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**(2025) 04 JH CK 1276**  
**In the Jharkhand High Court**  
**Case No : First Appeal No. 228 Of 2012**

Bishnu Kumar Aikat

APPELLANT

Vs

State Of Jharkhand through the Deputy Commissioner

RESPONDENT

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**Date of Decision :** 15-04-2025

**Acts Referred:**

Code of Civil Procedure, 1908 — Section 80  
Transfer of Property Act, 1882 — Section 111

**Citation :** (2025) 04 JH CK 1276

**Hon'ble Judges :** Gautam Kumar Choudhary, J

**Bench :** Single Bench

**Advocate :** Ajit Kumar, Rajiv Kumar Sinha, Nawal Kishor Pandey, Indrajit Sinha, Puja Agarwal

**Final Decision :** Partly Allowed

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## Judgement

Gautam Kumar Choudhary, J

1. Plaintiffs are in appeal against dismissal of Title Suit No. 377 of 2007 which was filed for the following declarations:

- a. Title over the suit property.
- b. Suit property was not the Khas Mahal Lease Hold Property of the Defendant State.
- c. Order of mutation passed in Mutation Case No.1614 R 27/07-08 dated 02.08.2007 to be null and void.
- d. Perpetual injunction in favour of the Plaintiff and to restrain the defendant from disturbing the peaceful possession of the Plaintiff in view of the lease deed being no.174 dated 04/01/1972.

CASE OF PLAINTIFF

2. The appellants/plaintiffs' case is that they are lawful owner and have

possession over the land and building in question standing over M.S. Plot No. 1360, Sub Plot Nos. A, B, C, D & E measuring an area of 2.06 acres under Municipal Holding No. 237 Lalpur, Hazaribagh Road, Ranchi. The said land was originally recorded in the name of Kaviraj Jamni Bhushan Roy in M.S. records of right in 1929 which was purchased by Fanindra Nath Aikat on 27.08.1931, who came in possession over it. Fanindra Nath Aikat gifted the said property on 13.05.1946 in favour of Mrs. Gauri Rani Aikat and she was recognized as settled raiyat and her name was entered in Register II. Gauri Rani Aikat died on 22.07.1975 and her property was inherited by the Plaintiffs. Registered family partition with respect to the suit property also took place on 19.10.1987 and suit property came in their share and they had been paying rent to the State.

3. The lawful owners executed power of attorney being nos.1890, 1892 and 1893 dated 08.03.2006 in favour of the Plaintiffs. The Plaintiff filed an application for mutation after the death of Mrs. Gauri Rani Aikat which was registered as Mutation Case No.1614R27/2007-08 which was rejected by the Circle Officer, Town Anchal, Ranchi on the ground that it was Khas Mahal lease hold property.

4. It is case of the plaintiff that the suit land was not Khas Mahal land. It is averred that lease deed was not executed by the State with regard to K.M. Plot No.38, 39 corresponding to M.S. Holding No.103 not with reference to M.S. Plot No.1360 and Holding No.237 as the particulars of property for which application for mutation was filed, does not tally with the said lease hold property. It is case of the plaintiff that the said lease deed does not bear any recital as to how and when the said property was acquired by the State.

#### CASE OF STATE

5. Land in question was not Raiyati land of the plaintiffs, rather it was a lease hold right which was initially leased out to the Plaintiff. Lease was with respect to M.S. Plot No.1360 corresponding to Khas Mahal Plot Nos. 38 and 39 leased out for 30 years on 29.09.1904 by the Secretary of the State India in Council in favour of Nibaran Chandra Gupta and thereafter, the lease was transferred to Fanindra Nath Aikat on 27.08.1931 with the permission of Deputy Commissioner, Ranchi and it was renewed on 8th April, 1946 for 25 years till 31st March, 1966. The said Fanindra Nath Aikat after obtaining permission from Deputy Commissioner, Ranchi vide Case No.206/R-08 of 45/46 transferred the lease hold land by way of gift to his wife namely Smt. Gouri Rani Aikat and it was renewed upto 1996 vide registered deed of lease in 1972. It is further pleaded that after 1966, the lease was renewed in 1972 till 1996.

