

(2025) 05 JH CK 1138
In the Jharkhand High Court
Case No : L.P.A. No. 384 Of 2021

Haponmay Murmu

APPELLANT

Vs

Commissioner, Santhal Pargana Division, Dumka, P.O., P.S.
And District Dumka

RESPONDENT

Date of Decision : 02-05-2025

Acts Referred:

Santhal Parganas Tenancy Act 1949 — Section 3, 4, 15, 42

Chota Nagpur Tenancy Act, 1908 — Section 46, 71A

Andhra Pradesh (Telangana Area) Tenancy and Agricultural Lands Act, 1950 — Section 50B(ii), 50B(4)

Citation : (2025) 05 JH CK 1138

Hon'ble Judges : Sujit Narayan Prasad, J; Rajesh Kumar, J

Bench : Division Bench

Advocate : Atanu Banerjee, Ashutosh Anand, Rakesh Kr. Shahi, Ashish Verma, Manoj Kumar Jha, Rajesh Lala, Kumar Nishant

Final Decision : Dismissed

Judgement

Sujit Narayan Prasad, J

1. Both the appeals have been directed to be tagged together, as such they have been heard together and is being disposed of by this common order/judgment.

Prayer:

2. Both the appeals, under Clause 10 of the Letters Patent, have been directed against common order/judgment dated 15.09.2021 passed by learned Singh Judge in W.P.(C) No. 5118 of 2012 [subject matter of LPA No. 384 of 2021] and W.P.(C) No. 6675 of 2012 [subject matter of LPA No. 386 of 2021] whereby and whereunder the writ petitions preferred by the writ petitioners-appellants have been dismissed declining to interfere with the order passed by the Commissioner, Santhal Pargana Division, Dumka.

Factual Aspect:

3. Brief facts of the case, as per the pleading made in the writ petition is as under:

4. In both the cases, before the writ Court since common order dated 27.06.2012 passed by learned Commissioner, Sonthal Pargana Division, Dumka was under challenge, as such for the sake of convenience, only the fact involved in one of the writ petitions [WPC No. 5118 of 2012] is taken herein.

5. It is the case of the writ petitioner-appellant that as per Sonthal Parganas Settlement Regulation, 1872 (Regulation No. 3 of 1872), for preparation of record of rights, the Settlement Officers have been given power to enquire into landed right under Regulation 12 of the Regulation, 1872 and records of rights have to be prepared in the form as prescribed under Regulation 13 of the Regulation, 1872 containing the nature and instance of each rights and interest held by each class of occupiers. The procedure for preparation of record of rights has also been provided in the said Regulation. After preparation, publication is there under Regulation 24 as per which, after six months of such publication the record of rights becomes final.

6. Accordingly within the Santhal Parganas, firstly Wood's Survey & Settlement took place, which was followed by McPherson Settlement of 1905 and settlement was concluded in the locality in 1908 and thereafter Gantzer's survey and settlement came in the year 1932.

7. Further, Regulation 25(3) of the Regulation, 1872 itself provides that despite final publication of the record of rights, the same can be reopened during fresh settlement i.e. during fresh preparation of record of rights.

8. It is stated that fresh survey and settlement proceedings for preparation of records of rights under the said Regulation started and therefore, in terms of Regulation 25(3) of the Regulation, 1872 the earlier entries were entitled to be reopened. Accordingly during preparation of the records of rights the petitioner filed objection with respect to the preparation of record of rights in respect of land comprised within Jamabandi No. 2 measuring 6 Bigha 7 Katha and 14 Dhors contending inter alia that the ancestors of the petitioner [who are appellants herein] namely Fate Manjhi and Sona Manjhi were the recorded raiyats but the ancestors of the Respondent No. 5 and 6 had wrongly got their names entered during the earlier settlement. The same was registered as Settlement Correction Case No. 311/98. On being noticed the Respondent No. 5 and 6 appeared and filed their show cause denying the contention of the petitioner. The competent authority- the Charge Officer, Dumka, after hearing the parties vide order dated 21.3.2002 in Settlement Correction Case No. 311/98, rejected the petitioners' application inter alia on the ground that the petitioner may approach before the appropriate court since the dispute relates to the entries made in McPherson and Gantzer's survey and settlement.

