

IN THE HIGH COURT OF JHARKHAND AT RANCHI
W.P. (C) No. 5778 of 2017

1. Smt. Sushila Mishra, w/o late Shambhu Dayal Mishra
2. Vinay Mishra, s/o late Shambhu Dayal Mishra
both are resident of Tiril Road, Kokar, P.O. & P.S.-Sadar, Dist.-Ranchi, presently residing at D-2/5, Telco Colony, Hudco, P.O. & P.S.-Jamshedpur, Dist.-East Singhbhum

.... Petitioners

Versus

1. The State of Jharkhand
2. Commissioner, South Chotanagpur, P.O. & P.S.-Sadar, Dist.-Ranchi
3. Deputy Commissioner, Ranchi, P.O. & P.S.-Sadar, Dist.-Ranchi
4. Schedule Area Regulation Officer, Ranchi, P.O. & P.S.-Sadar, Dist.-Ranchi
5. Binod Kumar Munda, s/o late Ropna Munda, resident of Tunki Tola, Kokar, P.S.-Sadar, Dist.-Ranchi

.... Respondents

With

W.P. (C) No. 5786 of 2017

Smt. Prabhawati Devi, w/o Sri Narayan Prasad Verma, resident of Bishnupuri, Tiril Road, Kokar, P.O.-Bariyatlu RMCH, P.S.-Sadar, Dist.-Ranchi

.... Petitioner

Versus

1. The State of Jharkhand
2. Commissioner, South Chhotanagpur, P.O. & P.S.-Sadar, Dist.-Ranchi

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- 3. Additional Collector, Ranchi, P.O. & P.S.-Sadar, Dist.-Ranchi
- 4. Schedule Area Regulation Officer, Ranchi, P.O. & P.S.-Sadar, Dist.-Ranchi
- 5. Binod Kumar Munda
- 6. Mangra Munda
both sons of late Rupna Munda, resident of Village-Kokar, Tunki Tola, P.O.-Bariyat, RMCH, P.S.-Sadar, Dist.-Ranchi

.... Respondents

With

W.P. (C) No. 5798 of 2017

Smt. Anjali Burman, w/o late Satyanarayan Burman, resident of Bishnupuri, Tiril Road, Kokar, P.O.-Bariyat, RMCH, P.S.-Sadar, Dist.-Ranchi

.... Petitioner

Versus

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- 2. Commissioner, South Chhotanagpur, P.O. & P.S.-Sadar, Dist.-Ranchi
- 3. Additional Collector, Ranchi, P.O. & P.S.-Sadar, Dist.-Ranchi
- 4. Schedule Area Regulation Officer, Ranchi, P.O. & P.S.-Sadar, Dist.-Ranchi
- 5. Mangra Munda son of late Rupna Munda, resident of Village-Kokar, Tunki Tola, P.O.-Bariyat, RMCH, P.S.-Sadar, Dist.-Ranchi

.... Respondents

With

W.P. (C) No. 5844 of 2017

- 1. Smt. Geeta Devi @ Geeta Devi Roy, w/o Raghunath Roy

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2. Raghunath Roy, s/o late Shivpujan Roy
both sons of Bishnupuri, Tiril Road, Kokar, P.O.-Bariyatu
RMCH, P.S.-Sadar, Dist.-Ranchi

.... Petitioner

Versus

1. The State of Jharkhand
2. Commissioner, South Chhotanagpur, P.O. & P.S.-Sadar, Dist.-Ranchi
3. Additional Collector, Ranchi, P.O. & P.S.-Sadar, Dist.-Ranchi
4. Schedule Area Regulation Officer, Ranchi, P.O. & P.S.-Sadar, Dist.-Ranchi
5. Mangra Munda son of late Rupna Munda, resident of Village-Kokar, Tunki Tola, P.O.-Bariyatu, RMCH, P.S.-Sadar, Dist.-Ranchi

.... Respondents

P R E S E N T

HON'BLE MR. JUSTICE ANIL KUMAR CHOUDHARY

.....

For the Petitioners	: Mr. Manjul Prasad, Sr. Advocate
	: Mr. Arbind Kr. Sinha, Advocate
	: Mr. Akhouri Prakhar Sinha, Advocate
	: Mr. Aniket Rohan, Advocate
For the Respondents	: Mr. Praveen Akhauri, SC (Mines)-I
	: Ms. Mohini Gupta, AC to SC (Mines)-I
	: Mr. Diva Kant Roy, AC to SC (Mines)-I
	: Mr. Anup Kr. Agrawal, AC to GA IV
	: Mr. Amrit Raj Kisku, AC to GA V
	: Mr. P.P.N. Roy, Sr. Advocate
	: Ms. Pragati Prasad, Advocate

