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Court of the Principal District
and Sessions Judge
Bokaro

T.A.N. 33/2007

- ① Divisional forest officer ^{Divisions} ~~Divisions~~
- ② The Range Officer, Chas Range

vs

- ① Sri Hari Pada Mahanta
- ② Sri Kailash Bati Mahanta
- ③ Deletet v.o.s. dt 15.07.10
- ④ The Chief Secretary, Govt Jharkhand
- ⑤ The Secretary forest Dept.
- ⑥ The Deputy Commissioner, Chas
- ⑦ Electro Steel Subgroup Ltd.

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P. - 3690 (22)
25/3/15

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In the Court of the Pt. Dist. Judge Bokaro

DISTRICT : BOKARO.

T.A.M - 33/07

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sheet

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IN THE COURT OF THE SUB-ORDINATE JUDGE-II, BOKARO.

Present : Ashok Kumar Singh
Sub-Judge-II,
Civil Court, Bokaro.

Hari Pada Mahatha

Dated:- Bokaro, the 29th Day of May, 2007.

D.F.O. Forest

Title Suit No.:- 25/1996

Hari Pada Mahatha and Ors.:-----Plaintiffs

- Vrs.-

The D.F.O. Forest and Ors.:-----Defendants

Advocates for the Plaintiffs:- Sri S.N.Rai, Sri Pradeep Kumar Singh, Sri R.A. Tiwari, Advocates

Advocates for the Defendants:- Sri S.K.Sen, A.GP.



J U D G E M E N T

(1) It is a suit by the plaintiffs for a decree for declaration of permanent occupancy raiyath right and confirmation of possession etc of the plaintiffs in the lands described in schedule A and B of the plaint.

(2) That the case of the plaintiffs as set out in the plaint, in brief is that R.S. Plot No. 1159 and 1389 and 1321 and 1120 more fully described in Scheduled below of the ^{plaint} hereinafter referred to as the disputed lands originally belonged to Uday Chandra Ghoshal S/O late Sristidhar Ghosal and his co-sharers of village- Kherabera P.S. Chandnakiary District Manbhum, now Bokaro and was recorded in gairabad Khatian No. 58 under Khewat No. 5 of Mouza-Bhagabandh Mouza No. 83 within P.S. Chas(M) Court



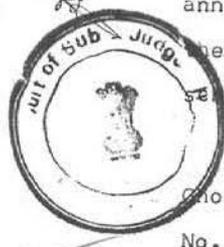
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District- Manbhum, now disctrict Bokaro and they were in peaceful khas possession of the same, Udaya Chandra Ghoshal got the disputed lands along with other lands in his own share by their family arrangement and amicable partition, the disputed plots alongwith other lands fell to the Exclusive shares of Uday Chandra Ghoshal one of the co-sharers landlords and he remained in peaceful possession of the same keeping no manner of concern with his other co-sharers.

That, Uday Chandra Ghoshal while thus in possession of the disputed lands, permanently settled an area of $8\frac{1}{2}$ acres in Plot No. 1159 by executing as and dated 12th Aswin 1347 B.S. to one Smt. Sumitra Bala Devi wife of Sri Raghu Nath Mahatha on receipt of a Salami of Rs. 125/- and reserving annual rent of Rs. 4 and 8 annas including cess and delivered peaceful possession thereof. The detail of the land settled is described in schedule 'A' belc^W of this plaint.



That, like wise the said Uday Chandra Ghosal also permanently settled an area- 3.05 acres in plot No. 1389, 5.13 acres in Plot No. 1321 an area of 1.00 acre in Plot No. 1120 total 3 plots and total area 9.18 acres by executing Hukumnama dated 27th Chaitra 1349 B.S. to said Smt. Sumitra Bala Devi W/O sri Raghu Nath Mahtha on receipt of Salami of Rs. 95/- and reserving annual rent of Rs. 5/- including cess and delivered peaceful possession thereof. The detail of the lands settled is described in schedule B below of the plaint. The sketch maps of the lands mentioned in schedules are attached forming the part of this plaint.

That, the disputed lands were originally gora land by dint of hard manual labours and at huge cost sumitra Bala Devi cut earth and reclaimed a portion of the disputed land into paddy producing khets and remained in peaceful possession of the same growing paddy in the paddy khets and rabi crops in theremaining portion

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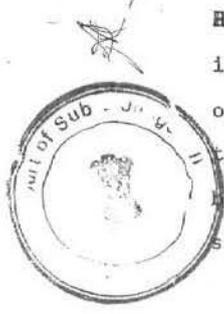
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of the disputed land on payment of rent to the exland lord and by exercising diverse act of possession of the same in the manner their mother.

That, thus plaintiffs are in peaceful possession of the disputed land by reclaiming paddy khet and cutting earth and levelling the same to grow rabi crops since 1347 B.S. corresponding to 1940.

That, while thus in peaceful uninterrupted possession after a lapse of the statutory period of 30 years, the employees of the Forest Dept., wanted to forcible dispossession of plaintiffs from the disputed land when they seriously been protested. Having been restrained to get the possession of the disputed land the Forest Dept. proceeded with a case under B.P.L.E. against the plaintiffs. Right to year 1991 to 1994 for the portions of the lands in dispute which were reclaimed and prepared to paddy khet of course the said B.P.L.E. Cases against plaintiffs for the respective portions of the disputed lands have not yet been disposed off and plaintiffs remained in peaceful possession thereof, indefeasably and adversely.



That the Forest Deptt. never possessed the disputed lands.

That, by the false claim of the Forest Deptt. by proceedings under the Bihar Public Land Encroachment Act a cloud been cast upon the title of plaintiffs and as such plaintiffs have been advised to file a suit for declaration of his title and for confirmation of possession therein and hence this notice is being sent to defendants.

That the cause of action arose in the month of October 1995 when the plaintiffs came to know the pendency of B.P.L.E. Cases 26/91-92 and others and on 10.11.1995 when the plaintiffs compelled to issue notice U/S 80 C.P.C. to the defendants and on subsequent dates within the jurisdiction of this Court.

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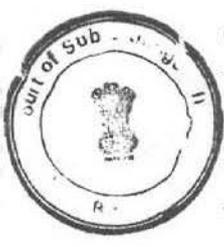
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That, for the purpose of Court fees & jurisdiction the suit is valued Rs. 41,000/- and the Court fees has been paid.

