

(2024) 11 JH CK 0011

In the Jharkhand High Court

Case No : Writ Petition (C) No. 5423 Of 2016, 5149 Of 2020

M/s. Bharat Coking Coal Limited

APPELLANT

Vs

State Of Jharkhand, through the Secretary

RESPONDENT

Date of Decision : 12-11-2024

Acts Referred:

Constitution of India, 1950 — Article 226, 254, 254(1), 254(2), 372

Indian Forest Act, 1927 — Section 29, 29(1), 29(3)

Bihar Private Forests Act, 1947 — Section 13, 14, 15(3), 16, 17, 22, 23, 24, 25, 26, 27

Bihar Land Reforms Act, 1950 — Section 4, 4(h)

Government of India Act, 1915 — Section 63

Citation : (2024) 11 JH CK 0011

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

Bench : Division Bench

Advocate : Indrajit Sinha, Ankit Vishal, Amitabh Prasad, Kunal Chandra Suman, Manish Mishra, Varsha Ramsisaria

Final Decision : Allowed

Judgement

Sujit Narayan Prasad, J

1. Since the issues involved in the both writ petitions are identical, as such with the consent of learned counsel for the parties, both the writ petitions were directed to be listed together, as would appear from order dated 27.09.2016 passed by the learned Single Judge, as per roster during the relevant period of time. Accordingly, both the writ petitioners have been heard together and are being disposed of by this common order.

Prayer:

2. The writ petition being W.P. (C) No. 5149 of 2010, filed under Article 226 of the Constitution of India, has been filed for the following reliefs:

(i) For an appropriate writ, order or direction from this Hon'ble Court for quashing of letter No. 3926 dated 25.08.2010 issued by the Respondent No. 3

whereby and whereunder the petitioner has been restrained from carrying out mining and other activities over the plot Nos. 437, 419 and 230 of Jamdihi Mauza, P.S. Chirkunda (Nirsa) at Dhanbad.

(ii). Upon quashing of letter No. 3926 dated 25.08.2010 for issuance of further writ/direction commanding upon the concerned respondents to forbear them in interfering the mining and other activities being carried out by the petitioner over the land situated at plot Nos. 437, 419 and 230 of Jamdihi Mauza, P.S. Chirkunda (Nirsa) at Dhanbad;

3. The writ petition, being W.P.(C) No. 5423 of 2016, filed under Article 226 of the Constitution of India, has been filed for the following reliefs:

a. For issuance of an appropriate writ, order or direction, including writ in the nature of certiorari for quashing Letter No.388 dated 17.8.2016 issued under the signature of Regional Forest Officer, Urban Technical Region, Dhanbad, whereby and whereunder, the petitioner has been directed to stop its mining operation over an area of 141.5 acres of land (Later on modified by letter contained in Memo no. 1983 dated 3.9.2016 to area excluding plot nos. 437, 230 and 419), situated under Mauja Jamdihi, P.S. Chirkunda (Nirsa), District Dhanbad, as the mining operation is being carried on illegally and without permission of the Forest Department, against which offence report bearing no.112710 dated 9.5.2016 has been lodged;

b. For issuance of further appropriate writ, order or direction, including writ in the nature of certiorari, for quashing the letter, contained in Memo no.1983 dated 3.9.2016, whereby and whereunder, the Divisional Forest Officer, Dhanbad has been pleased to direct the General Manager of the petitioner- Company not to carry on mining operation except over Plot Nos. 437, 230 and 419 in connection with an interim order of the Hon'ble High Court of Jharkhand, Ranchi is in operation;

c. For issuance of further appropriate writ, order or direction, including writ in the nature of certiorari, for quashing the show cause notice, contained in Letter No.1984 dated 3.9.2016, issued to the Chairman- cum- Managing Director, Bharat Coking Coal Limited, whereby and whereunder, noticee has been directed to show cause as to why not an appropriate action and contempt be initiated against the petitioner for flouting the order of the Hon'ble Delhi High Court passed in Application No.302 of 1995 dated 12.12.1996, as the notice is carrying on illegal mining operation except on Plot Nos.437, 230 and 419;

d. For issuance of further appropriate writ, order or direction, including writ in the nature of certiorari, for quashing the show cause notice, contained in Letter No.1985 dated 3.9.2016, issued by the Divisional Forest Officer, Dhanbad to the Chairman- cum-Managing Director of Bharat Coking Coal Limited, directing him to show cause as to why not a proceeding under the Forest Conservation Act, 1980 be initiated for illegal mining purportedly being carried out by the petitioner- Company over an area of 141.5 acres of Jamdehi Reserved Forest except on Plot

Nos. 437, 230 and 419;

e. For issuance of further appropriate writ, order or direction, including writ in the nature of certiorari, for quashing the show cause notice, contained in Letter no.1986 dated 3.9.2016 issued to the Director (P & P), Bharat Coking Coal Limited, directing him to show cause as to why not an appropriate proceeding be initiated in terms of Forest Conservation Act, 1980 for illegal mining over an area of 141.5 acres of Jamdehi Reserved Forest except on Plot Nos.437, 230 and 419;

f. Upon quashing the aforesaid letters bearing nos.1983, 1984, 1985 & 1986 all dated 3.9.2016, further for issuance of an appropriate writ, order or direction, directing and commanding upon the respondents to forthwith forbear from interfering with mining operation being carried on in Mauja Jamdihi, P.S. Chirkunda (Nirsa), District Dhanbad.

Brief facts of the case:

4. The Bengal Coal Company Limited had initially taken mokrari settlement and coal mining right in respect of lands under Jamdihi Mouza area of about 1053 Bighas from the proprietor of Sambandhpur Estate (Pandra) by virtue of Registered Patta No.1268 B.S. dated 27th Agrahan.

5. It has been stated that from the registered lease deeds dated 25.05.1937 and 05.04.1937, it is apparent that the Bengal Coal Company Limited was in actual possession of 1053 Bighas 1 Katha 4 Chhatak of land and the company was entitled to carry out mining activities on the aforesaid lands. The Bengal Coal Company was in possession of the aforesaid lands long before the Survey Settlement and the actual area recorded in their names under Khata nos.59 and 60 of Jamdihi Mouza and they were carrying mining activities and the same also confirms from perusal of the Khatian of the aforesaid land.

6. In the year 1960 by virtue of registered sale deed dated 10.08.1960 executed by said Bengal Coal Company, entire lands situated at Jamdihi Mouza was sold and transferred to Sri Mahavir Prasad Agarwal and Om Prasad Agarwal, who also carried out mining over the aforesaid lands.

7. Thereafter, one Sri Prabhash Chandra Ojha and Chuniram Rewani took settlement in the year 1944 with respect to Plot nos.48 and 419 of Jamdihi Mouza and also other lands, situated at the aforesaid Mouza for a period of 99 years, which was subsequently extended to 999 years by registered deed of settlement executed in the year 1948 and have started extracting coal from the aforesaid lands in the name and style of Jamdihi Basantimate Colliery.

8. Later on, one Prakash Chandra Ojha and the legal heirs of Chuniram Rewani had sold the Jamdihi Basantimate Colliery along with right, title and interest over Plot Nos.48 and 419 and also other plots to one Md. Yusuf, who worked till the nationalization of Coal Mines in the year 1973.

9. Plot nos.48 and 419 are within the lease hold area/settlement area of Bengal

Coal Company Limited and they have filed title suits, bearing Title Suit Nos.39 of 1956 and 13 of 1957, against Abdul Latif for declaration of right of the Company with regard to the underground coal and coal mining right over Plot nos.48 and 419, under Khata no.59, situated at village Jamdihi and also for recovery of possession of the same and other reliefs. The aforesaid title suits were decreed in part and the defendants were permanently restrained from interfering with the possession of the plaintiff in the aforesaid plots and, thereafter, the aforesaid judgment and decree was confirmed by the Appellate Court in Title Appeal Nos.13 and 14 of 1962.

