CASE NO.:
Appeal (civil) 2414-15 of 1999

PETITIONER:
Situ Sahu and Others

RESPONDENT:
The State of Jharkhand and others

DATE OF JUDGMENT: 10/09/2004

BENCH:
Shivaraj V. Patil & B.N. Srikrishna

JUDGMENT:
J U D G M E N T

Srikrishna, J.

These appeals, by special leave call into question the judgment of the Division Bench of the Patna High Court dismissing the writ application of the appellants.

In the area to which the Chota Nagpur Tenancy Act, 1908 (hereinafter referred to as 'the Act') applied, certain lands were originally recorded in the names of Kochya Oraon, Bachua Oraon and Jagna Oraon, ancestors of one Goinda Oraon. They were the recorded tenants of land in Khata no.13 of village Chhotanagpur. Jagna Oraon died immediately after the revisional survey. Kochya and Bachua surrendered the tenancy pertaining to plot nos. 588, 1883, 1884 and 1885 in Khata no.13 admeasuring 2.65 acres of the land to the landlord, the Maharaja of Chhotanagpur by a registered deed dated 7.2.1938. Soon thereafter, the landlord settled the land on the appellants on 25.2.1938. The appellants have been in possession of the land and cultivating it.

On 3.2.1978 the said Goinda Oraon filed an application under section 71A of the Act for restoration of the land in question on the ground that the appellants had fraudulently acquired the land by means of a 'sada hukumnama'. This application was registered as S.A.R. Case No. 415/77-78. The Special Officer, Ranchi issued notices to the appellants and, after hearing the parties and recording evidence, came to the conclusion that the land belonged to the ancestors of Goinda, who were members of scheduled tribes and khatiyani holders of the land in question. Although, originally there were four co-sharers in the land, namely, Kochya Oraon, Bachua Oraon, Jagna Oraon and Goinda Oraon, the tenancies were surrendered only by Kochya and Bachua and not by the other two. The surrender was made on 7.3.1938 and the settlement in favour of the appellants was made on 25.3.1938. The Special Officer took the view that the surrender and the settlement of the land constituted one continuing act and was, therefore, contrary to the provisions of the Act. He also held that the surrender was illegal as all the shareholders had not surrendered their rights and decided that by reason of the provisions of Section 71A of the Act the tribals could not have been dispossessed from the aforesaid land. In this view of the matter, he allowed the application for restoration of possession to the applicant Goinda Oroan by an order made on 9.5.1980. The appellant appealed to the Additional Collector, Ranchi who affirmed the view of the Special Officer. A revision petition was also dismissed by the

Commissioner upholding the views of the two authorities below.

The appellants challenged the order of the Revenue Authorities by a writ petition before the Patna High Court. The High Court dismissed the writ petition holding that section 71A of the Act is a beneficial legislation and the legislative intent is to extend protection to a class of citizens who were unable to protect their properties on account of backwardness, and, therefore, the Court had to give a broad and liberal construction to the legislative intent of protection. The High Court agreed with the authorities below that the surrender of the tenancy and the settlement of the land, coming in quick succession, was one continuous 'transaction' which was hit by section 71A of the Act. The contention that the application for restoration was filed after the period of limitation, was rejected on the ground that the plea of limitation had not been raised at any stage of the proceeding. On this reasoning the High Court dismissed the writ application of the appellants. Hence, this appeal.

Before we take up the contentions in the appeal, a quick look at the applicable material legal provisions. The Chhota Nagpur Tenancy (Amendment) Act, 1908 is of 1908 vintage. By the amending Act of 1947 (Bihar Act 25 of 1947), which came into force with effect from 5.1.1948) section 46 was introduced in the statute. Section 46 of the Act puts restrictions on the transfer of the rights by 'raiyat' who is a member of a Scheduled Tribe. As a rule, any transfer of holding or a portion of his holding by sale, exchange, gift or will and so on is prohibited by section 46. Provisos (a) and (b) of Section 46 deal with transfer of occupancy rights of a raiyat who is a member of Scheduled Tribe. Both these provisos contain only one exceptional situation under which the transfer of the occupancy right of a raiyat belonging to a Scheduled Tribe is recognized in law and that is where it has been done with the previous sanction of the Deputy Commissioner. By a further amendment made by the Bihar Scheduled Areas Regulations, 1969, certain amendments were made, inter alia, in Rule 3 of Order I of Code of Civil Procedure and in Article 65 of the IInd Schedule of Limitation Act of 1963. What is of importance for us is the introduction of Section 71 A and 71B in the Chota Nagpur Tenancy Act, 1908 (Bengal Act VI of 1908). Section 71A reads as follows:

