

(2025) 04 JH CK 1275
In the Jharkhand High Court
Case No : W.P.(S) No.4928 Of 2021

Bablu Toppo

APPELLANT

Vs

State Of Jharkhand through The Chief Secretary

RESPONDENT

Date of Decision : 28-04-2025

Acts Referred:

Chota Nagpur Tenancy Act, 1908 — Section 9(2), 49, 49(1)(a), 49(1)(b), 49(2), 49(4), 71A

Citation : (2025) 04 JH CK 1275

Hon'ble Judges : Deepak Roshan, J

Bench : Single Bench

Advocate : Ramawatar Choubey, Indrajit Sinha, Ankit Vishal, Arun Kumar Dubey, Shashnak Shekhar

Final Decision : Dismissed

Judgement

Deepak Roshan, J

1. Heard learned counsel for the parties.
2. The instant writ application has been preferred by the Petitioner praying therein for following reliefs :-

(a) That Hon'ble Court may be pleased to direct the respondents to cancel the map sanctioned by the respondent No-3 for construction of multistoried building over the tribal Kaimi/Raiyati land bearing Khata No. 7, Plot No-19, measuring area 80 (eighty) decimals and plot No. 20 measuring area 92 (ninety two) decimals total area 1.72 acres situated at Village- Gari, Anchal- Bargai, P.S - Sadar, District- Ranchi which is in possession of the present tribal petitioner and the said land was transferred illegally under section 49 CNT Act in the name of the respondent No. 6 vide sale deed dated 16.03.1965 without payment of full consideration amount under permission of the Deputy Commissioner, Ranchi which is wholly without jurisdiction and the said permission vide Misc. Case No. 103 R 8 II of 1964-65 is/was totally contrary to Section 49(a) & (b) of the CNT

Act.

(b) holding and declaring that not for any industrial purposes or for any other purposes the State Government by ratification had declared to be subsidiary thereto or for access to land used or required for any such purpose and hence the Deputy Commissioner has/had no jurisdiction of sanction for transfer in absence of the ratification by the State Government under section 49(1)(a) & (b) of the CNT Act.

(c) holding and declaring that the use of land for the purpose of mining or for any other purposes the State Government had not notified the said land to be subsidiary thereto or for access to land used or required for any such purpose and hence the Deputy Commissioner has/had no jurisdiction of sanction for transfer in absence of the notification.

3. The brief facts of the case as per the pleadings in the writ petition is that the land appertaining to Khata No-7, Plot No-19, measuring area 80 (eighty) decimals and Plot No-20 measuring are 92 (ninety-two) decimals i.e. total 1.72 acres situated at Mouza- Gari, Anchal Bargai, District-Ranchi was recorded as Kaimi/Raiyati in the name of Etwa Oraon in the Revisional survey record of right "Bakabze" son of Shanicharwa Oraon and Bisu Oraon, respectively.

The Petitioner has been paying rent and the State is issuing rent receipts regularly and has been in peaceful possession over the land. However, the Respondent Nos. 4 & 5 suddenly came over the land in the beginning of month of March, 2024 and started construction work. Later, the Petitioner learnt that the Respondent Nos. 4 & 5 got sanctioned the map for multistoried building by the Respondent No. 2 against which he represented to him on 11.12.2023, 01.04.2024 and 02.04.2024 and served copy to the Respondent No. 2 but no response had come from their side at all. Hence, this writ application.

4. Learned counsel for the Petitioner submits that as per Section 49(2) of the Chotta Nagpur Tenancy Act (hereinafter to be referred as CNT Act), therein the word 'shall' is used which shows mandatory that the land can be used for that purpose for which it was transferred and not for any other purpose.

He further submits that the land is being used for construction of multistoried apartment by Developer which is completely impermissible as per Section 49(2) of CNT Act because the so called permission was granted by the Deputy Commissioner, Ranchi for the purpose of opening a shoe factory but there is no recital of starting a shoe factory in the sale deed; rather the recitals are like a sale of general land viz. the transferee may use the land as per choice may construct building, well, pond, house and live therein, may start any kind of factory, may shift pump, may open crusher, etc. Moreover, he submits that the purpose of transfer of land is recited in the sale deed is to repay loan and to buy another land which is not a purpose of transfer of land under Section 49(2) of the Act.

5. Learned counsel further submits that as per Section 49(4) before granting sanction, the Deputy Commissioner 'shall' satisfy himself that adequate compensation is tendered to the landlord because there is use of word 'shall' and also 'himself' which is mandatory for the Deputy Commissioner to satisfy himself but in this case the Deputy Commissioner has badly failed to satisfy himself; rather it has written the word 'sanctioned' which is glaring example of non application of mind.

