

## Jagdish Prasad Singh and Another Vs State of Bihar and Others

**Court:** Jharkhand High Court

**Date of Decision:** Aug. 18, 2003

**Acts Referred:** Chotanagpur Tenancy Act, 1908 " Section 71(A)  
Civil Procedure Code, 1908 (CPC) " Section 11

**Citation:** (2003) 4 JCR 395

**Hon'ble Judges:** S.J. Mukhopadhaya, J

**Bench:** Single Bench

**Advocate:** Debi Prasad, L.K. Lal and P. Akhauri, for the Appellant; R.S. Mazumdar, GA, for the Respondent

**Final Decision:** Allowed

### Judgement

S.J. Mukhopadhaya, J.

In this writ petition, while the petitioners have challenged the order dated 23rd December, 1991 passed in SAR

Case No. 81 of 1989-90 and order dated 2nd February, 1994 passed in SAR Appeal No. 116(R)-15 of 1993, have also prayed to set aside the

proceeding initiated u/s 71 (A) of the Chhotanagpur Tenancy Act, 1908 (for short CNT Act).

2. The case of petitioners is that the land in question under Khata No. 37, Plot Nos. 268, 344, 345, 386, 397, 416, 422, 423, 449, 625, 840,

841, 1068, 1071, 1074, 1075, 1076, 1083, 1255, 1256, 1257 and 1258 having total area of 30.55 acres originally belonged to Birsa Munda s/o,

Mangra Munda and Prabhu Sahay Munda s/o Alias Munda of village Saranloya, P.S. Lapung, District- Ranchi. It was auction sold on 18th July,

1936 in favour of one Jagarnath Chandra Sahu in pursuance of Rent Execution case No. 1674(R)-9/1935-36, who took delivery of possession on

23rd October, 1937, from the Rent Suit Deputy Collector. Ranchi. One Atma Ram Poddar, subsequently purchased the land from Jagarnath

Chandra Sahu, the decree holder. Thereafter, it was settled in favour of petitioners by registered deed dated 5th June, 1954. Since then the

petitioners are in peaceful possession over the land in question.

The 4th and 5th respondents filed a petition u/s 71 (A) of the CNT Act for restoration of land in question in their favour. It was registered as SAR

Case No. 195/71 which was rejected on merit, vide order dated 11th September, 1974. The second petition u/s 71 (A) of the CNT Act was

preferred by 4th and 5th respondents being SAR case No. 45/76 was not entertained by the SAR Magistrate, Ranchi vide order dated 10th

December, 1976.

Third time a petition u/s 71(A) of the CNT Act was preferred by 4th and 5th respondents, being SAR Case No. 81/1989-90. In the said case, the

Court of Special Officer, Ranchi while doubted the legality of the Rent Execution Case No. 1674(R)-9 of 1935-36 and delivery of possession,

held the proceeding not conducted in terms of Section 208 of CNT Act and allowed the petition for restoration in favour of 4th and 5th

respondents vide impugned order dated 23rd December 1991. The petitioners, thereafter, preferred SAR Appeal No. 116(R)-15 of 1991-92

was allowed in favour of petitioners on 6th January, 1993, the Court below having decided the case on presumption, but it was again remitted for

fresh decision of SAR Case No. 81/1989-90.

3. The appellate Court vide its order dated 6th January, 1993 admitted that the rent case was decided in 1936 and delivery of possession was

affected on 23rd October, 1937. It also noticed that the petition for restoration u/s 71 (A) of the CNT Act, registered, as SAR Case No.

81/1989-90 was third successive attempt made by the 4th and 5th respondents. In view of the such finding of fact by the appellate Court, the

Court below vide order dated 6th/10th February, 1993 rejected the SAR Case No. 81/1989-90. However, the said order was again set aside in

SAR Appeal No. 116(R)-15 of 1993-94 preferred by 4th and 5th respondents and the case was again remitted to the first Court vide impugned

order dated 2nd February, 1994.

4. The petitioners have challenged the entire proceeding on the following grounds :--

(a) A petition u/s 71(A) of the CNT Act for restoration of land is not maintainable in the case the land transferred in pursuance of auction, sale,

such transfer being involuntarily transfer, beyond the scope of Section 71(A) of the CNT Act.