6. The land in question is lease hold property and was Khas Mahal property, as such the plaintiff had no right, title over the suit property. After gift of the lease hold land by Fanindra Nath Aikat on 13.05.1946 in favour of Gauri Rani Aikat, she came in permissible possession over the said property and she had no absolute right. It was for this reason that mutation was rejected in Mutation Case No.1614R27/2007-08.

7. Defendant Nos.5 and 6 are sisters of plaintiff no.1 and they are claiming right, title and interest and have not supported the case of the plaintiff so far as the relief claimed are concerned, but they claim separate title and interest over the suit property.

8. In order to appreciate the facts of the case, the list of dates as appearing in the pleading is being set out as under: -

27.08.1931 – Fanindra Nath Aikat purchased the suit property by registered sale deed from Kaviraj Jamni Bhushan Roy.

13.05.1946 – Fanindra Nath Aikat gifted the property to his wife Gouri Rani Aikat vide registered deed of gift. Her name was accordingly entered in

Register II.

22.07.1975 – Gouri Rani Aikat died.

19.10.1987 – Registered deed of family partition was made by heirs and descendants of Gouri Rani Aikat.

08.03.2006 – Plaintiffs got power of attorney by heirs and descendants of Gouri Rani Aikat.

02.08.2007 – Plaintiff- Bishnu Kumar Aikat filed application for mutation in Mutation Case No.1614/R 27/2007-08 which was rejected on the ground that it was a Khas Mahal lease hold property and contrary to M.S. Record of Right, 1929.

9. After the said order rejecting the application for mutation, instant suit has been filed for declaring the suit property being not a Khas Mahal lease hold property and declaring order passed by the Circle Officer to be illegal and non-est in the eye of law.

10. On the basis of the pleadings of the parties, following issues were framed.

I. Whether the suit is maintainable in its present form?

II. Have the plaintiff's any cause of action for the suit?

III. Whether the suit is barred by law of Limitation?

IV. Whether the notice under Section 80 C.P.C. was properly served upon the defendants?

V. Whether the suit land is the Khas Mahal land being lease hold property of the State?

VI. Whether the plaintiffs or their predecessor in interest were in permissive possession over the land?

VII. Whether the plaintiff have violated the terms of the lease?

VIII. Whether the suit property was acquired by Government from the recorded

tenant of M.S. record of right, 1929?

IX. Whether any compensation was paid to the recorded tenant of M.S. record of right by the State Government?

X. Whether the defendants have acted beyond the law and claim advanced is mala fide and barred by limitation?

XI. To what relief or reliefs, the plaintiffs are entitled to?

11. Learned Court below has decided this issue against plaintiff on the ground that it was a Khas Mahal land on the basis of entry in Exhibit 11 wherein M.S. Plot No.1360, Holding No.237 stood in the name of Kaviraj Jamni Bhushan. It was noted by the trial Court that K.M. Plot Nos.38 & 39 corresponds with municipal survey plot no.1360/2453 as averred by the plaintiff. With respect to plot nos.38 and 39 from Exhibit A, it was evident that lease deed was executed by the Deputy Commissioner, Ranchi representing the Governor of Bihar in favour of Fanindra Nath Aikat on 08.04.1946, who was the predecessor-in-interest of the Plaintiffs. This was accepted as clinching evidence of plot being a leasehold land.

#### ANALYSIS

12. The central issue to the adjudication of the present lis between the parties is Issue No.V, whether the suit land was Khas Mahal being lease hold property of the State, and if so, if the Circle Officer had the authority to refuse mutation when the parties were in settled possession and suit property had been duly transferred in favour of the plaintiffs?

