MANU/BH/0057/1985

Equivalent Citation: AIR1985Pat196, 1985(33)BLJR185, 1985()PLJR1

IN THE HIGH COURT OF PATNA
FULL BENCH

Civil Writ Jurn. Case No. 1309 of 1976

Decided On: 08.08.1984

Appellants:**Deonarayan Singh and Ors.**
Vs.
Respondent:**Commissioner of Bhagalpur Division and Ors.**

Hon'ble Judges/Coram:
S.S. Sandhawalia , C.J., S. Ali Ahmad and S.B. Sinha , JJ.

Counsels:
For Appellant/Petitioner/Plaintiff: Balbhadra Prasad Singh, Kalika Nandan and Devendra Prasad Sinha, Advs.

For Respondents/Defendant: Tara Kant Jha, Shree Nandan Prasad Singh, Mihir Kumar Jha, Murari Narain Choudhary, Advs., Mani Lal, Standing Counsel and R.C. Sinha, Jr. Counsel to Standing Counsel

Overruled / Reversed by:
Deonarayan Singh and others Vs. Commissioner of Bhagalpur and others (MANU/SC/0918/1997)

JUDGMENT

S.S. Sandhawalia, C.J.

1. Whether the prescriptive period of twelve years for perfecting the title by adverse possession (the original transfer being in contravention of Section 27 of Regulation 3 of 1872} would stop running from the 1st of Nov. 1949, being the date of the enforcement of the Santhal Parganas Tenancy (Supplementary Provisions) Act, 1949-- is the significant solitary question arising from a deep-seated conflict of precedents within this Court which has necessitated this reference to the Full Bench.

2. The facts deserve notice within the narrow confines of their relevance to the issue aforesaid. The whole dispute focuses on Jamabandi No. 65 of Mouza Billi, police station Madhupur, which is recorded as Mulraiyat-ka jote in the name of Sitaram Singh 8 annas Mulraiyat of the said Mouza and Jaleshwar Singh, Yudhisthir Singh and Kesturi Devi. The plot stands recorded in the names of different co-sharers. By a sale deed dt. 22nd March, 1939, 38.09 acres of land were sold to one Bimal Kanti Raichoudhary. He got his name duly mutated in the revenue records by an order dt. 27th Nov. 1939, of the Sub-divisional Officer, Deoghar, which, in turns was approved by the Deputy Commissioner, Santhal Parganas, on 28th Dec. 1939. The said Bimal Kanti Raichoudhary again sold the plot along with Mulraiyat rights and interests to. Radha Prasad Singh, (father and predecessor-in-interest of the petitioners) by a registered sale deed dated the 26th of June, 1950. According to the writ petitioners, so long as Radha Prasad Singh was alive, he remained in peaceful possession over the said 38.09 acres of land of Jamabandi No. 65 as also over the Mulraiyati jote of

Jamabandi No. 3 and was also acting as 8 annas Mulraiyat of Mouza Billi.

3. In the year 1970-71 respondent jagarnath Singh along with seven others filed a petition before the Sub-divisional Officer, Deoghar, challenging the legality of the sale of some portion of Mulraiyat ka jote of Jamabandi No, 65 to Radha Prasad Singh, father of the writ petitioners, and praying for their eviction from the aforesaid land and restoration of the same to them through the agency of the Sub-divisional Court. By his order dated the 19th of Nov. 1971, the learned Sub-divisional Officer held that the original sale in favour of Bimal Kanti Raichoudhary was executed against the express provision of Mulraiypt records. However, he held that because the said sale had been accepted by the Sub-divisional Officer and later approved by the Deputy Commissioner by allowing mutation, he had no authority to challenge the order previously passed by his predecessor. He, therefore, opined that for the redressal of their grievance the applicants should approach the higher Courts. The respondents thereafter preferred an appeal to the Deputy Commissioner and by his order dt. 30th Sept. 1975, the Additional Deputy Commissioner allowed the same and directed restoration of the disputed land to the respondents. The writ petitioners then preferred an appeal before the Commissioner, Bhagalpur Division. By his detailed order (Annexure 3), the Commissioner affirmed the findings of the court below that there had been an illegal alienation of the land of Mulraiyati ka jote appertaining to Jamabandi No. 65 of Mouza Billi, and, therefore, the ejectment of the appellants under Section 42 of the Santhal Parganas Tenancy (Supplementary Provisions) Act, 1949 (hereinafter referred to as "the Act") and the restoration of the same to the respondents was justified. The appeal was consequently rejected.

