**IN THE HIGH COURT OF JHARKHAND AT RANCHI**
**W.P.(C) No. 1726 of 2007**

1. Mahendra Prasad Rai, son of late most. Gaya Devi, wife of late Khartar Rai, Resident of village-Dudhani No. 6, S.c. Dhoria, P.O. Dumka, P.S. Dumka (T), District- Dumka
2. Birendra Prasad Rai, son of late most. Gaya Devi, wife of late Khartar Rai, Resident of village-Dudhani No. 6, S.c. Dhoria, P.O. Dumka, P.S. Dumka (T), District- Dumka

……Petitioners

Versus

1. The State of Jharkhand
2. The Commissioner, Santhal Pargana Division, Dumka
3. The Settlement Officer, Dumka
4. The Assistant Settlement Officer, Dumka

5(a) Suna Devi
(b) Balram Mahto @ Tun Tun Mahto
(c) Damodar Mahto
(d)Umesh Mahto
(e) Poonam Devi
(f). Lalita Devi (substituted V.O.D 06.07.2009)
All residents of Mohalla Dudhani, Dumka Town, P.S. Dumka Town, P.O. Dumka Town, District-Dumka.

6. (a) Manju Devi
(b) Uttam Mahto
(c) Anita Devi, wife of Murari Mahto
Residents of village Dakchin Bahal, P.O. and P.S. Jamtara, Dsitrict-Jamtara

6.(d) Anna Purna Kumari @ Putul, resident of Mohalla Goshala Road, Dudhani, Dumka (T), P.O, P.S and District- Jamtara.

7. Mangli Mahatwain wife of late Kishun Mahto (Deleted vide order dated 16.04.2008)
8. Binod Mahto son of late Shiknath Mahto
9. Basudeo Mahto
10. Someshwar Mahto
11. Manoj Mahto
12. Anil Mahto

All residents of village Dudhani, No. 6, S.C. Dhoria, P.O. and P.S. Dumka Town, District-Dumka.

..... … Respondents

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**CORAM: HON'BLE MR. JUSTICE SANJAY KUMAR DWIVEDI**

For the Petitioners :Mr. Jay Prakash Jha, Sr. Advocate
Mr. Aishwarya Prakash, Advocate
For the State Ms. Shalini Shahdeo, A.C. to (L& C)-I
For the Respondent Nos. 5 and 6 : Mr. Ayush Aditya, Advocate
Mr. Avnish Prakhar, Advocate
Mr. Akash Deep, Advocate

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**40/ 09.04.2026**: Heard Mr. Jay Prakash Jha, learned senior counsel for the

petitioners, Mr. Shalini Shahdeo, learned counsel appearing on behalf of the respondent-State and Mr. Ayush Aditya, learned counsel for the respondent nos. 5 and 6.

2. This petition has been filed for under Article 226 of the Constitution of India for direction upon the respondents not to evict the petitioner from the land bounded with house situated on current settlement plot nos. 86, 92, 363, 424 (Khanapuri Khata No. 49/8) of mouza Dudhani under Dumka District. Prayer has also been made to set aside the judgment and order of the learned Commissioner, Santhal Pargana Division, Dumka in R.M. R. No. 316/87-88 by which he has affirmed the order passed by the Assistant Settlement Officer and Settlement Officer, Santhal Pargana Dumka in R.E.A. No. 19/421 of 86-87 and R.E.A. No. 130/1987 whereby the order of eviction has been passed against the petitioner and her family members from the house and land, situated on the aforesaid plots of land.

3. Mr. Jai Prakash Jha, learned senior counsel for the petitioner submits that the father of the petitioner got sub-lease from the original tenant (KURFA) as far back as in the year 1936 and the thereafter occupied the land all through paid rent to the original tenant and the landed property got mutated in the name of the petitioner as far back as in the year 1974-75 through Mutation Case No.42/74-75, 30A/76-77 and the rent was being paid to the State since thereafter. He further submits that a settlement proceeding was going on in terms of Notification Under Section 9 of the Santhal Pargana Settlement Regulation (3) 1872 in the whole of the Dumka District and in course of the khanapuri proceeding of the settlement proceeding under the Dudhani Mauza, the authorities under the settlement found that the petitioner and her family members have possession of the landed property in measuring 1 katha and 10 dhurs which was said to be khanapuri Khata