(3) That the case of the defendants as set out in wirtten statement of the defendants in brief is that there is no cause of action for the present suit. That the suit is not maintainable. That the suit is barred by limitation That the suit is barred by principles of waiver, estoppel and acquiesces. That the present suit is barred under the provision of transfer of property Act. That the suit is barred under the provision of Indian Registration Act. That the present suit is barred by the Provision of Indian Forest Act, 1927 as well as Bihar ^{Private} Forests Act, 1946-47. That the suit is barred under the Provision of C.N.T. Act. That the suit is also barred by Bihar Land Reforms Act. That the suit is barred uner the provision of Section 80 of the Civil Procedure Code which is mandatory provision to sue against government. That the suit is bad for non-joinder and mis-joinder of necessary partyes. That the valuation of the suit property is abnormally low according to present market value. The valuation of the suit property cannot be less than Rs. 250/- per decimals and the plain-tiffs are bound to pay the advelorem court fee. That the statement made in para 1 of the plaint are not wholly correct and emphatically denied by this defendant. This within Mouza: Bhaga Bandh Mouza no. 83 Gair Abad Khatian no. 58 under Khewat No. 5, plot no 1389, area 3.05 acre plot no 1321, area 5.13 acres plot no. 1120 area 1.00 acre and plot no. 1159 area 8.50 acres Total area 17.68 acres of land in the last cadestral survey settlement operation record of right under C.N.T. Act section 80 and 81 was prepared and particulars to be recorded. The Jangal Jhari Forest lands and waste lands were recorded under Khatian Part II nature and character of such

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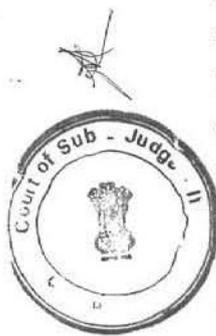
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land was written as Jangal-Jhari and waste lands. Certain limited rights were provided to the proprietors intermediaries such as cutting big trees for rebuilt and repairing house premises like Mahua, Palash, and Hartaki, Sal and collect fruit products collectively and Grazing cattle in the forest lands. After the commencement of the Indian Forest Act 1927 as also the Bihar ^{Private} Forests Act, 1948 come into operation by issuance of notifications in Bihar Gazette the Governor of Bihar had seized those Jangal Jhari Forest land and waste land. The propreitory rights of lands lord, Tenure Holder, intermediary and under raiyats were extinguished and Govt. has acquired proprietary right over such land. The Government may constitute protected forest in the manner herein after provided in the Public interest. This defendant further submit that whenever it has been decided to constitute forest land and waste land a protected Forest the Govt. shall issue notification under the provision of Sec. 3 and 4 as also under Sec. 29(3) Chapter-IV of the Indian Forest Act, 1927 the State Government may constitute protected Forest over forest land and waste land which are the exclusive property of government or over which government has proprietary right to the whole or any part the government is entitled to a protected forest in the manner herein after provided. The Governr is further pleased to exercise the power conferred by section 4 and 29(3) of the Indian Forest Act, 1927 appoint a Forest Settlement Officer to enquire into and determine the existence nature and extent of any right to be found therein and deal with the same. That after due enquiry made by F.S.O. the forest land and waste lands held and possessed by ex-landlord, Jamin-dars intermediaries, tenure holder, under raiyats were seized from the date of report by F.S.O. AND the government has acquired propreitory right over those forest land and waste lands. The F.S.O. had prepared Master Plan for that proposed Forest Land and demarcate the area of such forest

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After that notification U/S 29(3) of the Indian Forest Act, 1927 was issued vide notification no. C/F 17014/58-1429R dt. 24.5.58. Thereafter notification U/S 30 of the Indian Forest Act was issued being notification no. 17038/64-4850 R dated 19.12.1964 thereafter another notification was issued U/S 14(21) of the Bihar Private Forests Act, 1947 being Notification No. 4466-VI F - 29/47 R dtd. 28.4.47 again notification U/S 15(3) of the Bihar Private Forests Act 1947 was issued by the Governor in Bihar Gazette in pursuance of his power conferred under the Act being Notification no. 9526-VIF -316/48R dtd. 11.8.48 under the Provision of Section 31 of the Indian Forest Act 1927, the vernacular translation of those notification U/S 30 and others were promulgated by beat of drum by a Dholidar in presence of respectable persons and villagers by Forester in the neighbourhood area of the Forest Lands. That after the Indian Forest Act and Bihar Private Forests Act come into operation over all the jungle hari forest land and waste lands recorded in Khatian Part II as also Gair Abad Mallick Khata in the C/S operation over which government has acquired proprietary right and the right of land lord, intermediaries, tenure holder, jamindar have been extinguished as such the government may constitute protected forest in the manner herein after provided. The recorded tenure holder jamindar Uday Chandra Ghoshal S/O Late Sristidhar Ghoshal had or has got no right to settle gair abad khatian land which was also recorded in khatian part II, plot no. 1159 area 8.50 acre to Smt. Sumitra Bala Devi W/O Sri Raghu Nath Mahatha, on 12 Aswin 1347 B.S. and the settlee did not derive any legal right, title interest over those settled lands which are under demarcated forest Area. Forest or waste lands jangal jhari recorded under Khatian Part II in the last C/S operation settled to any person by virtue of Hukumnama or permanent Jot Patta said to have been executed by the then recorded tenant Udaya Chandra Ghoshal son of late Sristidhar Ghoshal on 10th Aswin

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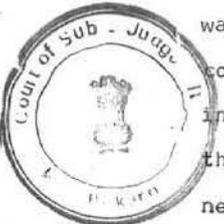
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1347 B.S. has got no legal valid, existence or has not conferred any right, title, interest and the same is totally false, baseless fabricated got up manufactured created bogus and colourable paper transaction invented for the purposes of grabbing the forest land law fully held and possessed by Forest Deptt. under the Act and such paper has never been intended to acted upon. That after declaration and publication of notifications the protected forest are under the demarcated Protected Forest Area by cutting Trenches, erecting boundary, Pagars, posting pillars, pole fencing by wire transplanting various species of trees, Bamboo clumous and some natural product trees like Palash, Sal, Mahua, Chakundi and Ors. bushes of different species and the same area are under the direct control management supervision and possession of the Forest Department since the acts come into force and the Governor or the ^{Authority} concerned was pleased to issue notification by exercising the ^{power} conferred by the Act. The plaintiffs nor their predecessors in interest or their vendors ever possessed any portion of the disputed lands described in the schedule of plaint neither delivery of possession was at any point of time effected upon nor the plaintiffs or their predecessors exercising any act of possession and their claim of possession, reclamation ploughing and getting delivery of possession by giving proper and adequate valuation/consideration is nothing but mere pretence and pure myth. That Udaya Chandra Ghoshal S/O Sristidhar Ghoshal the ex-land lord had no right beyond the provision of C.N.T. Act section 80-81 Khatian part II was prepared and nature and character of the land was recorded as Jangal Jhari permanently settle any portion or whole of plot no. 1389, 1321 and 1120 total area 9.18 acre by executing Hukumnama or patta to Smt. Sumitra Bala Devi W/O Sri Raghunath Mahatha on 27th Chaitra 1349 BS in respect of Jangal Jhari forest and waste land which are recorded under Khatian Part II in last C/S operation as the tenancy right was extinguished under the provision of the