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By the Court:-

1. Heard the parties.

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2. The Writ Petition No. 5778 of 2017 has been filed under Article 226 of the Constitution of India with a prayer for issue of appropriate writ(s), order(s), direction(s) for quashing the order dated 22.10.2010 passed by the respondent no.4 in S.A.R. Case No. 104/08-09, copy of which has been annexed as Annexure-6, the order dated 11.01.2012 passed by the respondent no.3 in S.A.R. Appeal No. 56R 15 of 2010-11, a copy of which has been annexed as Annexure-7 and order dated 20.03.2017 passed by the respondent no.2 in S.A.R. Revision No. 95 of 2012, a copy of which has been annexed as Annexure-8 of this writ petition whereby and where under, the authorities have allowed the restoration of land under Section 71A of Chotanagpur Tenancy Act in favour of the respondent no.5.
3. Writ Petition No. 5786 of 2017 has been filed under Article 226 of the Constitution of India with a prayer for issue of appropriate writ(s), order(s), direction(s) for quashing the order dated 19.02.2010 passed by the respondent no.4 in S.A.R. Case No. 312/2005-06, copy of which has been annexed as Annexure-6, the order dated 29.07.2011 passed by the respondent no.3 in S.A.R. Appeal No. 15R 15/2010-11, a copy of which has been annexed as Annexure-7 and order dated 17.04.2017 passed by the respondent no.2 in S.A.R. Revision No. 147 of 2011, a copy of which has been annexed as Annexure-8 of this writ petition whereby and where

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under, the authorities have allowed restoration of land under Section 71A of Chotanagpur Tenancy Act in favour of the respondent nos.5 and 6.

4. Writ Petition No. 5798 of 2017 has been filed under Article 226 of the Constitution of India with a prayer for issue of appropriate writ(s), order(s), direction(s) for quashing the order dated 22.10.2010 passed by the respondent no.4 in S.A.R. Case No. 102/2005-06, copy of which has been annexed as Annexure-6, the order dated 29.07.2011 passed by the respondent no.3 in S.A.R. Appeal No. 13R 15 of 2010-11, a copy of which has been annexed as Annexure-7 and order dated 17.04.2017 passed by the respondent no.2 in S.A.R. Revision No. 146 of 2011, a copy of which has been annexed as Annexure-8 of this writ petition whereby and where under, the authorities have allowed restoration of land under Section 71A of Chotanagpur Tenancy Act in favour of the respondent no.5.
5. Writ Petition No. 5844 of 2017 has been filed under Article 226 of the Constitution of India with a prayer for issue of appropriate writ(s), order(s), direction(s) for quashing the order dated 22.10.2010 passed by the respondent no.4 in S.A.R. Case No. 102/2005-06, copy of which has been annexed as Annexure-5, the order dated 29.07.2011 passed by the respondent no.3 in S.A.R. Appeal No. 12R 15 of 2010-11, a copy of which has been annexed

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as Annexure-6 and order dated 17.04.2017 passed by the respondent no.2 in S.A.R. Revision No. 148 of 2011, a copy of which has been annexed as Annexure-7 of this writ petition whereby and where under, the authorities have allowed restoration of land under Section 71A of Chhotanagpur Tenancy Act in favour of the respondent no.5.

6. The writ petitioners are the purchasers of the lands involved in respective cases which was originally purchased by Md. Rafique from the ancestors of the respondent no.5 vide sale deed no.5144 dated 24.08.1961.
7. It is submitted by the learned Senior Advocate appearing for the petitioners relying upon the judgment of Hon'ble Supreme Court of India in the case of **Situ Sahu & Ors. vs. The State of Jharkhand & Ors.** reported in **MANU/SC/0744/2004**, paragraph no. 11 of which reads as under:-

"11. We are, therefore, of the view that the use of the words "at any time" in Section 71-A is evidence of the legislative intent to give sufficient flexibility to the Deputy Commissioner to implement the socio-economic policy of the Act viz. to prevent inroads upon the rights of the ignorant, illiterate and backward citizens. Thus, where the Deputy Commissioner chooses to exercise his power under Section 71-A it would be futile to contend that the period of limitation under the Limitation Act has expired. The period of limitation under the Limitation Act is intended to bar suits brought in civil courts where the party himself chooses to exercise his right of seeking restoration of immovable property. But, where, for socio-economic reasons, the party may not even be aware of his own

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rights, the legislature has stepped in by making an officer of the State responsible for doing social justice by clothing him with sufficient power. However, even such power cannot be exercised after an unreasonably long time during which third-party interests might have come into effect. Thus, the test is not whether the period of limitation prescribed in the Act of 1963 had expired, but whether the power under Section 71-A was sought to be exercised after unreasonable delay."
(Emphasis supplied)

and the judgment of Hon'ble Supreme Court of India in the case of **Jai Mangal Oraon vs. Mira Nayak & Ors.** reported in **MANU/SC/0371/2000**, paragraph no.16 of which reads as under:-

"16. The submission that, in any event the contesting respondents cannot be allowed to hold the land they being non-tribals and the Deputy Commissioner is obliged to allot the same to some other tribal only does not merit our acceptance. Apart from the grounds on which we have rejected the claim of the appellant, we find that the High Court left open the question about the disputed character of the lands and the nature of interest surrendered which if had been properly considered and decided was likely to have an impact on the question of the very applicability of the statutory provisions to the case on hand. Merely because Section 71-A commences with the words "If at any time..." it cannot be taken to mean that those powers could be exercised without any point of time-limit, as in this case after nearly about forty years unmindful of the rights of the parties acquired in the meantime under the ordinary law and the law of limitation. We consider it, therefore, inappropriate to countenance any such contentions in these proceedings." (Emphasis supplied)

that the Hon'ble Supreme Court of India has in no uncertain terms has held that the power vested under Section 71A of

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Chotanagpur Tenancy Act cannot be exercised after an unreasonable long time. So the authority concerned, has to examine whether the power under Section 71A of Chotanagpur Tenancy Act is sought to be exercised after unreasonable delay; more so when such specific plea of unreasonable delay is taken by the aggrieved party.