(b) The third petition u/s 71 (A) of the CNT Act for restoration of the land is not maintainable being barred by principle of res judicata, similar

petition u/s 71 (A) of the CNT Act preferred by same party having been earlier rejected on merit.

And

(c) An application u/s 71 (A) of the CNT Act to set aside, the sale of immovable property sold in connection with an auction sale is not

maintainable, there being specific provision u/s 213 of the CNT Act wherein limitation of 30 days from the date of sale has been prescribed.

5. According to the 4th respondent, the auction sale was not made in accordance with Section 208 and other provisions of the CNT Act. There is

no prove of deputing any officer or Amin to give possession of land in favour of auction purchaser. The landlord had mere right to claim rent from

the raiyat but auction sale was not permissible.

The counsel for the 4th respondent relied on a decision of the Patna High Court in the case of Smt. Bina Rani Ghosh, reported in 1985 PLJR 732.

The question whether a petition u/s 71(A) of the CNT Act for restoration of land is maintainable in the case where transfer takes place pursuant to

an execution case or by direction of the Court for auction fell for consideration before the Patna High Court in the case Raj Sewak Singh and Anr.

v. State of Bihar and Ors., reported in 1988 BLT 172. The Court held as follows :--

Plainly enough the word "transfer" used in Section 71(A) of the Chhotanagpur Tenancy Act even if to be held to have an extended meaning, the

same must be confined only to the cases of the voluntary transfer. A transfer which is made pursuant to an auction held in Execution of a rent

decree, in my opinion, being involuntarily transfer the same does not and cannot attract the provision of Section 71(A) of the Chhotanagpur

Tenancy Act.

It may be mentioned here that involuntarily transfers or in other words "transfers" which have been effected under the provision of the statute fall

out side the scope of the provisions of the Transfer of Property Act.

Further in an auction-sale held in execution of a rent decree, no question of violation of the provision of Section 46 of the Chhotanagpur Tenancy

Act or any other provision thereof arises; nor can it be said that a fraud has been committed by a Court in such a decree and directing holding of

an auction for realization of the decretal amount.

It was reiterated by the Patna High Court in the case of Abdul Salim Vs. The Commissioner, South Chotanagpur Division, Ranchi and others, ,

wherein the Court held that a transfer if affected by operation of law, such transfer is not covered by Section 71(A) of the CNT Act.

Whether a second petition for restoration of land u/s 71(A) of CNT Act is barred by principle of res judicata or not stands decided by a decision

of Division Bench of the Patna High Court in the case of Ram Chandra Sahu v. State of Bihar, reported in 1989 BLT 482. The Court held that if

an application for restoration u/s 71 (A) of the CNT Act is rejected, the subsequent application for the same relief is barred by the principle of res

judicata.

7. In this case, it is not in dispute that the lands in question were transferred pursuant to Rent Execution Case No. 1674/ 1935-36 in default of

payment of rent. It was auction purchased by Jagarnath Chandra Sahu to whom the possession was given on 23rd October, 1937.

In this background, the petition u/s 71(A) of CNT Act was not maintainable, nor there was any occasion for the appellate Court to remit the case

to the first Court for fresh decision on merit.

Further, the first petition preferred by 4th and 5th respondents u/s 71(A) of CNT Act, registered as SAR No. 195/71 having been rejected on

merit on 11th September, 1974, subsequent petition including the 3rd time petition u/s 71 (A) of the CNT Act registered as SAR Case No.

81/1989-90 was not maintainable being barred by principle of res judicata.

8. In the aforesaid circumstances also, there was no occasion for the appellate Court to remit the case to the first Court for fresh decision on

petition u/s 71(A) of the CNT Act preferred by 4th and 5th respondents.

For the reasons aforesaid, the order dated 23rd December, 1991 passed in SAR Case No. 81/1989-90 and order dated 2nd February 1994

passed in SAR Case No. 116(R)-15/93, as also the proceeding u/s 71(A) of CNT Act initiated against the petitioners at the Instance of 4th and

5th respondents, registered as SAR Case No. 81/1989-90 90 are set aside.

9. The writ petition is allowed. However, there shall be no order, as to costs.