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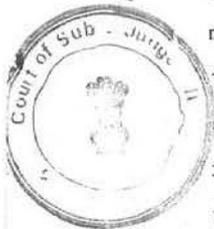
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Indian Forest Act and Bihar Private Forests Act the proprietary right was vested upon the government and government had acquired proprietary right over such lands which were recorded under Gair Abad Khata and Khatian Part-II simultaneously, hence the permanent settlement or Jot Patta said to have been executed by Udaya Chandra Ghoshal S/O Late Sristidhar Ghosal on 27th Chaitra 1349 B.S. on a valuable consideration is totally false, baseless, bogus unacted collusive document invented for the purpose of encroaching the government forest lands which is under direct control supervision, management and possession under Demarcated protected forest area. The plaintiffs nor their predecessors ever possessed any portion of the disputed land at any point of time as falsely alleged nor they ever exercise any act of possession and their claim of taking delivery of possession by giving proper and adequate consideration is pure myth and they have purchased nothing but a bag of wind and they are intended to establish their claim by virtue of such documents. On the other hand this defendant has acquired and derived legal valid right title, interest by virtue of convincing certain impeachable public documents entry made in the year 1925. That Gair Abad Khata no. 58 Khewat no. 5 plot no. 1159 area 8.50 acre plot no. 1389 area 3.05 acre plot no. 1321, area 5.12 acre plot no. 1120 area 1.00 acre constitute protected forest of mouza bhaga bandh and the same are in the exclusive physical possession of the forest department by transplanting different species of trees and Bamboo Chemons. The claim of cutting earth reclaimed by hard labour or by huge expenses is totally false on the whole it is a jungal jhari forest and waste and it was or is never cultivated. The allegations of initiating of B.P.L.E. case by Forest Department on encroachment of forest land by uprooting the plants and trees transplanted by forest department and caused injury and irreparable loss to forest land to vacate the illegal encroachment the department has started B.P.L.E. proceeding

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it does not amount to restrain the plaintiffs from their adverse possession. The allegation contrary to the aforesaid admitted facts and the plaintiffs are bound to strict proof of the same. That the plaintiffs have not derive any legal valid right, title interest over the public land by virtue of the Hukunama, jot patta executed by ex-land lord without any consideration for the lands recorded under Gair Abad Khata as also Khatian Part II Jangal Jhari forest and waste lands since 1925 the documents said to have been executed by Udaya Chandra Ghosal S/O Late Sristidhar Ghosal in favour of Smt. Sumitra Bala Devi W/O Sri Raghunath Mahatha did not conferred any legal valid right, title interest and possession hence the question of casting clouds upon the plaintiff's title does not arise at all, and the plaintiff's case has no merit or substance. The entire allegations are issues of lies regarding purchase by settlement by executing Hukunama, jot patta which are confusing and contradictory one. The entire land of Mouza Bhaga bandh Mouza no. 83 khata no. 58, khewat no. 5, plot no. 1159, 1389, 1321, 1120 total area 17.68 acre are forest land ~~affixer~~ after notifications issued under the Provision of Indian Forest Act 1927 Bihar Private Forests Act, 1947 U/S 29(3), 30, 31, 14(21) and 15(3) ? respectively. The ex-land lord tenure holder jamindars or their predecessors in interest had or have no right to execute or transfer any forest land as their right, title, interest have been extinguished under the law. The plaintiffs have not derive any legal, valid, right, title interest or possession by virtue of such false, baseless fabricated colourable sham, unauthentic document said to have been executed in their favour. This defendant also subkit that no any manner of right, title, interest or possession have accrued to these plaintiffs by virtue of so called kacha forged and fabricated whimsical, documents as well as so called B.P.L.E. case order instituted by forest department due to illegal and wrongful acts of

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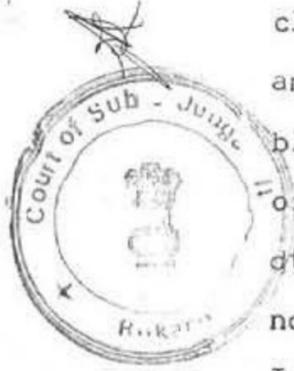
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the plaintiffs. Defendant forest department have to suffer irreparable/heavy loss which can not be compensated due to tree cutting, plant uprooting, cultivation earth cutting soil erosion etc. That no cause of action for the present suit arose on the month of October 1993 and on 10.11.95 or on any subsequent dates which would warrant to issue notice U/S 80 C.P.C. within the jurisdiction of this Court as falsely alleged in para 10 of the plaint. That the suit is grossly under valued as the value of the suit lands is more than 1 lakhs the plaintiffs have wrongly under valued the suit land as Rs. 41,000/- (Rupees forty one thousand only) and unless the advelorem Court Fee is paid on the present market value of the suit land the present suit cannot proceed. That the plaintiffs are not entitled to any of the relief or relives as have been claimed in para 12 a,b,c,d, of the plaint under the facts and circumstances stated above the plaintiffs suit is liable to be dismissed with costs. That as per the provision of the Forest Conservation Act and the interim order dtd. 12.12.96 of the Hon'ble Supreme Court in Civil Writ no. 202 of 1995 (T.N.Godevarma Vrs. Union of India and Ors.) In accordance with section 2 of the Act (Forest Conservation Act) all on going activities within any Forest in any state through out the country without prior approval of the Central Government must ceases forthwith. As far as definition of Forest and Forest Lands as concerned. The Hon'ble Supreme Court observed that the word forest must be understood according to its dictionary meaning. This description covers all statutorily recognised forest whether designated as Reserve, Protected, otherwise for the purpose of section 2(1) of the Forest Conservation Act. The term Forest land occurring in section 2 will not only includes forest as understood in the Dictionary senses but also any area recorded as forest in government records in respective of the ownership. The suit land obviously has been recorded as Jangal Jhari in Khatian Part II therefore, the provisions

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of the Forest Conservation Act and the interim order passed by the Hon'ble Supreme Court made it clear that the claim of right, title, interest over the suit land by the plaintiffs are illegal, baseless and mischievous also the award of title, over the suit land would tantamount to contempt of the Hon'ble Supreme Court thus the suit is without any merit substance and deserve to be dismissed out rightly. That save and except what ever statement have been specifically admitted in this written statement with reference to the statements made in the plaint all other statements contrary to the aforesaid admitted facts in this written statements are emphatically denied by this defendants and the plaintiffs are bound to strict proof of the same. That in the recent revisional survey authority after due and proper verification on spot khatian prepared in the name of forest department. Under the aforesaid facts and circumstances stated above the present suit is liable to be dismissed with exemplary costs to this defendant.