10. At the time of nationalization of Coal Mines, over Plot Nos.437, 419 and 230 of Jamdihi Mouza, two collieries were operating i.e. Dahibari Colliery owned by Dahibari Colliery Company and Jamdihi Basantimate Colliery owned by Jamdihi Coal Company, which were nationalized by virtue of Coal Mines Nationalization Act, 1973 and compensation amount of Rs.7,50,100/- and Rs.4,43,800/- was also paid to the respective proprietors and the aforesaid collieries, including the land, building, tramline, vehicles, etc. were vested with the Central Government free from all encumbrances. This fact is apparent from the schedule of Coal mines Nationalization Act, 1973, at sl. Nos.227 and 237.

11. It is the case of the petitioner that since the nationalization of aforesaid collieries, the petitioner-BCCL is continuing with the mining activities in the aforesaid collieries till date. Further, since the nationalization of the aforesaid collieries no objection was raised from any corner against the petitioner regarding mining activities and only in the year 2010, the forest officials visited the Dahibari Colliery and Jamdihi Basantimate Colliery and Respondent no.3 had issued a letter, bearing Letter no.3926 dated 25.8.2010, whereby and whereunder, the petitioner had been restrained from carrying out mining and other activities over Plot nos.437, 419 and 230 of Jamdihi Mouza, P.S. Chirkunda (Nirsa), District Dhanbad.

12. Aggrieved thereof, the petitioner has approached this court by filing writ petition being W.P. (C) No. 5149 of 2010.

13. During pendency of the writ petition W.P. (C) No. 5149 of 2010, this Court passed an interim order dated 19.01.2011 whereby the operation of the impugned order dated 25.08.2010 has been stayed. Thereafter, the petitioner has resumed mining operation.

14. However, thereafter while undertaking the mining operation a truck bearing Registration No. JH-10AM-0131 unloading dumped mineral over plot no. 230 was intervened by the Forest Authorities stating that no permission for dumping on the said plot has been obtained from the concerned department. On the basis of such allegation a forest offence report was lodged by Forest Range Officer, Nirsa Range bearing No. 112710 dated 09.05.2016.

15. On the basis of aforesaid offence report, the Divisional Forest Officer issued a letter dated 17.08.2016 directing the officer of the petitioner-company to

forthwith stop mining operation over an area of 141.5 acres of land.

16. After issuance of letter dated 17.8.2016, the Divisional Forest Officer, Dhanbad vide its letter, contained in Memo No.1983 dated 3.9.2016, addressed to the General Manager, Chanch Victoria Area No.XII, Bharat Coking Coal Limited, whereby and whereunder, it is clarified that since an interim order is in operation, concerning Plot Nos.437, 230 and 419, Bharat Coking Coal Limited is carrying on illegal mining on the rest of the area measuring 141.5 acres, claimed to be forest land, and, therefore, the mining operation on the said area should be immediately stopped.

17. The aforesaid letter was followed by another letter, bearing no.1984 dated 03.09.2016, whereby and whereunder, the noticee-Chairman-cum-Managing Director, Bharat Coking Coal Limited has been directed to show cause as to why not an appropriate action and contempt be not initiated against the petitioner for flouting the order of the Hon'ble Supreme Court of India passed in Application No.302 of 1995 dated 12.12.1996, as the noticee is carrying on illegal mining operation except on Plot Nos.437, 230 and 419.

18. Thereafter, another show cause notice, contained in Letter No.1985 dated 03.09.2016, was issued by the Divisional Forest Officer, Dhanbad to the Chairman-cum-Managing Director of Bharat Coking Coal Limited, directing him to show cause as to why not a proceeding under the Forest Conservation Act, 1980 be initiated for illegal mining purportedly being carried out by the petitioner-Company over an area of 141.5 acres of Jamdehi Reserved Forest except on Plot Nos. 437, 230 and 419.

19. Again, show cause notice, as contained in Letter no.1986 dated 3.9.2016, was issued to the Director (P & P), Bharat Coking Coal Limited, directing him to show cause as to why not an appropriate proceeding be initiated in terms of Forest Conservation Act, 1980 for illegal mining over an area of 141.5 acres of Jamdehi Reserved Forest except on Plot Nos.437, 230 and 419.

20. Aggrieved with the impugned letter dated 17.08.2016 whereby the petitioner was directed to stop mining operation over an area of 141.5 acres of land; and letter dated 03.09.2016, whereby and whereunder, the Divisional Forest Officer, Dhanbad has directed the General Manager of the petitioner- Company not to carry on mining operation except over Plot Nos. 437, 230 and 419 in connection with an interim order of the Hon'ble High Court of Jharkhand, Ranchi is in operation and also letter dated 03.09.2016, whereby show cause has been issued upon the petitioner, the petitioner has approached this Court by filing W.P. (C) No. 5423 of 2016.

Submission on behalf of petitioner-BCCL:

21. Learned counsel for the petitioner –BCCL has assailed the impugned orders passed by the respondents-authorities, by taking following grounds:

I. Initially, the Bengal Coal Company Limited took mokrari settlement and

coal mining right in respect of lands under Jamdihi Mouza area of about 1053 Bighas from the proprietor of Sambandhpur Estate (Pandra) and came in actual possession thereof by virtue of Registered Patta No.1268 B.S. dated 27th Agrahan.

II. Thereafter, in the year 1960 by virtue of registered sale deed dated 10.08.1960 executed by said Bengal Coal Company, entire lands situated at Jamdihi Mouza was sold and transferred to Sri Mahavir Prasad Agarwal and Sri Om Prasad Agarwal, who also carried out mining over the aforesaid lands.

III. It is stated that one Sri Prabhash Chandra Ojha and Chuniram Rewani took settlement in the year 1944 with respect to Plot nos.48 and 419 of Jamdihi Mouza and also other lands, for a period of 99 years, which was subsequently extended to 999 years by registered deed of settlement executed in the year 1948 and have started extracting coal from the aforesaid lands in the name and style of ?Jamdihi Basantimate Colliery.

IV. Later on, Prakash Chandra Ojha and the legal heirs of Chuniram Rewani had sold the Jamdihi Basantimate Colliery along with right, title and interest over Plot Nos.48 and 419 and also other plots to one Md. Yusuf, who worked till the nationalization of Coal Mines in the year 1973.

V. Learned counsel for the petitioner further states that Plot nos.48 and 419 are within the lease hold area/settlement area of Bengal Coal Company Limited and they have filed title suits, bearing Title Suit Nos.39 of 1956 and 13 of 1957, for declaration of right of the Company with regard to the underground coal and coal mining right over Plot nos.48 and 419, under Khata no.59, situated at village Jamdihi and also for recovery of possession of the same. The aforesaid title suits were decreed in part and the defendants were permanently restrained from interfering with the possession of the plaintiff in the aforesaid plots and, thereafter, the aforesaid judgment and decree was also confirmed by the Appellate Court in Title Appeal Nos.13 and 14 of 1962.

VI. Learned counsel for the petitioner submits that at the time of nationalization of Coal Mines, over Plot Nos.437, 419 and 230 of Jamdihi Mouza, two collieries i.e. Dahibari Colliery owned by Dahibari Colliery Company and Jamdihi Basantimate Colliery owned by Jamdihi Coal Company, were operating which were nationalized by virtue of Coal Mines Nationalization Act, 1973 and for that even the compensation amount to the tune of Rs.7,50,100/- and Rs.4,43,800/- was also paid to the respective proprietors.

VII. Submission has been made that from the aforesaid factual aspect, it is evident that the entire Jamdihi Mouja has been vested with the petitioner upon coming into force of the Coking Coal Mines Nationalization Act, therefore, the land in question cannot be said to be forest land in any manner. Moreover, the land claimed by the respondents as forest land is scattered in patches and does not have a single tree standing, which could otherwise give it the nature of forest

land.

