nature and is statutorily recognized. In this regard, it is useful to refer to Section 8 of the SPT Act which also recognizes the hereditary right of appointment to the office of village headman. Section 8 reads as under:-

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

It therefore throws light on the heir's right to be appointed as a village headman.

31. In the event a successor is not found, then in such an event the pradhani village reverts back to a khas village. In the judgments rendered in the case of Thakur Hembrom (Supra), Baisakhi Harijan (Supra) and Babu Lal Mandal (Supra), the High Court of Patna and this Court have held that only after a claim to be appointed on the basis of hereditary rights is refused or rejected, the process for election of a village headman under Section 5 and the applicable rules will be vitiated. However, the said decisions seek to endorse the view that two applications, one on the basis of hereditary right and the other one on the basis of election can be made simultaneously. Such a view is untenable in law as a village cannot be a khas and a pradhani at the same point of time and there is no question of entertaining two such applications simultaneously. The judgment of Thakur Hembrom was questioned before the Hon'ble Supreme Court and vide judgment dated 7th November 1996 rendered in the case of Sheapujan Bhagat versus Thakur Hembrom, (1997) 1 SCC 529, the same was reversed. The Apex Court in this context observed

"2. In case the candidate in the line of succession on hereditary principle is unavailable, then the election requires to be done"

Therefore, the view taken by the Courts in Baisakhi Harijan Vs. State of Bihar, 1995 BBCJ 131 and Babu Lal Mandal Vs. State of Jharkhand, 2008 SCC Online Jhar 1151 (para 5) have to be held to be bad law.

32. In the case of Sogen Murmu (Supra) it has been held that the appointment on the basis of hereditary right is merely a preferential right and not an absolute right. At paragraph 19 the learned court held as follows:-

" 19. The hereditary right is only a preferential right and not an absolute right and this right makes one eligible in preference to others for consideration for the post of headman and not decisive factor in any manner. Thus becoming eligible is one thing but furthermore required is he should be acceptable to the villagers as per the rules"

33. In my respectful opinion, the above observations of the Division Bench are erroneous and appear to have been arrived on a misreading of the statutory provisions. A hereditary right is not just a preferential right, but it is a vested right which cannot be taken away lightly. The unavailability of an heir or a fit heir to succeed to the office of village headman makes the village to be converted into a khas village and thereafter the process to be followed for appointment would be in terms of Section 5 of the SPT Act i.e. either the raiyats or the landlord have to make an application to the Deputy Commissioner for declaring the khas village into a pradhani village. It is only after due notice in Form A as per Rule 3(1) and ascertainment of the consent of two-thirds of the recorded jamabandi raiyats that the Deputy Commissioner can declare the said khas village again as a pradhani village whereafter the process of appointment as stipulated under Sub-rule 3(1) to (4) read with Clause 1 of Schedule V of the SPT Rules have to be followed for appointment of the village headman / Pradhan of that village. In the case of Sheapujan Bhagat versus Thakur Hembrom (Supra), the Apex Court also noted that the village in question became a khas village after the resignation of the village headman as thereafter no appointment of a village headman was made. Therefore, it is beyond any cavil that a Pradhani village in absence of a successor has to revert to a khas village and once that happens in the event, a village headman is to be appointed, the procedure prescribed therefore must be followed. It is thus clear that the procedure for the appointment of a village headman in a khas village and a pradhani village are exhaustively dealt with by the SPT Act, the SPT Rules and Schedule V to the SPT Rules and the process of appointments of the two kinds of villages are distinct and different.

34. This leads me to the next question as to whether a woman can become a village headwomen either in the capacity of a widow, daughter or daughter-in-law. The answer to the above question is simple. If the customs of the village permit a woman to be appointed as a village headwoman, then there is no bar in

a woman being appointed as a village headwoman either of a khas village or of a Pradhani village. So far as khas village is concerned, the appointment is to be made in terms of the customs prevalent in the village and therefore if there is no bar in a woman being appointed as a village head woman, then a woman can also participate in the process of appointment.