(4) On the basis of pleadings of both the parties the following issues have been settled for adjudication in this case :-

Issues settled

- (i) Is the suit maintainable in the present form ?
- (ii) Is there any cause of action for the suit ?
- (iii) Is the suit barred by the principle of waiver, estoppel and acquiescence ?
- (iv) Is the deed of settlement of the suit land in accordance with law ?
- (v) Is the suit land reclaimed into paddy producing Khet by the plaintiffs ?
- (vi) Is the entire area of each suit plot acquired by the Bihar Forest ?
- (vii) Is the plaintiff entitled for the reliefs prayed in the suit ?

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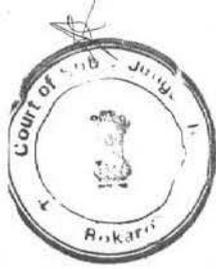
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(viii) Is the plaintiff entitled to any other relief or reliefs.

F I N D I N G S

(5) The following witnesses have been examined on behalf of the plaintiffs P.W. 1 Hari Pada Mahtha, P.W. 2 Amul Sharma, P.W. 3 Sudhir Kumar Ghoshal, P.W. 4 Binod Bihari Mishra, P.W. 5 Gobardhan Dey, P.W. 6 Mahabir Mahatha.

Following documents have been exhibited on behalf of the plaintiffs Hukumnama No. 1347 and 1349 written in Bangali Language, Ext. 2 - 2/C Malgugari Receipts, Ext. 3 - 3/b Map, Ext. 4 Notices U/S. 80 of the C.P.C., Ext. 5 - 5d Postal Receipts, Ext. 6 Signature on plaint, Ext. 7 to 7/e Notices in BPLE Cases.



The following witnesses have been examined on behalf of the defendants D.W. 1 Bishamibhar Ram, D.W. 2 sri Bhagwan Ram, D.W. 3 Ajit Kumar Chaudhary, D.W. 4 Ilahi Bug Ansari, D.W. 5 Birendra Kumar, D.W. 6 Ashok Kumar.

The following documents have been marked exhibits on behalf of the Defendants. Ext. A Notification, Ext. A/1 Notification, Ext. A/2 Notification, Ext. B Map, Ext. B/1 Map, Ext. A/3 Notification U/S. 29 of the Indian Forest Act. 1927, Ext. C Certified copy of Khatiyon No. 58.

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(6) Now I discuss and elaborate the evidence on different crucial points for determination.

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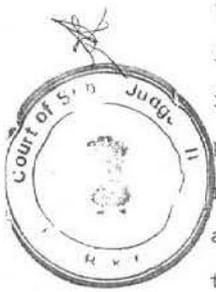
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ISSUE NO. (i) : 13 : -

Is the suit maintainable in the present form ?

The plaintiffs have pleaded/argued that R.S. Plot No. 1159/1389/1321/1120 appertaining to Khatian No. 58 under Khewat No. 5 of Mouza Bhagbandh belonged to Uday Chandra Ghohal in his tenure right while U.C.Ghoshal was enjoying his tenure right, he settled the portions of aforementioned plots to Sumitra Devi wife of Raghunath Mahatha, the plaintiff no. 3 vide Hukumnama dated 12th Aswin 1347 B.S. corresponding to the year 1940 and 27th Chaitra 1349 B.S. corresponding to the year 1942. The settlee by dint of hard labour and huge expenses reclaimed the gora land into paddy fields and remained in cultivating possession in the reclaimed portion and by way of Bari land adjoining the reclaimed portions and perfected their indefeasible right (Raiyati right) of the portions settled, while thus in possession since 1940, in the year 1996 plaintiffs were served with notices in B.P.L.E. cases, hence the plaintiffs apprehended of the casting of the clouds to their right, title, interest in the suit land was compelled by advice to bring the suit and in compliance of Section 80 C.P.C. to issue notices to the defendants and in absence of any reply, brought a civil suit for reliefs to them. Having been served with notices the defendants appeared through G.P. and filed W.S. on behalf of defendant no. 4, the D.F.O. It is worth mentioning that the written statement has been submitted by one sushil Kumar Verma, a Forester an authorised person on behalf of defendant no. 4. It is worth mentioning that no such authority letter has been filed in this case record. He claimed that the lands in suit plots were junge-jhari in the record of rights, hence the land lord was given a limited right as per the Indian Forest Act 1927, and Bihar ^{Private} Forests Act, 1947. It has been submitted on behalf of the plaintiffs that there was no such provisions, which have been ^{Private} derived from either in Indian Forest Act, 1927 or Bihar

Forests Act, 1947, in which the government of Bihar or the government of Bihar may seize these jhangal-jhari and waste land. It is worth mentioning that the Bihar Protected Forest Contd.....P/14



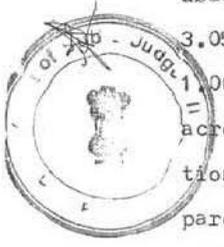
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Act 1946 was enacted after the present settlement in favour of the plaintiffs in the year 1940-1942.

It would be proper to mention that in 1940 - 42 the land lords were enjoying their tenure rights and they were used to settle the lands in gairabad nature to the raiyats. That before vesting of the intermediary right to the government in 1952 - 56 or before 1946, of the enactment of the Bihar ^{Private} Forests Act and till its proper notification the landlords/tenure holders/khwat holders/intermediaries had the right to settle the gair abad lands to its raiyat.



The defendants have pleaded /argued that the case of the defendants is that within village Bhagabandh No. 83, gair abad khatiyar no. 58, under khewat no. 5, plot no. 1389, area 3.05 acres, plot no. 1321 area 5.13 acres, plot no. 1120 area 1.00 acres, plot no. 1159 area 8.50 acres, totalling area 17.60 acres of the land in the last cadastral survey settlement operation, record of rights under CNT ^A Act, Section 80 & 81 was prepared and particulars were recorded the jungle-jhari forest lands and waste lands were recorded under khatiyar part II and nature of the suit land was jungle jhari and waste lands. After the commencement of the Indian Forest ^{Private} Act 1927 and the Bihar

Forests Act 1946 came in operation by issuance of the notification in Bihar Gazette, the Governor of Bihar had seized those jungle-jhari, forest lands and waste lands and the proprietary rights of land lords, tenure holders/intermediaries and under raiyats was extinguished and then the government of Bihar acquired proprietary right over the instant suit land and hence the lands claimed by the plaintiffs as settler of the ex-landlord, in question was baseless. Neither the I Form nor M. Form presented before the Court as exhibits. Hence the plaintiffs are not in possession over the suit land. Further, it is not claimed that ex-landlord did not file any return regarding the instant suit land. After demarcation and publication of notification suit lands are under the demarcated protected forest area by cutting trenches, erecting boundary, fixing pillars by fencing by wire, transplan-

Contd....P/15

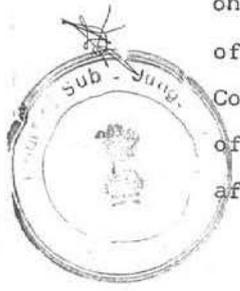


Date of application for the copy.	Date fixed for notifying the requisite number of stamps and folios.	Date of delivery of the requisite stamps and folios.	Date on which the copy was ready for delivery	Date of making over the copy to the applicant.