VIII. It has been submitted that upon insistence of the authorities the petitioner as well as the forest authorities conducted a joint inspection and report was prepared upon such inspection, which clearly reveals that the entire Mouja Jamdihi covering 141.5 acres of land is non-forest land and the mining operation over the said Mauja is being carried out since long.

IX. Submission has been made that the petitioner-BCCL after nationalization of Coal Mines is carrying out the mining operation without any objection from any corner but all of a sudden in the year 2010, the impugned letter dated 25.08.2010 has been issued restraining the petitioner-BCCL from carrying out the mining and other activities over plot nos. 437, 419 and 230 of Jamdihi Mouza, Dhanbad.

X. The said decision as contained in letter dated 25.08.2010 is based upon the State Government notification dated 23.09.1964 issued under power conferred under Section 29(3) of the Indian Forest Act, 1927.

XI. Being aggrieved, the petitioner approached this Court by filing WPC No. 5149 of 2010, in which interim order of stay was passed whereupon the petitioner resumed the mining operation but the authorities of the Forest Department again made objection stating that the plot on which the mining mineral is being dumped is a forest land and no permission for dumping on the said plot has been obtained from the concerned department and directed the petitioner to forthwith stop mining operation over plot an area of 141.5 acres of land vide letter dated 17.08.2016 followed by letter dated 03.09.2016 as also show cause notice was issued upon the petitioner as to why a proceeding under the Forest Conservation Act, 1980 be not initiated against it.

XII. Aggrieved thereof, the petitioner again approached this Court by filing writ petition being WPC No. 5423 of 2016.

XIII. The ground has been taken in assailing such decision of the State authority of the forest department that the restraintment order is per se illegal on the basis of the fact that Section 29(3) does not confer any power upon the State to pass restraintment order rather Section 29(3) confers power upon the State to carry out enquiry to be conducted that by the forest authority and till the submission of the enquiry report the existing right of the party will subsist.

XIV. It has been contended that the notification under the proviso to Section 29(3) of the Forest Act, 1927 is of 23.09.1964, which itself suggests that the enquiry is to be conducted by the forest authority and till the enquiry report is submitted, the right of the parties is to be maintained. But contrary to the said provision and without bringing any fact-finding report, in terms of Section 29(3) of the Indian Forest Act, 1927, the order of restraintment, has been passed which is absolutely illegal and improper.

XV. Further submission has been made that the land was settled in the year 1937

in favour of Bengal Coal Company and thereafter leased out initially for 99 years which was extended up-to 999 years by registered deed of settlement executed in the year 1948 and thereafter coal have been extracted from the aforesaid lands in the name and style of Jamdihi Basantimate Colliery.

XVI. It has further been submitted that at the time of nationalization of Coal Mines, over Plot Nos.437, 419 and 230 of Jamdihi Mouza, two collieries i.e. Dahibari Colliery and Jamdihi Basantimate Colliery were operating which were nationalized by virtue of Coal Mines Nationalization Act, 1973 and for that due compensation amount was also paid to the respective proprietors. Hence, the land which was in favour of the raiyats/proprietors and leased out in favour of block-hold companies so far mining operations are concerned, no such order of restraint ought to have been passed by the State restraining the petitioner from mining operation over the plot in question.

XVII. The ground has been taken that after coming into effect of Coal Mines Nationalization Act, 1973, the land which was being used for the purpose of carrying out the mining operation, will be protected under the policy as stipulated under Coal Mines Nationalization Act, 1973 and by virtue of that since mining operation was carried out, hence, in that view of the matter there cannot be any restraint order in view of Section 29(3) of the Forest Act, 1927.

22. Learned counsel for the petitioner, based upon the aforesaid ground has submitted that the impugned orders suffer from error and are not sustainable in the eyes of law.

Submission on behalf of respondents-State: -

23. Learned counsel for the respondents-State has defended the impugned orders by placing reliance upon the averments made in the counter affidavit:

I. It has been stated that a total area of 154.70 acres in Mouza Jamdihi has been notified as 'Protected Forest' under Section 29 of the Indian Forest Act, 1927 vide notification dated 23.09.1964. As per provision laid down under Section 29(3) of the Indian Forest Act, 1927 rights of Government and of private persons in or over the forest land were enquired into by the Forest Settlement Officer, appointed for the purpose, who after due process demarcated the forest boundary on the map in green line and recorded a certificate to that effect on the map itself.

II. It has been submitted that prior to the notification under the Indian Forest Act, the said land was notified as Private Protected Forest under Section 13 of the Bihar Private Forests Act, 1947 vide notification dated 28.04.1947.

III. It has been submitted by referring to Bihar Private Forest Act, 1947 whereby and whereunder all the private forests have been put under the control of the erstwhile State of Bihar and it is on the basis of that notification has been issued in view of provision of Section 29(3) of the Indian Forest Act, 1927 on 23.09.1964.

IV. The contention has been raised that since by virtue of notification dated 28.04.1947, the private forest land is also to be taken care of and hence all the forests which were within the exclusive title of the private raiyats or the private parties, the same is also to be protected under the object and intent of the said notification dated 28.04.1947 and it is in these circumstances and by taking aid of Section 29(3) of the Indian Forest Act, 1927, the notification has been issued on 23.09.1964 declaring the area to be protected forest and in that view of the matter, the impugned order of restraintment has been passed since no permission was sought for by the petitioner from the State authority particularly from the Forest Department of the State to carry out the mining operation in that area.

V. Learned counsel for the State has relied upon the provisions of Bihar Land Reforms Act, 1950 wherein also it has been provided that the lands, which are of the land lords, are vested in the State and in that view of the matter, the land since is of the King Bandvasani, hence, as per the object and intent of Bihar Land Reforms Act, 1950, the land in question is also said to be vested with the State and in that view of the matter it is the mandatory requirement by the petitioner to seek permission to carry out the mining operation. But no such permission was sought for as such order of restraintment was passed, which suffers from no error.

24. The learned State counsel, based upon the aforesaid ground, has submitted that impugned orders since have been issued on consideration of the ground as referred hereinabove, as such the same are not fit to be interfered with.

Analysis:

25. We have heard learned counsel for the parties, gone across the pleading made in the writ petitions as also in the counter affidavits and the relevant provisions of law.

26. In the backdrop of the aforesaid facts this Court is of the view that following issues are required to be answered for proper adjudication of the present lis:

(I) Whether Bihar Land Reform Act, 1950 will be applicable in the factual aspects of the instant case?

(II) Whether by virtue of notification dated 28.04.1947 since the State of Bihar has taken decision to bring the private forests also under the fold of protected area, hence the provision of Section 29 of the Indian Forest Act, 1927 will be applicable herein?

(III) Whether the private forest is to be brought under the fold of proviso to sub-section (3) to Section 29 of the Indian Forest Act, 1927?

(IV) Whether the mining operation as being carried out by virtue of Coal Nationalization Act, 1973 in particular area, then the State without determining and without getting the report in view of provision of section 29(3) of the Act, 1927, can pass such restraintment orders.

27. Since all the issues are interlinked, the same are being taken up together.

28. This Court, before delving upon the issues, considers it fit and proper to reiterated the factual aspects and relevant provisions of law, which are necessary for deciding the issues involved herein.

29. It is pleaded herein that initially the Bengal Coal Company Limited had taken mokrari settlement and coal mining right in respect of lands in question. In the year 1960 by virtue of registered sale deed dated 10.08.1960 executed by said Bengal Coal Company, entire lands situated at Jamdihi Mouza was sold and transferred to Sri Mahavir Prasad Agarwal and Om Prasad Agarwal, who also carried out mining over the aforesaid lands.