4. Aggrieved by the aforesaid orders the present writ petition has been preferred. When it originally came up for hearing before the Division Bench, the primary point that was apparently pressed on behalf of the writ petitioners was that in any event the vendees had perfected their title by adverse possession by 1970 and they could not, therefore, be evicted under Section 42 of the Act. The Bench noticed that the sole point involved was whether the Deputy Commissioner could evict a transferee who had not completed possession of twelve years or more before 1st Nov. 1949 when the Santhal Parganas Tenancy Act 1949 came into force. On this significant issue they noticed that the Full Bench decision of this Court in Bhauri Lal Jain v. Sub-divisional Officer of Jamtara MANU/BH/0001/1973 had been divergently interpreted by two Division Benches of this Court in 1978 BLJ 272 Mt. Pairia v. Commr. of Bhagalpur Division and in 1979 BUR 201 Nakul Chandra Mandal v. Commr. of Bhagalpur Division. The Division Bench therefore, felt compelled to refer the issue for an authoritative decision by a larger Bench and to resolve the apparent conflict. That is how the matter is before us.

5. As before the Division Bench, so before us, the focal point that has been canvassed is whether on the concurrent finding of all the three authorities below that the transfer by sale deed dt. 22nd March, 1939, being contrary to Section 27 of Regulation III of 1872, the vendees could perfect their title by adverse possession, even after the enforcement of the Santhal Parganas Tenancy (Supplementary Provisions) Act, 1949. To put it in other words, would the tune for calculating the prescriptive period of twelve years stop running from the 1st of Nov. 1949, or would it continue to do so even thereafter, till the order of eviction is passed. Inevitably, this issue has to be decided in the light of the corresponding provisions of Regulation III of 1872, and those of the Act, which in turn have to be viewed in the context of their legislative background.

6. The historical retrospect here spans a period of more than a century. Its true perspective is against the back-drop of the primordial backwardness of the Santhal Tribes interspersed in the deeply wooded and semitrupical forests of the district of Santhal Parganas. The underlying rationale of Regulation III of 1872 and the earlier Regulation going back even beyond the middle of the 19th century may well be noticed from the final settlement report in the district of Santhal Parganas by J.F. Gantzer, which is supplemental to the earlier and more celebrated and exhaustive report of Sir Hugh Mcpherson :

> "The question of transfers is one of the most important with which this settlement has had to deal, and it is in fact one which affects the very root of the whole Santal Parganas system. Broadly speaking it may be said that the whole object of the agrarian law of the district since 1872, when Regulation III of that year was introduced, is to ensure that the population should be allowed to remain undisturbed in possession of its ancestral property, and that any reclamation of waste lands which is done in any village shall be done only by the Jamabandi Raiyats of the village. The history of the district plainly shows that the vast majority of the people in it are quite unable to grasp the principle of outsiders taking possession of their land whether legally or illegally, that is to say, either by force or by the ordinary means of acquiring land such as sale, mortgage or certain forms of sub-lease."

For our purpose it is, perhaps, unnecessary to delve beyond the year 1872, when Regulation III was enacted, and subsequently, amendments were made therein. In chronological order, this was followed by the Santhal Parganas Tenancy (Supplementary Provisions) Act, 1949, which came into force on the 1st of Nov. 1949. As the very heading of the statute indicates, it was not intended to altogether repeal or substitute the earlier Regulation III of 1872, but was somewhat supplementary in nature. While some of the provisions of Regulation III of 1872 continued as supplemented by the Act, certain sections thereof were, however, repealed and substituted by more elaborate provisions of the Act, which might have become necessary by passage of time. In this category falls Section 20 of the Act, which in terms substituted Section 27 of the earlier Regulation III of 1872. At this stage it is not only apt, but indeed necessary to juxtapose the corresponding provisions :

Section 27 of Regulation III of 1872 :	Section 20 of Act XIV of 1949 :
"27. (1) No Transfer by a Raiyat of his right in his holding or any portion thereof, by sale, gift, mortgage, lease or any other contract or agreement, shall be valid unless the right to transfer has been recorded in the record of rights, and then only to the extent to which such right is so recorded."	"20. Transfer of Raiyat's rights - (1) No transfer by a Raiyat of his right in his holding or any portion thereof, by sale, gift, mortgage, will, lease or any other contract or agreement, express or implied, shall be valid, unless the right to transfer has been recorded in the record of rights, and then only to the extent to which