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-ting various specific trees like Bamboo, Palash, Sal Etc. and the same are under the direct management, supervision possession and control of the Forest Department. Therefore, the ex-land lord had no right to settle the suit land in favour of Sumitra Bala Devi. That to vacate the illegal encroachment by the plaintiffs the department started B.P.L.E. cases to restrain the plaintiffs for their adverse possession It has been contended on behalf of the defendants that, if there is a BPLE proceeding there is bar to sue through a civil court. That Sumitra Bala Devi has not been examined in this case, through she is a party in the instant suit. It has also been contended on behalf of the defendants that plaintiffs are not paying rent to the state that five witnesses have been examined on behalf of the defendants who placed the relevant documents of the defendants, That the suit is without merit and substance. Considering the aforesaid pleadings, in the factual backdrop of the case it is crystal clear that this issue be decided in affirmative.



ISSUE NO. (ii) :- Is there any cause of action

for the suit ?

The cause of action in the present civil suit arose in the month of October 1995, when the plaintiffs were served with notices and they came to know the pendency of the B.P.L.E. cases 26/91-92 and others and on 10.11.1995, when the plaintiffs were compelled to issue notice U/S 80 of the C.P.C. to the defendants and on subsequent dates within the jurisdiction of the Civil Court. The contention of the defendants in this regard is not tenable. Hence, this issue is decided in affirmative.

ISSUE NO. (iii) :- Is the suit barred by the principles of waiver, estoppel and acquiescence?

In the factual backdrop of this case this issue is decided in the negative. This issue is decided in favour of the plaintiffs.



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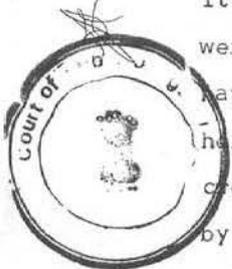
Date of application for the copy.	Date fixed for notifying the requisite number of stamps and folios.	Date of delivery of the requisite stamps and folios.	Date on which the copy was ready for delivery	Date of making over the copy to the applicant.

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ISSUE NO. (iv) :- Is the deed of settlement of the suit land in accordance with law ?

It has been pleaded/argued on behalf of the plaintiffs that the deed of settlement of the suit land is in accordance with law in as much as the landlords have been empowered to settle the waste land to the raiyats witnessed by a patta (lease of land). Sometime the settlement witnessed by sanad and hukumnama and kabuliat. Herein in the instant case the Hukumnama and sanad (the lease of land) were executed and granted by the landlord are the exhibits no. - 1/a and 1 respectively. Though these are unregistered documents. As per the plaintiffs the settlement by unregistered (patta) document. But it is in accordance with customs and usages of the land and they were taken to be granted as to be a valid one. The plaintiffs have referred A.I.R. (33) 1946 Patna 22 wherein it has been held -Bihar Tenancy Act- Lease of agricultural land can be created orally- Kabuliyat by Tenant registered - Rent accepted by landlord- valid lease is created. Plaintiffs have further referred A.I.R. 1953 PATNA 365 ; wherein it has been held- (b) Although an unregistered sale deed is not admissible in evidence to prove title, nevertheless it could be referred to as explaining the nature and character of the possession henceforth held by the party. (c) if there is a transfer effected in violation of the law, the transfer would be deemed to be in adverse possession, ever since the date of transfer. On the basis of the aforesaid discussions it can safely be held that this issue also is decided in affirmative.



ISSUE NO. (v) :- Is the suit land reclaimed into paddy khets by the plaintiffs?

In this regard it is pertinent to note that the plaintiffs crave leave to place the sketch-maps as part of the plaint which displays the reclaimed portions of the paddy khets the notices issued under the B.P.L.E. cases i.e Ext. 7 to 7/e are evidence of the factum of encroachment of lands by construction (construction meaning thereby construction of



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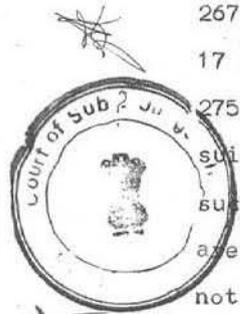
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paddy producing khets. The D.W. 1 in his cross examination has admitted the existence of paddy khets beside the Bhagaband jungle. B.W. 2 has also deposed to the same tune. Hence this issue is also decided in affirmative.

ISSUE NO. (vi) :- Is the entire area of each suit plot acquired by the Bihar Forest ?

It is pertinent to note that the plaintiffs crave leave to analyse and examine the notification dated 24th May 1958 Ext. A/2 on behalf of the defendants in which the plot numbers and areas have been shown to be notified to be labelled as protected forests. Serial No. 39 of the list in the notification- village Bhagabandh has been described no khatiyani number has been mentioned causing the notification as deficient one. There is an area of 267.58 acres declared to be the protected forest of the area of 17 plots where as the suit plots are consisting of an area of 275.58 acres only. It is evident that the area of each unit of suit plot has not been declared to be protected forest and as such the area settled to the plaintiffs out of each suit plot are exempt to be declared as protected forest, even otherwise the notification dated April 1947, now Ect. A/1 does not disclose the acquisition for private protected forest of the lands of said Uday Chandra Ghoshal vide serial no. 47. The lands of several other tenure holders were described to be acquired for private protected forest. Further, it has not been published in the locality as per the requirement of the law. It was an intention of the Governor to acquire the lands in the nature of jungle, jungle jhari in the khatiyani part II of the tenure holder. The present notification has not been dealt with in its completion to the extent of declaring the lands to be the protected forest. The present notification was for covering the period of the time of such inquiry and record and in the meantime the existing rights of the individual was not eclipsed. No notifiical U/S 29(3) of the Indian Forest Act 1927 has yet been published and as such the individual rights has not been eclipsed nor the inquiry and record has been made within those period beyond thirty years as U/S 30 of the Indian Forest Act, 1927. In absence of notification



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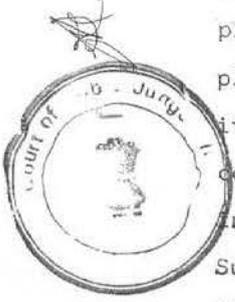
Date of application for the copy.	Date fixed for notifying the requisite number of stamps and folios.	Date of delivery of the requisite stamps and folios.	Date on which the copy was ready for delivery	Date of making over the copy to the applicant.