35. So far as pradhani village is concerned, the office of village headman being hereditary, the next heir can be appointed as a village headman and thus if a woman is considered to be the next heir, then in that event, she would be entitled to succeed to the office of village headman as well. Clause 4 of Schedule V uses both the expressions 'he/she' leaving no room of doubt about the flow of hereditary right even on a female gender, but the law of inheritance governing the family of the village headman should be the deciding factor. Therefore, if a woman is entitled by the law governing the family to inherit or succeed to a male's property, then in that event she can be eligible to be appointed as the village headman/headwomen. Learned Amicus Curiae has, in this regard, referred to the Santhal Tribal Law of Inheritance as recorded in the report of Mr. J. F. Gantzer which is as follows:

"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 dies without issue, the surviving brothers and the sons of predeceased brothers inherit his share per stirpes. 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 ghar-jamai and to give him thereby all the rights of a son. The adoption of a ghar-jamai is a formal proceeding leaving no room for doubt as to the father- in-law's intention and resulting in the ghar-jamai cutting off all connection with his own family as far as his rights to property are concerned, and becoming for all intents and purposes the son of his father-in-law. When such adoption has been formally made the ghar-jamai can succeed as a son and oust other female relatives. It is of importance to note that a ghar-jamai 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 ghar jamai. A widow cannot in any circumstances create a ghar-jamai. There is a distinction between a ghar-jamai and a ghardi-jamai. In both cases the bridal party goes from the bride's house to fetch the prospective husband and no dowry (pon) is given, but whereas the ghar-jamai 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 that woman herself is usually given a small present (arpa) annually at the harvest season, and this is utilised for

setting up her new home. At the expiry of the stipulated period, the ghard-jamai is free and may return to his own home with his wife.

When a ghar-jamai has succeeded to his father-in-law's estate the holding has usually been recorded in his sole name. In some cases, at the request of the parties, the wife has been jointly recorded with her husband.

The rules against female succession among Santals whether Christians or non-Christians are changing owing to the force of public opinion, and the rules which have been previously accepted, cannot be treated as hard and fast and binding for all time. The change which is occurring is in the direction of ameliorating the condition of women and giving them a more assured footing in the family. During the course of the revision settlement operations, the daughters of a deceased Santal have sometimes been recorded as his heirs not only without opposition from the agnates but at their request. In other cases it appears from title suit decisions that arbitrators in Santal cases have found in favour of daughters. This is particularly so in the case of girls who suffer from any physical defects in dealing with cases of this nature the custom adopted in particular locality must be carefully considered it would be unwise to force upon an unwilling litigant a decision in advance of custom. If a change in custom has been well established and generally accepted it will of course, be treated as the customary law of the locality in mitigation of the harshness of the ancient tribal law.

As a rule we have tried as far as we could legally do so, to record daughters in all cases where not to do so would have involved real hardship, e.g. where the male relations not only want to claim the land but refuse to maintain the girl. Where close male relations, who obviously have a clear right under the law, have been suspected to be likely to desert the girl, we have recorded them, but have also endeavoured to record the girl in the remarks column of the khatian as khorposhdar until death or marriage.

As regards widows, the entries have had perforce 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 widows, 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 Santal Law. In other cases the widow has like the daughter been recorded only in the remarks column as a khorposhdar for certain plots sufficient to maintain her, until her death.

To sum up it may be said that where a Santal woman has been recorded as wife of so and so, she holds a widow's right as if she were a Hindu widow. Where a Santal woman has been recorded as daughter of so and so, 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

is still somewhat in doubt as the system is so new, but there seems little doubt that if she dies issueless, Santal sentiment would prefer that the property should revert to her nearest male relatives.

Paragraph 45 also may be relevant is reproduced hereunder:

45. Females-Entry of Women's names in the records-The relevant portion of Khanapuri Rule no. 46 reads as 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 the 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 a 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 site 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:-

"Where 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."

36. The report of Mr. Gantzer is indicative of the changes in rules regarding female succession among Santhals, whether Christians or non Christians going to the force of public opinion and which though were previously accepted, have not been treated as hard and fast and binding for all time. This change which had been occurring was in the direction of ameliorating the condition of women and giving them a more assured footing in the family. The aforesaid report also sites of instances where widow or daughters have been recorded, where not to do so would have involved real hardship i.e. where the male relations not only want to claim the land but refused to maintain the girl.