	such right is so recorded: Provided that a lease of Raiyati land in any sub-division for the purpose of the establishment or continuance of an excise shop thereon may be validly granted or renewed by a Raiyat, for a period not exceeding one year, with the previous written permission of the Deputy Commissioner : Provided further that where gifts by a recorded Santhal Raiyal to a sister and daughter are permissible under the Santhal law, such Raiyat may, with the previous written permission of the Deputy Commissioner, validly make such a gift : Provided also that an aboriginal Raiyat may, with the previous written permission of the Deputy Commissioner, make a grant in respect of his lands not exceeding one half of the area of his holding to his widowed mother or to his wife for her maintenance after his death."
(3) If at any time it comes to the notice of the Deputy Commissioner that a transfer in contravention of sub-sec. (1) has taken place; he may, in his discretion, evict the transferee and either restore the transferred land to the Raiyat or any heirs of the Raiyat who has transferred it. or re-settle the land with another Raiyat according to the village custom for the disposal of an abandoned holding : Provided that - (a) that the transferee whom	(5) If at any time it comes to the notice of the Deputy Commissioner that a transfer in contravention of sub-sec. (1) or (2) has taken place he may in his discretion evict the transferee and either restore the transferred land to the Raiyat or any heirs of the Raiyal who has transferred it, or re-settle the land with another Raiyat according to the village custom for the disposal of an abandoned holding: Provided that the transferee whom it is proposed to evict

it is proposed to evict has not been in continuous cultivating possession for twelve years;	shall be given an opportunity of showing cause against the order of eviction."
(b) that he is given an opportunity of showing cause against the order of eviction; and,	
(c) that all proceedings of the Deputy Commissioner under this section shall be subject to control & revision by the Commissioner."	

7. Particular attention herein is called to the fact that Sub-section (5) of Section 20 of the Act is not in pari materia with the earlier Sub-section (3) of Section 27 of Regulation III of 1872. The legislature, by design, out of three Clauses (a), (b) and (c) of the proviso to Sub-section (3) of Section 27 of the Regulation, retained only the provision with regard to the notice to the transferee as the solitary proviso to Sub-section (5) of Section 20 of the Act. Now, apart from repealing Section 27 of Regulation III of 1872. the Act also, inter alia, enacted Section 42, 64, 65 and 69, which undoubtedly cover the somewhat analogous field of the ejectment of persons in unauthorised possession of the agricultural lands by transfers in contravention of the provisions of this Act or equally of, any, other provision having the force of law in the Santhal Parganas, which, inevitably includes Regulation III of 1872. Lastly, what calls for notice in this context is the fact that later Sub-section (5) of Section 20 of the Act was itself repealed and substituted by a much more comprehensive provision on the same subject by the Bihar Scheduled Area Regulations, 1969 (Bihar Regulation 1 of 1969.)

8 . Now, against the aforesaid vista of the legislative back-drop, Mr. Balabhadra Prasad Singh, learned Counsel for the writ petitioner, wove a web of an elaborate and erudite submission on the history and purpose of the statute in Santhal Parganas and the true import of the earlier Section 27 of the Regulation and the later Section 20, 42, 64, 65 and 69 of the Acc and the canons of construction for arriving at the intent of the legislature therein. One is somewhat deeply tempted to beckon to this invitation to examine the matter refreshingly on principle and the language of the statutory provisions. However, the discipline of the law and the doctrine of precedent categorically prevent any such exercise in futility. It was the common stand of the parties before us that the matter is not res integra. Indeed, the Counsel were agreed that it was covered by precedent and that too by the Full Bench decision of this Court in Bhauri Lal Jain's cast (MANU/BH/0001/1973) (supra) which has ever since held the field. I would wish to record that neither of the eminent Counsel on either side did at any stage even attempt to assail the correctness of this Full Bench or urged its reconsideration by a larger one. Though it is no compliment to the clarity of precedent, it must be noticed that both Mr. Balbhadra Prasad Singh for the writ petitioners and Mr. Tara Kanta Jha for the respondents heavily relied on it and canvassed that its true ratio was in support of the diametrically opposite stand which they were projecting.

9. From the above, it would be manifest that the sole question before this Full Bench now is a twofold one. Firstly, whether the question posed at the very outset has been considered and adjudicated upon by the earlier Full Bench in Bhaurilal Jain's case (supra); and, if so, what is its precise mandate on this specific issue. It is within the aforesaid parameter alone that the submissions of the learned Counsel for the parties can now be legitimately examined.

10. With his usual perspicacity and eloquence, Mr. Balbhadra Prasad Singh (apparently conscious of the binding nature of precedent) primarily fell back for support on certain observations in Bhaurilal Jain's case and buttressed it with the constructions placed thereon (if one may say so) by three Division Benches in 1978 BBCJ 572 Asharfi Mahto v. State of Bihar 1978 BLJ 272 (Most Pairia v. Commr. of Bhagalpur Division), and 1980 BLJ 72 (Godo Mahto v. State of Bihar). He further invited the Bench to overrule, what for his purpose was an erroneous and discordant note by the Division Bench struck in ILR 57 Pat 854 Nakul Chandra Mandal v. Commr. of Bhagalpur Division.