9. It has further been pleaded that pursuant thereto the petitioner preferred Settlement Correction Appeal No.1/2002-2003 and 02/2002-2003 before the

Commissioner, Santhal Pargana Division, Dumka, which was allowed and the matter was remanded back to the Settlement Officer holding that Regulation 25(3) of the Regulation, 1872 clearly provides that entries made during the earlier survey and settlement operations can be reopened during the fresh survey and settlement proceedings. Accordingly the Settlement Officer was directed to go into the matter in detail and come to a conclusion and pass a reasoned order.

10. The said remand order passed by the Commissioner (Respondent No. 1) was challenged by the Respondent No. 5 and 6 by filing W.P.(C) No. 4150 of 2006, which was dismissed as withdrawn in terms of order dated 05.09.2006.

11. In terms of the order of remand, the Charge Officer/Settlement Officer, Dumka vide order dated 25.07.2008 allowed the Settlement Correction Case No.126 of 2006 and 127/2006 and directed for correction of the record of rights.

12. Aggrieved thereof, the respondent no. 5 and 6 preferred R.M.R. No. 67/2008-09 before the Commissioner, Santhal Pargana Division, Dumka (Respondent No. 1). However, the Respondent No. 1 by terms of his order dated 27.06.2012 allowed the revision application preferred by the Respondent No. 5 and 6 inter alia on the ground that the Settlement Officer had acceded its jurisdiction in passing an order for correction in McPherson and Gantzer's parcha, against which, the appellants approached this Court being W.P.(C) No. 5118 of 2012 and W.P.(C) No. 6675 of 2012, which were heard and dismissed vide common judgment/order dated 15.09.2021, against which, the instant intra-court appeals have been preferred.

13. It is evident from the factual aspect that the land in question is being claimed by the appellants on the ground that there is error in the settlement made by the Settlement Officer. The issue has been raised initially in the Settlement Proceeding(s), wherein order of rejection has been passed against the appellants by the Settlement Officer, which was challenged before the Commissioner in Settlement Correction Appeal No. 01 of 2002-03 and 2 of 2002-03 whereby the Commissioner remanded the matter to Settlement Officer for fresh adjudication.

14. The Settlement Officer has passed detailed order on 23.07.2008/25.07.2008 in Settlement Correction Case No. 126 of 2006 in favour of appellant-petitioner. The said order was again challenged before the Commissioner, Sonthal Parganas Division, Dumka which were registered as RMR No.-67/2008-09 with S.C.A. No. 63/2008-09.

15. The plea was taken by the private respondents before the Commissioner that the order passed by the Settlement Officer cannot be said to be proper in view of the fact that the settlement which was carried out during McPherson Settlement era and thereafter the Gantzer Settlement has been carried out, the appellant did not raise any issue even in the subsequent settlement i.e., rather, has raised the issue after lapse of about more than 85 years since the settlement which was made in favour of the predecessor-in-interest of the private respondents,

sometimes in the year 1925, wherein the settlement has been made in favour of the predecessor-in-interest of the private respondents at the time of McPherson Settlement wherein jamabandi record has been created, which stood recorded in the name of Hari Bhagat, Arjun Bhagat, Chander Bhagat and Dukhan Bhagat. The McPherson settlement in the locality was concluded in the year 1908. The objection although was made being Objection Case No. 768 of 1905 and 766 of 1905 by the predecessor-in-interest of the appellants, which was decided with a direction to prepare McPherson parcha under [Jamabandi] JB No.2 for mouza-Lataria in the name of the ancestors of private respondents therein. The ground has been taken that the order so passed in Objection Case No. 768 of 1905 and 766 of 1905 has not been questioned even no application was made at the time of Gantzer's Settlement and the appellant sat idle and all of a sudden objection again was raised by taking aid of Regulation 25(3) of the Regulation 1872 and under Section 42 of the SPT Act, 1949. The revisional authority has taken into consideration the aforesaid aspect of the matter by holding the decision of the settlement officer to be excess in his jurisdiction in passing of correction in McPherson Settlement Purcha and Gantzer Settlement Purcha, after such a belated stage and accordingly quashed the said order.

