

---

**(2006) 08 JH CK 0069**

**In the Jharkhand High Court**

**Case No :** Civil Writ Jurisdiction Case No. 1061 of 1998 (R)

Jainath Sahi

APPELLANT

Vs

The State of Bihar (now Jharkhand) and Others

RESPONDENT

---

**Date of Decision :** 11-08-2006

**Acts Referred:**

Bihar Land Reforms Act, 1950 — Section 4(h), 5, 6, 7  
Chotanagpur Tenancy Act, 1908 — Section 46, 71A

**Citation :** (2007) 1 JCR 137

**Hon'ble Judges :** R.K. Merathia, J

**Bench :** Single Bench

**Advocate :** Kamal Ranjan, for the Appellant; H.K. Mehta, Government Advocate and M. Patra, J.C. to G.A. for Respondents No. 1 to 4 and L.K. Lal and Amar Kumar Sinha for Respondents No. 5 to 7, for the Respondent

**Final Decision :** Allowed

---

## Judgement

R.K. Merathia, J.—In this writ petition, petitioner has prayed for quashing the orders passed by respondents No. 2 and 4 rejecting the petitioner's application u/s 71A of the Chotanagpur Tenancy Act, 1908 (for short "the Act") for restoration of Plot Nos. 404, 405, 407, 413, 428, 429 and 430 of Khata No. 155 of Village Tisia, P.S. Kisko, District Lohardaga against respondents No. 5 to 7.

2. The facts in short are as follow:

According to the petitioner, lands in R.S. Khewat No. 7 of Village Tisia, P. O. & P.S. Kisko, District Lohardaga stood recorded in the record of rights in the name of petitioner's grand father Chaitu Sahi, a member of the scheduled tribe. The lands appertaining to Khata No. 155 under Khewat No. 7 were recorded as his "Bakast lands" and were in his khas possession which will be evident from the return filed by him in Form "K" of the Bihar Land Reforms Act with a prayer to retain the same as "raiya". The Revenue authorities after proper enquiry assessed the rent under Sections 5, 6 and 7 of the Bihar Land Reforms Act in the name of Chaitu Sahi vide Rent Assessment Case No. 52 of 1960-61 and Form

"M" was issued in his name. Petitioner filed an application u/s 71A of the Act for restoration of R.S. Plot Nos. 404, 405, 407, 409, 410, 411, 412, 413, 428, 429 and 430 appertaining to said Khata No. 155, in the year 1980-81 vide S.A.R. Case No. 9 of 1982-83. Respondent No. 5 appeared in the case. The said case was dismissed by respondent No. 4 by order dated 28.7.1984 on the ground that the petitioner could not prove that he is a member of the scheduled tribes. Petitioner preferred an appeal before respondent No. 3 being S.A.R. Appeal No. 3-R-15 of 1984-85. Respondent No. 3 allowed the appeal in part by order dated 16.4.1987 (Annexure 3). It held that no doubt the petitioner was a member of the scheduled tribes but Plot Nos. 409, 410, 411 and 412 Area 1. 61 decimal was settled to Budhu Sahu (father of respondents No. 5 to 7) by registered deed No. 152 dated 19.1.1942. Accordingly, respondent No. 3 allowed the petitioner's appeal with regard to the remaining plots (404, 405, 407, 413, 428, 429, and 430). Against the said order, the petitioner filed a revision being S.A.R. Revision No. 147 of 1987 and respondents Nos. 5 to 7 also filed revision being S.A.R. Revision No. 148 of 1987 before respondent No. 2. (It may be mentioned here that one more revision being S.A.R. Revision No. 128 of 1987 was also heard along with the said revisions by the Commissioner which arose out of S.A.R. Case No. 10 of 1982-83 regarding Khata No. 146, Plot No. 602. In the present case, we are not concerned with S.A.R. Case No. 10 of 1982-83 or Revision No. 128 of 1987). The Commissioner disposed of all the revisions by a common order dated 30.12.1997 in favour of respondents No. 5 to 7.

3. Learned Counsel for the petitioner submitted that this writ petition is confined to S.A.R. Revision No. 147 of 1987. He further submitted that in order to avoid further controversy, his client is ready to accept the order passed by respondent No. 3 allowing petitioner's claim in part regarding Khata No. 155.

On merits he submitted as follows. The revisional authority could not have relied on the purported Sada Hukumnama produced for the first time before it claiming settlement of Plot Nos. 404, 405, 407, 428, 429 and 430 of Khata No. 155. The said Sada Hukumnama was never produced before any authority. It cannot be believed that the grand father of the petitioner would settle the said lands in favour of respondents No. 5 to 7 by Sada Hukumnama in the year 1943, when he had allegedly settled other lands with respondents No. 5 to 7 by a registered document in the year 1942. The Commissioner without making any enquiry about the genuineness of the Sada Hukumnama and the rent receipts believed the same and rejected the revision filed by the petitioner. If the said lands were settled to Budhu Sahu by Sada Hukumnama, why no objection was raised in course of rent assessment proceeding in the name of Chaitu Sahi. He also submitted that the finding about possession is also without any basis.