11. On the other hand, the frontal and somewhat ruthless contention of Mr. Tara Kant Jha for the respondents was that the Full Bench in Bhaurilal Jain's case (MANU/BH/0001/1973) had directly considered the matter and unreservedly adjudicated upon it in his favour and consequently, no observation by any subsequent Division Bench could whittle down its clarion ratio. Inevitably he canvassed for the affirmance of ILR 57 Pat 854 Nakul Chandra Mandal's case (supra) and the overruling of all contrary' views by the Division Benches. The theme song on his behalf was that the question before us having been considered and answered in unequivocal terms by a Full Bench, unless a larger Bench overrules the same or the final Court obliterates it, the strict discipline of law prevented any deviation from what had been earlier laid down.

12. The rival stands having been put in focus, the primal issue now before us is whether the Full Bench in Bhaurilal Jain's case (supra) has directly considered and pronounced on the identical question now raised before us, and, if so, whether its ratio would still hold the field. I am inclined to answer both these questions in no uncertain terms in the affirmative.

13. Inevitably turning now to Bhaurilal Jain's case (supra) it deserves recalling that the larger question before the Full Bench was the very constitutionality of Section 20(1) and 42 of the Act and that of Sub-section (5) of Section 20 of the same, as amended by the Bihar Scheduled Areas Regulation 1969. A perusal of the judgment would disclose that the manner in which the challenge to the vires was posed, the question now before us became integral and, if one may say so, a precondition before the said Full Bench. Necessarily, therefore, it had to be considered and adjudicated upon. A reference to para 20 of the report will indicate that the same was in terms posed as under : --

> "Coming to the question whether title by adverse possession could be acquired after the 1949 Act came in, it will be useful to refer to the impugned provisions of the Act."

Thereafter the Bench quoted and construed the provisions of Section 42, 64 and 69 of the Act, and in an elaborate discussion, both on the language of the statute and precedent, it observed as follows in para 31 of the report: --

> "I have already found that title by adverse possession could not be acquired

> under the Act by a transferee, in view of clear bar to acquisition of any such title under Section 69 of the Act. Therefore, restoring back the property from the unlawful possession of a transferee, who could not acquire any title from such invalid transfer in spite of his long possession, to the transferor, whose title, at no point of time, was extinguished, will not come under the mischief of Article 31 of the Constitution. It only meant restoring possession of the property to the original and rightful owner."

And finally, the Full Bench lucidly formulated its conclusions in para 36 of the report and the propositions (iv) and (v), in the following terms, appear to me as an unequivocal adjudication of the issue : --

> "(iv) That the Limitation Act was applied to the District of Santal Parganas under Regulation III of 1872, and adverse possession could be acquired under an invalid transfer, in contravention of Section 27 (1) of the Regulation.
>
> Those, who did not acquire title by adverse possession under Regulation III of 1872, could be evicted under the old Section 20(5) or Section 42 of the Act, even after the repeal of Section 27(3) of the Regulation, as the Act was supplemental to the Regulation."
>
> "(v) That Section 20 of the Act was prospective and that there could not be acquisition of title by adverse possession in case of transfer or settlement, etc., in contravention of Section 20(1) and (2) of the Act."

14. Now, once it has been succinctly held, as above. I see not the least reason to depart from the law so laid down more than a decade ago, which has held undisputed sway within this jurisdiction. It calls for notice that no contrary view of a co-equal Bench or of the final court on this point could at all be brought to our notice. It bears repetition that no challenge to the aforesaid ratio of the Full Bench was at all made before us. Indeed, as already noticed, there was only an attempted reliance on the part of the writ petitioners to seek support from the Full Bench in Bhaurilal Jain's case (MANU/BH/0001/1973) (supra), rather than any assailing thereof. Even otherwise the passage of nearly 35 years since the enforcement of the Act has now rendered the question before us of a prescriptive right as one of somewhat rare occurrence, rendering it doubly inexpedient to now deviate from the earlier ratio.

15. On the doctrine of precedent, it is well settled that once a question has been considered and answered by the Full Bench, then all decisions of a Division Bench or a Single Bench, whether prior or subsequent thereto, running contrary to its ratio, must be held as no longer good law. In AIR I960 SC 1118(Jai Kaur v. Sher Singh) it was observed :

> "It is true that they did not say in so many words that these cases were wrongly decided; but, when a Full Bench decides a question in a particular way every previous decision which had answered the same question in a different way cannot but be held to have been wrongly decided."

In MANU/TN/0278/1963(C. Varadarajulu Naidu v. Baby Ammal) whilst holding that even though there may be much to be said in favour of the contrary view, it is not apt to depart from a law settled by the Full Bench, the following observation was made :

> "The evil of unsettling consistent judicial opinion would be much greater than

> the evil of laying down what is alleged to be bad law. The Full Bench decisions should, as far as possible, be held to be binding unless they be so glaringly bad as not being in conformity with any statute or with any decision of a superior court like the Supreme Court."

