

IN THE HIGH COURT OF JHARKHAND, RANCHI

W.P.(C) No. 2621 of 2009

Amar Kumar Choudhary, son of late Ramdeo Choudhary,
resident of Chatwal, PO and PS-Chanho, District Ranchi

..... Petitioner(s)

-- Versus --

- 1.The State of Jharkhand
- 2.The Commissioner, Chhotanagpur Division, Ranchi
- 3.The Additional Collector, Ranchi
- 4.Deputy Collector, Land Reforms Sadar, Ranchi
- 5.Special Officer, Ranchi
- 6.Joseph Kujur, son of late Junus Kujur, resident of Chatwal, PO
and PS Chanho, District Ranchi Respondents

CORAM: HON'BLE MR. JUSTICE SANJAY KUMAR DWIVEDI

For the Petitioner(s) :- Mr. Ram Prakash Singh, Advocate

Mr. Pradeep Kumar, Advocate

For the State :- Mr. Ajit Kumar, AC to GA-V

For the Respondent No.6:- Mr. Sanjeev Thakur, Advocate

5/06.07.2026 Heard the learned counsel appearing on behalf of the petitioner as well as the learned counsel appearing on behalf of the respondent State as well as the learned counsel appearing on behalf of the respondent no.6.

2. This writ petition has been filed under Article 226 of the Constitution of India for quashing the order dated 21.10.2008 passed by learned Divisional Commissioner, Ranchi in SAR Revision

No.108 of 2008 whereby he has been pleased to confirm the order dated 28.06.2008 passed in SAR Appeal No.53R 15/07-08 passed by learned Additional Collector, Ranchi and further for quashing the order dated 28.06.2008 passed in SAR Appeal 53R 15/07-08 whereby the order dated 26.08.1998 passed in SAR Case No.10/86-87 and order dated 18.07.2007 in SAR Case No.13/06 has been set-aside.

3. Learned counsel appearing on behalf of the petitioner submits that father of the petitioner acquired the land under the proceeding for a valuable consideration of Rs.2,500/- in the year 1947 from Kusal Kujur and others and came in khas possession over the same and title has been perfected by lapse of time being Khata no.41 Plot no.610, area 1.32 acres in the same village. He also submits that Kusal Kujur had assured the father of the petitioner to obtain permission of the competent authority to sell the land in favour of the father of the petitioner, however, Kusal Kujur could not obtain the permission of the competent authority to sell the land in favour of the father of the petitioner, and even, never disturbed the peaceful possession of the father of the petitioner and the father of the petitioner has remained in exclusive possession over the land. He next submits that in the year 1962, said Kusal Kujur and his sons illegally without any right and title over the land under the proceeding started disturbing the peaceful possession and thereafter the father of the petitioner has filed title suit being Title Suit No.971

of 1962 which was decreed on compromise by the judgment dated 12.03.1965. He next submits that in the year 1986-87, the father of the respondent no.6 has filed restoration case for the land in question. The learned SAR court has disposed of the SAR case by order dated 26.08.1988 directing that the same portion of the land in the same village shall be transferred by the petitioner herein in favour of the father of the respondent no.6 and pursuant to that, 1.32 acres of land in the same village has been transferred in the name of the father of the respondent no.6 by way of registered sale deed by the order dated 21.9.1988 as contained in Annexure-3 series. He also submits that pursuant to the said transfer, the said land was also mutated in favour of petitioner's father as contained in Annexure-4 series. He next submits that thereafter the said order was not challenged in any other court and that has attained finality. He next submits that after 19 years of the order dated 26.08.1988, another SAR Case No.13/06-07 was instituted before the learned LRDC who was also the In-charge SAR Officer and the same was rejected by the order dated 18.07.2007 upholding the order passed in SAR Case No.10/86-87 as contained in Annexure-5 and Annexure-5/1. He next submits that thereafter the respondent no.6 has preferred the appeal before the learned Additional Collector, Ranchi who has been pleased to set-aside the order passed by SAR Officer in SAR Case No.10/86-87 dated 26.08.1988 as well as SAR Case No.13/2006-07 dated 28.06.2008 and ordered the Circle Officer,

Chanho to give possession of Khata no.4 Plot no.571 area 1.32 acres to the respondent no.6. He next submits that thereafter the petitioner herein has preferred SAR Revision No.108/2008 before the Divisional Commissioner, South Chhotanagpur Division, Ranchi and he has also been pleased to dismiss the said revision by the order dated 21.10.2008 confirming the order dated 03.07.2008 passed in SAR Appeal No.53R 15/07-08 passed by Additional Collector, Ranchi as contained in Annexure-7.