Learned Counsel for the petitioner relied on Durga Das Vs. The Collector and others, , Balwant Singh and another etc. Vs. Daulat Singh (dead) by L.Rs. and others, and Abdul Manan v. Mussaraf Ali 2001 (1) PLJR 349 and submitted that mutation entries neither confers nor extinguishes title nor it has any presumptive

value of title.

Regarding the meaning of "transfer", he relied on Pandey Orson Vs. Ram Chander Sahu and others, . He further submitted that plea of adverse possession taken by respondents No. 5 to 7 cannot be accepted in view of the judgment of Lincai Gamango and Others Vs. Dayanidhi Jena and Others, in which it has been held that a non-tribal would not acquire right and title on the basis of adverse possession, as adverse possession operates on an alienable right.

4. Learned Counsel appearing for respondents No. 5, 6 and 7 submitted that petitioner's application u/s 71A of the Act was not maintainable as he was not raiyat and it was not a case of transfer by a raiyat in contravention of Section 46 or any of the provision of the Act; and that dispossession by fraud has not been alleged/proved. He further submitted that respondents No. 5 to 7 had perfected their title by adverse possession prior to 1969 i.e. prior to coming into force of Section 71A of the Act; and that the petitioner's application was filed after 40 years of the settlement. He further submitted that even if Sada Hukumnama is ignored for the sake of argument, even an oral settlement coupled with rent receipts is sufficient to prove the title and possession of respondents No. 5 to 7. He further submitted that the petitioner could file a suit challenging the settlement in favour of respondents No. 5 to 7 or could take recourse to a proceeding u/s 4(h) of the Bihar Land Reforms Act.

He relied on Paras Nath Munda v. Rama Sahu 1988 BLT (Rep) 520 to show that no permission of the Deputy Commissioner was required for surrender of land by raiyat prior to coming into force of the Chotanagpur Tenancy (Amendment) Act, 1947. Relying on the Full Bench decision of the Patna High Court in Mostt. Ugni v. Chowa Mahton 1968 PLJR 3, he submitted that an unregistered document though no evidence of title can be looked into for co-lateral purpose i.e. nature and character of possession. He also relied on Jai Mangal Oraon v. Mira Navak 20001 5 SCC 141 and submitted that distinguishing the case of Pandey Oraon (Supra), it was held that powers u/s 71A of the Act could not be exercised after about 40 years.

5. Admittedly lands of Khata No. 155 were recorded as Bakast Malik under the last survey in the name of grand father of the petitioner, a scheduled tribe. He being the ex-landlord was entitled to keep some lands for himself and settle some lands to other. As such, it cannot be said that the petitioner is not a raiyat. Moreover if the claim of possession of respondents No. 5 to 7 based on Sada Hukumnama and rent receipts is not accepted, certainly it will be a case of transfer of land in violation of Sections 46 and 71A of the Act.

Petitioner filed the application u/s 71A of the Act, praying for restoration of the lands alleging illegal possession of respondents No. 5 to 7. Respondents No. 5 to 7 never produced the purported Sada Hukumnama of 1943 before any authority. It was produced for the first time before the revisional authority. It appears that a registered deed of 1948 was also produced for the first time before the

revisional authority. To which land it belonged is not clear. Without any enquiry, the revisional authority accepted the version of respondents No. 5 to 7. Petitioner was not given opportunity to raise his objections to the documents filed by the respondents No. 5 to 7. Only on the basis of such documents, the revisional authority could not have concluded that respondents No. 5 to 7 were in possession of the lands. Further there is no finding from when respondents No. 5 to 7 were in possession of the lands in question. Though the revisional authority can correct the errors of law and facts, but it should not have accepted the version of respondents No. 5 to 7 without holding a proper enquiry into the matter and without affording opportunity to the petitioner.

6. The respondents No. 5 to 7 were required to prove their case, and petitioner was not required to file suit to disprove it. Further Section 4(h) of the Bihar Land Reforms Act is not applicable in this case. Fraud is one of the grounds and not the only ground u/s 71A of the Act. The submissions of learned Counsel appearing for respondents No. 5 to 7 on these scores are not at all tenable.

7. On the whole, it is clear that the order of the revisional authority cannot be sustained.

8. Though this litigation is continuing since 1982-83, but in the circumstances noticed above, I am left with no option than to remand the matter to the revisional authority.

9. In the result, the impugned order dated 30.12.1997 passed by the Commissioner, South Chotanagpur Division, Ranchi (respondent No. 2) in Revenue Revision No. 147 of 1987 is set aside. The parties are directed to appear and file their further pleadings, if any, before respondent No. 2 on 11th September, 2006. The respondent No. 2 will fix a date for hearing and then proceed with the matter. After hearing the parties and after holding proper enquiry, he will pass a fresh order in accordance with law, without being prejudiced by observations, if any, made in this order. It is expected that respondent No. 2 will dispose of the matter as early as possible and preferably within six months from the date of receipt/production of a copy of this order. However, there will be no order as to costs.