30. Thereafter, one Sri Prabhash Chandra Ojha and Chuniram Rewani took settlement in the year 1944 for a period of 99 years, which was subsequently extended to 999 years by registered deed of settlement executed in the year 1948 and have started extracting coal from the aforesaid lands in the name and style of Jamdihi Basantimate Colliery.

31. Later on, one Prakash Chandra Ojha and the legal heirs of Chuniram Rewani had sold the Jamdihi Basantimate Colliery along with right, title and interest of land in question to one Md. Yusuf, who worked till the nationalization of Coal Mines in the year 1973.

32. Further the title suits, bearing Title Suit Nos.39 of 1956 and 13 of 1957, were filed against Abdul Latif for declaration of right of the Company with regard to the underground coal and coal mining right over Plot nos.48 and 419, under Khata no.59, situated at village Jamdihi. The aforesaid title suits were decreed in part and the defendants were permanently restrained from interfering with the possession of the plaintiff in the aforesaid plots. The judgment and decree passed in the title suits were confirmed by the Appellate Court in Title Appeal Nos.13 and 14 of 1962.

33. At the time of nationalization of Coal Mines, over Plot Nos.437, 419 and 230 of Jamdihi Mouza, two collieries were operating i.e. Dahibari Colliery owned by Dahibari Colliery Company and Jamdihi Basantimate Colliery owned by Jamdihi Coal Company, which were nationalized by virtue of Coal Mines Nationalization Act, 1973 and compensation to the tune of Rs.7,50,100/- and Rs.4,43,800/- was also paid to the respective proprietors, which is apparent from the schedule of Coal mines Nationalization Act, 1973, at Sl. Nos.227 and 237.

34. The land in question is shown to be in possession of raiyats since the year 1937, although reference of King Bandvasani has been made in order to take aid of the object and intent of Bihar Land Reforms Act, 1950 since in the Bihar Land Reforms Act, 1950 provision has been made by conferring power upon the Collector to conduct an enquiry if any land has been settled by the ex landlord in order to frustrate the provisions of Bihar Land Reforms Act, 1950 by settling it on or after 01.01.1946 for the purpose of annulment of the transfer subject to

approval by the State Government.

35. Therefore, the very object and intent of the Bihar Land Reforms Act, 1950 needs to refer herein along with the provisions of Section 4(h) and (hh), which reads as under:

"4(h) The Collector shall have power to make inquiries in respect of any transfer including the settlement or lease of any land comprised in such estate or tenure or the transfer of any kind of interest in any building used primarily as office or cutchery for the collection of rent of such estate or tenure or part thereof, [* * *] [Substituted by Act 20 of 1954.] and if he is satisfied that such transfer was made [at any time after the first day of January, 1946, with the object of defeating any provisions of this Act or causing loss to the State or obtaining higher compensation thereunder the Collector may, after giving reasonable notice to the parties concerned to appear and be heard [* * *] [Inserted by Act 16 of 1959.] annul such transfer, dispossess the person claiming under it and take possession of such property on such terms as may appear to the Collector to be fair and equitable:]

[Provided that an appeal against an order of the Collector under this clause if preferred within sixty days of such order, shall lie to the prescribed authority not below the rank of the Collector of a district who shall dispose of the same according to the prescribed procedure:] [Inserted by Act 16 of 1959.]

Provided further that no order annulling a transfer shall take effect nor shall possession be taken in pursuance of it unless such an order has been confirmed by the State Government.]

4(hh) The Collector shall have power to make inquiries in respect of any transfer including the settlement or lease of any land comprised in such estate or tenure or the transfer of any kind of interest in any building used primarily as office or cutchery for the collection of rent of such estate or tenure or part thereof, [* * *] and if he is satisfied that such transfer was made [at any time after the first day of January, 1946, with the object of defeating any provisions of this Act or causing loss to the State or obtaining higher compensation thereunder the Collector may, after giving reasonable notice to the parties concerned to appear and be heard [* * *] annul such transfer, dispossess the person claiming under it and take possession of such property on such terms as may appear to the Collector to be fair and equitable:]

[Provided that an appeal against an order of the Collector under this clause if preferred within sixty days of such order, shall lie to the prescribed authority not below the rank of the Collector of a district who shall dispose of the same according to the prescribed procedure:]

36. It is not in dispute that Bihar Land Reforms Act, 1950 has been enacted to dispense with the intermediary system so that the rent be directly deposited in the State exchequer by the raiyats and not to the land lord, the intermediaries.

37. However, the vesting of the land is to be followed after making payment of compensation in favour of raiyats on the basis of rent receipts issued by the landlords.

38. The legislation contained a provision as under Section 4-h, to achieve the object and intent of the Bihar Land Reforms Act, 1950 so that there may not be any settlement of land after coming into effect of Bihar Land Reforms Act, 1950 and if the settlement has been made post 01.01.1946, then the inquiry in terms of provisions of Section 4(h) is to be done for the purpose of providing reasonable opportunity of hearing.

39. The reference of Bihar Land Reforms Act, 1950 is made herein since one of the arguments of the respondent-State is that in view of the provisions of Bihar Land Reforms Act, 1950, the land which is being used for the purpose of mining operation will be said to be vested in the State therefore, permission from the State is mandatory.

40. The provision of notification of 1947 is required to be discussed herein, since the same has been taken as a ground to inter-link the conduct of the petitioner by way of conferment of power upon it to take action in pursuance to provisions of Bihar Land Reforms Act, 1950 as also the relevant provisions of the Indian Forest Act, 1927 in particular Section 29(3) thereof.

41. The notification of the year 1947, was issued on 28.04.1947 under Sections 14 and 15 (3) of Bihar Private Forest Act for the purpose of taking care of the private forest area of the erstwhile State of Bihar in the pre-independence period. Under section 14 of the said Act, it is stipulated that whenever it is proposed by the [State]Government to constitute any private forest, a private protected forest, the [State]Government shall issue a notification declaring that it is proposed to constitute such forest a private protected forest.

42. Further under Section 15 of the said Act it is stipulated that the Collector shall in the prescribed manner hear any objection presented under clause (c) of Section 14 and shall pass an order dismissing such objection, or directing that the proposal to constitute the said forest a private protected forest shall be dropped either in respect of the whole of the said forest or in respect of a part of it to be specified in the order.

43. The provisions of the Bihar Private Forests Act, 1947, in respect of private protected forests, are contained in Chapter II of the Act. The scheme of these provisions is that the State Government on being satisfied that it is necessary in the public interest to apply the provisions of the chapter to any private forest, may constitute such forest a protected forest in the manner laid down; the first step that has to be taken is the issue of a notification under Section 14 declaring that it is proposed to constitute a forest a private protected forest and calling for objections of all landlords whose interests are likely to be affected. The hearing of objections is provided for in Section 15, sub section 3 of which section further provides that if no objection is presented or when objection is so presented and

finally disposed of the Government may issue a notification declaring its decision to constitute the area a private forest and appointing an officer "to enquire into and determine the existence, nature and extent of any rights other than landlord's rights, alleged to exist in favour of any person in or over any land in the forest".

44. Section 16 provides that on the issue of such a notification under sub-section 3 of Section 15 the Forest Settlement Officer shall publish a proclamation fixing a period of not less than three months from the date of such proclamation for claims to be made by all persons as regards rights other than landlord's rights.

45. Section 17 empowers the Forest Settlement Officer to enquire into all claims preferred in response to the notification and also into the existence of any rights mentioned in sub-section 3 of Section 15 and not claimed under Section 16.

46. Section 22 of this Chapter deals with the procedures for dealing with claims of forest contractors and grantees. Section 23 provides that in the case of claim to a right in or over any land other than a right of way or right of pasture or a right to forest produce or water course the Forest Settlement Officer shall pass an order admitting or rejecting the same in whole or in part subject to the provisions of Sections 25 and 26.