13. After hearing the submission raised at Bar, the following points for determination arises: -

i. Whether the plaintiff has succeeded to prove that it was a Raiyati land and not a lease hold land?

ii. Whether the burden of proof that it was a Khas Mahal land as pleaded by the State, has been discharged on their part?

iii. Whether learned Court below has omitted to record a finding on the issue no. X regarding claim by adverse possession?

iv. Whether the order of Circle Officer in not mutating the land, is sustainable in the eyes of law?

v. Whether the said lease was a lease in perpetuity?

14. It is difficult to be persuaded by the argument on behalf of the appellant, that it was a Raiyati or a freehold land and not a leasehold land. Exhibit A, which specifically refers to the execution of registered deed of lease by the Deputy Commissioner in favour of Fanindra Nath Aikat in 1946 with respect to plot nos.38 and 39, Chhaparbandi Holding No.103 of Village Lalpur, P.S. Ranchi. The

lease was for Khas Mahal and the total area was 2.02 acres. The term of lease was for 25 years and the lessee on confirming all the terms and conditions of the lease, was entitled to renewal for a further term of 30 years at such rent, not exceeding twice the rent payable under the original deeds. It also stipulated that lessee shall not be entitled to any compensation for any building structure for improvement made.

15. Exhibit 12 adduced on behalf of plaintiff is a deed of gift dated 13th May, 1946 by Fanindra Nath Aikat in favour of Gauri Rani Aikat with respect to Holding No.785 under Ward No.7 of the Ranchi Municipality, Khas Mahal Holding No.103, Thana No.197, Khas Mahal Plot Nos.38 and 39 and Municipal Survey Plot No.1360 for 2.02 acres of land is an admission in the form of evidence to show that the suit land was a lease hold land. There is no contrary evidence brought on record to hold that at any point of time it was converted into a freehold land.

16. Therefore, so far, the first and second point for determination are concerned, there cannot be a scintilla of doubt that suit land was not a Raiyati land and was a lease hold land and constituted part of Khas Mahal property of the State.

17. In view of the finding that it was a lease hold property, possession of the land becomes permissive, and therefore the question of acquiring title by adverse possession does not arise.

18. Now the question is whether the Circle Officer had the authority to deny mutation in favour of the plaintiff on the ground that it was a Khas Mahal land?

19. For the reasons discussed in foregoing paragraphs, there can be little doubt that the land in question was a Khas Mahal land. From the list of dates, it will be evident that land in question several times changed hands, and the transfer was duly entered into Register II. Fanindra Nath Aikat gifted the property to Gouri Rani Aikat vide registered deed of gift in 13.05.1946. There is no denial that her name was accordingly entered in Register II. In 22.07.1975, Gouri Rani Aikat died. Registered deed of family partition was made by heirs and descendants of Gouri Rani Aikat in 19.10.1987.

20. When there was a long term Jamabandi, the mutation could not have been denied by the Circle Officer merely on the ground that it was a leasehold land. Law is settled that order in mutation proceedings are confined to the possession from whom the rent is to be collected. In the present case the original lease was granted as per the case of the State in 29.09.1904 and had been renewed from time to time extending upto 1996.

21. The long duration of lease, time to time renewal of lease, and its transfer, clothed it with the character of a perpetual lease. Such lease cannot be terminated without an order passed by Civil Court under Rule 21 and 22

22. The word "Khas Mahal" is nothing but what is known in English as "Government Estate". That is defined in the Khas Mahal Manual as follows:—

“Meaning of “Government estates”:— The term “Government estates” is used to mean estates under the direct management of Government whether these are the property of Government or are the estates of private individuals brought under direct management of Government. It may also mean any land, which is the property of Government and as such would include estates owned by Government which have been let in farm and leased for periods and also the waste lands but would not include lands belonging to other departments of Government, e.g., roadside lands, so long as they are not relinquished by the department concerned to the Collector for management. This Manual unless it so appears from the context deals with the principles, policy and procedure for Khas management of estates under the direct management of Government.”

