

(2025) 07 JH CK 1278
In the Jharkhand High Court
Case No : C.W.J.C. No. 403 Of 2001

Mangra Uron

APPELLANT

Vs

Commissioner, South Chotanagpur Division at Ranchi

RESPONDENT

Date of Decision : 14-07-2025

Acts Referred:

Chhotanagpur Tenancy Act, 1908 — Section 46, 46(1), 71A

Citation : (2025) 07 JH CK 1278

Hon'ble Judges : Gautam Kumar Choudhary, J

Bench : Single Bench

Advocate : Jasvinder Mazumdar, A.K. Sahani

Final Decision : Allowed

Judgement

Gautam Kumar Choudhary, J

1. Heard both sides.
2. Petitioner claims to be in possession of the land measuring an area 2.56 acres of Plot No.439, 440 and 481 under R.S. Khata No.39, Village Udrangi, P.S. Bhandra, District Lohardaga.
3. As per the case of the petitioner, they were inducted as under-raiyat (Sikmidar) on the said land and the name of the predecessor-in-interest of the petitioner was entered as Sikmidar Dakhalkar on the land in question, and was accordingly, entered in revisional survey record of rights some time in 1930-35.
4. A restoration application was filed by the predecessor-in-interest of the private respondents under Section 71A of the CNT Act on the basis of which SAR No.6/95 was registered against the petitioner. The order of restoration passed in the said case was reversed in appeal in SAR Appeal 9R 15/1996-97. The revisional Court reversed the order passed in appeal, against which the instant writ petition has been preferred.
5. The main plank of argument advanced on behalf of petitioner is that as per

the revisional survey record of right, the petitioner's name was entered as Sikmidar some time in 1930-35, whereas the restoration application has been filed almost after sixty years which is in the teeth of ratio laid down by the Apex Court in the following authorities: -

i. *Situ Sahu & Others Vs. State of Jharkhand & Others*, (2004) 8 SCC 340

ii. *Jai Mangal Oraon Vs. Smt. Mira Nayak & Others*, (2000) 5 SCC 141

iii. *Anupama Roy Vs. State of Bihar & Others*, 2003 SCC OnLine Jhar 380

6. It is further argued by the learned counsel on behalf of petitioner that jurisdiction of SAR Court is limited to see if the transfer of land has been in violation of Section 46 of the CNT Act, and the said restoration application is filed within reasonable time. Since restoration application has been filed after sixty years, it is completely time barred.

7. Learned counsel on behalf of respondents submits that Sikmidar is non-heritable right and the original Sikmidar was Bale Oraon, whereas the present petitioner is heir and descendent of the original Sikmidar. It is further submitted that sub-tenancy is in the nature of lease, and for any lease of more than five years, a permission was required in terms of Section 46(1) of the CNT Act. Reliance is placed in this regard on *Amin Mahto v. Commissioner, South Chotanagpur Div.*, 1987 SCC OnLine Pat 152

"4. In view of the entry in the record of right in my opinion, there cannot be any doubt that the petitioner's predecessor-in-interest was merely an under Raiyat (Sikmidar) under the predecessor-in-interest of the respondent Nos. 4 to 7.

5. In terms of the provisions of Section 46 of the Chotanagpur Tenancy Act there cannot be any lease of an agricultural holding for a period of more than five years. Induction of an under Raiyat in an agricultural holding by a Raiyat is certainly a transfer within the meaning of Section 46 of the Chotanagpur Tenancy Act. The very fact that the petitioner has been claiming his right as Sikmidar and had been in possession of the land in that capacity for a period of more than five years it must be held that the same amounts to a transfer which evidently was in contravention of the provisions of Section 46 of the Chotanagpur Tenancy Act."

FINDING

8. Admittedly, petitioner is the heir and descendant of the original Sikimidar. Right of under raiyat is not heritable, and subtenancy is a type of agricultural lease. Any transfer of land for more than five years was impermissible under Section 46(1) of the CNT Act. Therefore, there is merit in the submission made on behalf of the respondent that violation did take place of Section 46(1) of the CNT Act.

9. Claim of title on the basis of inheritance is not an issue at hand, as it can be considered only by a Court of competent jurisdiction. The question is whether the remedy against dispossession under Section 71 A of the CNT Act has been

invoked within a reasonable time?

10. The undisputed fact is that petitioner's continued to be in physical possession of the land in question since 1930-35, when the ancestor of the petitioner was inducted as a Sikmidar and relevant entries to that effect were made in the revisional survey record of rights. Restoration application was filed in 1995 i.e. after 60 years which cannot be said to be reasonable time. The question if the petitioner had right to inherit sub-tenancy, cannot be a subject matter of adjudication before a SAR Court. Remedy for restoration against dispossession has been invoked after a reasonable time. In the authority relied upon on behalf of the respondents, the issue of limitation was not raised, and therefore, the facts of the present case are distinguishable.

11. This Court is of the view that although there was violation of Section 46(1) of the CNT Act, but the remedy was extinguished for the delay in filing the restoration application

12. Impugned order is not sustainable and is accordingly, set aside. Writ Petition is allowed. Interlocutory Application, if any, is disposed of.