no.49/8 Khanapuri, Khesra No. 84/52 86/52, 92/58, 366/279 and 367/279 as transferred case No. 19/421 as such a proceeding Under Section 20 (5) and 42 of the Santhal Pargana Tenancy Act 1949 was started against the petitioner, stating that the petitioner has illegal possession over the landed property in question. He submits that thereafter a notice was served upon the petitioner and the petitioner appeared before the Learned Assistant Settlement Officer in the khanapuri proceeding and submitted her show cause stating inter-alia that the father and husband of the petitioner had good relationship with one Kishun Mahato, the father and grand-father of the Respondent No.5 to 9 and out of love and affection the said Kishun Mahato and his sons being the witness, had settled 10 Katha 6 chhatak and 6 dhurs of land of Mauza Dudhani, being Plot No.279, 6 katha of Plot No.52 and 9 katha of Plot No. was made 58 and 9 katha of Plot No. 409, such settlement was made through KURFA. He submits that this a prevalent practice in the Santhal Pargana and on account of Kurfa settlement made as far back as 24.04.1936 and 05.05.1936, the father and husband of the petitioner and thereafter the petitioner came in possession of the landed property in question and thereafter the petitioner used to pay the rent to the heirs of the recorded tenant as being sub-lessee. He then submits that the father and the husband of the petitioner thereafter constructed their house and bounded the entire landed property on 1 Bigha and 10 Katha which are contiguous to each other and used it for domestic purposes and thereafter 2 Mutation Cases being 42/74-75 and 30/A/76-77 were separately started and thereafter they were also paying rent to the State. According to him, the original petitioner was a landlness lady and she had no other house. By drawing the attention to the impugned orders the learned senior counsel submits that the authorities have found that the house has been erected

therein and the said KURFA through which the father of the petitioner came over the possession of land was not question at any point of time. He submits that the authorities concerned have not exercised their jurisdiction so vested in them and passed the judgment of eviction by the cryptic orders which is contrary to the principle of Santhal Pargana Settlement Regulation. He also submits that the petitioners are in possession of the land and have constructed house for a period of 12 years and in view of that also the orders of the learned authorities are bad in law. He refers to section 56 of the Santhal Pargana Tenancy Act and submits that the Deputy Commissioner has power to permit the raiyat to remain in possession of the dwelling house and to buttress this argument he refers to Kurfa annexed with the writ petition and by way of drawing the attention of the Court to the rejoinder to the counter-affidavit filed by the respondent no.5 and submits that the rent receipts and order passed in mutation cases are annexed with said rejoinder. He also submits that the rent receipts of the year 1974-75 have been annexed. Mr. Jha, learned senior counsel submits that if the orders of the authorities will sustain, the great prejudice will be caused to the petitioners and to buttress this argument, Mr. Jha, learned senior counsel relied in the case of ***"Andu Larwey and Another Vs. The State of Jharkhand and Others"*** reported in ***2010 (3) JLJR 384.*** He refers to para 11 of the said judgment which is as under:-

> *"11. From the rival submissions the admitted facts which emerge are as follows*
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> *(i) In the proceeding before the Settlement Officer, on being called upon, the Assistant Settlement Officer submitted a report after conducting an enquiry and after recording the state-ments of the occupants of the lands adjacent to the disputed plots and also of the heirs of the recorded tenant. The report confirmed that even as per the admission of the heirs of the recorded Raiyat, the ancestors of the petitioners had taken the settlement from the original recorded tenant and had come into possession of the lands in 1936-37. This fact was supplemented by the petitioners who had produced rent receipt of the years 1937, 1939, 1940 and 1942.*
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> *(ii) The fact that the ancestors of the petitioners had taken*

*possession of the land in question on the basis of the Kurfa Settlement was also admitted by the surviving heirs of the recorded ten-ant in his written statement filed in the Title Suit No. 47/1964, Even if the documents pertaining to the Title Suit may be questioned as collusive documents, but the fact remains that the surviving heirs of the original recorded tenant have acknowledged that the petitioners had come in possession of the land's on which the ancestors of the petition-ers had constructed the house.*
*(iii) Admittedly, it was after considering these aspects of the evidences brought on record, the Settlement Officer being satisfied that the petition-ers, ever since the time of their ancestors, had come in occupation and pos-session of the land over which they had constructed the house, since 1936-37. Yet, even after accepting the afore-said facts, the Settlement Officer has relied on the Full Bench judgment of the Patna High Court in the case of Shaikh Bande (supra) and ordered for the petitioners' eviction from the land under Plot No. 1369 by applying the ratio which was decided in the context of the provisions of the C.N.T. Act and without making any reference whatso-ever to the law in relation to the Santhal Parganas Tenancy Act."*

4. Relying on above judgement, Mr. Jha, learned senior counsel submits that on the ground of adverse possession the matter was remanded back by this Court. He also relied in the case of ***" Uma Pada Choudhary and Another Vs. Panchanand Coudhary and Others"*** reported in ***2005(3) JCR 67 (Jhr).*** He refers to para 8 of the said judgment which is as under:-