"71A. Power to restore possession to members of the Scheduled Tribes over land unlawfully transferred \026

If at any time it comes to the notice of the Deputy Commissioner that transfer of land belonging to a raiyat (or a Mundari khunt kattidar or Bhuinhar) who is a member of the Scheduled Tribes has taken plae in contravention of section 46 (or section 48 or Section 240) or any other provisions of this Act or by any fraudulent method, (including decrees obtained in suits by fraud or collusion) he may, after giving reasonable opportunity to the transferee, who is proposed to be evicted to show cause and after making necessary enquiry in the matter, evict the transferee from such land without payment of compensation and restore it to the transferor or his heir and if such heir is not available or is not willing to agree to such restoration resettle it with another raiyat belonging to the scheduled tribes according to the village custom for the disposal of an abandoned holding."

The Section has three provisos which do not concern us as far as the present appeal is concerned. The other important point to be

noticed is that Article 65 of the Schedule of Limitation Act of 1963 was amended simultaneously by providing a period of 30 years as the limitation for bringing a suit for recovery of immovable property belonging to a member of a Scheduled Tribe.

Against the background of these legal provisions, the learned counsel for the appellants raised the following contentions.

1. Section 71A has no application whatsoever to the case of the appellant. Even if the surrender of tenancy by the tenants on 7.2.1938 followed by settlement of property on the present appellant on 25.2.1938 could be considered as 'transfer' within the meaning of section 71A, there was no provision of law which existed in the year 1938 under which such a transfer was prohibited. There is no retrospectice effect given to Section 71A so as to cover transactions which took place in the remote past. Hence, the power to restore possession could not have been exercised under section 71A;

2. In any event, the period of limitation of 30 years was long past when the application for restoration of possession was sought to be entered by the Special Officer in the year 1978.

Despite service of notice of this appeal, there was no appearance by the fifth and sixth Respondents, who are the contesting Respondents. Hence, we requested Mr.P.S. Narasimha, learned advocate, to appear as Amicus Curiae and represent the interest of the said respondents who belong to a Scheduled Tribe. Mr. Narasimha has commendably represented the case of the said respondents and brought to our notice some judgments of this Court having a bearing on the issue.

Shri Narasimha urged that there is no substance in the contention of the appellant on the issue of limitation. It is pointed out that the High Court was right in its findings that the issue of limitation had never been raised in the proceedings before the lower authorities. Limitation is not an abstract proposition of law, but must necessarily arise out of the facts. Hence, it was urged that we should not entertain the plea of limitation. Learned Amicus Curiae further contended that Section 71A is an enabling power of the Deputy Commissioner which can be exercised by him, even suo-motu, "if at any time" it comes to his notice that the rights of a raiyat belonging to a Scheduled Tribe have been taken away by reason of : (a) contravention of section 6 or section 48 or s. 240 B or any other relevant provision of the Act; or (b) by any fraudulent method including decrees obtained under statutes by fraud or collusion. Learned amicus curiae also drew our attention to the judgments of this Court in Jai Mangal Oraon v. Mira Nayak and others (2000) 5 SCC 141; Ibrahimpatnam Taluk Vyavasaya Coolie Sangham v. K. Suresh Reddy and others (2003) 7 SCC 667; State of Rajasthan v. Shankar Lal Kunda Ram Banwarilal (1992) Supp. 2 SCC 76; and Uttam Namdeo Mahale v. Vittal Deo and Others (1997) 6 SCC 73.

Apart from the reasoning given by the High Court, it appears to us that the judgment of this Court in Ibrahimpatnam (supra) is decisive on the contention of limitation urged before us. Under somewhat similar circumstances suo-motu power was given to the Collector under section 50B (iv) of the Andhra Pradesh (Telangana Area) Tenancy and Agricultural Lands Act, 1950 to call for and examine the record relating to any certificate issued or proceedings taken by the Tahsildar under this section for the purpose of satisfying himself as to the legality or propriety of such certificate or as to the regularity of such proceedings and pass such order in relation thereto as he may think fit. In this judgment, to which one of us (Shivraj V. Patil,J.) was a party, the Court observed (para 9):