37. Whenever a question would arise in the event of a dispute regarding the eligibility of a woman to be next heir to succeed to the post of village headman, the issue can be decided in terms of Clause 4 of Schedule V of the SPT Rules by the Deputy Commissioner or the competent authority. Each case has to be decided on its own facts having regard to the law applicable to the family and the traditions followed by the family. Therefore, no straightjacket formula or one fits all solution can be given as an answer. The answer to each case would depend on the facts of each case. In the case of Sogen Murmu (supra) the learned Division Bench of this Court was called upon to decide the issue whether a daughter married in the Gharjamai form can succeed to the post of village headman? The Court answered the issue in the negative at paragraphs 20 to 30 of the report relying on the general customs that were reported to be prevalent without

actually deciding or causing to decide or remanding the matter for decision on the question whether the family was in fact continuing to follow the same or the family with time moved away from such tradition and custom. The question whether a custom or a Santhal Traditional Law debars a woman to succeed to the office of village headman, should be decided on case to case basis and by not applying the general customary law. Exclusion of female from the line of succession must not be readily inferred and the person who relies upon such custom, must plead and prove the same. In this regard, the observations made by this Court in the case of Baga Tirkey versus Pinky Linda and another, 2021 (2) JBCJ 723 (HC): 2021 SCC Online Jhar 1339 at paragraph 24 and 25 are profitably quoted hereunder :-

"24. As observed at the outset, we have consciously refrained from referring to one or the other custom, said to be operating in the Oraon Community regarding divorce, since it is for the party to plead and prove such customs for seeking relief before the Family Court. The illuminating opinion of the Apex Court rendered in the case of Salekh Chand v. Satya Gupta, reported in (2008) 13 SCC 119, followed in the recent decision in the case of Rathnamma V. Sujathamma, reported in (2019) 19 SCC 714, para-16 is quoted hereunder:-

16. This Court in a judgment reported as Salekh Chand (Dead) by LRs v. Satya Gupta while dealing with claim of adoption under the Hindu Adoption and Maintenance Act, 1966, held as under –

"21. Mookka Kone v. Ammakutti Ammal [AIR 1928 Mad 299] it was held that where custom is set up to prove that it is at variance with the ordinary law, it has to be proved that it is not opposed to public policy and that it is ancient, invariable, continuous, notorious, not expressly forbidden by the legislature and not opposed to morality or public policy. It is not disputed that even under the old Hindu Law, adoption during the lifetime of a male issue was specifically prohibited in addition, I have observed that that such an adoption even made would be contrary to the concept of adoption and the purpose thereof, and unreasonable. Without entering into the arena of controversy whether there was such a custom, the same was not a valid custom.

25. In the case of Dr. Surajmani Stella Kujur v. Durga Charan Hansdah, report in (2001) 3 SCC 13, para-10 also it has been held as under:-"

"For custom to have the colour of a rule or law, it is necessary for the party claiming to plead and thereafter prove that such custom is ancient, certain and reasonable. Custom being in derogation of the general rule is required to be construed strictly. The party relying upon a custom is obliged to establish it by clear and unambiguous evidence."

38. In view of the above, a plea that a custom or tradition exists which excludes a female succeeding to the office of village headman needs to be proved to the hilt and such custom should be ancient and certain i.e. being consistently followed and reasonable. These principles do not appear to have been taken into

consideration by the learned Division Bench in the case of Sogen Murmu and hence cannot be held to apply in a general manner, so far as the inheritance of females to the office of village headman is concerned.