*" 8. Having heard the learned counsel for the appellants and perused the records, I find that the plaintiff had sought reliefs of declarations of their right, title and interest and confirmation of possession and for declaration that the order of the Circle Officer for their eviction is illegal and without juris-diction. No declaration of title and/or possession was sought for against the State of Bihar. Such being the case there was no necessity of impleading the State of Bihar as a defendant in the suit. The nature of the claim of the appellants was purely relat-ing to title and possession with respect to the suit land which were allegedly inter-fered with, by defendants, giving rise to the cause of action for the suit. In that view. there was no necessity to add the State of Bihar as a defendant as the issues involved were the contesting claims of right, title between the plaintiffs and the defendants. So far the order of the Circle Officer is concerned, the same has not declared any right and title. The Circle Officer held that - Kurfa settlement in favour of the father of the plaintiff No. 1 was contrary to the provision of Santhal Parganas Tenancy Act without taking into consideration that at the time of the said settlement, the Act itself was not in existence and it was brought on statute book much thereafter, There was no question of contravention of any provision which was then not in existence, The Court below has thus committed serious errors in arriving at the finding that the suit was bad for non-joinder of the State of Bihar and on that ground dismissing the plaintiffs suit and appeal. It is thus held that the State of Bihar was not a necessary party to the suit and the reliefs prayed for by the plaintiffs relating to declaration of their title and con-firmation of possession should have been considered and decided even*

*in absence of the Circle Officer or the State of Bihar."*

5. Relying on the above judgment, Mr. Jha submits that the raised practice was allowed considering the kurfanama. He also relied in the case ***of " Asharfi Mahaton and others Vs. The State of Bihar and others"*** reported in ***1978 PBCJ 572.*** He refers to paras 6 and 7 of the said judgment which is quoted hereinbelow:-

> *"5. Learned counsel for the petitioners Mr. Braj Kishore Prasad No. 2 has urged that on the findings recorded by the authorities, the petitioners had been in possession of the lands in question since 1941 and that when the proceedings was started in the year 1969 they had perfected their title by adverse possession and as such no orders for their eviction could be passed under Section 20 (5) of the Act. In this connection reliance has been placed on the case of Bhauri Lal Jain and another. Vrs. Sub-Divisional Officer Jam-tara and others and on the unreported decision in Goda Mahato and others Vrs. State of Bihar and others, decided on 2nd January, 1977.*
> *Mr. Prasad submitted that on the findings the petitioners came in possession of the disputed lands at least on 1st Baisakh 1348 1941) and at a time when Regulation 3 of 1872, was in force. According to the provisions as contained in Regulation 3 of 1872, title by adverse possession could be acquired. There fore he submitted that the process of acquisition of title by adverse possession has started in the year 1941 itself and that the process so started continued even after the enforcement of the Act. According to him, therefore the orders as contained in Annexures 4, 5, 7 and 8 for eviction of the petitioners from the lands in question were bad.*
> *6.In the aforesaid case Bhauri Lal Jain and another (supra) it has been held that the title by adverse possession could be acquired under an invalid transfer in contravention of Section 27 (1) of Regulation 3 of 1872 and those who had acquired good title by adverse possession under that Regulation could not be evicted. It is true that on 1st. November 1949 the petitioners had not perfected their title by adverse possession, but that is of no consequence so far as this case is concerned. The petitioners had come in possession of the lands in question in the year 1941 on the basis of a Kurfa settlement, which was an invalid transfer being in contravention of Section 27 (1) of Regulation 3 of 1872. It is also true that Section 69 (a) bars acquisition of title by adverse possession on any land held or acquired in contravention of provision of Section 20. But the petitioners did not come in possession of the disputed lands or claim to have acquired title in contravention of section 20. They claim to have core in possession on the basis of acquisition of title by a Kurfa settlement. This settlement, though illegal, was certainly not in contravention of the provision of Section 20. Therefore, in my opinion, section 69 has not application and therefore the process of acquisition of title in the year, 1941, continued till after the enforcement of the Act."*

6. Relying on the above judgment, he submits that the said case was remanded back to consider the case afresh on the ground of adverse possession. Lastly he relied in the case of ***"Bishwanath Ghirla Vs. The***

***State of Bihar and others"*** reported in ***1988 BBCJ 372***.

7. Relying on the said judgment, he submits that it has been held therein that if the house is there ejectment order will not sustain. On these grounds, the submits that the writ petition may kindly be allowed.