16. The appellant being aggrieved with the order passed by the revisional authority has filed writ petition being WPC No. 5118 of 2012 and WPC No. 6675 of 2012. The ground has been taken by taking aid of Regulation 25(3) of the Regulation, 1872 by agitating the issue that in view of provision of Regulation 25(3), the objection can be made at any time since there is no time limit in the aforesaid provision of raising objection against the settlement.

17. The learned Single Judge has disagreed with the contention raised on behalf of the appellant-writ petitioner by taking the ground that the objection has been dealt with in the year 1905 in Settlement Objection Case No. 766 of 1905 and 768 of 1905 and thereafter the name was recorded in the name of the predecessor-in-interest of the private respondents, hence, the issue of right, title has already been decided. Accordingly, the writ petitions have been dismissed, which is the subject matter of present appeal(s).

Submission on behalf of appellant-writ petitioner:

18. Mr. Atanu Banerjee, learned counsel along with Mr. Durga C. Mishra, learned counsel for the petitioner has assailed the impugned order on the following grounds:

I. That the learned Single Judge has not appreciated the provision of Regulation 25(3) of the SPT Regulation, 1872 wherein no time limit has been given to raise the objection against the issue of settlement.

II. Submission has been made that Regulation 25(3) of the Regulation, 1872 has purposely been inserted in order to protect the interest of the local tribal people living in the areas for whose benefit the tenancy law has been created, but this aspect of the matter has not been considered by learned Single Judge while

passing the impugned order.

III. The order which was passed by the Settlement Officer dated 25.07.2008 was in favour of the present appellants, that was passed on consideration of implication of Regulation 25(3) of the Regulation 1872, and after giving specific finding of commission of manipulation ,the said order was passed. But the Commissioner while exercising the power of revision has not appreciated the aforesaid aspect of the matter rather has gone into the fact that settlement made at the time of McPherson Settlement and approved in the Gantzer Settlement is not allowed to be reversed after lapse of such an inordinate delay.

IV. The learned counsel has taken further ground that if any manipulation has been made in the settlement record in order to deprive the title/possession of the land of the present appellants, the law is very specific that the fraud vitiates the very solemnity of the act and the entire action taken will be vitiated in the eye of law. But this aspect of the matter has not been taken into consideration either by the Commissioner under its revisionary jurisdiction or by the learned writ Court.

19. Learned counsel for the appellant based on the aforesaid ground has submitted that the order passed by learned Single Judge requires interference.

Submission on behalf of respondents:

20. Per contra, learned counsel for the respondents-State and respondents-private respondents have taken the following grounds in defending the order passed by the learned Single Judge:

I. Submission has been made that there is no error in the order passed by the revisional authority since the thoughtful consideration has been given on the ground of delay of agitating the issue that too in a case where survey settlement was made in the year 1925 itself at the McPherson Settlement and even no objection was raised at the time of Gantzer's Settlement which was carried out thereafter. The aforesaid aspect of the matter has been taken into consideration by the revisional authority, which led the revisional authority in reversing the order passed by the settlement officer, which suffers from no error.

II. The argument of implication of Regulation 25(3) of the Regulation, 1872 is also not come to aid the appellant on the ground that the objection was raised on behalf of predecessor-in-interest of the appellant way back in the year 1905 being Objection Case No. 768 of 1905 and 766 of 1905, which has been decided against the appellant but no appeal has been filed and hence the order become final and thereafter entry since has been made as per the McPherson Settlement and that has been approved by the revenue authority. It has been submitted that the aforesaid aspect of the matter has been taken into consideration by the revisional authority as also by the learned Single Judge, as such order impugned cannot be said to suffer from error.

III. The argument so far as it relates to applicability of Regulation 25(3) of the

Regulation, 1872 is concerned, it has been submitted that the same cannot be said to be applicable after such an inordinate delay committed by the party, considering themselves to be aggrieved one, only on the ground that there is no reference of any time period as contained under Regulation 25(3) of the Regulation 1872.

21. Learned counsel for the respondents, based upon the aforesaid ground, has submitted that the impugned order requires no interference by this Court.