47. Section 27 gives a right of appeal to any person who has made a claim under Section 16 or Section 22 against the order passed by the Forest Settlement Officer under Sections 22, 23, 24 or 26. Section 30 provides for the final action to be taken by the Government in the matter of constituting a private protected forest.

48. It requires to refer herein that the Hon'ble Apex Court in the case of State of Bihar and Ors. Vs. Lt. Col. K.S.R. Swami 1961 SCC OnLine SC 351 has held that the notification under Section 14 is not intended to amount to a final constitution of the private forest as a private protected forest. The notification under the proviso is to be made only 'pending the completion of the said enquiries, procedure and appeals'. Quite clearly, these enquiries, procedure and appeals are not stopped by the declaration under the proviso. For ready reference the relevant paragraph of the aforesaid Judgment is being quoted as under:

"9. It is abundantly clear that the notification under the proviso is not intended to amount to a final constitution of the private forest as a private protected forest. The notification under the proviso is to be made only "pending the completion of the said enquiries, procedure and appeals". Quite clearly, these enquiries, procedure and appeals are not stopped by the declaration under the proviso. They have to be completed and it is only after their completion that a notification can be made by the Government under the main part of the section. On a reasonable reading of the section it is therefore abundantly clear that even where the Government thinks fit to make a declaration under the proviso, this will have effect only so long as the period fixed under Section 16 for preferring claims (i) has not expired; (ii) claims under Sections 16 and 22 have not been disposed of;

(iii) the periods limited by Section 27 for appealing from the orders passed in respect of those claims have not elapsed and (iv) all appeals preferred against such orders have been disposed of.”

10. Turning now to Section 19 of this Chapter we find it laying down that “rights (other than landlord's rights) in respect of which no claim has been preferred under Section 16 and of the existence of which no knowledge has been acquired by enquiry under Section 17, shall be extinguished, unless, before the notification under Section 30 is published, the person claiming them satisfies the Forest Settlement Officer that he had sufficient cause for not preferring such claim within the period fixed under Section 16”

49. It needs to refer herein that The Forest Act, 1927 is a pre-constitutional legislation enacted by the Indian Legislature as per Section 63 of the Government of India Act, 1915. The 1927 Act was the law enforced in the territory of India immediately before the commencement of the Constitution and by virtue of Article 372 of the Constitution of India, the 1927 Act continues in force until altered or repealed by a competent legislation. The 1927 Act was enacted to consolidate the law relating to forests, the transit of forest produces and the duty leviable on timber and other forest produce.

50. Relevant provision of the said statute is provided under Section 29, which is having three sub provisions. Relevant herein is sub-section 3 thereof, which is being referred herein:

29. Protected forests.—(1) The 1 [State Government] may, by notification in the [Official Gazette], declare the provisions of this Chapter applicable to any forest-land or waste-land which is not included in a reserved forest, but which is the property of Government, or over which the Government has proprietary rights, or to the whole or any part of the forests produce of which the Government is entitled.

(2) The forest-land and waste-lands comprised in any such notification shall be called a “protected forests”.

(3) No such notification shall be made unless the nature and extent of the rights of Government and of private persons in or over the forest-land or waste-land comprised therein have been inquired into and recorded at a survey or settlement, or in such other manner as the [State Government] thinks sufficient. Every such record shall be presumed to be correct until the contrary is proved:

Provided that, if, in the case of any forest-land or waste-land, the 1 [State Government] thinks that such inquiry and record are necessary, but that they will occupy such length of time as in the mean time to endanger the rights of Government, the [State Government] may, pending such inquiry and record, declare such land to be a protected forest, but so as not to abridge or affect any existing rights of individuals or communities.

51. It is evident from the provision of Section 29 thereof that the State

Government may, by notification in the Official Gazette, declare the provisions applicable to any forest-land or waste-land which is not included in a reserved forest, but which is the property of Government, or over which the Government has proprietary rights, or to the whole or any part of the forests produce of which the Government is entitled. Further, it has been provided that the forest-land and waste-lands comprised in any such notification shall be called a "protected forest".

52. Thus, it is evident that Sub-section (1) of Section 29 permits the State Government to issue notification declaring the application of the provisions of Chapter IV to any forest land which is not included in a reserved forest but which is the property of government, or over which the government has proprietary rights, or to the whole or any part of the forest produce of which the government is 'entitled'. The forest land comprised in any such notification is called a 'protected forest'.

53. Further, it is settled position of law that before Section 29(1) by the State Government, it must be shown that the requirements of that provision are satisfied.

54. Sub-Section 3 of Section 29 thereof says that no such notification shall be made unless the nature and extent of the rights of Government and of private persons in or over the forest-land or waste-land comprised therein have been inquired into and recorded at a survey or settlement, or in such other manner as the State Government thinks sufficient. Every such record shall be presumed to be correct until the contrary is proved, provided that, if, in the case of any forest-land or waste-land, the State Government thinks that such inquiry and record are necessary, but that they will occupy such length of time as in the mean time to endanger the rights of Government, the State Government may, pending such inquiry and record, declare such land to be a protected forest, but so as not to abridge or affect any existing rights of individuals or communities.

55. The said inquiry is contemplated to determine the nature and extent of the rights of the government and of private persons in or over the forest land. Based on the findings of the inquiry the record is to be prepared. Further, under sub-section (3) such a record shall be presumed to be correct until the contrary is proved. The presumption, therefore, attaches to the record prepared in pursuance of the inquiry.

56. The Section 29(3) particularly its proviso whereby power has been conferred upon the State that, if, in the case of any forest-land or waste-land, the State Government thinks that such inquiry and record are necessary, but that will occupy such length of time as in the mean time to endanger the rights of Government, the State Government may, pending such inquiry and record, declare such land to be a protected forest, but so as not to abridge or affect any existing rights of individuals or communities.

57. Now, advertent to the factual aspect of the present case, herein it is admitted fact that the land was in possession of the private parties/raiyats. The said fact is

also evident from the decree passed in title suits, being Title Suit Nos.39 of 1956 and 13 of 1957, filed against Abdul Latif, which were decreed in part and thereby the defendants were permanently restrained from interfering with the possession of the plaintiff in the aforesaid plots and, thereafter, the aforesaid judgment and decree was also confirmed by the Appellate Court in Title Appeal Nos.13 and 14 of 1962.

58. The relevance of the year is having bearing herein in order to consider the argument advanced on behalf of the State with respect to the applicability of the provisions of Bihar Land Reforms Act, 1950.

59. The applicability of Bihar Land Reforms Act, 1950 is to be considered on the basis of power, which is to be exercised for the purpose of vesting of the land, which is in terms of the provisions of Section 4(h) of the Bihar Land Reforms Act, 1950.

60. It is evident from the provisions of Section 4(h) that the Collector shall have power to make inquiries in respect of any transfer including the settlement or lease of any land comprised in such estate or tenure or the transfer of any kind of interest in any building used primarily as office or cutchery for the collection of rent of such estate or tenure or part thereof, and if he is satisfied that such transfer was made at any time after the first day of January, 1946, with the object of defeating any provisions of this Act or causing loss to the State or obtaining higher compensation thereunder the Collector may, after giving reasonable notice to the parties concerned to appear and be heard annul such transfer, dispossess the person claiming under it and take possession of such property on such terms as may appear to the Collector to be fair and equitable.

61. Here, it appears that the land in question has been settled since 1937, which were in exclusive possession of the private parties, which were settled in favour of Bengal Coal Company by virtue of registered sale deeds.

62. This Court in view of the fact that the land in question is in possession of the private raiyats since the year 1937 and documents to that effect has also been relied upon by the petitioner and the title over the land in question has also been affirmed in the title suits, which were affirmed in the title appeals filed by the aggrieved.