8. On the other hand, Mr. Shalini Shahdeo, learned counsel for the respondent-State submits that the petitioner was found in illegal occupation over the non-transferable land of plot no. 424 of Mouza Dudhani no. 6, S.C. Dhoriya, P.S. Dumka, District-Dumka which is governed by the provision of Santhal Parganas Tenancy (Supplementarty Provision) Act, 1949. She submits that in the light of provision 20(1) of the Santhal Pargana Tenancy Act, 1949 speaks about any transfer of non transferable land is ilelgal. She further submits that the authorities have rightly passed the order in R.E. Case No. 120/87/1065, R.E. Appeal No. 398/87 and Rev. Misc. Revision No. 316/87-88. She submits that the land in question is non-transferable and land is governed by the provision of Santhal Parganas Tenancy Act, 1949. She also refers to sections 20 and 42 of the Santhal Parganas Tenancy Act, 1949 and submits that in the light of said sections the land in question has been rightly restored in favour of the recorded tenant. She further submits that in the present survey settlement operation, petitioner was found illegal occupation over the land in question and in view of that these proceedings have been initiated. She also submits that the petitioner was never in possession over the land in question since 1936. She submits that the Circle Officer was not competent authority to grant mutation of non transferable land. She submits that in view of Clause XV of Santhal Parganas Settlement Notification No. S.O. 1079 dated 08.08.1978, Settlement Officer of Santhal Parganas has been vested with the power of Deputy Commissioner under Bihar Act 14 of 1949 is under the provision of Santhal Parganas Tenancy

(supplementary Provisions) Act, 1949 for the purpose of the said rule and for the purpose of the proper conduct of the survey operation. She also submits that the Assistant Settlement Officer camp at Dumka who were conducting his case was specially vested with the power of the Deputy Commissioner under the provision of Santhal Parganas Tenancy Act, 1949. She submits that the learned authorities have rightly passed the impugned orders and there is no illegality in the said orders and in view of that the writ petition may kindly be dismissed.

9. Mr. Ayush Aditya, learned counsel for the respondent nos. 5 and 6 submits that the State authorities in RE Case No. 120/2015 of 1987 by order dated 25.05.1987 and R.E. Case No. 19/421 of 1986 by order at 6.03.1987 in the Survey Process during the Khanapuri Proceeding, it was found out that the petitioner herein is in illegal possession of the property mentioned and pursuant to the said proceeding started in the year 1986-1987 by order dated 25.05.197 and 06.03.1987, the order was passed in terms of Section 20 (5) read with Section 42 of the Santhal Pargana Tenancy Act for eviction of these petitioners. He also submits that the said orders, two appeals being 393/87 and 130/1987 were filed which were also dismissed by order dated 29.11.90/10.01.1991 and 28.08.1987 and, thereafter, Revision was also filed which was numbered as 316/1987-88, which was dismissed on 08.01.2007. He further submits that the revision has been rightly dismissed by the learned Divisional Commissioner, Santhal Pargana vide order dated 08.01.2007 and the learned Commissioner has rightly considered each and every aspects of the matter and have taken note of the fact that the lands are Zamabandi land, which are non-transferable in the area of Santhal Pargana which is evident from Gentzer Settlement and copy of Khatian, which is annexed in the counter affidavit. He further submits that

the learned Commissioner has also taken note of the fact that kurfanama, on the basis of which the petitioners are claiming possession was never produced in any legal proceedings and, therefore, the same could not be relied upon and as per the Tasdik Niyamawali under the Santhal Pargana Tenancy Act in which has been clearly mentioned that what should be the basis on which Kurfanama should be accepted and the said Tasdik Niyamawali has been annexed as annexure-B to the counter affidavit. He draws the attention of the Court to said Tasdik Niyamawali and submits that only three conditions mentioned therein, wherein kurfanama can be considered. He submits that none of the conditions provided therein have been fulfilled and in view of that the learned Commissioner has rightly passed the said order. He submits that sections 20 and 42 of of Santhal Pargana Tenancy Act has been considered by the a Co-Ordinate Bench of this Court in the case of **" *Chakaram Mahato & others Vs. The State of Jharkhand and others"*** reported in ***2009 0 Supreme (Jhk) 897***. He refers to para 8, 9, 10, 11 and 12 of the said judgment which is quoted hereinbelow:-

> *"8. Section 20(1) of the Act prohibits transfer by a Raiyat of his holding, except in cases where the right to transfer was recorded in the record of rights and that also only to the extent it was so recorded. Section 20(2) contained further restriction in case of ab-original Raiyats, restricting their right of transfer in case of transferable holdings only to bona-fide cultivating ab-original Raiyat of the Pargana of Taluk or Tappa, in which the land is situated. Section 42 and also Sub-section (5) of Section 20(old) authorized the Deputy Commissioner to evict persons having acquired land in contravention of the above provisions. The scope of the amended Sub-Section(5) of Section 20 is confined to cases of contravention of Sub-sections (1) and (2) of that Section and fraudulent transfer by scheduled tribes only since the 8th February, 1969.*
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> *9. The Hon'ble Supreme Court in AIR 1969 SC 204 also considered AIR 1963 SC60S and held that the prohibition against the transfer of Raiyati land situated in Santhal Pargana has its root in the peculiar way of life of Santhal villages which favour the emergence of powerful village community with its special rights over all the land of the village. It also held that once the land was allowed to lose their Raiyati character which was certain that village may find, in the course of a few years the total stock of land available for settlement to residents, Raiyats dwindling before they arise, it was this state of thing that the alienation of Raiyati*