Also, there is violation of Section 49(1)(a) & (b) because the tribal land can be taken by the subsidiaries for State or its any industrial purpose or for use of another purpose which can be confirmed by ratification or notification but there is neither ratification nor notification by the State Government. Further, there is no any limitation prescribed regarding 'change of use of land' as enshrined under Section 9(2) CNT Act and hence granting sanction for construction and also construction of apartment is totally contrary to the intent of Section 49(2) CNT Act.

He also submits that the scope of Sections 71-A CNT Act and 49(2)/49(1)(a) & (b) are totally different.

6. Learned counsel for the respondent submits that the instant writ petition is not sustainable in the eyes of law and is devoid of any merit as land in question was transferred in favour of the vendor of respondent no.4 in accordance with the provisions contained in Section 49 of the CNT Act, 1908. Moreover, the petitioner has never challenged the order dated 16.03.1965 passed by the Deputy Commissioner in Misc. Case No. 103.R.8.II of 1964-65, even after having the knowledge of the said order dated 16.03.1965. Therefore, the order passed in Misc. Case No. 103.R.8.II of 1964-65 has attained finality in the eyes of law.

7. Learned counsel for the Respondents also submits that the averments made in the writ petition that the petitioner is in peaceful possession of the land in question stands falsified in view of the fact that the petitioner has filed S.A.R Case No. 72/2023-24 for restoration of land in question and earlier also one SAR Case No. 330/ 2007-08 was filed against the vendor of Respondent No.4 for restoration of land which has already been dismissed.

8. Having heard learned counsel for the parties and after going through the records it appears that the land in question was originally been recorded in the name of "Late Etwā Oraon". After his death, his two sons namely, Bisu Oraon and Sanicharwa Oraon filed an application under section 49 of the CNT Act before the Deputy Commissioner for permission of Sale of the property in question. Accordingly, Misc. Case No. 103. R.8. II. of 1964-65 was registered.

Subsequently, the Deputy Commissioner vide its order dated 05.03.1965 (Annexure-A to the Counter Affidavit of Respondent No.4) accorded sanction to transfer the land in question amongst other.

Pursuant to the said order of the Deputy Commissioner, Bisu Oraon and

Sanichara Oraon (descendent of the recorded tenant) transferred the land in question to M/s Arun Kumar Mahendra Kumar (A Partnership Firm) vide Sale Deed No.2439 dated 16.03.1965 (Annexure-B to the Counter Affidavit of Respondent No.4). Thus, it is evident that the land in question was transferred in favour of the vendor of Respondent no.4 in accordance with the provisions contained in Section 49 of the CNT Act, 1908.

9. Subsequently, legal heirs of the recorded tenant after a gap of more than 40 years filed an application in the year 2007 under section 71A of the CNT Act before the Special Regulation Officer which was registered as SAR Case No. 330/2007-08 for restoration of land. The SAR Court vide its order dated 09.02.2010 dismissed the aforesaid case filed under section 71A of the CNT Act (Annexure-C to the Counter Affidavit of Respondent No.4).

10. The documents further reveal that M/s Arun Kumar Mahendra Kumar (A Partnership Firm) vide Sale Deed No.6428 dated 14.09.2021 transferred the land in question to the private Respondents (Annexure-D to the Counter Affidavit of Respondent No.4). Subsequently, Mutation in their favour has also been done by the competent authority and correction Slip showing Mutation was issued (Annexure-E Series to the Counter

11 Thus, it is evident that there is no lacuna or discrepancy with respect to the ownership of the Respondent No.4 & 5. Interestingly, the Petitioner has again filed an application under Section 71 A of the CNT Act which was registered as S.A.R. Case No. 72/2023-24 for restoration of land. However, the SAR Court after issuing Notices and hearing the parties dismissed the said SAR Case (Annexure-H to the Supplementary Counter Affidavit of Respondent No.4).

12. In this factual background, the prayer made in this application for a direction the 3rd Respondents to cancel the map sanctioned for construction of multi-storeyed building over the land in question, not only misconceived but also a gross misuse of process of law.

The contention of the Petitioner that the scope of Sections 71-A CNT Act and 49(2)/49(1)(a) & (b) are totally different; is misconceived and Non-Est in the eye of law in the facts and circumstances of this Case. The Petitioner is trying overreach with the orders passed by S.A.R. Court, which has dismissed the application for Restoration.

13. As stated hereinabove, earlier also in the year 2007, an application under section 71A of the CNT Act before the Special Regulation Officer was filed which was registered as SAR Case No. 330/2007-08 for restoration of land which was dismissed vide order dated 09.02.2010 and the Petitioner misusing the said section again filed 2nd Restoration application under 71A of the CNT Act and even the subsequent Restoration Application has been dismissed.

14. Having regard to the aforesaid facts and circumstances and the discussions made hereinabove, the instant writ application stands dismissed. Pending I.As, if

any, also stands closed. Though, it is a fit case to impose cost upon the Petitioner for misusing the process / provisions of law; however, this Court only gives warning to the Petitioner not to do such things in future.