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U/S. 29(3) of the Indian Forest Act, 1927 said to be the notification after inquiry and record as notified vide notification dated 28th April 1947, the Ext. A-1 on behalf of the defendants, the Hindi translation of the notification in the year 1964 U/S. 31 of the Indian Forest Act 1927 published vide notification dated 19.12.1964, Ext. A on behalf of the defendants. Although this notification dealt with the reservation of the detailed particulars of the various varieties of the trees. Further the D.W. 1 D.W. 2, D.W. 3, D.W. 4, D.W. 5, D.W. 6 all have deposed to the tune that they are not aware of the fact, whether entire area or a portion there of the suit plots have been acquired. It is pertinent to take note of the factum that under the above discussion it could be observed that the entire area of each suit plots have not been acquired and the portions of the each suit plots have been left to be possessed by the raiyats. Further, it has been pleaded/argued on behalf of the plaintiffs that the contesting defendant no. 4, the D.F.O. has not been examined in this case. The authorised person on behalf of the defendant Sushil Kumar has not been examined and therefore the claim of the defendants in the W.S. could not be proved properly. Further, it has been pleaded/argued on behalf of the plaintiffs that the Khatiyan in recent survey has already been prepared in the name of the plaintiffs. No objection as yet has been brought by the defendants. The entry in recent survey record will become important. The plaintiffs have referred AIR 1981 Calcutta P. 74 wherein it is held -(A) Evidence Act Section. 35 - Record of Rights - conflict in entries in C.S. Khatiyan and R.S. Khatiyan prepared subsequently- entry in R.S. Khatiyan being later has to be presumed to be correct. As revealed by aforesaid discussions this issue is decided in negative.-In other words this issue is decided in favour of the plaintiffs. Further, it would not be improper to add the following points in the issue of maintainability of the suit that so far the provision of BPLE Act are concerned the plaintiffs have argued/pleaded that as per the nature of the suit and the reliefs prayed therein no provisions of BPLE Act are attracted in as much as no question of vesting or nonvesting

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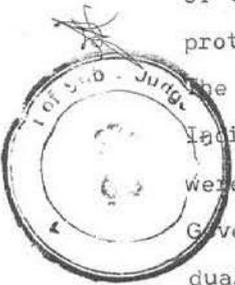
Date of application for the copy.	Date fixed for notifying the requisite number of stamps and folios.	Date of delivery of the requisite stamps and folios.	Date on which the copy was ready for delivery	Date of making over the copy to the applicant.

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of the intermediary has been involved in the suit nor any case against the state has since been brought. That the claim of the defendants in their W.S. vide Para 13 that Khatiyani U/S. 80 ordered to be prepared in the record of rights and U/S. 81 particulars to be recorded in khatiyani is correct. As per the provisions of U/S. 80 & 81 of the C.N.T. Act the record of rights has been prepared and published in the year 1925-26 much earlier than the enactment of Indian Forest Act 1927 and much earlier the intention of the Governor to declare the jungle jhari / waste lands to be protected forests in the year 1947 or onwards and much earlier of the present settlement to the plaintiffs in the year 1940-42. That the claims of the defendants that the suit lands have been declared to be the protected forests is a mere myth and it remains unproved as yet. The claim of the raiyats due to non inquiry U/S. 29(3) of the Indian Forest Act 1927 has not been extinguished as yet. If there were any inquiry U/S. 29(3) of the Indian Forest Act 1927 the Governor or Authority concerned must have extinguished the individuals rights in the portions of the plots in their possession in as much as the forest Act has declared the suit plots to be protected forests in part and not entire area. The Bihar Forest without any proper notification forcibly claiming the suit land belonging to the plaintiffs. The translation in Hindi of the notification U/S. 30 of the Indian Forest Act has not been published in accordance with law in as much as none of the villager of Bhagabandh has been witness to the promulgation of the Hindi translation of the notification. Furthermore, this notification was promulgation to the effect of the reservations of particular kinds of trees and not to the effect of the acquisition of the lands for protected forests. The plaintiffs are in peaceful uninterrupted continuous possession of the suit lands since 1940-42. When the Bihar ^{Private} Forests Act was not in existence. Therefore, the plaintiffs acquired indeasible right much less raiyati right over the lands and by these continuous possession of 12/30 years the plaintiffs have become occupancy raiyat of the suit land under the provisions of CNT Act Sec. 16 and Sec. 6 of the repealed Act and

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Date of application for the copy.	Date fixed for notifying the requisite number of stamps and folios.	Date of delivery of the requisite stamps and folios.	Date on which the copy was ready for delivery	Date of making over the copy to the applicant.
25.03.15	27.03.15	27.03.15	27.03.15	27/3/15

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the occupancy raiyats cannot be ejected from the holding unless and untill a decree for ejection is executed as provided U/S. 22 of the C.N.T. Act.

(7) On the basis of aforesaid discussions considering the facts and circumstances of the case it is evident and expediant for the ends of justice that the suit be decreed and consequently issue no.(vii) and (viii) be decided in affirmative. Plaintiffs have been able to prove their case against the defendants partly ex-parte and partly on contest. The suit is liable to be decreed in favour of the plaintiffs and against the state, and plaintiffs may be granted reliefs with certain modifications, as, prayed for. since the defendants are state, therefore, it will not be expedient to award costs against them, therefore be it

O R D E R E D

that the suit is decreed partly ex-parte in favour of the plaintiffs and against defendants no. 1,2,3,5 and on contest against defendant no. 4, without costs. Defendants are to be directed, for decree, for declaration, for permanent occupancy raiyati rights, of the plaintiffs in the lands described in schedule 'A' and 'B' of the plaint (suit land). The law will take its own course for execution.

(DICTATED AND CORRECTED BY ME)

(PRONOUNCED BY ME)

Corrected
 27.03.15

A.K. Singh 29-5-2007
 (A. K. SINGH)

Ashok Kumar Singh 29-5-2007
 (ASHOK KUMAR SINGH)
 SUB-JUDGE-II, BOKARO.



Date of application for the copy.	Date fixed for notifying the requisite number of stamps and folios.	Date of delivery of the requisite stamps and folios.	Date on which the copy was ready for delivery	Date of making over the copy to the applicant.