16. In view of the above, it is rendered somewhat unnecessary to advert in very great detail to the Division Bench decisions, which, with the greatest respect, in my view, have not correctly applied the ratio of the Full Bench. However, before referring to them briefly, it is significant to note that the view I am inclined to take is in consonance with that of the Division Bench in Nakul Chandra Mandal's caseILR 57 Pat 854 (supra). Therein the illegal transfer had taken place prior to the enforcement of the Act on 6th July. 1949. Holding that the title could not be perfected after the enforcement of the Act. S.K. Choudhuri, J., speaking for the Bench, observed as follows : --

> "This contention of Mr. Ghose that the petitioners could not have been evicted under Section 42 of the Act as they have perfected their title at a time after the 1949 Act had come into force by remaining in possession for more than 12 years under illegal settlement has no substance."

It calls for pointed notice that Mr. Justice S. Sarwar Ali, who had the privilege of being a member of the Full Bench in Bhaurilal Jain's case (AIR 1973 Pat 1) (supra) was a party to the judgment aforesaid. In my view, this is wholly in consonance and in accord with the earlier Full Bench, holding the field within this Court.

17. It remains to briefly refer to the discordant and contrary views taken by Division Benches. In 1980 BLJ 72 Godo Mahto v. State of Bihar (the case has been reported belated, having been decided on the 2nd of Jan. 1973), the brief judgment indicates that the issue was hardly canvassed and the case was merely remanded to the Sub-divisional Officer to investigate the relevant fact and to decide the same in accordance with law as laid down in Bhaurilat Jain's case (MANU/BH/0001/1973) (FB) (supra). However, there is no gainsaying the fact that the illegal transfer having been that of March and April, 1949, hardly any question of perfecting the same by adverse possession could arise after the enforcement of the Act. With the greatest respect, the inference arising from the case is unsustainable and the judgment has. therefore, to be overruled.

18. Again in 1978 BBCJ 572 Asharfi Mahato v. State of Bihur the issue was not deeply examined and the Bench followed the decision in Coda Mahto's case (1980 BLJ 72) (supra). For the reasons recorded in the context of the latter case, this judgment also does not lay down the law correctly and is contrary to the ratio of the Full Bench, and with deep deference, has trf be overruled.

19. What has been said above would apply broadly to the observations of the Division Bench in 1978 BLJ 272 (Mt. Pairia v. Commr. of Bhagalpur Division). Therein, even though it was observed that the point at issue was concluded by the Full Bench decision in Bhaurilal Jain's case (supra), its ratio seems to have been misconstrued, herein also the Bench followed Goda Mahto's case (supra). However. it was further observed that this result also flows from the application of the law by the Full Bench itself in paras 41 to 43 of the report. It seems to have been assumed that the remand in the said case was with regard to an alleged Kurfanama of the year 1938, which could not be perfected by adverse possession by Nov. 1949. when the Act came into force. However, a close reading of Paras 41 to 43 of the report would

indicate that the Kurfa settlement of 1938 was with regard to only one Plot No. 125 in a composite transfer. There were as many as 3 separate petitioners laying claim to as many as five separate plots. The counter-affidavit in the said writ petition had taken the firm stand that there was, in fact, no such Kurfanama or other document and the respondents, being illiterate aboriginals has been inveigled into singing and thumb marking blank documents on which the deeds and agreements had been apparently forged. It was in this context that the Bench remanded the matter for a clear determination of the facts and disposal in accordance with the law laid down in the Full Bench. In my view, no contrary inference arises from the particular facts of that case. However. I am willing to go to the extent that if there be any discordance betwixt the unequivocal declaration of law formulated by the Full Bench and its subsequent application, then it is the former that must prevail and the declaratory part has obvious supremacy over the applicatory one. Again, when faced with the categoric conclusion of the Full Bench in proposition (iv) in para 36 of the report, the same was sought to be whittled down by the succeeding proposition (v). Herein also with respect, I do not find how the latter is in any way contradictory or modificatory of what has been expressly formulated by the Full Bench itself in proposition (iv). Indeed the effect of Section 20 of the Act, being prospective, in no way cuts down the clear ratio that those who did not perfect their adverse possession under Regulation III of 1872 were barred from doing so later after the enforcement of the Act and could be evicted under the Act. With the greatest respect, this case also does not lay down the law correctly and I am constrained to overrule the same.

20. On a conspectus of the relevant statutory provisions, on principle and in the light of the aforesaid precedent, it would appear that three distinct situations may arise in the context of perfecting title by adverse possession where the original transfer is in contravention of the statute. For the sake of clarity these may be dealt with individually in the reverse chronological order.