Analysis

22. We have heard learned counsel for the parties and gone through the finding recorded by the Settlement Officer vide order dated 23.07.2008/25.07.2008 by which the petition preferred by the appellant was allowed in Settlement Correction Case No. 126/2006 and 127/2006 and direction was passed for correction of the record of rights; as also finding recorded in R.M.R. No. 67/2008-09 with S.C.A No. 63 of 2008-09 by the Commissioner, Santhal Pargana Division, Dumka (Respondent No. 1) vide order dated 27.06.2012, preferred by the respondent no. 5 and 6, which was challenged before the writ Court by filing Writ Petitions being W.P.(C) No. 5118 of 2012 and W.P.(C) No. 6675 of 2012, which stood dismissed, hence, the instant intra-court appeal.

23. This Court, on the basis of argument advanced by the parties and the pleading available on record, is of the view that following issues requires consideration for adjudication of the lis:

I. Whether the objection which has been dealt with by the revenue authority way back in the year 1905, order passed therein had been accepted for a period of about 100 years, is it available for the appellants to re-agitate the said issue again by taking aid or Regulation 25(3) of the SPT Regulation, 1872 at the time when the settlement is being carried out by the State?

II. Whether, in absence of any time limit, under Regulation 25(3), the party can be allowed to agitate the issue even after lapse of more than 100 years. Will it not lead to unnecessary harassment to the third party and is contrary to the purport of the Limitation Act?

III. Whether the reference of the word 'fresh settlement' will be construed to be fresh one or the settlement which has been made at the first instance and thereafter the second settlement made after first one settlement said to be carried out subsequently?

24. Since all the issues are inter-linked, as such they are taken up together to be answered.

25. There is no dispute that the Santhal Parganna Tenancy (Supplementary Provisions) Act, 1949 [SPT Act, 1949] prior to its enactment in the year 1949, it was by way of regulation i.e., Sonthal Parganna Settlement Regulation, 1872 [Regulation 1872].

26. The Sonthal Parganna Settlement Regulation, 1872 has been saved by virtue of Section 3, 4 and 5 of the Act, 1949, so far the statutory provision as contained under Regulation 1872 is not in consistent with the Act, 1949. The Regulation, 1872 contained a provision under Regulation 25(3) for the purpose of issue of settlement by virtue of publication of the draft and its finalization. The Said provision as contained under Regulation 25 is quoted as under:

"25. Record to be final after six months publication.-

(1) After a period of six months from the date of the publication of the record-of-rights of any village, such records shall be conclusive proof of the rights and customs therein recorded, other than the rights mentioned in Section 25-A, except so far as concerns entries in such record regarding which objections by parties interested may still be pending in the Original or Appellate Courts, or may still be open to appeal. (2) Notwithstanding anything contained in sub-section (1), the Settlement Officer may, at any time before the settlement is eclared by a Notification in the Official Gazette to have completed,-(a) inquire into and correct any material error in such record; and(b) revise any order or decision passed by himself or by anAssistant Settlement Officer:

Provided that no such order or decision shall be so revisedwhere nay order passed by the Commissioner is likely to be affected by such revision, or where an appeal from such order ordecision is pending before the Commissioner:

Provided, further that no material error shall be correctedand no decision or order shall be revised, until reasonable noticehas been given to the parties concerned to appear and be heard inthe matter.

(3) When a record-of-right has become final, or any objection to any entry in a record-of-right has been finally disposed of in the Settlement Courts, and when all final decisions and orders, including such as may have been passed on revision as provided in sub-section (2), have been correctly embodied therein, such record shall not, until a fresh settlement is made or a new table of rates and rent-rols are prepared, be re-opened without the previous sanction of the State Government.

(4)(a) Notwithstanding anything contained in sub-section(3), in case of the discovery of material error in any such record of-right, the Commissioner may by an order in writing direct that such error shall be corrected in the manner specified in the order:

Provided that no material error shall be corrected until reasonable notice has been given to the parties concerned to appear and to be heard in the matter.