"Even before the Division Bench of the High Court in the writ appeals, the appellants did not

contend that the suo motu power could be exercised even after a long delay of 13-15 years because of the fraudulent acts of the non-official respondents. The focus of attention before the Division Bench was only on the language of sub-section (4) of Section 50-B of the Act as to whether the suo motu power could be exercised at any time strictly sticking to the language of that sub-section or it could be exercised within reasonable time. In the absence of necessary and sufficient particulars pleaded as regards fraud and the date or period of discovery of fraud and more so when the contention that the suo motu power could be exercised within a reasonable period from the date of discovery of fraud was not urged, the learned Single Judge as well as the Division Bench of the High Court were right in not examining the question of fraud alleged to have been committed by the non-official respondents. Use of the words "at any time" in sub-section (4) of Section 50-B of the Act only indicates that no specific period of limitation is prescribed within which the suo motu power could be exercised reckoning or starting from a particular date advisedly and contextually. Exercise of suo motu power depended on facts and circumstances of each case. In cases of fraud, this power could be exercised within a reasonable time from the date of detection or discovery of fraud. While exercising such power, several factors need to be kept in mind such as effect on the rights of the third parties over the immovable property due to passage of considerable time, change of hands by subsequent bona fide transfers, the orders attaining finality under the provisions of other Acts (such as the Land Ceiling Act). Hence, it appears that without stating from what date the period of limitation starts and within what period the suo motu power is to be exercised, in sub-section (4) of Section 50-B of the Act, the words "at any time" are used to that the suo motu power could be exercised within reasonable period from the date of discovery of fraud depending on facts and circumstances of each case in the context of the statute and nature of rights of the parties. Use of the words "at any time" in sub-section (4) of Section 50-B of the Act cannot be rigidly read letter by letter. It must be read and construed contextually and reasonably. If one has to simply proceed on the basis of the dictionary meaning of the words "at any time", the suo motu power under sub-section (4) of Section 50-B of the Act could be exercised even after decades and then it would lead to anomalous position leading to uncertainly and complications seriously affecting the rights of the parties, that too, over immovable properties. Orders attaining finality and certainty of the rights of the parties accrued in the light of the orders passed must have sanctity. Exercise of suo motu power "at any time" only means that no specific period such as days, months or years are not prescribed reckoning from a particular date. But that does not mean that "at any time" should be unguided and arbitrary. In this view, "at any time" must be understood as within a reasonable time depending on the fats and circumstances of each

case in the absence of prescribed period of limitation."

We are, therefore, of the view that the use of the words "at any time" in section 71A 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 71A it would be futile to contend that the period of limitation under 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 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 71A was sought to be exercised after unreasonable delay.

Mr. Narasimha fairly conceded that he was not in a position to demonstrate that the surrender which took place on 17.2.1938 was in contravention of any of the provisions of the Act. He also conceded that section 46, which came into force on 5.1.1948, had no retrospective effect. Thus, there was no question of the transfer which took place in 1938 being in contravention of section 46. He, however, strongly urged that the circumstances of the transfer brought about on record suggest a fraudulent transaction on the part of the landlord. He particularly urged that as the facts show only some of the co-sharers had surrendered their rights while some had not and the landlord had managed to take possession of the land and within a span of less than three weeks settled the land upon the present appellants. This transaction smacks of a fraudulent act and must be viewed at askance, is his submission.

We will assume that the surrender of tenancy on 7.2.1938 and the settlement of the lands on the present appellant on 25.2.1938 were in quick succession and could be viewed as parts of the same transaction within the meaning of the term 'transfer' as contemplated by the Act. Nonetheless, it has not been established before us that the transfer was contrary to any other provisions of the Act.

We shall now examine the last argument of Shri Narasimha that the transfer was fraudulent. Even on this, we are afraid that the appellants are entitled to succeed. We need not go into the details of the transaction for we may even assume that the transfer was fraudulent. Even then, as held in Ibrahimpatnam (supra), the power under Section 71A could have been exercised only within a reasonable time. Looking to the facts and circumstances of the present appeal, we are not satisfied that the Special officer exercised his powers under Section 71A within a reasonable period of time. The lapse of 40 years is certainly not a reasonable time for exercise of power, even if it is not hedged in by a period of limitation. We derive support to our view from the observations made by this Court in Jai Mangal Oraon case (supra) which was also a case which arose under the very same provision of law. There this Court took the view that Section 46(4)(a), which envisaged a prior sanction of the Deputy Commissioner before effecting the transfer in any of the modes stated therein, was introduced only in the year 1947 (with effect from 5.1.1948) and no such provision existed during the relevant point of time when the surrender was made in that case (15.1.1942). Obviously, therefore, no such provision existed in 1938, and the same reasoning applies.

In the result, therefore, we are of the view that the Special Officer ought not to have exercised his powers under Section 71A of

the Act after such an unreasonable long period of time, in the facts and circumstances of the case brought to light.

The appellants succeed. The impugned judgment of the High Court and the impugned judgments of the authorities below are all set aside and the application for restoration made by the fifth respondent being SAR 415/77-78 is dismissed.

There shall be no orders as to costs.

We place on record our appreciation of the able assistance rendered by the Amicus Curiae Shri P.S. Narasimha.