39. Upon a reading of the judgments in the cases of Sogen Murmu (Supra), Thakur Hembrom (supra), Smt. Swarnlata Devi (Supra), noted in the referral order in WPC No. 3164 of 2005 by the learned Single Judge, it would appear that there are some inconsistencies in the above judgments, but all these judgments are otherwise flawed in their reasoning and need to be overruled to the extent indicated here and above. In the case of Sogen Murmu while deciding the main issue involved therein i.e. whether a daughter married in Gharjamai form can be appointed as a village headman or not, the Court simply applied the purported customary law and adjudicated the same. As such, they need to be overruled. The case of Thakur Hembrom stands overruled by the Hon'ble Supreme Court in the case of Sheapujan Bhagat as indicated in the foregoing paragraphs. The decision in Baisakhi Harijan, so far as it holds that in a given case when there are two applicants one on the basis of hereditary right and the other on the basis of election, the Sub-Divisional Officer or the Deputy Commissioner, as the case may be, has to first consider the case of the person who claims on the basis of hereditary right, does not appear to be in consonance with the interpretation of different clauses of Clause 5 under Rule 3 of the SPT Rules as accorded in the foregoing paragraphs since the statute does not contemplate simultaneous applications, one under Section 5 of the SPT Act and the other in terms of Section 6 of the SPT Act. So far as the decision in Smt Swarnlata Devi is concerned, the same are incorrect as it makes applicable the procedure prescribed by Clause 1 of Schedule V to the hereditary appointment by directing the concerned authority to satisfy himself regarding the general acceptability of the candidate to the raiyats. Thus, in conclusion, the judgment of Sogen Murmu (Supra) and Smt. Swarnlata Devi (Supra) need to be overruled whereas the judgment rendered in the case of Baisakhi Harijan (Supra) needs to be overruled to the extent indicated above. The judgment of Thakur Hembrom (Supra) stands overruled by the Hon'ble Supreme Court in the case of Sheapujan Bhagat (supra) and nothing further needs to be done qua the same.

40. In the light of what has been discussed hereinabove, the issues raised can be answered in the following manner :-

1. Whether the office of a village headman under the Santhal Pargana Tenancy (Supplementary Provisions) Act, 1949 ("SPT Act") is hereditary?

The answer to this issue is in affirmative. The office of the village headman of a Pradhani Village is hereditary and the same has been recognised statutorily as well as by all the judgments including the judgment of the Hon'ble Supreme Court of India in case of Sheapujan Bhagat v. Thakur Hembrom, (1997) 1 SCC 529.

2. Whether a female can be appointed as a village headman / headwoman as a

successor to the office in exercise of hereditary right in terms of the SPT Act?

The answer to this question would vary from case to case and depends on the Customs and tradition followed by the family of the headman in the case of Pradhani Village and village customs in the case of a Khas village. The SPT Act and the Rules made thereunder recognise that a female can be appointed as a village headman but if it is established by cogent evidence that the law of succession applicable to the previous headman's family disentitles a female from being the next heir then only in that event a female would be disqualified from becoming a headman.

3. Whether the process for appointment of a village headman of a khas village and a Pradhani village is the same?

The answer to this issue is in negative. The process for appointment of a village headman of a Khas village and Pradhani village are different and distinct. In a khas village the procedure prescribed by section 5 of the SPT Act read with Rule 3 and clause 1 of the Schedule V is to be followed whereas in a Pradhani village the procedure prescribed by Section 6 of the SPT act read with Rule 3(5) of the SPT Rules along with Clauses 3 & 4 of Schedule V has to be followed.

4. Whether the Deputy Commissioner is required to satisfy himself regarding the general acceptability of the candidate in case of appointment of a village headman on the basis of hereditary right?

The answer to this issue is in negative. In the case of an appointment on the basis of hereditary right the Deputy Commissioner is not required to act in terms Clause 1 of Schedule V to the SPT Rules and hence neither there is any requirement for satisfying himself that the candidate is generally acceptable to the raiyats.

5. Whether the judgments rendered in cases of Jagdish Misra v. Chamakial Misra [1965 BLJR 674], Baisakhi Harijan v. State of Bihar [1995 BBCJ 131], Smt. Swarnlata Devi v. State of Jharkhand [2003 (3) JLJR 724 (JHC) : 2003 SCC Online Jhar 341], Babu Lal Mandal v. State of Jharkhand (2008(3) JLJR 455 (JHC) 2008 SCC Online Jhar 1151], Sogen Murmu v State of Jharkhand [2012 (2) AIR Jhar 179 2011 SCC Online Jhar 997] and Subhas Chandra Sah v. State of Jharkhand and others [2012 (3) AIR Jhar 760 2012 SCC Online Jhar 149) have incorrectly interpreted the provisions of the SPT Act and the Rules made thereunder with regard to appointment of a village headman and therefore are liable to be overruled?

