IN THE HIGH COURT OF JHARKHAND AT RANCHI
W.P.(C) No.3852 of 2014

1. Ananta Gour @ Anant Kumar Pradhan, son of late Gajendra Gour,
2. Ishan Gour @ Ishan Kumar Pradhan, son of late Gajendra Gaur

Both residents of village Gour Danga, P.O. Bhillai Pahari, P.S. MGM, District-East Singhbhum .....Petitioners

-Versus-

1. The State of Jharkhand
2. The Commissioner, Singhbhum (Kolhan) Division Chaibasha, P.O and P.S. Chaibasha, District:West Singhbhum
3. The Deputy Commissioner East Singhbhum, Jasmshedpur, Collectorate office, P.O and P.S.Jamshedpur, District: East Singhbum.
4. The Land Reforms Deputy Collector, Dalbhum, Jamshedpur, P.O and P.S.Jamshedpur, District: East Singhbum.
5. Mamta Singh Munda wife of late Jyotish Singh Munda, resident of village Gour Danga P.P Bhilai Pahari, P.S. MGM, District: East Singhbhum

.... Respondents

CORAM: HON'BLE MR. JUSTICE SANJAY KUMAR DWIVEDI

For the Petitioner :Mr. Prabhash Kumar, Advocate
: Mr. Ganesh Ram, Advocate
:
For the State :Mr. Ratnesh Kumar, Advocate
: Mrs. Shalini Sahdeo, Advocate
For the Resp. No.5 : Mrs. Swati Shalini, Advocate
: Mr. Kanishka Deo, Advocate

10/ 01.09.2026: Heard Mr. Prabhash Kumar, learned counsel for the petitioners, Mr. Ratnesh Kumar, learned counsel for the State and Mrs. Swati Shalini, learned counsel for the respondent no.5.

2. Mr. Prabhash Kumar, learned counsel for the petitioners submits that I.A. No. 11040 of 2023 has been filed for substituting the name of legal heirs and successor of petitioner no.1 and the name of legal heirs and successors have been disclosed in para 4 of the said I.A. He submits that Ishan Gour @ Ishan Kumar Pradhan son of late Gajendra Gour is required to be substituted in place of petitioner no.1 however inadvertently he has substituted the name of petitioner no.2 in place of petitioner no.1. He submits that the

name of Ishan Gour @ Ishan Kumar Pradhan is required to be inserted and in view of that he seeks permission to correct the same.

3. Permission is accorded.

4. Learned counsel for the petitioners shall correct the same in course of day.

5. This writ petition has been filed under Article 226 of the Constitution of India for quashing the order dated 29.6.2006 passed by respondent no.4 -the Land Reforms Deputy Collector, Dalbhum, Jamshedpur, in Land Restoration case no. 78/2002-2003 whereby the petition filed under section 71 (A) of Chotanagpur Tenancy Act for restoration of possession in favour of respondent no. 5 has been allowed. Prayer is also made for quashing the order dated 29.10.2012 passed by the respondent no. 3-Deputy Commissioner, East Singhbhum, Jamshedpur in S.A.R. appeal no.142/2010-2011 whereby the appeal filed by the petitioners has been dismissed and further prayer has been made for quashing of the order dated 22.4.2014 passed by respondent no.2 in S.A.R. Revision case no.4/2012-2013 whereby the revision filed by the petitioners has been dismissed. Prayer is also made to restore the land in favour of the petitioners.

6. Mr. Prabahash Kumar, learned counsel for the petitioners submits that petitioners are in possession of the lands in question recorded under khata no. 151, bearing under plot no.191 area 0.01 acres area and 0.51 acres situated in Mauza Deoghar Revenue thana no.1147 under plot no.192 police station M.G.M. in the District East Singhbhum. He further submits that the lands in question though recorded in the name of Muchi Ram Munda the deceased father in law of respondent no.5 but the petitioners are in all acts of actual peaceful physical possession on the lands in question since

1967. He next submits that the Title suit no. 791/1967 was instituted which was ended in compromise and accordingly the Circle Officer, Jamshedpur mutated the name of the petitioner no.1 and accepted the rent from him in respect of the land in question contained in Annexure-1. He next submits that since the petitioners are in possession of the land since 1967, nobody claimed for the same and after 35 years of possession SAR Case has been filed which is barred by limitation. According to him, the petitioners have already constructed the house on the land and in view of that the nature the land has been changed in the form of Chapparbandi lands. He next submits that said proceeding was instituted under section 71-A of the Chhotanagpur Tenancy Act, 1908 (hereinafter referred to as 'Act of 1908') in the year 2003 and pursuant to that restoration case no.78/2002-2003 was registered which was allowed by order dated 29.6.2006 contained in Annexure-3. He submits that against the said order, SAR Appeal-No.142/2010-2011 was filed which was also dismissed vide order dated 29.10.2010. He next submits that against the appellate order the petitioners filed SAR Revision no.4/2013 which was also dismissed vide order dated 22.4.2014.