Schedule XLII—High Court (J) 17 [old C. P. 20]

The Pr. D. S. BOKARO

T. D. M-53/07

DECREE IN ORIGINAL SUIT

Order XX, Rules 6 and 7, Code of Civil Procedure

District Bokaro

In the Court of Sub Judge II at Bokaro

Title Suit No. 25 of 1996

① Shri Hari Pada Mahatha ② Shri Kailash Pati Mahatha both sons of late Raghu Nath Mahatha ③ Smtya. Sumitra ^{Plaintiff} (Cald.)

versus

① The Chief Secretary, Government of Bihar Patna Secretariate, Patna - 1 ② The Secretary (Forest Department), Government of Bihar, Patna - 1 ③ The Deputy Commissioner, Bokaro ^{Defendant} (ii)

Note—The addresses given above are the addresses for service filed by the parties under rules 19 and 22 of Order VII, or under rules 11 and 12 of Order VIII, of the first Schedule to the Code of Civil procedure, with the exception of

who did not appear or omitted to file their addresses

Suit filed on 20-03-96

Suit valued Rs. 41000/-

Cause of action arose in the month of October 1995 and on 10-11-95

Claim for—

- (a) A decree for declaration of permanent occupancy raiyati right of the plaintiffs in the lands described in schedule A and B of the plaint.
- (b) A decree for the cost of the suit.
- (c) A decree for any other and further relief for which may be found entitled to.

SCHEDULE 'A'

District Bokaro P. S. Char (M), Pergana Khaspel Moyja - Bhagabandh, No. 83 under Khewat No. 5 Khatian No. 58 Plot No. 1159 Area - 8.50 acres.

Boundary :- North : Portion of Plot No. 1159
 South :- Izari Nadi
 East - Portion of Plot No. 1159
 West - Plot No - 1157/1158 (ii)



Date of application for the copy.	Date fixed for notifying the requisite number of stamps and folios.	Date of delivery of the requisite stamps and folios.	Date on which the copy was ready for delivery	Date of making over the copy to the applicant.

Schedule XLII—High Court (J) 17 [Old C. P. 20]

This suit counting on this 29-05-07 for final disposal before Sri A.K. Singh, ^{Sub Judge II} Judge II

_____ day _____ in the presence of

Adv. Sri S.N. Rai, Sri Pradeep Kumar Singh, Sri R.A. Tiwari for the plaintiff

and of _____ Sri S.K. Sen, A.G.P. _____ for the defendant

it is ordered and decreed that the suit is decreed partly ex-parte in favour of the plaintiffs and against defendants no. 1, 2, 3, 5 and on contest against defendant no. 4, without costs. Defendants are to be directed for decree for declaration for permanent occupancy raiyati rights of the plaintiffs in the lands described in schedule 'A' and 'B' of the plaint (suit land). The law will take its own course for execution.

and that the sum of Rs. _____

as paid by the _____

_____ to the _____

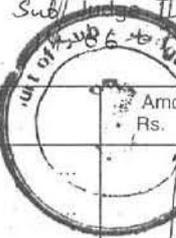
an account of the costs of this suit, with interest thereon at the rate of _____ per annum from this date to date of realization.

Given under my hand and the seal of this Court, this* 29th day of May 2007

* Enter here the date of the judgment.

Sub
Office Clerk
12-06-07

Sub
11-6-2007
12-06-07
sharistadar
COSTS OF SUITS

Sub Judge II


Plaintiff	Amount		Defendant	Amount	
	Rs.	P.		Rs.	P.
1. Stamp for complaint	...		Stamp for power	...	
2. Do for power		Do for petition or affidavit	...	
3. Do for petition or affidavit	...		Cost for exhibition	...	
4. Cost for exhibits.	...		Pleader's fee	...	
5. Pleader's fee on Rs.	...		Subsistence :—		
6. Subsistence :—			(a) for defendant or his agent	...	
(a) for plaintiff or his agent	...		(b) for witnesses	...	
(b) for witnesses	...		Commissioner's fee	...	
7. Commissioner's fee	...		Service of process	...	
8. Service of process	...		Copying or typing charges	...	
9. Copying or typing charge	...				
Total			Total		

SPL



Date of application for the copy.	Date fixed for notifying the requisite number of stamps and folios.	Date of delivery of the requisite stamps and folios.	Date on which the copy was ready for delivery	Date of mailing over the copy to the applicant.
25.03.15	27.03.15	27.03.15	27.03.15	27.03.15

Part of Decree
(T.S. 25/96)

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(Contd.) * Bala Devi W/o Late Raghu Nath Mahatta all by faith Hindu by occupation cultivation resident of village - Bhagaband P.S. Chas (M) P.O. Alkusa Pargana Khaspol Dist. - Bokaro

..... Plaintiff

_____ x _____ x _____ x _____

(Contd.) * (i) (4) The Divisional Forest Officer,
Combind Building, Dhanbad
(5) The Ranger, Chas Range,
Forest Department Chas
Dist. - Bokaro

..... Defendants

_____ x _____ x _____ x _____

(Contd.) * (ii) SCHEDULE 'B'

Item No. 1

Within same Mouja, Khewat and Khatian Plot No. 1389 Area - 3.05 Acres.

Boundary

- North :- Portion of Plot No. 1389
- South :- Plot No. 1166
- East - Plot No. 1168/1171/1172/1173
- West - Plot No. 1169, 1170

Item No. 2

Plot No. 1321 Area - 5.13 Acres.

Contd.



Date of application for the copy.	Date fixed for notifying the requisite number of stamps and folios.	Date of delivery of the requisite stamps and folios.	Date on which the copy was ready for delivery	Date of making over the copy to the applicant.

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Boundary : - North - Plot No. 1243
 South - Portion of Plot No. 121
 East - Plot No. 1349
 West - Portion of Plot No. 1321

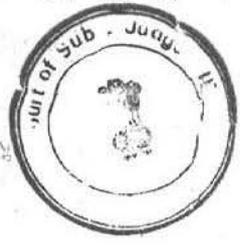
Item No. 3 Plot No. - 1120 Area - 1.00 Acre.

----- X ----- X ----- X

Fulls
 12-06-07
 Office Clerk

Sh
 11-6-2007
 Sharistandar
 12-06-07

Sub Judge II
 14-06-07



Comptroller
 27-03-15

Application for Copy..... 5
 Searching fee..... 72
 Extra fee for Urgency..... 66
 Folios..... 68
 Total Fee..... 211

(Rs Two hundred eleven only)

Sharma
 H.C.C. 27.3.15.