(b) Every order passed by the Commissioner under this sub-section shall be final and conclusive and shall not be reopened until a fresh settlement is made or a new table of rates and rent-rolls is prepared.

(c) The State Government may make rules to regulate the procedure to be

followed in case of the discovery of material error in any such record-of-right and generally for the guidance of the Commissioner in the discharge of his functions under clause (a).

27. It is evident from Regulation 25 (3) of Regulation, 1872, which is the subject matter as per the argument advanced on behalf of appellant/writ petitioners, that the objection has to be raised for the purpose of rectifying the error committed in the settlement at the time of carrying out settlement and the same can be adjudicated at the time of fresh settlement. The purport of the aforesaid provision is in order to give opportunity to the claimant to raise the objection in a case where there is error in the settlement.

28. It is admitted that under Regulation 25(3) there is no time frame for raising such issues. The said aspect of the matter has emphatically been argued that in absence of any time frame under Regulation 25(3), if any error has been committed during the settlement which can be raised by the party aggrieved at any time without consideration of any period to be reasonable one.

29. There is no dispute that under Regulation 25(3) no time limit has been there but can it be said to be exercised even after the inordinate delay.

30. It is also admitted fact that law of limitation is not referred in the Regulation or SPT Act. As such, the issue of limitation will be applicable or not that is the issue to be considered herein.

31. We are not dealing with the issue of limitation rather we are dealing with the issue to have an opportunity to agitate the issue said to be within reasonable period.

32. This Court, in order to consider the aforesaid aspect of the matter, has thought it proper to provision of Section 71-A of the Chota Nagpur Tenancy Act, 1908 [in short 'CNT Act, 1908'] which is similar tenancy provision formulated for the Chotanagpur region of the State of Jharkhand whereas the SPT Act, 1949 has been enacted for the Santhal Parganna Region of the State of Jharkhand.

33. The original Act of the CNT Act, 1908 has no provision for restoration of the land.

34. Herein, it would be apt to intent and purport of the enactment of SPT Act/ Regulation and CNT Act. The main object of the Chota Nagpur Tenancy Act and Sonthal Pargana Tenancy Act is to protect tribal and ownership and prevent exploitation by non-tribals. Both Acts restricts the transfer of tribal land to non-tribals and provide mechanisms for the restoration of land that has been illegally or fraudulently transferred. They also protect community ownership of land and address issues like land disputes and tenancy rights.

35. Further, it is admitted fact that the CNT Act has been enacted to protect the interest of the tribal population living in the Chotanagpur region wherein the restriction has been impose in transfer of land belonging to the tribal population

in favour of the non-tribal people without prior sanction of the D.C., as required under Section 46 of the CNT Act, 1908. There was no mechanism of the land being, if land has been transferred from the tribal to the non-tribal due to non-compliance of the requirement as stipulated under Section 46 of the Act, 1908. Hence, the legislation has been amended and a new provision as Section 71-A has been inserted by way of Bihar Schedule Area Regulation, 1969.

36. The Section 71-A of the CNT Act, 1908 confers upon the Deputy Commissioner by opening 'at any time' if it comes to the notice of the DC that the land of the tribal has been transferred in favour of non-tribal without prior sanction of the DC or in violation of any of the provision of CNT Act, 1908 then the land is to be restored in favour of the tribal concerned subject to providing an opportunity of hearing to the affected party.

37. For ready reference, Section 71-A of the CNT Act, 1908 is quoted as under:

"71A. Power to restore possession to member of the Scheduled Tribes over land unlawfully transferred.-If at any time, it comes to the notice of the Deputy Commissioner that transfer of land belonging to a raiyat [or a Mundari Khunt Kattidar or a Bhuinhari] who is a member of the Scheduled Tribes has taken place in contravention of section 46 [or section 48 or Section 240] or any other provision of this Act or by any fraudulent method, [including decrees obtained in suit by fraud and collusion] he may, after giving reasonable opportunity to the transferee, who is proposed to be evicted, to show cause and after making necessary enquiry in the matter, evict the transferee from such land without payment of compensation and restore it to the transferor or his heir, or in case the transferor or his heir is not available or is not willing to agree to such restoration, re-settle it with another raiyat belonging to the Scheduled Tribes according to the village custom for the disposal of an abandoned holding:

Provided that if the transferee has, within 30 years from the date of transfer, constructed any building or structure on such holding or portion thereof, the Deputy Commissioner shall, if the transferor is not willing to pay the value of the same, order the transferee to remove the same within a period of six months from the date of the order, or within such extended time not exceeding two years from the date of the order as the Deputy Commissioner may allow, failing which the Deputy Commissioner may get such building or structure removed:

Provided further that where the Deputy Commissioner is satisfied that the transferee has constructed a substantial structure or building on such holding or portion thereof before coming into force of the Bihar Scheduled Areas Regulation, 1969, he may notwithstanding any other provisions of the Act, validate such transfer where the transferee either makes available to the transferor an alternative holding or portion thereof as the case may be, of the equivalent value of the vicinity or pays adequate compensation to be determined by the Deputy Commissioner for rehabilitation of the transferor:

Provided also that if after an enquiry the Deputy Commissioner is satisfied that

the transferee has acquired a title by adverse possession and that the transferred land should be restored or re-settled, he shall require the transferor or his heir or another raiyat, as the case may be, to deposit with the Deputy Commissioner such sum of the money as may be determined by the Deputy Commissioner having regard to the amount for which the land was transferred or the market value of the land, as the case may be, and the amount of any compensation for improvements effected to the land which the Deputy Commissioner may deem fair and equitable."

38. Thus, it is evident that Section 71A of the CNT Act, 1908 begins with the phrase 'at any time' and speaks that if it comes to the knowledge of the District Commissioner concerned that the land has been transferred without following the statutory provision, as contained under the Act, 1908, the Deputy Commissioner will have power to invalidate such transfer depending upon such exception(s) as carved out under Proviso to Section 71A of the CNT Act, 1908.

39. By passage of time, an issue has crept up as to what would be the term as 'at any time'. The matter travelled to the Hon'ble Supreme Court in the case of Jai Mangal Oraon Vs. Mira Nayak (Smt.) & Ors. reported in [(2000) 5 SCC 141], wherein the Hon'ble Apex Court has held that "at any time..." it cannot be taken to mean that those powers could be exercised without any point of time-limit. For ready reference, the relevant paragraph of the judgment is quoted as under:

"16. The submission that, in any event the contesting respondents cannot be allowed to hold the land they being non-tribals and the Deputy Commissioner is obliged to allot the same to some other tribal only does not merit our acceptance. Apart from the grounds on which we have rejected the claim of the appellant, we find that the High Court left open the question about the disputed character of the lands and the nature of interest surrendered which if had been properly considered and decided was likely to have an impact on the question of the very applicability of the statutory provisions to the case on hand. Merely because Section 71-A commences with the words "If at any time..." it cannot be taken to mean that those powers could be exercised without any point of time-limit, as in this case after nearly about forty years unmindful of the rights of the parties acquired in the meantime under the ordinary law and the law of limitation. We consider it, therefore, inappropriate to countenance any such contentions in these proceedings.

40. Further, the Hon'ble Apex Court in the case of Situ Sahu & Ors. vs. State of Jharkhand & Ors. [(2004) 8 SCC 340 : 2004 (4) JCR SC 211] has given its thoughtful consideration to the phrase 'at any time', and has held at paragraphs 10, 13 to 16, which reads as under:

"10. Apart from the reasoning given by the High Court, it appears to us that the judgment of this Court in Ibrahimpatnam [(2003) 7 SCC 667] is decisive on the contention of limitation urged before us. Under somewhat similar circumstances suo motu power was given to the Collector under Section 50-B(iv)

of the Andhra Pradesh (Telangana Area) Tenancy and Agricultural Lands Act, 1950 to call for and examine the record relating to any certificate issued or proceedings taken by the Tahsildar under this section for the purpose of satisfying himself as to the legality or propriety of such certificate or as to the regularity of such proceedings and pass such order in relation thereto as he may think fit. In this judgment, to which one of us (Shivaraj V. Patil, J.) was a party, the Court observed (SCC pp. 676-77, para 9):