(i) A transfer in contravention of Sub-section (1) or (2) of Section 20 of the Act. Obviously such a transfer would inevitably be after the enforcement of the Act on the 1st of Nov. 1949. In view of the clear provisions of Sub-sections (3), (4) and (5) of Section 20 itself and the related provisions of Section 42. 64, 65 and 69 of the said Act and the adjudication of the Full Bench in proposition (v) in Bhaurilal Jain's case MANU/BH/0001/1973 (supra), no question of any acquisition of title by adverse possession or perfecting the same in this context can at all arise.

(ii) A transfer in contravention of Section 27 of Regulation III of 1872 with regard to which the prescriptive period of 12 years has not elapsed on the 1st of Nov. 1949. In such a case time for perfecting title by adverse possession would in law stop running from the date of the enforcement of the Act on Nov. I. 1949, and if the prescriptive period of 12 years is not completed before that, the right or title would remain inchoate and cannot be perfected thereafter by virtue of adverse possession. This would follow from proposition (iv) of the Full Bench in Bhaurilal Jain's case (supra). In such a case the Deputy Commissioner under Section 42 of the Act read with the other relevant provisions may at any time on his own motion or on an application made to him pass an order ejecting the transferee holding the transfer in contravention of the statute.

(iii) A transfer in contravention of Section 27 of Regulation III of 1872 in which the transferee has been in continuous adverse cultivating possession

> for 12 years prior to the 1st of Nov. 1949. In view of Clause (a) of the proviso to Sub-section (3) of Section 27 of the said Regulation, the transferee herein became immune to eviction if he had been in continuous cultivating possession for 12 years. He was thus allowed to perfect his title by way of adverse possession. This equally follows from proposition (v) in Bhaurilal Jain's case laying down that the provisions of Section 20 were prospective and not retrospective in effect and consequently they would not invalidate the title already perfected by adverse possession under Regulation III of 1872 despite its repeal and substitution on 1st Nov. 1949 by Section 20 of the Act.

21. To finally conclude : The answer to the question posed at the outset is rendered in the affirmative and it is held that the prescriptive period of 12 years for perfecting the title by adverse possession (in case of a transfer which was originally in contravention of Section 27 of Regulation III of 1872) would stop running on the date of the enforcement of the Act on 1st Nov. 1949.

22. Once that is so, it is plain and indeed common ground that the whole claim of the writ petitioners herein is rested on a transfer effected on 23rd March, 1939. The prescriptive period of 12 years for perfecting the title by adverse possession would thus not be completed on 1st Nov. 1949, when it would stop running. Consequently, the power of the authorities to eject such an unauthorised transferee under the Act would remain untrammelled. The writ petitioners on their own showing are only successors-in-interest of the original transferee Bimal Kanti Raichoudhary and plainly enough cannot claim a better title than him. herein there is a concurrent finding of the Sub-divisional Officer, the Deputy Commissioner and then the Commissioner that the said transfer was in violation of the record-of-rights of the estate and consequently, Section 27(1) of Regulation III of 1872. This concurrent finding was not challenged before us and indeed being based on the relevant records is thus wholly unassailable. That being so, no amount of subsequent delay in initiating the ejectment proceedings or the continuity of possession by the writ petitioners or their predecessor-in-interest after 1st Nov. 1949 can perfect the transfer originally in contravention of the statute. The Deputy Commissioner and the Commissioner were patently right in their view, which was in consonance with the one enunciated by the Full Bench in Bhaurilal Jain's case (MANU/BH/0001/1973) (supra), and consequently in rejecting the appeal. In this context it is equally well to recall the categorical observation of the Supreme Court in Ram Kristo Mandal v. Dhankisto Mandal MANU/SC/0369/1968 in paragraph 8 :

> 'The language of Section 27 is clear and unambiguous. It prohibits any transfer of a holding by a raiyat either by sale, gift mortgage or lease or by any other contract or agreement. The section is comprehensive enough to include a transfer of the holding by way of an exchange. The Schedule B properties were admittedly of raiyati character and were, therefore, inalienable. Sub-section (2) of Section 27 in clear terms enjoins upon the courts not to recognise any transfer of such lands by sale, mortgage, lease etc. or by or under any other agreement or contract whatsoever."

