

आदेश का  
क्रम संख्या और  
तारीख

आदेश और पदाधिकारी का हस्ताक्षर

आदेश पर की  
गई कारवाई के  
बारे में टिप्पणी,  
तारीख के  
साथ।

25/10/2021

**IN THE COURT OF THE COMMISSIONER SOUTH  
CHHOTANAGPUR DIVISION RANCHI**

**SURVEY APPEAL 102/2001**

**Gandru Oraon & Others**

**Vrs.**

**Charwa Oraon & Others**

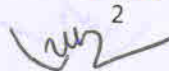
Survey appeal 102/2001 was filed by Gandru Oraon and 11 others vrs. Charwa Oraon and 6 others challenging the order by the Charge officer, Ranchi in survey revision case 22/96 where in Charge officer ordered to prepare new khata w.r.t. the land under khata no 210/2019 plot nos 254/142, 280/159 and 281/160 of village Karanji in district Ranchi.

In the present case the appellant remained absent after 2012. The O.Ps continued to be present. On 23.11.2020 the court directed the GP to present the case of the petitioner considering his long absence. Hence the case of the petitioner was argued by the GP.

The petitioners claim is that the land under Rs khata no 219 stands recorded in khewat no 28/3 which is Bhuihari khewat and other samilat malikan khewat 28/1 and 28/2 which stand recorded in the name of Kotwar Oraon and Nanuwa Oraon. The land under khewat no 28/3 stands recorded in the name of both jointly as Bhuiharidar. The present appellants are the successor of recorded khewatdar Nunuwa Oraon. During the present survey operation the new khata no 210 is prepared as bakas bhuihari khata under khewat no 28/3 in the name of appellants. This entry



आदेश का क्रम संख्या और तारीख	आदेश और पदाधिकारी का हस्ताक्षर	आदेश पर की गई कारवाई के बारे में टिप्पणी, तारीख के साथ।
	<p>remained intact up to the stage of tasdik. No objection was filed u/s 83 of the CNT act. After the lapse of 5 years respondents filed a petition u/s 89 where-in the charge officer allowed the petition. The land in question is a Bhuihari land and heirs of Bhuiyardars are in physical possessions of these lands. Person name Harindar Lal who was recorded as adh batayidar in the last revisional survey has got no right to settle the land to other person as he himself was only a tenant. Thus the claim of the respondents about the settlements of the land from adh batayidar is not tenable. A revision u/s 89 of the CNT act could have been filed only within 1 year from the date of draft publication or the order u/s 83. In this case the draft ROR was published in the year 1992 where as this application was filed in year 1996. Right of occupancy cannot be acquired on the Bhuihari lands and these lands are not vested into the state u/s 2q of BLR act. The respondents cannot claim to be the raiyat under the appellants as they were never issued any rent receipts by the appellants. The SAR case 63/1976 was decided on maintainability as during the year 1976 Bhuihari lands was not under the purview of sec 71A. Thus the orders passed by the charge officer is arbitrary and should be set aside.</p> <p>The respondents claim that the total area of 3.61 acres in the new plots 254, 280 and 281 in village Karanji was recorded as kayami in the Rs record of right in the name of Falindar lal, Ravindar lal and others who settled the above land on 14.10.1929 in favour of Sukra Oraon through hukumnama. The lands was in cultivating possession of Sukra Oraon which was inherited by the present respondents</p>	

2  


आदेश का  
क्रम संख्या और  
तारीख

आदेश और पदाधिकारी का हस्ताक्षर

आदेश पर की  
गई कारवाई के  
बारे में टिप्पणी,  
तारीख के  
साथ।

being the legal heirs and successors. In the proceeding u/s 145 CrPC the possession of respondents was confirmed by the executive magistrate. In SAR case no 63/1976 it was held that the land under the proceeding is raiyati land of Falindar lal and others and thus is not restorable. The possession of ancestors of the respondents has been recorded since 1929. During the recent survey operations and respondents were out of station their objection u/s 83 case no 64/1993 was dismissed for non prosecution. Against this order revision was filed which was accepted after condonation of delay and after hearing both the parties the charge officer directed to open the khata in the name of respondents. Hence this appeal is fit to be dismissed.

From perusal of records and arguments by the parties it is clear that revision case 22/96 was filed after the delay of more than 4 years after publication of draft ROR in 1992. The O.Ps have claimed to have filed objection u/s 83. Even the petition filed in a charge officers court mentions about the case u/s 83 in point no 5. The lower courts orders only mention about admission of the case after condonation of delay but no reason has been assigned for accepting this long delay as the petitioner has only mentioned his being out of station for the delay. Clearly being out of station as a cause could not have been a cogent reason for delay of 4 years. From the perusal of SAR case no 63/76 it is clear that the SAR court did not find the matter maintainable u/s 71A and thus kept it in abeyance. In a proceeding u/s 145 CrPC the Executive Magistrate vide order dtd 21.08.2000 has declared possession of Birsa Oraon and others who were first party in the case. The entries in the khatian shows

आदेश का क्रम संख्या और तारीख	आदेश और पदाधिकारी का हस्ताक्षर	आदेश पर की गई कारवाई के बारे में टिप्पणी, तारीख के साथ।
	<p>Falindar Lal and others as kayami but in adh batayi status. Clearly this adh batayidar could not have settled the land with others as claimed by the O.P. Khewat no 28/3 is a Bhuihari khewat which was non transferable to others and was not covered under occupancy rights; hence merely possession of the same could not have decided the title. Respondents are not the raiyats of the land and the lands are clearly bhuihari tenure, which can only be transferred to the legal heirs of the original raiyats. The petitioner has not come to this court for last 5 years and hence this case has been argued by the GP but considering the facts of the case this appeal has to be allowed and the order passed by the charge officer admitting the case after 4 years and allowing the transfer of the Bhuihari lands cannot be sustained. Thus the orders of the charge officer are set aside.</p> <p>Dictated &amp; Corrected</p> <p><i>[Signature]</i> Commissioner</p> <p><i>[Signature]</i> Commissioner</p>	