"9. Even before the Division Bench of the High Court in the writ appeals, the appellants did not contend that the suo motu power could be exercised even after a long delay of 13-15 years because of the fraudulent acts of the non-official respondents. The focus of attention before the Division Bench was only on the language of sub-section (4) of Section 50-B of the Act as to whether the suo motu power could be exercised at any time strictly sticking to the language of that sub-section or it could be exercised within reasonable time. In the absence of necessary and sufficient particulars pleaded as regards fraud and the date or period of discovery of fraud and more so when the contention that the suo motu power could be exercised within a reasonable period from the date of discovery of fraud was not urged, the learned Single Judge as well as the Division Bench of the High Court were right in not examining the question of fraud alleged to have been committed by the non-official respondents. Use of the words 'at any time' in sub-section (4) of Section 50-B of the Act only indicates that no specific period of limitation is prescribed within which the suo motu power could be exercised reckoning or starting from a particular date advisedly and contextually. Exercise of suo motu power depended on facts and circumstances of each case. In cases of fraud, this power could be exercised within a reasonable time from the date of detection or discovery of fraud. While exercising such power, several factors need to be kept in mind such as effect on the rights of the third parties over the immovable property due to passage of considerable time, change of hands by subsequent bona fide transfers, the orders attaining finality under the provisions of other Acts (such as the Land Ceiling Act). Hence, it appears that without stating from what date the period of limitation starts and within what period the suo motu power is to be exercised, in sub-section (4) of Section 50-B of the Act, the words 'at any time' are used so that the suo motu power could be exercised within reasonable period from the date of discovery of fraud depending on facts and circumstances of each case in the context of the statute and nature of rights of the parties. Use of the words 'at any time' in sub-section (4) of Section 50-B of the Act cannot be rigidly read letter by letter. It must be read and construed contextually and reasonably. If one has to simply proceed on the basis of the dictionary meaning of the words 'at any time', the suo motu power under sub-section (4) of Section 50-B of the Act could be exercised even after decades and then it would lead to anomalous position leading to uncertainty and complications seriously affecting the rights of the parties, that too, over immovable properties. Orders attaining finality and certainty of the rights of the parties accrued in the light of the orders passed must have sanctity. Exercise of

suo motu power 'at any time' only means that no specific period such as days, months or years are not (sic) prescribed reckoning from a particular date. But that does not mean that 'at any time' should be unguided and arbitrary. In this view, 'at any time' must be understood as within a reasonable time depending on the facts and circumstances of each case in the absence of prescribed period of limitation."

"13.We will assume that the surrender of tenancy on 7.2.1938 and the settlement of the lands on the present appellant on 25.2.1938 were in quick succession and could be viewed as parts of the same transaction within the meaning of the term 'transfer' as contemplated by the Act. Nonetheless, it has not been established before us that the transfer was contrary to any other provisions of the Act.

14.We shall now examine the last argument of Shri Narasimha that the transfer was fraudulent. Even on this, we are afraid that the appellants are entitled to succeed. We need not go into the details of the transaction for we may even assume that the transfer was fraudulent. Even then, as held in Ibrahimpatnam (supra), the power under Section 71A could have been exercised only within a reasonable time. Looking to the facts and circumstances of the present appeal, we are not satisfied that the Special officer exercised his powers under Section 71A within a reasonable period of time. The lapse of 40 years is certainly not a reasonable time for exercise of power, even if it is not hedged in by a period of limitation. We derive support to our view from the observations made by this Court in Jai Mangal Oraon case (supra) which was also a case which arose under the very same provision of law. There this Court took the view that Section 46(4) (a), which envisaged a prior sanction of the Deputy Commissioner before effecting the transfer in any of the modes stated therein, was introduced only in the year 1947 (with effect from 5.1.1948) and no such provision existed during the relevant point of time when the surrender was made in that case (15.1.1942). Obviously, therefore, no such provision existed in 1938, and the same reasoning applies.

15.In the result, therefore, we are of the view that the Special Officer ought not to have exercised his powers under Section 71A of the Act after such an unreasonable long period of time, in the facts and circumstances of the case brought to light.