63. Hence, this Court is not hesitant in coming to the conclusion that it is pre cut-off date i.e., 01.01.1946, therefore, the provision of Section 4(h) will not be applicable in the facts and circumstances of the present case.

64. The second argument which has been advanced on behalf of State that the private forests have also been decided to be declared under the protected forest in view of notification of the State of Bihar issued on 28.04.1947 and the bearing of Section 29(3) of the Indian Forest Act, 1927 will be there and that is the reason the restraintment order has been issued since the area has been declared to be protected forest.

65. We have already referred that of notification of the year 1947, which is for the purpose of taking care of the private forest by the erstwhile State of Bihar in the pre-independence period.

66. The purpose of coming out with the said notification appears to be that under the Indian Forest Act, 1927 which is also a pre-independence statutory provision, the forest land is only the subject matter.

67. Learned counsel for the State, therefore, has tried to impress upon the Court by virtue of notification dated 28.04.1947 since the State of Bihar has taken decision to bring the private forests also under the fold of protected area, hence the provision of Section 29 of the Indian Forest Act, 1927 will apply.

68. This Court is of the view that admittedly the erstwhile State of Bihar, in the pre-independence period, has come out with notification to take care of the private forest land.

69. But it is admitted position that under the provision of 29(3) of the Indian Forest Act, 1927, no amendment has been carried out in that respect.

70. The question, therefore, would be that merely because the State of Bihar has come out with a notification in the year 1947, will such notification amount to an addition to the statutory provision as contained under Section 29(3) of the Indian Forest Act, 1927.

71. Herein, it is not in dispute that Indian Forest Act, 1927 is the Central Legislation, although of pre-independence period, but constitutional validity has been accepted under the saving clause as provided under the Constitution of India.

72. The aforesaid fact cannot be disputed since even as per the case of the State, the restraintment order is based upon the notification issued under Section 29(3) of the Indian Forest Act, 1927.

73. Further, the law is well settled that there cannot be any insertion by the State in the Central Legislation particularly the legislation if has been deemed to be assented earlier by the Central Government.

74. Herein, the reference the mandate of Article 254 of Constitution of India needs to be referred, which reads as under:

254. Inconsistency between laws made by Parliament and laws made by the Legislatures of States.—

(1) If any provision of a law made by the Legislature of a State is repugnant to any provision of a law made by Parliament which Parliament is competent to enact, or to any provision of an existing law with respect to one of the matters enumerated in the Concurrent List, then, subject to the provisions of clause (2), the law made by Parliament, whether passed before or after the law made by the Legislature of such State, or, as the case may be, the existing law, shall prevail

and the law made by the Legislature of the State shall, to the extent of the repugnancy, be void.

(2) Where a law made by the Legislature of a State 1 ***

with respect to one of the matters enumerated in the Concurrent List contains any provision repugnant to the provisions of an earlier law made by Parliament or an existing law with respect to that matter, then, the law so made by the Legislature of such State shall, if it has been reserved for the consideration of the President and has received his assent, prevail in that State:

Provided that nothing in this clause shall prevent Parliament from enacting at any time any law with respect to the same matter including a law adding to, amending, varying or repealing the law so made by the Legislature of the State.

75. It is evident from the provision of Article 254 that binding effect is to be considered in the light of Article 254 of the Constitution of India. If the legislation has been assented by the President, then the same cannot be given go by or allowed to be prevailed upon by any legislation formulated by the State even assented by the Governor, which is evident from Article 254 (1) of the Constitution of India.

76. As per mandate of Article 254(1) if any provision of law made by the Legislature of a State is repugnant to any provision of a law made by Parliament which Parliament is competent to enact, or to any provision of an existing law with respect to one of the matters enumerated in the Concurrent List, then, subject to the provisions of clause (2), the law made by Parliament, whether passed before or after the law made by the Legislature of such State, or, as the case may be, the existing law, shall prevail and the law made by the Legislature of the State shall, to the extent of the repugnancy, be void.

77. While on the other hand, as per stipulation prescribed in Article 254(2) a law made by the Legislature of a State with respect to one of the matters enumerated in the Concurrent List contains any provision repugnant to the provisions of an earlier law made by Parliament or an existing law with respect to that matter, then, the law so made by the Legislature of such State shall, if it has been reserved for the consideration of the President and has received his assent, prevail in the State, reference in this regard may be made to the judgment rendered by the Hon'ble Apex Court in the case of M. Karunanidhi v. Union of India, (1979) 3 SCC 431, wherein, at paragraph-8, 24 & 25, it has been held as under:—

"8. It would be seen that so far as clause (1) of Article 254 is concerned it clearly lays down that where there is a direct collision between a provision of a law made by the State and that made by Parliament with respect to one of the matters enumerated in the Concurrent List, then, subject to the provisions of clause (2), the State law would be void to the extent of the repugnancy. This naturally means that where both the State and Parliament occupy the field

contemplated by the Concurrent List then the Act passed by Parliament being prior in point of time will prevail and consequently the State Act will have to yield to the Central Act. In fact, the scheme of the Constitution is a scientific and equitable distribution of legislative powers between Parliament and the State Legislatures. First, regarding the matters contained in List I, i.e. the Union List to the Seventh Schedule, Parliament alone is empowered to legislate and the State Legislatures have no authority to make any law in respect of the Entries contained in List I. Secondly, so far as the Concurrent List is concerned, both Parliament and the State Legislatures are entitled to legislate in regard to any of the Entries appearing therein, but that is subject to the condition laid down by Article 254(1) discussed above. Thirdly, so far as the matters in List II, i.e. the State List are concerned, the State Legislatures alone are competent to legislate on them and only under certain conditions Parliament can do so. It is, therefore, obvious that in such matters repugnancy may result from the following circumstances:

1. Where the provisions of a Central Act and a State Act in the Concurrent List are fully inconsistent and are absolutely irreconcilable, the Central Act will prevail and the State Act will become void in view of the repugnancy.
2. Where however a law passed by the State comes into collision with a law passed by Parliament on an Entry in the Concurrent List, the State Act shall prevail to the extent of the repugnancy and the provisions of the Central Act would become void provided the State Act has been passed in accordance with clause (2) of Article 254.
3. Where a law passed by the State Legislature while being substantially within the scope of the entries in the State List entrenches upon any of the Entries in the Central List the constitutionality of the law may be upheld by invoking the doctrine of pith and substance if on an analysis of the provisions of the Act it appears that by and large the law falls within the four corners of the State List and entrenchment, if any, is purely incidental or inconsequential.
4. Where, however, a law made by the State Legislature on a subject covered by the Concurrent List is inconsistent with and repugnant to a previous law made by Parliament, then such a law can be protected by obtaining the assent of the President under Article 254(2) of the Constitution. The result of obtaining the assent of the President would be that so far as the State Act is concerned, it will prevail in the State and overrule the provisions of the Central Act in their applicability to the State only. Such a state of affairs will exist only until Parliament may at any time make a law adding to, or amending, varying or repealing the law made by the State Legislature under the proviso to Article 254.

So far as the present State Act is concerned we are called upon to consider the various shades of the constitutional validity of the same under Article 254(2) of the Constitution.

24. It is well settled that the presumption is always in favour of the

constitutionality of a statute and the onus lies on the person assailing the Act to prove that it is unconstitutional. Prima facie, there does not appear to us to be any inconsistency between the State Act and the Central Acts. Before any repugnancy can arise, the following conditions must be satisfied:

1. That there is a clear and direct inconsistency between the Central Act and the State Act.
2. That such an inconsistency is absolutely irreconcilable.
3. That the inconsistency between the provisions of the two Acts is of such nature as to bring the two Acts into direct collision with each other and a situation is reached where it is impossible to obey the one without disobeying the other.