In view of the discussions made herein above, the instant issue is answered in affirmative. The judgments rendered in Jagdish Misra v. Chamakial Misra (1965 BLJR 674), Smt. Swarnlata Devi v. State of Jharkhand (2003 (3) JLJR 724 (JHC) : 2003 SCC Online Jhar 341), Babu Lal Mandal State of Jharkhand (2008(3) JLJR 455 (JHC) 2008 SCC Online Jhar 1151, Sogen Murmu State of Jharkhand (2012 (2) AIR Jhar 179 2011 SCC Online Jhar 997) and Subhas

Chandra Sah, State of Jharkhand and others (2012 (3) AIR Jhar 760:2012 SCC Online Jhar 149) have incorrectly interpreted and applied the provisions of SPT Act and the Rules made thereunder with regard to appointment of a village headman and therefore are liable to be overruled.

So far as the case of Baisakhi Harijan v. State of Bihar (1995 BBCJ 131) is concerned it is liable to be overruled to the extent it held as follows (at pg. 133):

"..... Even in a case where there are two applicants one on the basis of hereditary right and the other on the basis of election the Sub Divisional Officer or the Deputy Commissioner, as the case may be, has to first consider the case of a person who claims on the basis of hereditary right...."

41. The reference is answered accordingly. The two writ petitions are directed to be placed before the appropriate Single Judge for deciding the same in the light of the discussions made hereinabove and the law laid down. However, it is made clear that the law laid down hereinabove shall apply prospectively and none of the appointments of Pradhan made earlier which have attained finality shall be disturbed.

(Aparesh Kumar Singh, J.)

Ratnaker Bhengra, J. I have gone through the judgments of both Hon'ble Mr. Justice Aparesh Kumar Singh and of Hon'ble Mr. Justice Anil Kumar Choudhary. I am in agreement with the conclusions reached by brother Hon'ble Mr. Justice Aparesh Kumar Singh on the issues. I would, however, like to comment on Issue No. 1 and Issue No. 3.

2. The SPT Act, in Chapter-II entitled "Village Headman and Mulraiyaats via section 5 deals with "appointment of a village headman of a khas village", while section 6 deals with "Landlord to report the death of village headman".

3. A reading of the definition of a "khas village" in section 4(ix) reads as follows:

(ix) "khas village" means a village in which there is no mulraiyaat nor for the time being any village headman irrespective of whether there was or was not previously a mulraiyaat or village headman in the village.

4. What can be deduced from this definition is that for the time being there was no village headman or previously there was no village headman in the village. Hence the appointment of a headman under section 5 of the Act, read as well with Rule 3(1), 3(2) and 3(4) follow as a corollary.

5. Section 6 of the Act, is headed as "Landlord to report the death of village headman". It can be immediately thus contrasted with section 4(ix) in which then for the time being there was no village headman or previously there was no headman in the village. Section 6 of the Act on the other hand while indicating "... a village which is not khas, ..." is for reporting the death of a village headman. It would thus imply that it was not a village where there was no village headman or previously not so. The other significant phrase here is "death of

village headman". It is then, thus in the case of "death of a village headman" that Clause 3 of Schedule V becomes relevant and operational. In this regard section 4 (xxiii) of the Act may also be of some relevance. It reads thus:

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

6. The words of note here is " recognised", and the word "pradhan" amongst others. It would follow that recognition of pradhan was both before and after the commencement of the Act.

7. In my view the aforesaid tensions between hereditary governance and the more democratic institutions is addressed by the aforesaid and also other relevant provisions, while even allowing scope for diverse traditional institutions, depending on the circumstances of a given village.

(Ratnaker Bhengra, J.)

Anil Kumar Choudhary, J: I have the benefit of going through the erudite and scholarly judgment of brother Hon'ble Mr. Justice Aparesh Kumar Singh and brother Hon'ble Mr. Justice Ratnaker Bhengra. I am in agreement with the answers given by brother Hon'ble Mr. Justice Aparesh Kumar Singh, but I am supplementing the answer to the question no. 2 given by his Lordship with some additional reasons.