23. From the above, what follows is that Khas Mahal is the Estate of the Government and was leased by the Government and renewed from time to time. Lease deed in question can neither be cancelled nor possession of the land in question be resumed unilaterally and the respondents are required to take recourse to the due process of law under the Rule 21 and 22 of the Khas Mahal Manual by invoking the jurisdiction of the competent civil court by filing appropriate suit and not otherwise. Resumption of such a land by the State cannot be made without following the procedure as laid down in Rule 21 and Rule 22 of the provisions of Khas Mahal Manual which reads as follows:—

“21. Resumption should be for public purposes only.—When a tenant holds land from Government under a lease containing a clause which authorises the lessor to resume possession of the whole or part of the lands of the tenancy, this power of resumption shall only be exercised if the land is required for a public purpose, and the power of resumption shall not be exercised without the sanction of Government obtained through the Board of Revenue.

9. If such land be required for the use of the persons other than Government e.g. for a local body, it should ordinarily be acquired under the provisions of the Land Acquisition Act, and not under the power of resumption given by the lease.

“22. Khas possession can only be taken through Civil Court if lessee objects.—When in a lease it is provided that, in the event of certain contingencies occurring, the Collector will enter upon and take khas or direct possession of the property, it must be understood that, where the settlement-holder objects, possession cannot be taken save under the orders of a competent Civil Court.

24. From perusal of the aforementioned provisions, it would be evident that even in a case where leases under the provision of Khas Mahal Manual are to be resumed, the same can be done only if a public purpose exists and that too with the sanction of the Government obtained through the Board of Revenue. Even in such a case Khas possession can only be taken through the Civil Courts if the lessee objects thereto and such power cannot be exercised by executive fiat arbitrarily. (*Jaleshwar Mistry v. State of Bihar*, 1989 PLJR 402 at page 403)

25. Moreover, the lease in the present case to all intent and purpose partook the

character of a perpetual lease which creates a vested legal right in the lease holders to the exclusion of others, and shall be binding on parties until it is determined by a court of law under Section 111 of the Transfer of Property Act, and any resumption of possession of the leasehold lands can only be done by taking recourse to the due process of law. However, there can be no forcible dispossession contrary to the law by assuming powers that the law does not vest in the Corporation in a relationship of lesser or lessee or sub-lessee. Thus, before exercising the right of resumption of possession of a leased land, lease is required to be first determined under Section 111 of the Transfer of Property Act and only thereafter, resumption of possession of a leased land can be done by taking recourse to the due process of law. (See Uday Sinha v. State of Bihar, 2021 SCC OnLine Pat 5696).

26. Denying mutation in favour of a bona fide transferee of lease hold property, amounted to denying the renewal of lease and consequently possession, which could not have been done by the Circle Officer, if the lessee had paid the rent of the land for the lease hold area. As discussed in the foregoing paragraphs, the lease could have been determined by a proper order passed under Rule 21 and 22 of the Khas Mahal Manual read with Section 111 of the T.P. Act. In the absence of such order, denying mutation on the ground that it was a Khas Mahal property of the State, is not sustainable. Specific provision is made in Chapter IV of the Khas Mahal Manual, 1953 for maintaining register to make entries in the relevant register in the name of the lessee, and further details like rent etc. So long as the lease is not terminated the entries of the lessee or his transferee, who is in possession of the Khas Mahal property, cannot be denied. Refusing mutation in this manner without going into facts and law, would open the door to corruption. The Government in its functioning has to be transparent and fair. This is basic of administrative justice and rule of law.

27. Under the circumstance, the order passed in Mutation Case No.1614 R 27/07-08 dated 02.08.2007 is declared to be null and void and the Circle Officer is directed to pass order afresh after giving the right of hearing to the parties. Defendants are injuncted from interfering with the peaceful possession of the Plaintiffs/Appellants so long they pay rent to the State in terms of the lease and so long the lease is not determined as per the procedure established by law.

First Appeal is accordingly, partly allowed. Interlocutory Application, if any, is disposed of.