8. It is next submitted by the learned Senior Advocate appearing for the petitioners that in the respective orders passed by the revisional authority being the respondent no. 2 though the ground of limitation has been specifically raised by the writ petitioners being the revisionist and such contention of the writ petitioner-revisionist, was also noted down by the respondent no.2 but no finding has been given in respect of limitation, by the respondent no.2. It is further submitted by the learned Senior Advocate appearing for the petitioners that undisputedly, as the power under Section 71A of Chotanagpur Tenancy Act, 1908 is sought to be exercised after a delay of 47 years, the same is an unreasonable delay. Hence, it is submitted that the order dated 20.03.2017 passed by the respondent no.2 in S.A.R. Revision No. 95 of 2012 in W.P. (C) No.5778 of 2017, order dated 17.04.2017 passed by the respondent no.2 in S.A.R. Revision No. 147 of 2011 in W.P. (C) No.5786 of 2017, order dated 17.04.2017 passed by the respondent no.2 in S.A.R. Revision No. 146 of 2011 in W.P. (C) No.5798 of 2017

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and order dated 17.04.2017 passed by the respondent no.2 in S.A.R. Revision No. 148 of 2011 in W.P. (C) No.5844 of 2017 be quashed and set aside.

9. Learned Senior Advocate appearing for the respondent no.5 in W.P. (C) No.5778 of 2017, W.P. (C) No.5798 of 2017 and W.P. (C) No.5844 of 2017 and respondent nos.5 and 6 in W.P. (C) No.5786 of 2017 as also the learned counsel for the State fairly submits that no finding on the issue of limitation has been arrived at by the respondent no.2 though in the orders concerned, the respondent no.2 noted down the contention of the writ petitioners who filed the revision before it, that the prayer of the private respondents is hopelessly barred by unreasonable delay.
10. Having heard the parties and considering the aforesaid undisputed facts, this Court is of the considered view that since the ground of unreasonable delay in seeking invocation of the power under Section 71A of Chotanagpur Tenancy Act is an important aspect, certainly, the respondent no.2 of all these four writ petitions have committed a grave illegality by not giving any finding in respect of the same even though it has been noted by it that the writ petitioners agitated the point of limitation before it.
11. Hence, in the considered opinion of this Court, the order dated 20.03.2017 passed by the respondent no.2 in S.A.R. Revision No. 95 of 2012 in W.P. (C) No.5778 of 2017, order dated 17.04.2017

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passed by the respondent no.2 in S.A.R. Revision No. 147 of 2011 in W.P. (C) No.5786 of 2017, order dated 17.04.2017 passed by the respondent no.2 in S.A.R. Revision No. 146 of 2011 in W.P. (C) No.5798 of 2017 and order dated 17.04.2017 passed by the respondent no.2 in S.A.R. Revision No. 148 of 2011 in W.P. (C) No.5844 of 2017 are not sustainable in law and continuation of the same will amount to abuse of process of law.

12. Accordingly, the order dated 20.03.2017 passed by the respondent no.2 in S.A.R. Revision No. 95 of 2012 in W.P. (C) No.5778 of 2017, order dated 17.04.2017 passed by the respondent no.2 in S.A.R. Revision No. 147 of 2011 in W.P. (C) No.5786 of 2017, order dated 17.04.2017 passed by the respondent no.2 in S.A.R. Revision No. 146 of 2011 in W.P. (C) No.5798 of 2017 and order dated 17.04.2017 passed by the respondent no.2 in S.A.R. Revision No. 148 of 2011 in W.P. (C) No.5844 of 2017 are quashed and set aside.
13. The S.A.R. Revision No. 95 of 2012, S.A.R. Revision No. 147 of 2011, S.A.R. Revision No. 146 of 2011 and S.A.R. Revision No. 148 of 2011 are remanded to the respondent no.2 being the Commissioner, South Chotanagpur Division, Ranchi to pass a fresh speaking order after giving a specific finding in the matter of limitation after giving opportunity of fresh hearing to the parties.

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14. It is made clear that this Court has not expressed any opinion regarding the merits of the contention of the petitioner so far as the matter of limitation is concerned. Hence, the respondent no.2 is not expected to be prejudiced by this Order.
15. All the writ petitions are disposed of accordingly.

(Anil Kumar Choudhary, J.)

High Court of Jharkhand, Ranchi
Dated the 23rd April, 2024
AFR/Sonu-Gunjan/-

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