4. The learned counsel appearing on behalf of the petitioner, in this background, submits that the petitioner was in possession over the said land since the year 1947 and the first proceeding was initiated in the year 1986-87 and pursuant to the order dated 26.08.1988 passed in the said proceeding, by way of registered deed dated 21.9.1988 the land has already been transferred and mutation has also been made. He next submits that the said order passed on 26.8.1988 was not challenged, however, a fresh SAR case was instituted being SAR Case no.13/06-07, however, the SAR court has been pleased to reject the said application and on appeal, the two orders of the learned SAR courts have been set aside which has been affirmed in the revision by the learned Divisional Commissioner. He next submits that in view of the fact that after 40 years, the first SAR case was filed and further the second proceeding was in the year 2006-07 and on the ground of limitation itself, both the applications were not maintainable,

however, the orders have been passed. He next submits that the second SAR case being SAR Case No.13/2006-07 was rightly decided by the then learned SAR Officer holding the proceeding as res-judicata. He further submits that even the learned appellate authority has wrongly hold that there was no structure on the land in question which is contrary to any evidence led before the court. He next submits that there are witnesses examined in SAR Case No.10/86-87 where they have clearly deposed that the structures were there, however, the learned appellate authority and the learned revisional authority have not considered the deposition and in absence of any document, has passed the orders. On these grounds, he submits that the impugned orders may kindly be set-aside.

5. The learned counsel appearing on behalf of the respondent State submits that the learned appellate authority has found that there is no structure on the land in question and in view of that, the learned appellate authority has rightly passed the order. He also submits that the learned Divisional Commissioner has also considered that aspect of the matter and has rightly passed the order.

6. The learned counsel appearing on behalf of the respondent no.6 submits that the respondent no.6 was never put in possession in spite of the registered deed which was executed pursuant to the order dated 26.08.1988 passed in SAR Case

No.10/86-87. He next submits that, in this background, the respondent no.6 was compelled to file the next SAR Case being SAR Case No.13/06-07, and in view of that, the appellate court and revisional court have rightly passed the order.

7. In course of hearing of the writ petition of 2009, all of a sudden, Mr. Razaullah Ansari, the learned counsel has appeared in absence of filing any petition and has submitted that he may kindly be allowed to intervene in the writ petition.

8. From the entire proceeding, as discussed hereinabove, there is no mention of a new person who is claiming to be intervenor in the present writ petition of the year 2009, and that too, orally, and in view of that, the contention of Mr. Razaullah Ansari, the learned counsel is not being accepted by this Court.

9. Mr. Vijayant Verma, the learned counsel submits that he has filed I.A. No.8559 of 2026 and is supporting his brother, who is the petitioner. The instant I.A. stands disposed of, accordingly.

10. In course of argument, the learned counsel for the respondent no.6 has not questioned the transfer by the registered deed dated 16.09.1988 pursuant to the order passed by the learned SAR officer dated 26.08.1988 in SAR Case No.10/86-87 and prior to that, the possession was taken in 1947 by the father of the petitioner and when the execution not being done by the father of the respondent no.6, title suit, being Title Suit No.971 of 1962 was instituted in which the compromise has taken place and considering

the compromise aspect and further the provisions of the Chhotanagpur Tenancy Act, the learned SAR Officer has passed the order in light of the proviso (2) to Section 71(A) of Chhotanagpur Tenancy Act to execute the same area of land in the same village in favour of the father of the respondent no.6, and thereafter, the registered-deed was executed and further the mutation was also done in light of the annexure as contained at page nos.64 and 65 of the writ petition. Thus, for a transaction of the year 1947, the first case was instituted in the year 1986-87, that is, after more than 40 years and the said order was not challenged which has attained finality, however, later on, respondent no.6 has instituted another SAR case being SAR Case No.13/06-07 which was rejected by the learned SAR court by order dated 18.07.2007 and against that, respondent no.6 has preferred SAR Appeal No.53R 15/2007-08 which was allowed by the order dated 28.06.2008 by the learned Additional Collector setting aside the order dated 26.08.1988 as well as the order dated 18.07.2007 which was challenged by the petitioner herein before the learned Divisional Commissioner in SAR Revision No.108/2008 which was rejected by order dated 21.10.2008, and thereafter, the petitioner has preferred this writ petition before this Court. The deposition led in SAR Case No.10/86-87 as annexed with the writ petition being Annexure-2 series wherein the witnesses have stated about the existence of the structure on the land in question, however, the learned appellate

authority has stated that there is no substantial structure on the land in question which has been affirmed by the learned revisional authority, and that too, in absence of any material.

11. On query made by this Court, the learned counsel appearing on behalf of the respondent State has not been able to show any material on the record to suggest that there was no existing substantial structure on the land in question.