25. In Colin Howard's Australian Federal Constitutional Law, 2nd Edn. the author while describing the nature of inconsistency between the two enactments observed as follows:

"An obvious inconsistency arises when the two enactments produce different legal results when applied to the same facts."

78. Further, the similar view has been taken by the Hon'ble Apex Court in the case of Govt. of A.P. v. J.B. Educational Society, (2005) 3 SCC 212 wherein, at paragraph-12, it has been held as under:—

"12. Thus, the question of repugnancy between the parliamentary legislation and the State legislation can arise in two ways. First, where the legislations, though enacted with respect to matters in their allotted sphere, overlap and conflict. Second, where the two legislations are with respect to matters in the Concurrent List and there is a conflict. In both the situations, parliamentary legislation will predominate, in the first, by virtue of the non obstante clause in Article 246(1), in the second, by reason of Article 254(1). Clause (2) of Article 254 deals with a situation where the State legislation having been reserved and having obtained President's assent, prevails in that State; this again is subject to the proviso that Parliament can again bring a legislation to override even such State legislation."

79. Further, the Constitution Bench of the Hon'ble Apex Court has reiterated the same view in the Judgment rendered in the case of State of Kerala v. Mar Appraem Kuri Co. Ltd., (2012) 7 SCC 106, wherein, it has been held at paragraph-65 which reads as under:—

"65. Applying the above tests to the facts of the present case, on the enactment of the (Central) Chit Funds Act, 1982 on 19-8-1982, intending to occupy the entire field of chits under Entry 7 of List III, the State Legislature was denuded of its power to enact the Kerala Finance Act 7 of 2002. However, as held in numerous decisions of this Court, a law enacted by the State Legislature on a topic in the Concurrent List which is inconsistent with and repugnant to the law made by Parliament can be protected by obtaining the assent of the President

under Article 254(2) and that the said assent would enable the State law to prevail in the State and override the provisions of the Central Act in its applicability to that State only.”

80. Likewise, the Hon'ble Apex Court in the case of K.A. Annamma v. Secretary, Cochin Coop. Hospital Society Ltd., (2018) 2 SCC 729 at paragraph-60 to 62, it has held as under: —

“60. The law in relation to Article 254 of the Constitution and how it is applied in a particular case is fairly well settled by the series of decisions of this Court. This Article is attracted in cases where the law is enacted by Parliament and the State Legislature on the same subject, which falls in List III - Concurrent List.

61. In such a situation arising in any case, if any inconsistency or/and repugnancy is noticed between the provisions of the Central and the State Act, which has resulted in their direct head on collision with each other, which made it impossible to reconcile both the provisions to remain in operation inasmuch as if one provision is obeyed, the other would be disobeyed, the State Act, if it has received the assent of the President will prevail over the Central Act in the State concerned by virtue of Article 254(2) of the Constitution.

62. A fortiori, in such a situation, if the State Act has received the assent of the Governor, then the Central Act would prevail over the State Act by virtue of Article 254(1) of the Constitution.”

81. The law is well settled regarding Article 254 of the Constitution of India and is very specific that in case law is enacted by the parliament and the State Legislature on the same subject, which falls in List III, concurrent list, in such a situation arising in any inconsistency and/or repugnancy between the provisions of the Central and the State Act, if the State Act has received the assent of the President, will prevail upon the Central Act in the concerned State by virtue of Article 254(2) of the Constitution of India. But if the State Act has received the assent of the Governor, then the Central Act would prevail over the State by virtue of Article 254(1) of the Constitution of India.

82. This Court on the basis of aforesaid constitutional mandate having been considered by the Hon'ble Apex Court in the cases referred herein above and after going through the notification dated 28.04.1947, has found that the said notification is with the assent of the Governor but the Indian Forest Act, 1927 is being the Central legislation, hence, the Indian Forest Act, 1927 will prevail upon the said notification.

83. Therefore, the contention which has been raised on behalf of petitioner that the private forest will also come into in the fold of Indian Forest Act, 1927 so as to maintain the enquiry to be conducted in view of provision of Section 29(3) of the Act, 1927, having no substance.

84. This Court, after having answered the aforesaid issues and coming to the applicability of provision of Section 29(3) of the Indian Forest Act, 1927, has

found that it is evident that from the proviso to sub-section (3) to Section 29 of the Indian Forest Act, 1927 that the power has been conferred to conduct enquiry by the revenue authority.

85. Here, another question would be that whether the private forest is to be brought under the fold of the proviso to sub-section (3) to Section 29.

86. The Indian Forest Act, 1927 is very specific which is for the purpose of maintaining the forest by giving a declaration to that effect and protected forest is also to be declared but for that an inquiry is to be there followed by notification in view of provision of Section 29(3) of the Act, 1927.

87. Here, the fact which is not in dispute is that in view of the declaratory suit filed in between the parties i.e., title suits, bearing Title Suit Nos.39 of 1956 and 13 of 1957, which has been decreed and, thereafter, the aforesaid judgment and decree was also confirmed by the Appellate Court in Title Appeal Nos.13 and 14 of 1962. Therefore, the land in question will be said to be settled in the year 1937 in favour of the private parties and declaration to the effect of inter se right has been decided by the competent court of civil jurisdiction. As such, the State cannot say that the said land is of the State or of the ex-landlord or ex-king [raja] in the pre-independent period.

88. Otherwise also even accepting that the land was of the ex-landlord but the question would be that if the land was in possession of the private parties since the year 1937 based upon that a lease deed was entered in between the Bengal Coal Company for the purpose of carrying out mining operation even then in view of the rider of the specific date i.e., 01.01.1946, the Collector cannot conduct enquiry for annulment of transfer.

89. The aforesaid issue has been decided by this Court with respect to applicability of the section 4(h) of the Bihar Land Reforms Act, 1950 in the case of State of Jharkhand & Ors vs. Izhar Hussain [LPA No. 786 of 2018], wherefrom it would be evident that provision of Section 4(h) has been held not applicable if the settlement has been shown to be pre 01.01.1946.

90. For ready reference, relevant paragraph is quoted as under:

16.

-----Sub-section 4 (h) provides power upon the Collector to make inquiries in respect of any transfer including the settlement or lease of any land comprised in such estate or tenure or the transfer of any kind of interest in any building used primarily as office or cutchery for the collection of rent of such estate or tenure or part thereof, and if he is satisfied that such transfer was made at any time after the 1st day of January, 1946, with the object of defeating any provisions of this Act or causing loss to the State or obtaining higher compensation thereunder the Collector may, after giving reasonable notice to the parties concerned to appear and be heard annul such transfer, dispossess the person claiming under it and take possession of such property on such terms as may appear to the

Collector to be fair and equitable; provided that an appeal against an order of the Collector under this clause if preferred within sixty days of such order, shall lie to the prescribed authority not below the rank of the Collector of a district who shall dispose of the same according to the prescribed procedure and further provided that no order annulling a transfer shall take effect nor shall possession be taken in pursuance of it unless such an order has been confirmed by the State Government.

It is, thus, evident that Section 4(h) confers power upon the Collector to effect any transfer if such transfer is found to be for the purpose of frustrating the intent and purport of the Act in respect of transfer made any time after 1st January, 1946.

The issue pertaining to applicability of provision of Section 4 (h) fell for consideration before Patna High Court in the case of Laxman Sahni Vs. State of Bihar & Ors. reported in 1990 (1) PLJR 170, wherein it has been laid down to the effect that recourse for cancellation of Jamabandi under the Sections can be taken only where any estate or tenure or any part thereof vests in the State. Section 4(h) clothes the Collector with jurisdiction to make enquiries in respect of transfers made any time after 1st January, 1946.