*holding in any form was interdicted by the Government orders since 1887. These orders had the effect of checking the practice of open transfers. But transfers in disguised form and collusive manner continue which will be clear from the notice of the Mac parson to the settlement report of the Santhal Pargana wherein he warns any disguised transfer. His note was accepted by the Government and the result was the amendment of the Regulation by which initially Section 27 was inducted followed by Section 20(1) of the Santhal Pargana Act, 1949. Thus, it will be evident that even the collusive compromise in a title suit to get an illegal transfer regularized by Court of law was in contravention to Section 20 of the Santhal Pargana Tenancy(Supplementary Provisions) Act, 1949.*

*10. In the instant case, the petitioners have not even produced a chit of paper or any documentary evidence to prove their possession over the land in question for 12 years prior to coming into force the 1949 Act and thus they were liable to be ejected under the provisions of Section 42 of the Santhal Pargana Tenancy (Supplementary Provision) Act. 1949. Coming to the question whether title by adverse possession can be acquired after the 1949 came into operation it will be relevant to refer Section 69 of the Act which reads as under:-*

*80 Notwithstanding anything contained in any low or anything having the force of law in the Santhal Parganas, no right shall accrue to any person in-*

*(a) land held or acquired is contravention of the provisions of Section wo or,*

*(b) land acquired under the Land Acquisition Act, 1894, for the Government on local authority or for railway company, while such land remains the property of the Government or of any local authority or of a railway company, or*

*(c) land recorded or demarcated as belonging to the Government or in a local authority which is used for any public works, such as a road canal or embankment, or is required for the repair of maintenance of the same while such land continues to be so used or required, or,*

*(d) a vacant holding retained by a village headman, Mul Raryat and members of then family, or a landlord, or,*

*(e) village Headman's official holding, grazing land, Jaherthan and burning and burial grounds.*

*11. Analysing the aforesaid provisions, it is manifest that Section 69(a) has made it clear beyond doubt that not withstanding anything contained in any law or anything having the force of law in the Santal Parganas, no right shall accrue to any person in any land held or acquired in contravention of the provisions of Section of the Act Section 20 has already been quoted and it prohibits transfer, settlement or lease in any manner, unless the right to transfer is recorded in the record of rights, in respect of any Ratyati holding. Therefore, although the law of limitation has been made applicable by Section 3 of Regulation 111 of 1872, which provision has not been repeated by the Act, still Section 69 makes it clear beyond any shadow of doubt that no right will be acquired of accrue in contravention of Section 20 of the Act. The provision in Section 64 that there will be no periud of limitation for filing an application under Section 42 of the Act also seems to achieve the same object. Therefore, the application of acquisition of title by verse possession under Section 28, read with Articles 142 and 144, of the Limitation Act is explicitly excluded in the Act. Contravention of provisions of Sub-sections(1) and (2) of Section 20 will be a continuing wrong because of Section 69. Similar bar against accrual of any right in case of lands mentioned in Clauses (b). (c). (d) and (e) of Section 69, as quoted above, clearly points out that no right by adverse possession could be acquired by encroachment also on the lands mentioned. The bar contained in Section 69 (a) is comprehensive enough to include cases of encroachment as well as, a case of encroachment could not be*

*put in higher pedestal than a case of an invalid transfer, the idea behind Section 69 being to prohibit accrual of adverse possession in those lands in Santhal Parganas.*
*12. In any event, the fact remains that all the three authorities below have given a concurrent findings against the petitioners and it has been time and again held that the High Court in its writ jurisdiction should not interfere against the findings arrived at by the authorities below in a summary proceedings unless there is a statutory violation. It is further an admitted fact that before initiating action a report was also called for by the Circle Officer based on which it was found that the petitioners had concealed the material facts about the earlier proceedings and there was not a single piece of documentary evidence produced by them to support the contention of possession since 1936 over the land in question and Section 20(3), (4) and (5) of the Santhal Pargana Tenancy Act clearly contemplates that in absence of any documentary evidence produced the possession cannot be legal."*

10. Relying on the above judgement, he submits that adverse aspect has also been dealt with by the Co-ordinate Bench of this Court and it has been held that that the claim on the basis of adverse possession is barred under the Santhal Pargana Tenancy Act.