23. Before parting with this judgment it perhaps deserves mention that apparently sensing the stone-wall of precedent in Bhaurilal Jain's case as against him, learned counsel for the writ petitioners had attempted some ancillary submissions to outflank or bypass the same. However, in the extraordinary jurisdiction of this Court, invoked against the hierarchy of three statutory authorities below, namely, the Subdivisional

Officer, the Deputy Commissioner and the Commissioner, taking a concurrent view on the primal issue before them, no other argument would either be possible or, in my view would be permissible. The judgments of the two appellate courts below make it plain that the sole issue which was agitated on behalf of the petitioners and adjudicated upon by the authorities was the claim with regard to the validity of the original transfer or perfecting the same by way of adverse possession. Indeed, even the Subdivisional Officer had taken the view that the transfer was in contravention of the statute but only on the ground of propriety that because the Deputy Commissioner had sanctioned the said mutation he declined to interfere himself and relegated the respondents to seek the relief from the superior authority. In this view of the matter I am wholly disinclined to permit or advert to the ancillary contentions sought to be urged in the alternative for the first time in the writ jurisdiction in order to bypass the concurrent judgments of the appellate courts below.

24. In the result, the writ petition is hereby dismissed. In the circumstances, the parties are directed to bear their own costs.

Brishketu Saran Sinha, J. (Dissenting)

25. I have had the advantage of reading the judgment of my Lord the Chief Justice. I am in complete agreement with him with regard to the issue referred to the Full Bench. However, as we have proceeded to dispose of the case on merits as well, I regret, I am unable to persuade myself to hold that there is no merit in this application and should be, accordingly, dismissed.

26. In order to appreciate the reasons for my coming to a different conclusion with regard to the merits of the case, it would be convenient to refer to facts as found in the order of the Additional Deputy Commissioner dated 30th Sept. 1975, copy of which is Annexure '2' and the order of the Commissioner dt. 2nd June, 1978, copy of which is annexure '3'.

27. The relevant facts, as found in those orders, which rightly have not been challenged before us, are as follows :

> The subject of dispute, pertains to Jamabandi No. 65 of mouza Billi which was recorded as Mulraiyat-ka-jote in the name of Sitaram Singh, eight annas Mulraiyat of mouza Billi. On the death of Sitaram Singh his eldest son Saryu Prasad Singh alias Bhatu Singh was appointed eight annas Mulraiyat of the village which was approved by the Deputy Commissioner, Santhal Parganas, on 20th Mar 1939. On 22nd Mar. 1939, Mulraiyati jote pertaining to jamabandi No. 3 as well as portion of Mulraiyat-ka-jote pertaining to Jamabandi No. 65 measuring 38.09 acres was sold to Bimal Kant Rai Choudhary for a consideration of Rs. 10,000/-. After the sale, the name of Bimal Kant Rai Choudhary was mutated as eight annas Mulraiyat of the said mouza in Revenue Miscellaneous case No. 21/1939-40 by an order, dt. 27th Nov. 1939, of the Sub-divisional Officer, Deoghar. This order was approved by the Deputy Commissioner on 28th Dec. 1939. On 26th June, 1960, Bimal Kant Rai Choudhary sold 38.09 acres of land of Mulraiyat-ka-jote pertaining to Jamabandi No. 65 as well as Jamabandi No. 3 to Radha Prasad Singh. father of the petitioners, by a registered deed of sale. Radha Prasad Singh, so long as he was alive, was in peaceful possession over the aforesaid land and was also acting as eight annas Mulraiyat. Jagarnath Singh, respondent 9 along with seven others filed a petition before the learned Sub-divisional

Officer, Deoghar, challenging the legality of the sale of a portion of the Mulraiyat-ka-jote of Jamabandi No. 65 to Radha Prasad Singh and further prayed for their eviction and restoration of the same to them. On such a petition Raiyati Auction case No. 65 of 1970-71 was started by the Sub-divisional Officer, who by order dt. 19th Nov. 1971, rejected the petition on the ground that the transfer having been accepted in mutation proceedings by the Deputy Commissioner, he was not competent to set aside the order. A copy of the order dt. 19th Nov. 1971, is Annexure '1'. Hence an appeal to the Additional Deputy Commissioner was preferred. The Additional Deputy Commissioner by his order dt. 30th Sept. 1975 (Annexure '2') allowed the appeal and directed restoration of the disputed land. The Deputy Commissioner held that as part of the interest of Mulraiyat-ka-jote had been transferred, it was in violation of Clause 18 of the Record of Rights of the village concerned which lays down that if there has been an alienation contrary to the provisions of the Act, the Deputy Commissioner can set aside the alienation and settle it with a duly qualified raiyat of the village or otherwise settle according to the circumstances of the case. The rights of a Mulraiyat, who is a village headman or a settlement-holder in the Santhal Parganas, are, it was held, entirely transferable, saleable and attachable. The privilege which a Mulraiyat possesses of transferring his tenure must be exercised in respect of the whole tenure at the same time. In other words, the learned Additional Deputy Commissioner held that if a Mulraiyat so chooses to transfer his tenure, he must alienate, the whole of his rights in the village, including the right of managing the village and collecting rent as well as his right and possession in the land; and he cannot split up the tenure so as to part with a portion and to retain the remainder. The sale of a portion of the tenure confers no title on the purchaser.