12. At page nos.62 and 64 of the writ petition, *Bunda Purcha* is there which is dated 25.03.1995 which clearly states that the land in question is of *Kayami* in nature and pursuant to said transaction, the name of the respondent no.6 has been included. The first transaction was made in the year 1947 and the suit was instituted in the year 1962 which was compromised by the order dated 12.03.1965. The SAR Case No.10/86-87 was instituted in the year 1986-87, that is after more than 40 years and the said SAR case was not challenged and has attained finality, and thereafter, the second SAR case was filed in the year 2006, that too, after 19 years from the first order in the SAR case passed on 26.08.1988 and the order dated 26.08.1988 was not challenged in the second SAR case. However, prior to the said challenge of the order, in this background, it is a clear case of constructive res-judicata and limitation. In the case of ***Situ Sahu v. State of Jharkhand*** reported in **(2004) 8 SCC 340**, the case was arising under Chhotanagpur Tenancy Act, the limitation period is said to be 30 years, and as there is no

limitation prescribed in Section 71(A) of Chhotanagpur Tenancy Act, it has been held in that case, that within a reasonable period of time, the restoration case is required to be instituted and a period of 30 years as held in that case, is a reasonable time. On the point of res-judicata and limitation, a reference may be made to the case of ***Fulchand Munda v. State of Bihar and Others*** reported in ***(2018) 14 SCC 774***, wherein at paragraph nos.13, 14 and 15, it has been held as under:

"13. Under the CNT Act as it stood in the year 1922, the transfer could have been challenged as it contravenes Section 46 of the CNT Act, being a contract or agreement of transfer. That plea having not been taken by the appellant's predecessors, the appellant and his predecessors were not entitled to raise the question of transfer being invalid under Section 46 of the CNT Act as it stood in 1922 on the principle of constructive res judicata. Section 46 of the CNT Act, by virtue of its amendment with effect from 5-1-1948, restricts and prohibits transfer by a raiyat of his right in his holding or any portion thereof by mortgage or lease for any period expressed or implied, which exceeds or might in any possible event exceed five years. It further restricts transfer by a raiyat of his right in his holding or any portion thereof, apart from mortgage, etc. by way of sale, gift or any other contract or agreement and if such transfer is effected it shall be invalid.

14. Section 71-A of the CNT Act authorises the Deputy Commissioner to evict the transferee from such land and to restore possession to the

raiyat if the transfer is being effected in contravention of Section 46 or any other provision of the CNT Act. Thus, if there is contravention of Section 46, the Deputy Commissioner is authorised to evict the transferee from such land and restore it to the transferor under Section 71-A of the CNT Act.

15. *The predecessors of the respondents could not be treated to be in possession in contravention of Section 46 as possession of land by them has been upheld by the High Court in its decision. The decision of the High Court cannot be reopened by taking advantage of amendment in Section 46 which came into force with effect from 5-1-1948. Section 71-A of the CNT Act would be attracted only in case the Deputy Commissioner finds that the impugned transfer was made in contravention of Section 46 or any other provision of the CNT Act. The decision of the High Court comes in the way of the Deputy Commissioner in arriving at any such findings. The possession having been denied to the appellant's predecessors holding that there was no contravention of Section 46 as it stood in 1922, the appellant cannot be permitted to take advantage under Section 46 on same having been amended by an Act of 1947. That apart, although there is no period of limitation prescribed for exercising the power under Section 71-A by the Deputy Commissioner, the party affected is called upon to approach the appropriate authority or the power has to be exercised by the Deputy Commissioner within a reasonable period of time. The gap of more than 50 years for challenging the transaction of 1922 cannot be said to be a reasonable time for exercising the power even if it is not hedged in by a period of limitation.*

13. In light of the above judgment and coming back to the facts of the present case, as discussed hereinabove, the point of res-judicata and limitation are attracted in the case in hand and further the learned appellate authority as well as the learned revisional authority have not given any cogent reason on saying as to how the res-judicata aspect is not attracted in the aforesaid background. As such, the order dated 28.06.2008 passed in SAR Appeal No.53R 15/07-08 and further the order dated 21.10.2008 passed in SAR Revision No.108/2008 are, hereby, set-aside and further the order dated 26.08.1988 passed in SAR Case No.10/86-87 has attained finality and as such, the order dated 26.08.1988 has attained finality and that is existing in view of allowing of the present writ petition.

14. This writ petition being W.P.(C) No.2621 of 2009 is allowed in the above terms and disposed of.

15. Pending petition, if any, also stands disposed of.

(Sanjay Kumar Dwivedi, J.)

Dated : 06.07.2026

SI/ **A.F.R.**