11. Learned counsel for the respondent nos. 5 and 6 also relied in the case of ***" Jiwan Prasad Sah and others" Vs. The State of Jharkhand and others"*** reported in ***2018 0 Supreme (Jhk) 921***. He refers to para 11 of the said judgment which is quoted hereinbelow:-

*"11. Point regarding applicability of Section 20 read with Section 42 of Santhal Pargana Tenancy (Supplementary Provisions) Act, 1949 as the petitioner has claimed that the property in question is not agricultural property.*
*(a) The petitioners claim to have constructed house on the property involved in this case. From the records of this case, this Court finds that the petitioners have never raised this plea before any of the authorities and even in this writ petition and accordingly this Court is not inclined to permit the petitioners to raise this point for the first time during the course of the arguments.*
*(b) That apart from aforesaid technical aspect of the matter, the fact remains that admittedly the property in question has been recorded as Jamabandi property and admittedly the private respondents herein or their predecessors were the recorded tenant of the property and admittedly there is no order converting the nature of land from agricultural to nonagricultural by any of the competent authority.*
*(c) This Court is of the considered view that merely because some construction has been made over the property involved in this case that does not change the nature of land from agricultural land to non-agricultural land so as to deny the benefit of the provisions of Santhal Pargana Tenancy (Supplementary Provisions) Act, 1949 to the recorded tenant of the property.*
*(d) So far as the judgment which has been relied upon by the petitioners reported in 1988 BBCJ 372 is concerned, this Court finds*

*that admittedly the property involved in the said case was converted into a non-agricultural property by virtue of the fact that the authorities under the provisions of Bihar Privileged Persons Homestead Tenancy Act, 1947 declared the petitioners of the said case as privileged tenant and in view of the specific order under the provisions of Bihar Privileged Persons Homestead Tenancy Act, 1947, the property was no longer agricultural property. In the instant case the property in question continues to be recorded in the record of rights as agricultural land and there is no such supervening circumstances. Accordingly the reliance on this judgment by the petitioners does not help the petitioners in any manner and the same is clearly distinguishable.*

*(e) So far as the other judgment reported in 2003(3) JCR 230 is concerned, admittedly the property in question in the said case was converted into Basauri property by virtue of the provisions under Santhal Pargana Regulations and as the nature of the land was changed from agricultural land to Basauri land, it was held by this Hon'ble Court that Basauri land become transferable and such transfer do not fall within Section 20 of Santhal Pargana Tenancy (Supplementary Provisions) Act, 1949. In the instant case, this Court does not find any material on record and it is not even case of the petitioners that the nature of the land was changed from agricultural to non- agricultural by any competent authority. Accordingly the reliance on this judgment by the petitioners does not help the petitioners in any manner and the same is clearly distinguishable.*

*(f) Therefore the contention of the petitioners that merely because some construction has been made over the property, the same takes it out of the purview of section 20 and 42 of Santhal Pargana Tenancy (Supplementary Provisions) Act, 1949 is devoid of any merits. Thus, the second contention of the petitioners is also rejected.*

*(g) From the perusal of the impugned order, this Court finds that the Commissioner has recorded specific findings and doubted the genuineness of the kurfa itself and admittedly the nature of land was never changed by any competent authority."*

12. Relying on the said judgment, he submits that in absence of any proper order of the competent authority, the nature of the land cannot be changed. On these grounds, he submits that the writ petition may kindly be dismissed.

13. In reply, Mr. Jha, learned senior counsel for the petitioners submits that those judgments relied by the learned counsel for the respondent no.5, the judgments relied on behalf of the petitioners has not been considered.

14. In view of above submissions of the learned counsel for the parties, it is an admitted position that on the basis of kurfanama the petitioners herein are claiming their possession over the land as noted

hereinabove in the argument of the learned senior counsel for the petitioners as well as learned counsel for the respondent nos. 5 and 6 and respondent-State. The concerned authorities have found that the said Kurfanama was not subject matter of any proceeding before any court. With regard to kurfa the Tasdik Niyamawali under the Santhal Pargana Tenancy Act are there which is brought on record by the respondent no.5 in the counter-affidavit wherein three conditions are put therein to take into consideration any kurfanama. For ready reference of the case the same is incorporated hereinbelow:-

*1–कुर्फा, 2–आपसी समझौता का टाईटल सूट, 3–विल द्वारा सम्पत्ति का हस्तानान्तरण, 4–सादा दान पत्र द्वारा सम्पत्ति का हस्तानान्तरण, 5–सादा कागजात पर आपसी बदलेन, 6–..... अस्पष्ट ..... जमाबन्दी रैयत के साथ फौती–फिरारी या अनावाद जमीन की प्रधान द्वारा दी गई बन्दोवस्ती, 7–प्रधान द्वारा अपने साथ फौती–फिरारी या अनावाद जमीन की बन्दोवस्ती, 8–प्रधान या अन्य व्यक्तियों द्वारा बिना बन्दोवस्ती के दखल की गई फौती या फिरारी जमीन।*