7. Mr. Kumar, learned counsel for the petitioners further submits that the authority have not considered the limitation aspect as the petitioners were already in possession of the land since 1967 on the basis of compromise decree in Title suit no. 791/1967 however, erroneously rejected the said point. He next submits that respondent no. 5 is widow of late Jyotish Singh Munda and her sons have not filed restoration case and only widow has filed the said case. He submits that it is well settled that once the restoration case is filed after 30 years, the same is barred by time,

however, the learned courts have wrongly rejected the said contention of the petitioners. On these grounds, he submits that impugned orders may kindly be set aside.

8. Learned counsel for the respondent-State submits that learned authorities have rightly passed the impugned orders considering the callousness involved in filing of the title suit and obtaining the compromise decree. She also submits that the compromise decree is dated 11.11.1968 wherein mutation case was filed in the year, 1999 and the rent receipts only of the year 2000 and 2003-2004 have been filed. She submits that compromise decree itself is dehors of law in view of provisions made under the Act of 1908 and in view of that writ petition may kindly be dismissed.

9. Mrs. Swati Shalini, learned counsel for the respondent no. 5 accepts the submissions of the learned counsel for the respondent-State and submits that respondent no.5 is widow of late Jyotish Singh Munda and she is first legal heir and successor of said late Jyotish Singh Munda. She submits that even the sons have not filed restoration case, the respondent no. 5 is having right of filing restoration case and in the light of provisions made in Act of 1908' She also submits that if the collusive decree is obtained which is already barred under sub-section 3 of Section 46 of the Act of 1908. She submits that in the suit the Deputy Commissioner was not made defendant that is violation under the Act of 1908 as the Deputy Commissioner is necessary party under sub-section 3-A of section 46 of Act of 1908. On these grounds, she submits that writ petition may kindly be dismissed.

10. Mr. Prabhash Kumar, learned counsel for the petitioners in reply submits that so far sub-section 3A of section 46 of C.N.T. Act is concerned,

that has been inserted in the Statute in the year, 1975.

11. In view of above submissions of the learned counsel for the parties, the Court has gone through the materials on record including the annexures annexed with the writ petition and counter affidavit filed by the respondent-State, the petitioners herein are claiming said possession pursuant to title suit being Title suit no. 791/1967 which was ended in compromise. Although the decree is of the year, 1968 wherein the mutation case has been instituted in the year, 1999 and rent receipts from 2000 and 2003-04 have only been filed which suggest that mutation was not allowed earlier and at a particular point of time mutation petition was filed which has been allowed in favour of the petitioners that too on the basis of Title suit no. 791/1967 and compromise decree. There is no doubt that if callousness is not there a petition under section 71-A of the Act is barred by time and if it has been filed after 30 years of possession as has been held in the case of ***"Situ Sahu and others Vs. The State of Jharkhand and others'*** reported in ***AIR 2004 SC 4918***.

12. The fraudulent aspect with regard to collusive decree has been further considered in the judgment of the Full Court of Patna High Court in the case of ***Bina Rani Ghosh v. Commissioner, South Chota Nagpur Division***, reported in ***1988 Supreme (Pat.) 195,*** it has been held at paragraph nos.11 and 24, which reads as under:

> *"11. Coming now to S.71A, what first meets the eye is the fact that here exceptional protection has been given to the raiyati rights of persons who are members of the Scheduled Tribes. Apparently, the working of the Act had shown that the existing protection generally afforded by the statute were inadequate with regard to the majority of the unsophisticated members of the Scheduled Tribes and, therefore, by serial No. 3 of the Bihar Scheduled Areas Regulation, 1969, this section was specially inserted for their benefits. Again, the protection given here is in wide ranging terms against all unlawful transfers. It embraces in its wide sweep not only the contraventions of S.46 or of any other provisions of the Act but equally transfers by any fraudulent method including decrees obtained in a suit by fraud and collusion. It is plain*

that the protection has been given in the widest amplitude. Yet again the power to set aside such illegal transfer is given to the Deputy Commissioner without any limit of time when it comes to his notice. Obviously enough the Deputy Commissioner can here act suo motu.

