

**(2003) 02 JH CK 0014**  
**In the Jharkhand High Court**  
**Case No : Writ Petition (C) No. 3064 of 2001**

|                               |    |            |
|-------------------------------|----|------------|
| Mahipal Mishra                | Vs | APPELLANT  |
| State of Jharkhand and Others |    | RESPONDENT |

---

**Date of Decision :** 05-02-2003

**Acts Referred:**

Constitution of India, 1950 — Article 226

**Citation :** (2003) 2 JCR 401

**Hon'ble Judges :** Vikramaditya Prasad, J

**Bench :** Single Bench

**Advocate :** Rajeev Sinha and S.S. Choudhary, for the Appellant; A.K. Mehta and A.K. Sahay for respondent No. 2, Rajeev Sharma, for respondent No. 3, Jay Prakash Jha and Samim Akhtar, for the Respondent

---

## Judgement

Vikramaditya Prasad, J.—This is a case for appointment of a Pradhan in village Kurma in the District of Godda under the provision of the S.P.T. Supplementary provision Act read with S.P.T. Supplementary Rules, 1950.

2. Admittedly there was a Pradhan appointed in that village, admittedly the Pradhan died, subsequent thereto the question of appointment of a Pradhan arose. The Sections 5 and 6 of the Act do provide for such appointment.

3. The procedure for appointment is prescribed under Rule 3 of the Rules. Rule 3(5) of the Rules is relevant for the purpose, which reads as follows :--

In making the appointments of headman u/s 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.

4. Now if the Head Man died then he may leave successor or he may not leave successor and if he does not leave successor then a fresh step under the Rules has to be taken for appointment of a new Head Man. But if he has left some heirs then the question of acceptability of that heir is to be determined as per the

Rules. Obvious it is that this acceptability can be ascertained from the will of 2/3 of Jamabandi Raiyats. Rule 3(1) provides that first of all a notice has to be given to 2/3 Raiyats (which ordinarily is called 16 anna raiyats) and if they do not turn up then subsequent notice has to be given and if even thereafter they do not turn up then the Deputy Commissioner will decide the matter rejecting the application made u/s 5.

5. As stated above Section 5 deals with a fresh appointment of a Head Man. Now in this case it has been pointed out by the learned counsel for the respondent No. 4 that a notice was issued by the S.D.O. vide annexure-RE which indicates that the notice was given to only 11 persons as against the total number of 16 anna raiyats, 148. Moreover it was also pointed out by the learned counsel for the respondent No. 4 that out of these 11 two had already died and the rest were inter related. Thus the very fact that the notice was not served/ notified to all the 16 anna raiyats, therefore this notice itself is not sufficient to all concerned raiyats. Now the second ground that was taken up is that the present Head Man Smt. Swarnlata Devi is daughter of the ex-Head Man Nageshwar Mishra. The objection with regard to her is that she resides at Bokaro and not within one kilometer from the village. The learned counsel for the petitioner controverted this argument on the ground that for past 18 years, despite the petitioner's husband living at Bokaro, she is discharging the function of Head Man of the village. This question is of secondary importance, the question of first importance is that the Hon'ble Court in an earlier writ arising out of the same matter vide Annexure-2 had directed the D.C. to dispose of the petition finally after due notice to the raiyats within a period of six months from the date of receipt/production of a copy of this order.

6. The lacuna as found above is that the respondent No. 3 had not issued notice properly upon all the raiyats.

7. While the learned counsel for the respondent No. 3 insisted that there is other alternative remedies therefore that be exhausted first before coming to this Court, the contention of the learned counsel for the respondent No. 4 is that the matter is lingering for last 18 years, therefore it should be settled by this Court.

8. I am afraid how can I agree to this submission of the respondent No. 4 that it should be settled by this court for the simple reason that as per the scheme of the Act it is 16 anna raiyats who have either to make fresh appointment or to accept the fitness of the heirs of the erstwhile Pradhan. This is a democratic process and it cannot be exercised in any legal way by this court so this prayer cannot be accepted and has to be rejected.

9. Considering the chequered history of the case the impugned order is set aside and the S.D.O. is directed to issue a fresh notice to all the Jamabandi Raiyats (16 anna raiyats) of the village within 15 days from the date of receipt/production of a copy of this order, every attempt will be made by him for service of the notice upon those raiyats even by beating of the drums and thereafter he will pass an

order without being prejudiced by any earlier order or by his own earlier order.

10. With this direction this writ is disposed of.