*19:–कुर्फा में दी गई जमीनः–*

*ऐसे बहुत से मामले हैं जिसमें खाता रैयत ने सादा कागज लिखकर जमीन का हस्तानान्तरण किया है। इन लोगों ने रैयतों को लिखित रसीद भी दिया है या बहुत मामले में ये मार्फती रसीद भी सरकार से प्राप्त कर रहे हैं। इस तरह का हस्तानान्तरण संथाल परगना रैयती कानून 1949 की धारा 20 का उल्लंघन करता है।*

*जिस मामले में दखल की पुष्टि 1–11–49 के पूर्व न हो सके तो वैसे दखलकार को जमीन से उच्छेद किया जायगा एवं इस सम्बन्ध में सहायक बन्दोवस्त पदाधिकारी अपना प्रतिवेदन देंगे एवं बन्दोवस्त पदाधिकारी का आदेष प्राप्त कर उच्छेदी की कार्रवाई करनी होगी।*

*कुर्फा लिखने की तिथि की विष्वसनीयता की जांच में बहुत सावधानी बरतने की आवष्यकता है। इसके निर्धारण के लिए निम्नलिखित निदेष का अनुपालन किया जायगाः–*

*1. यदि कुर्फा पंजीकृत हो तो पंजीयन की तिथि को कुर्फा की तिथि समझा जायगा।*

*2. यदि कुर्फा सादा हो एवं किसी न्यायालय द्वारा उसकी तिथि की मान्यता दी गई हो तो उसके अनुसार ही कुर्फा की तिथि समझी जायगी।*

*3. यदि कुर्फा सादा हो और किसी न्यायालय द्वारा उसे प्रदर्ष के रूप में स्वीकृत किया गया हो तो उस स्वीकृति की तिथि ही कुर्फा की तिथि मानी जायगी न कि उस कुर्फा में दर्ज तिथि को। यह स्मरण रखना होगा कि कुर्फा अपने आप में जमीन पर व्यक्ति का स्पत्व स्थापित करने में महत्वहीन है। यह केवल एक साक्ष्य के रूप में दखल के सम्बन्ध में व्यवहार किया जा सकता है। दखल की अवधि सम्बन्धी जांच विस्तृत रूप में होनी चाहिए जिसमें थोड़ी भी शंका की गुंजाईष न हो।*

*20–आपसी समझौता का टाईटिल सूटः–*

*बहुत से मामले में अवैध रूप से हस्तांतरित भूमि पर खाता रैयत ने दखल वापसी के लिए व्यवहार न्यायालय में मुकदमा दायर किया था। उसके बाद एक समझौता आवेदन देकर द्वितीय पक्ष की लम्बी अवधि का दखल स्वीकार कर लिया गया है एवं उसी आधार पर मुकदमें खारिज किए गए हैं। कुछ मामलों में राजीनामा शर्तों के अनुसार भी मुकदमा खारिज किया गया है। कुछ मामलों में एक या दो गवाह का बयान लेकर अधिक दिनों का द्वितीय पक्ष का दखल बहाल रखते हुए मुकदमे को खारिज कर दिया गया है। ऐसे मुकदमों के आधार पर दाखिल खारिज हो गए हैं एवं रसीद भी राज्य से कट रही है।*

*ये मामले भी अवैध हस्तानान्तरण की श्रेणी में ही आते हैं एवं इसका भी निस्तार नियम–19 में उल्लिखित प्रक्रिया के अनुसार किया जायगा।*
*21–सादा कागज के द्वारा या मौखिक आपसी बदलैनः–*

*संताल परगना रैयती कानून 1949 के प्रावधानों के अन्तर्गत जमीन बदलैन की स्वीकृति के लिए धारा 23 के अनुसार उपायुक्त ही सक्षम हैं। इसके पूर्व लोग आपस में जमीन बदलेन करते थे या 1–11–1949 के बाद भी लोगों ने आपसी बदलैन सादा कागज या मौखिक रूप में किया है।*

*ऐसे मामले में यह देखना है कि बदलेन वाले पक्ष जमाबन्दी रैयत हैं। बदलेन की गई जमीन का समान मूल्य है। बदलैन आपसी सुविधा के लिए किया गया है एवं यह छिपी बिक्री नहीं है तथा जमीन एक ही मौजा या सन्निकट मौजा में अवस्थित है। इन बातों को सुनिष्चित कर लेने के बाद यह देखना होगा कि दोनों पक्ष बदलेन की गई जमीन पर दखलकार हैं एवं दोनों का दखल खानापुरी अभिलेख में प्रविष्ट है तथा किसी भी पक्ष को इस बदलेन से कोई आपत्ति न हो तो सहायक बन्दोवस्त पदाधिकारी को ऐसे बदलेन की सम्पुष्टि का आदेष बन्दोवस्त पदाधिकारी से प्राप्त करना होगा। पर यदि इन बातों की पुष्टि न हो तो यह अवैध हस्तानान्तरण का मामला माना जायगा एवं नियम–19 के अनुसार उच्छेदी की कारवाई की जायगी।*
*22–गैर जमाबन्दी रैयत के साथ अनावाद, फौती, फिरारी जमीन की बन्दोवस्तीः–*