Further, in the case of Sri Rama Prasad Singh & Ors Vs. The State of Bihar & Ors reported in 1990 (1) PLJR 165, it has been held that annulment of settlement made in 1945 on the assumption that it was made within the family to deprive the valuable land is mere presumption. On a plain reading of the provision it is obvious that the Collector while exercising power to make inquiries in respect of any transfer must be satisfied that such transfer was made at any time after 1st January, 1946. No finding recorded that the transfer was made after 1st January, 1946. The Land Reforms Deputy Collector being an adjudicating body could not recommend for such annulment and had to arrive at his own conclusions in terms of Section 4(h) of the Act.

18. Admitted fact herein is that the transfer has been made much prior to 1st January, 1946 i.e. sometimes in 20 the year 1933 by way of Auction Settlement being Auction Certificate Case No. 191 of 1933 and, therefore, in the facts of this case the provision of Section 4 (h) of the Act, 1950 should not have been initiated by the Circle Officer taking into consideration the settlement of the land in the year 1933 which exclude the land in question from the purview of Section 4(h) of the Act, 1950.

19. Further, even accepting the submission to the effect that the notification dated 24.05.1958 issued by the forest department holding the land as forest land and the fact that there was auction settlement in the year 1933, the question remains that under what authority and jurisdiction notification was issued in the year 1958 without resorting to any provision of law or without getting any declaration invalidating of the proceeding being Auction Certificate Case No. 191 of 1933.-----

The question would be that in absence of any power conferred by Statute upon any of the revenue authority can Jamabandi be cancelled. The answer of this question would be in negative as statute confers power upon the authority and the authority can purportedly exercise the power conferred upon it under the statutory power and if any decision is taken in absence of any provision the same would be said to be nullity in the eye of law when found to be without jurisdiction.

It is further settled that long running Jamabandi cannot be cancelled, save and except by filing a suit before the competent Court of Civil Jurisdiction-----.

20. This Court, after having gone into the details as above as also travelling across the impugned order wherefrom it is evident that the learned Single Judge has relied upon the judgment in The State of Jharkhand & Ors vs. Chanchala Devi passed in L.P.A. No. 142 of 2010 with L.P.A. No. 307 of 2009, wherein it has been held by the Co-ordinate Bench of this Court that if the State Government is claiming ownership upon the property in question which is in possession of the tenant/raiyat and his/her predecessors-in-title since 09.06.1942, Civil Suit is the only remedy available with the State Government.

Further it transpires from the impugned order that the learned Single Judge has also discussed about applicability of Section 29 of the Indian Forest Act, 1927, which confers power upon the State Government to issue notification in the official Gazette for declaring the 24 provision of this Chapter applicable to any forest land or waste-land which is not included in a reserved forest or over which the Government has proprietary rights, or to the whole or any part of the forest-produce of which the Government is entitled. Sub-Section (2) thereof further provides that the forest-land and waste-land comprised in any such notification, shall be called a "protected-forest". Sub-section (3) thereof says that no such notification shall be made unless the nature and extent of the rights of Government and of private persons in or over the forest-land or waste-land comprised therein have been inquired into and recorded at a survey or settlement, or in such other manner as the State Government, thinks sufficient. Every such record shall be presumed to be correct until the contrary is proved; provided that, if, in the case of any forest-land or waste-land, the State Government thinks that such inquiry and record are necessary, but that they will occupy such length of time as in the meantime to endanger the rights of Government, the State Government may, pending such inquiry and record, declare such land to be a protected forest, but so as not to abridge or affect any existing rights of individuals or communities.

Therefore, Section 29 (1) explicitly provides that the State Government may notify any forest land or waste 25 land as protected forest over which the Government has proprietary rights, or to the whole or any part of the forest produce of which the Government is entitled. The condition precedent for issuing any notification under section 29 (1) is the inquiry be conducted under section 29

(3) regarding the nature and extent of right of the Government and of the private persons upon the forest land or the waste land.

25. We, on appreciation of the findings recorded by the learned Single Judge and on the basis of discussions made herein above, are of the view that there is no reason to differ with the view/opinion of the learned Single Judge, by coming to the conclusion that the order dated 09.09.2016 passed by the revenue authorities is illegal and not sustainable in the eyes of law, as they have exercised power conferred under section 4(h) of the Act, 1950 which as per the discussions made herein above has been found to be not applicable in the facts and circumstances of the case as the case of the writ petitioner is that he is claiming title over the land in question on the basis of settlement made prior to 1st January, 1946 and further the additional Collector by way of order passed in Misc. Case No. 56/2015-16 has already passed order on 17.03.2016 holding therein that the present raiyats i.e Izhar Hussain and Akhtar Hussain are the recorded raiyats of Register-II in Thoka (Lot) No. 1665 which is absolutely correct and proper. But without questioning and without reversal of that order, a fresh proceeding was initiated under Section 4(h) of the Act, 1950 and further long running Jamabandi cannot be cancelled, save and except by instituting a litigation before the Civil Court of competent jurisdiction. Hence, the order passed by the learned Single Judge cannot be faulted with.

26. Accordingly, since the instant appeal lacks merit, is dismissed.

91. It needs to refer herein that the view taken in the case of State of Jharkhand & Ors vs. Izhar Hussain (supra) has been affirmed by Hon'ble Apex Court in Special Leave to Appeal (C) No.8108 of 2021 vide order dated 06.07.2021.

92. The provision of Section 29(3) particularly its proviso confers power upon the State to conduct enquiry even accepting the same is the power to be exercised and based upon that power the notification was issued on 23.09.1964 but there is no final fact-finding report while on the other hand under the proviso it has been referred that the subsisting right of the party will not be jeopardized.

93. This Court, in view thereof, is of the view that the word 'subsisting right' will have paramount importance which means the right which is available over the land in question in the facts of the present case is to be exercised. Otherwise also the State Government cannot be allowed to take the aid of the notification said to be issued under Section 29(3) way back on 23.09.1964 and even after lapse of 60 years there is no output with respect to the enquiry.

94. But the State on the one hand is taking lethargic approach even accepting the power under Section 29(3) is to be exercised for the last 60 years while on the other hand in the year 2016 i.e., after lapse of about 52 years, the restraintment orders [impugned orders] have been passed restraining the petitioner from mining operation. Such conduct of the State cannot be said to be proper. Moreover, as per the pleading made in the writ petition the land was leased out by the private parties in favour of Bengal Coal Company and after

coming into effect of Coal Nationalization Act, 1973 all the lands where the mining operation was carried out was vested with the Central Government and for the aforesaid purpose the nodal company has been constituted in the name and style of Coal India Limited and depending upon the territory the subsidiary companies have also been constituted one of it is Bharat Coking Coal Limited, the petitioner herein.

95. The other question is that when the mining operation as being carried out by virtue of Coal Nationalization Act, 1973, then where is the question the State without determining and without getting the report in view of provision of section 29(3) of the Act, 1927 pass such restraintment orders.

96. This Court, in view of the aforesaid discussion, is of the view that the issues, which have been framed is being answered accordingly.

97. This Court, having answered the issues framed by this Court, is of the view that it is the State authority which without conducting the enquiry and coming to the conclusion of fact finding based upon the provision of Section 29(3) of the Indian Forest Act, 1927, passed the impugned orders which requires interference by this Court.

98. Accordingly, the impugned orders of restraintment dated 25.08.2010; 17.08.2016 modified vide order dated 03.09.2016 as also the orders dated 03.09.2016 whereby show cause notices were issued upon the petitioner are hereby quashed and set aside.

99. However, the State is at liberty to raise the issue of title, if the State so wishes by ventilating the grievance before the competent Court of civil jurisdiction.

100. Such liberty is being granted since the State has raised the question of title/ vesting of the land by virtue of the effect of the Bihar Land Reforms Act, 1950.

101. Accordingly, both the writ petitions stand allowed.

102. Pending Interlocutory Application(s), if any, stand disposed of.