2. As has elaborately been discussed by his Lordship in the foregoing paragraphs of this judgment, this Full Bench has accepted the five questions proposed by the learned Amicus Curiae as mentioned in paragraph 21 and the questions as well as the answers thereof, which have been mentioned in paragraph 40 of the judgment of his Lordship, to be the questions formulated by this bench to be answered in this reference.

3. The question no.2 is as follows:

"Whether the female can be appointed as village headman/head woman as a successor to the office in exercise of hereditary right in terms of SPT Act?"

The answer to the question given by his Lordship is in the affirmative.

4. The reason for such affirmative answer is that, the use of the word 'can' in this question to be answered, in other words means the question is "Whether a female is eligible to be appointed as a village headman as a successor to the office in exercise of hereditary right in terms of SPT Act?".

The use of the words "father/mother" and "he/she" in clause 4 of the Schedule V without doubt makes it gender neutral statute. It makes no discrimination between male and female. The bare perusal of clause 4 of the Schedule V in no

uncertain manner indicates that a female can be a headman. As otherwise there is no justification for using the word "mother" or "she" in clause-4. Therefore the only corollary is that the female is eligible to be a headman and the term "headman" includes a "headwoman" also. Hence it can safely be deduced from the above that a woman can be appointed as village headman/head woman as a successor to the office in exercise of hereditary right in terms of SPT Act.

5. The question next arises is that when and under what circumstances a female can be appointed as village headman as a successor to the office in exercise of hereditary right in terms of SPT Act. SPT Act provides for appointment of village headman by two different modes. Section 5 of the SPT Act deals with appointment of a headman of the khas Village which otherwise means a village which do not have a headman from before or the headman having been dismissed for any misconduct, the same has rendered his/her heirs ineligible to succeed to the office of headman. Rule 3 of the SPT Rules relates to section 5 of the SPT Act only. This rule has got nothing to do with the appointment of headman under Section 6 of the SPT Act. On the other hand Section 6 of the SPT Act deals with appointment of headman of a village which is not khas. "Not khas Village" in other words means a village which is already having a headman and after such headman his/her "next heir" can succeed him/her.

6. Schedule V lays down the "prescribed manner" for appointment of headman both under Sections 5 as well as 6 of the SPT Act. Though there is no categorical segregation in the Schedule V as to which clauses of it are applicable to section 5 of SPT Act and which clauses are applicable to section 6 of SPT Act, but a bare perusal of Schedule V read with sections 5 and 6 of the SPT Act makes it crystal clear that clauses 1 and 2 of the schedule V relates to appointment of headman under section 5 of SPT Act whereas clauses 3 and 4 of the schedule V relates to appointment of headman under section 6 of the SPT Act.

7. Thus in the case of "not khas village" (such villages are also known as "Pradhani" village), if a female is a "next heir" on the basis of the law of inheritance applicable to the family of headman such a female can very well be appointed as the headman.

8. It is needless to mention that no study of any recent times about the Santhal Tribal Custom relating to law of inheritance has been brought on record but there are a number of judgments in several cases wherein in facts of those case courts have come to the conclusion that at present in some parts of Santahal Pragana in the State of Jharkhand there is custom regarding inheritance of the property by daughter of a sonless Santhal.

9. So in a particular case if the female is a "next heir" she can be appointed as a headman as a successor to the office in exercise of hereditary right in terms of SPT Act. The word "next heir" has not been defined in the statute. But if all eligibility criteria for being a headman is equal among the surviving heirs of a deceased headman than in the absence of any consensus between the heirs to

succeed the headman, the oldest among the heirs be preferred to be the "next heir".

(Anil Kumar Choudhary, J.)

In view of the leading opinion of Aparesh Kumar Singh, J. and the concurring opinions of Ratnaker Bhengra, J. and Anil Kumar Choudhary, J. with supplementing reasons, the reference is answered accordingly. The two writ petitions are directed to be placed before the appropriate Single Judge for deciding the same in the light of the discussions made hereinabove and the law laid down. However, it is made clear that the law laid down hereinabove shall apply prospectively and none of the appointments of Pradhan made earlier which have attained finality shall be disturbed.

Before parting, we record out deep appreciation for valuable assistance rendered by the learned Amicus Curiae and learned counsel for the parties in deciding the contentious legal issue concerning the appointment of Pradhan under the SPT Act, 1949.