*बहुत से मामले में गैर जमाबन्दी रैयत के साथ प्रधान ने जमीन की बन्दोवस्ती की है। बहुत से वैसे मामले में अनुमंडल पदाधिकारी द्वारा सम्पुष्टि भी की गई है। ऐसे मामले में यदि बन्दोवस्तदार जमीन पर दखलकार हों एवं कोई आपत्ति न हो तो खाता बन्दोवस्तदार के नाम से बनाया जायगा। आपत्ति एवं बिना दखल वाली जमीन के सम्बन्ध में सहायक बन्दोवस्त पदाधिकारी अपना प्रतिवेदन बन्दोवस्त पदाधिकारी को आदेष के लिए भेजेंगे। आदेष प्राप्ति के पश्चात ही कारवाई होगी।*

15. In view of above there are three conditions to consider kurfanama and all those are if it is registered then it will be from the date of registration and further if kurfanama is sada and if it has been considered by the any court of law then from the date of giving consideration of the kurfanama by the court of law that they will be considered of that kurfanama and lastly if kurfanama is exhibited by any court of law.

16. In light of above Rule, said kurfanama on which reliance has been placed heavily by the learned senior counsel for the petitioners, cannot be taken into consideration. It is an admitted position that in the survey settlement proceeding it has come to the knowledge of the authorities that non-transferable land is in possession of the petitioners, thereafter aforesaid proceedings have been initiated against the petitioners.

17. Section 20(1) of the Santhal Pargana Tenancy Act prohibits transfer by a raiyat of his holding, except in cases where the right to transfer was recorded in the record of rights and that also only to the extent it was so

recorded. Section 42 and also sub-section (5) of Section 20 (old) of Santhal Pargana Tenancy Act, 1949 authorized the Deputy Commissioner to evict persons having acquired land in contravention of the above provisions. Further section 69(a) of the Act clearly stipulates that notwithstanding anything contained in any law or anything having the force of law in the Santhal Parganas, no right shall accrue to any person in any land held or acquired in contravention of the provisions of Section 20 of the Act. In the light of Section 64 of the said Act there will not be period of limitation for filing an application under Section 42 of the Act.

18. Further in the case in hand, the authorities who have done the survey settlement have found the illegal occupation and thereafter initiated proceeding against the petitioners. There are findings of three authorities that are concurrent. It is well settled that the High Court sitting under Article 226 of the Constitution of India in the routine way can not interfere unless there is statutory violation.

19. The judgments relied by Mr. Jha, learned senior counsel for the petitioners are concerned, those were decided in the facts and circumstances of those cases. So far the case of ***"Andu Larwey" (supra)*** is concerned, that was remanded back to consider the adverse possession aspect of that petitioner. What has been discussed hereinabove and considering the sections 20, 42 and 69 of the Act that adverse possession is already barred under law and in view of that said judgment relied by Mr. Jha is not helping the petitioners.

20. The case of "***Uma Pada Choudhary" (supra)*** relied by Mr. Jha, in that case only subject matter was for adding State of Bihar as party and in that case it has been held that title suit there against particular person in absence of State, title suit can be decided. In the present case there is no

suit in the Civil Court and in that view of the matter this judgment is not helping the petitioners.

21. The judgment relied by Mr. Jha in the case of ***Asharfi Mahaton (supra)*** that was also on the basis of adverse possession. What has been discussed hereinabove under the Act the aspect of adverse possession is already closed and in view of that the said judgment is also not helping the petitioners.

22. So far the judegment relied by Mr. Jha in the case of ***"Bishwanath Ghirla(supra)*** is concerned, in that case agriculture land and the house was the subject matter and in the case in hand it has not been disclosed that whether by any valid order the nature of land has been changed or not and that aspect has been recorded in the case of ***Jiwan Prasad Sah (supra).***

23. In view of above facts, reasons and analysis and considering that all the three authorities have given concurrent findings against the petitioners and further there is no paper of possession with effect from 1936 and that has not been annexed either in the present writ petition or with the authorities concerned. The Court finds that no case of interference is made out as such this writ petition is dismissed. Pending I.A, if any, stands disposed of.

Dt.09.04.2026

Satyarthi/**A.F.R.** **( Sanjay Kumar Dwivedi, J.)**