24. If we analyse S.71A we will notice that the Deputy Commissioner has been given power to restore raiyati land of a member of the Scheduled Tribes, if a transfer has taken place 1.

(i) in contravention of Sec. 46;

(ii) in contravention of any other provisions of the Act;

(iii) by any fraudulent method including decree obtained in suit by fraud and collusion.

Decree of a Court by which the title of person is declared is not transfer as generally understood; but by Cl.(iii) it has also been included as a mode of transfer, albeit if the decree was obtained by fraud and collusion. There is no difficulty in understanding Cl.(i) because what is transfer within the meaning of Sec. 46 has been enumerated in that Section. Clause (ii) speaks about transfer in contravention of any other provisions of the Act. In other words, besides S.46, there are sections, transactions under which may amount to transfer. It is well settled that each word of a section must be given effect and so the words in Cl.(ii) must have full play. Section 72 mandates that a raiyat whose lease is not for a fixed period, may surrender his holding or part thereof with the previous sanction of the Deputy Commissioner in writing. Any surrender made in contravention of S.72 must be held to be bad in law. By surrender, right to hold land is given up by a raiyat in favour of another, who becomes entitled to hold the same. In effect, by surrender the raiyat looses his title in the land. The Legislature, therefore, provided that surrender may be made only with previous sanction of the Deputy Commissioner in writing. It must, therefore, be held that provisions referred to in Cl. (ii) is S.72. Surrender of right by a raiyat in his land must be held to be transfer within the meaning of Section 71A and statute provides that if it was made in contravention of S.72, the surrender may be annuled.'

13. In the light of discissions of the Full Bench Judgment in the aforesaid case, it is crystal clear that transfer by any fraudulent method including decrees obtained in a suit by fraud and collusion cannot be allowed to be continued.

14. Section 46(3) of the said Act reads as under:

(3) No transfer of contravention of sub-section (1), shall be registered or shall be in any way recognised as valid by any Court, whatever in exercise, of civil, criminal or revenue jurisdiction.

15. Sub Section 3 of Section 46 of the said Act, stipulates that any deed in violation of Section 46(1) of the said Act will not be recognized as valid by any Court; either Civil, Criminal or Revenue, and further, it is well settled that the collusive transaction by way of even registered deed in light of Sub Section 3 of Section 46 of the said Act, 1908, cannot be said to be a

valid transaction in light of the provisions made in the Act, 1908.

16. Section 46(4-A)(a) of the said Act reads as under:

> *(4-A) (a) The Deputy Commissioner may, of his own motion or on an application filed before him by an occupancy-Raiyat, who is a member of the Scheduled Tribes, for annulling the transfer on the ground that the transfer was made in contravention of clause (a) of the second proviso to sub-section (1), hold an inquiry in the prescribed manner to determine if the transfer has been made in contravention of clause (a) of the second proviso to sub-section (1):*
> *Provided that no such application be entertained by the Deputy Commissioner unless it is filed by the occupancy-tenant within a period of twelve years from the date of transfer of his holding or any portion thereof:*
> *Provided further that before passing any order under clause (b) or clause (c) of this sub-section, the Deputy Commissioner shall give the parties concerned a reasonable opportunity to be heard in the matter.*

17. In view of above the contention of the learned counsel for the petitioners with regard to the compromise decree, possession is not being accepted by this Court which is in violation of Act, 1908 as transfer has been claimed on the basis of compromise decree. Further, the decree is of 1968 wherein mutation case was filed in the year, 1999 that too at a particular point of time. The respondent no. 5 admittedly is the widow of late Jyotish Singh Munda and she has right to file restoration case. She is the first legal heir and successor of late Jyotish Singh Munda.

18. Further, the argument of the learned counsel for the petitioners with regard to conversion of the land into Chapparbandi lands, is not tenable as originally the land was not Chapparbandi land only after collusive decree the construction was made and in view of that the land was not Chapparbandi land in the light of statutory provision of Act, 1908. As such this contention of the learned counsel for the petitioners, is not accepted by this Court.

19. In view of above and looking into judgments of the three authorities which are under challenge, the Court finds that the learned

authorities have given findings on the point of limitation and thereafter the land has been restored in favour of respondent no.5. There is no illegalities in the impugned orders. Accordingly, this writ petition is dismissed. Pending I.A. if any, stands dismissed.

Dt.01.09.2026 **(Sanjay Kumar Dwivedi, J.)**

Satyarthi/-**A.F.R**