Copy Deptt.
 Office of the Principal District & Session Judge
 Bokoero

सच्ची प्रमाणित प्रतिलिपि शुल्क रु 10=00
Sharma
 27.3.15.
 प्रधान तुलना लिपिक
 प्रतिलिपि विभाग
 प्रधान जिला एवं सत्र न्यायाधीश का कार्यालय
 बोकारो



सच्ची प्रमाणित प्रतिलिपि
Sharma
 सिविल न्यायालय
 प्रधान जिला एवं सत्र न्यायाधीश का कार्यालय
 बोकारो
 धारा 76 अधिनियम (1) 1972 के अधीन प्राधिकृत

IN THE HIGH COURT OF JHARKHAND, RANCHI

W. P. (C) No. 2033 of 2015

Electrosteel Steels Limited, a company incorporated under the Companies Act, 1956, through its Director, Rama Shankar Singh, Son of Shri Ram Vilas Singh, R/10, Lohanchal, P.O. & P.S.:- Bokaro Steel City, District :- Bokaro. Petitioner(s)

Versus

1. The Union of India, through its Secretary, Ministry of Environment, Forests and Climate Change, Government of India, having its office at Indira Pariyabhvan, Aliganj, Jor Bagh, P.O. & P.S. :- Jor Bagh, Town & District :- New Delhi (NCR of Delhi)-110003.

2. Assistant Inspector General of Forest, Ministry of Environment, Forests and Climate Change, Government of India, having its office at Indira Pariyabhvan, Aliganj, Jor Bagh, P.O. & P.S. :- Jor Bagh, Town & District :- New Delhi (NCR of Delhi)-110003.

3. The State of Jharkhand, through its Chief Secretary, having its office Project Bhawan, Dhurwa, P.O.:-Dhurwa, P.S.:-Dhurwa, District :- Ranchi.

4. The Secretary Forest, Government of Jharkhand, having its office at Nepal House, Doranda, P.O. & P.S.:-Doranda, District :-Ranchi.

5. The Jharkhand State Pollution Control Board, through its Chairman, having its office at T.A. Division Building (Ground Floor), HEC, P.O. & P.S.:-Dhurwa, District :-Ranchi.

6. Member Secretary, the Jharkhand State Pollution Control Board, through its Chairman, having its office at T.A. Division Building (Ground Floor), HEC, P.O. & P.S.:-Dhurwa, District :-Ranchi.

.... Opp. Party(s)

CORAM: HON'BLE MR. JUSTICE R. R. PRASAD

For the Petitioner(s) : M/s Anil Kr. Sinha, Sr. Advocate
Indrajit Sinha, Bibhash Sinha, Advocates.

For the UOI : M/s Rajiv Sinha, ASGI
Niraj Kumar, JC to ASGI

For the Respondent No.3 & 4 :- M/s L.C.N. Shahdeo, G.P.IV
S. K. Gautam, J.C. to G.P.IV

For the JSPCB : M/s Dr. A. K. Singh,
Krishna Murari, Advocates

06/05.02.2016. Before proceeding further in the matter, the order which was passed on 22.05.2015 needs to be recorded which reads as under :-

"The petitioner was granted environmental clearance by the Central Government for establishing a factory in the name and style of M/s Electrosteel Steels Limited, Parwatpur at Bokaro. Thereupon, "No Objection Certificate" was granted by the Jharkhand State Pollution Control Board (for short Pollution Board) for establishing the factory. After the factory was established, consent to operate was given by the Pollution Board which is effective till December, 2016. Thereupon the factory started production after investing several crores and by employing 4700 employees (approx.). Beside that, thousands and thousands persons

are engaged indirectly with production of steel. While the production was going on a directive was issued by the Ministry of Environment, Forests and Climate Change, Government of India, New Delhi to stop production if M/s Electrosteel Steels Limited, Parwatpur at Bokaro if it has been established unauthorisedly on the forest land. Consequent upon such directive, the In-charge Member Secretary of the Pollution Board without holding any inquiry or without giving any notice to the petitioner to show cause passed the order as contained in its letter dated 18.04.2015 to stop production, which is certainly in violation of the principle of natural justice.

Furthermore, the land, over which the factory has been established, never happens to be the forest land and this declaration has been made by the competent civil court, when the vender of the petitioner had filed a title suit before the civil court for declaration of right, title and interest over the land including the land over which the factory does exist. In that case, the forest department was the party. That order though has been challenged by the forest department in an appeal bearing Title Appeal No.33 of 2007 before the District Judge, Bokaro but so long the decree passed by the trial court does subsist, the land, which is being claimed to be the forest land, cannot be said to be the forest land and under these situations, the impugned order can certainly be said to be bad on both counts.

However, Mr. A. K. Pandey, learned counsel for Jharkhand State Pollution Control Board, submits that the matter be adjourned for 25.06.2015 so that in the meantime, he may file counter affidavit.

Accordingly, let this case be posted on 25.6.2015.

Meanwhile, operation of the order dated 18.04.2015, as contained in Annexure-21, shall remain stayed.

Let a copy of this order be handed over to Mr. A. K. Pandey, learned counsel for Jharkhand State Pollution Control Board, for needful."

When the matter was taken up today, learned Assistant Solicitor General submitted that a counter-affidavit has been filed wherein it has been stated that when information was received to the Ministry of Environment, Forest and Climate Change, Government of India, New Delhi to the effect that M/s Electrosteel Steels Limited has been established over the forest land, the authority did write a letter to the Principal Secretary, Forest to ensure stoppage of production, if the factory has been established over the forest land. That letter reportedly was sent to the Pollution Control Board who took the decision according to his own wisdom.

As against this, Mr. A. K. Singh, learned counsel appearing for the Jharkhand State Pollution Control Board assisted by Mr. Krishna Muari and also by Mr. Sahdeo GP IV, submitted that it is true that the letter issued by the Ministry of Environment, Forest and Climate Change was never directed to the authority of the Pollution Control Board rather it was directed to the Principal

Secretary, Department of Forest, but that letter was endorsed to the Pollution Control Board for taking necessary action and when the Board did find that the factory has been established over the forest land, the impugned order dated 18.04.2015 was passed asking the petitioner to close the functioning of the factory with immediate effect.

Having heard learned counsel appearing for the parties, it is evident that the order dated 18.04.2015 has been passed, by the authority without giving any opportunity to the petitioner to be heard in the matter particularly when the petitioner has been putting forth the claim of ownership on the basis of a decree passed by the Civil Court in favour of the vendor of the petitioner and that decree does have force as it has not been reversed till date.

Under the circumstances, I do find that the authority did pass the order dated 18.04.2015 in violation of the principles of natural justice and accordingly, the said order is hereby set aside.

However, the authority would be at liberty to pass order in accordance with law after giving opportunity to the petitioner to be heard in the matter.

Thus, this application stands disposed of,.

(R. R. Prasad, J.)

Sandeep/