16.The appellants succeed. The impugned judgment of the High Court and the impugned judgments of the authorities below are all set aside and the application for restoration made by the fifth respondent being SAR 415/77-78 is dismissed.

41. Now, coming back to Regulation 25(3) of the Regulation, 1872, it is evident that herein also no time limitation has been given. However, in the aforesaid statutory provision, stipulation has been made that objection if any can be raised by the party aggrieved at the time of fresh settlement. Therefore, the provision as contained under Regulation 25(3) of the Regulation, 1872 is having two

requirement to be made by the party; first, as per the submission advanced by learned counsel for the appellant that the objection can be raised 'at any time' and; second in the fresh settlement if it is being carried out.

42. Herein, the particular of the present case is that the settlement has been done at the time of McPherson settlement/survey and thereafter, Gantzer's survey/settlement carried out.

43. After the McPherson Settlement, the Gantzer's Settlement has also been carried out and during the McPherson Settlement the objection has been filed by the appellant being Objection Case No. 768 of 1905 and 766 of 1905. The said objection was decided in favour of the private respondents. The said order has never been challenged by the parties. Therefore, it is not a case of making no objection on at the time of making fresh settlement reason being that the objection has already been raised at the time McPherson Settlement itself and same has been adjudicated against the appellants but was challenged before the higher forum.

44. Hence, the contention which has been raised on behalf the appellants that even though the objection has been dealt with by the authority even then such objection can be raised at the time of fresh settlement is not available for the appellant by interpreting Regulation 25(3) of the Regulation, 1872 in that term.

45. If objection would not have been decided then the matter would have been different but even if the objection would have been decided or there would not have been any objection then also raising the issue at the time of fresh settlement cannot be said to be acceptable as per the argument advanced on behalf of appellant treating the present survey which is going to be fresh one while after the McPherson Settlement survey has already been carried out in the year 1908.

46. Herein, after the McPherson Settlement, the Gantzer Settlement has been carried out but at that time no objection was raised by the aggrieved party, if any, rather the objection has been raised after issue having been settled on the basis of Objection filed on behalf of the appellant being Objection Case No. 768 of 1905 and 766 of 1905.

47. Even though the said order has not been challenged and at the time of Ganzter Settlement it could have been raised but now after lapse of about more than 100 years, the same issue is being agitated.

48. This Court, in view of the ratio laid down in the case of Situ Sahu (supra), therefore, is of the view that even though the time frame is not given under Regulation 25(3) of the Regulation, 1872 [SPT Act, 1949] but that does not mean that any litigation can be agitated by the party concerned even after lapse of more than 100 years, rather, the litigation is to be initiated or agitated before the competent forum within a reasonable period even in absence of any stipulation made to that effect as contained under Regulation 25(3) of the

Regulation, 1872 read with SPT Act, 1949.

49. Further, the objection has already been dealt with and that has not been chosen by the petitioner to challenge and hence on this count also he ceases the right to challenge that too after lapse of 100 years.

50. This Court, after having discussed the aforesaid fact along with the legal position and adverting to the order passed by the revisional authority found that the revisional authority has taken into consideration the settlement arrived at the McPherson Settlement/survey and the objection having been dealt with by dealing with in the Objection Case No. 768 of 1905 and 766 of 1905.

51. The learned Single Judge has taken into consideration the decision taken by the revisional authority on consideration of the objection case having been decided against the appellant being Objection Case No. 768 of 1905 and 766 of 1905 having not been challenged and based upon the aforesaid ground, has come to the conclusion that it is not available for the appellants to re-agitate the issue once they have accepted the order passed in Objection Case No. 768 of 1905 and 766 of 1905.

52. Learned Single Judge has also taken into consideration the issue pertaining to right, title over the land from McPherson Settlement and the land has been acquired by the ECL as recorded in the office of Settlement Officer, the liberty has been given to the petitioners-appellants to raise the issue in view of Regulation 5A of the Regulation, 1872, if so wishes.

53. This Court considering the aforesaid fact, based upon the reason assigned therein, is of the view that the order passed by learned Single Judge requires no interference.

54. Accordingly, both the appeals stand dismissed being devoid of any merit.

55. Interlocutory Application(s), if any, stands disposed of.