28. The case that there was a family partition was also disbelieved by the learned Additional Deputy Commissioner as no document was produced to substantiate it. Further, according to the Mulraiyati Record of Rights, such partition is illegal unless the same is sanctioned by the Sub-divisional Officer. Nothing was brought on the record to show that sanction of the Sub-divisional Officer was obtained in respect of partition between the co-sharers of the lands of Jamabandi No. 65 of mouza Billi. It was, therefore, held that the alienation was illegal and in violation of Clause 18 of the Record of Rights. He further directed the return of the lands to the respondents. This was affirmed by the learned Commissioner by Annexure '3' in which he clearly stated that the transfer was in violation of Section 42 of the Santhal Parganas Tenancy (Supplementary Provisions) Act, 1949, read with Clause 18 of the Record of Rights.

29. From what I have stated above it is obvious that whatever might have been the label of the original petition filed by respondent 9 and seven others, it was held on facts, that the transfer had to be set aside because it violated Section 42 of the Santhal Parganas (Supplementary Provisions) Act, 1949, read with Clause 18 of the Records of Right. The aforesaid enactment distinguishes a raiyat which is defined in Clause (xiii) of Section 4 and Clause (xxiii) of Section 4 which defines a village headman.

30. Now it would be convenient to refer to two sections of the aforesaid Act. Relevant portion of Section 20 of the Act has already been extracted in the judgment of the Hon'ble Chief Justice. Section 42 may also be conveniently ex traded here which at present reads as follows : --

> "Ejectment of a person in unauthorised, possession of agricultural land -- The Deputy Commissioner may at any time either of his own motion or on an application made to him pass an order for ejectment of any person who has encroached upon, reclaimed, acquired or come into possession of agricultural land in contravention of the provisions of this Act or any law or anything having the force of law in the Santhal Parganas."

By reference to the provisions of the Act it is obvious that the scope of Section 42 is larger than that of Section 20(5). While Section 20(5) is applicable when the conditions provided therein are fulfilled, Section 42 comes into play whenever there is any encroachment, reclamation, acquisition or possession of agricultural land in contravention of the provisions of this Act or any law or anything having the force of law in the Santhal Parganas. Therefore, while Section 42 is general, Section 20(5) applies in specific cases, when the conditions stated therein are fulfilled. From what I have stated above, it is clear that in this case the ejectment has been ordered, not on the ground of the violation of Section 20(5), but because of the violation as contained in Section 42 of the Act.

31. Another distinction between Section 20(5) and Section 42 is that while under Section 20(5), after ejectment, the competent authority can restore the land to the original raiyat, no such power is given in Section 42. Probably bearing this distinction in mind it has been held by the learned Additional Deputy Commissioner that the alienation being contrary to the provisions of law, ejectment must be ordered and it should be settled with a duly qualified raiyat of the village or otherwise the lands be disposed of according to the circumstances of the case and the learned Commissioner specifically held that the ejectment had to be upheld because of the violation of Section 42 of the Act. I am, therefore, constrained to hold that while the ejectment have got to be upheld, the authorities below erred in law in settling the lands with the original holder by the impugned order. That could not have been done. The lands, after ejectment have got to be settled with a duly qualified raiyat of the village or otherwise disposed of according to the circumstances of the case.

32. I, would, therefore, hold that the writ application must be allowed to the extent that the order of the learned Commissioner and the Additional Deputy Commissioner directing settlement of the lands with respondent No. 9 and others must be set aside and I order accordingly. There shall, however, be no order as to posts.

S. Ali Ahmad, J. (Concurring)

33. I entirely agree with my Lord the Chief Justice that the period subsequent to 31st Oct. 1949 cannot be taken into consideration for perfecting the title by adverse possession which had already started to run. 1 cannot usefully add on that point. But I regret my inability to agree that the application has. no merit and it should be dismissed. In my view, the order to restore possession over the land in question to respondents Nos. 4 to 15 cannot be sustained for the reasons mentioned in the judgment prepared by learned Brother B.S. Sinha, J. I agree with him and direct that the application be allowed to the extent indicated in the judgment of B.S. Sinha, J.

ORDER

34. It is held unanimously that the prescriptive period of twelve years for perfecting the title by adverse possession (the original transfer being in contravention of Section 27 of Regulation 3 of 1872) would stop running from the 1st of Nov. 194') being the date of the enforcement of the Santhal Parganas Tenancy (Supplementary Provisions)

Act, 194).

It is held by majority that the writ application must be allowed to the extent that the orders of the learned Commissioner and the Additional Commissioner directing settlement of land with respondent No, 10 must be set aside, and it is ordered accordingly. There shall, however, be no order as to costs.