

IN THE HIGH COURT OF JHARKHAND AT RANCHI
(Letters Patent Appellate Jurisdiction)

LPA No. 143 of 2022

Suresh Tirkey, son of Late Kanhu Tirkey, resident of Village Bara Ghaghra,
PO-Doranda, PS-Doranda, District-Ranchi **Appellant**

Versus

1. The Governor, through its Principal Secretary under Administration and control of the Scheduled Areas of the State of Jharkhand and under Article 244(1) and the Provisions in the Fifth Schedule of the Constitution of India, at Governor House, Andre House, PO GPO Ranchi, PS Kotwali Ranchi
2. The Jharkhand Tribes Advisory Councils through its Chairman under Administration and control of the Scheduled Areas of the State of Jharkhand under Article 244(1) and the provisions in the Fifth Schedule to the Constitution of India, at-office guided by the Principal Secretary/Secretary In-charge of the Scheduled Tribe, Scheduled Caste, Minority and Backward Class Welfare Department, Government of Jharkhand at Secretariat, Project Bhawan, HEC Compound, Dhurwa, PO-Dhurwa, PS-Dhurwa, Ranchi
3. The Secretary to the Council, Jharkhand Tribes Advisory Councils under Administration and control of the Scheduled Areas of the State of Jharkhand under Article 244(1) and the provisions in the Fifth Schedule to the Constitution of India at office guided by the Principal Secretary/Secretary In-charge of the Scheduled Tribe, Scheduled Caste, Minority and Backward Class Welfare Department, Government of Jharkhand at Secretariat, Project Bhawan, HEC Compound, Dhurwa, PO&PS-Dhurwa, Ranchi
4. The Joint Secretary to the Secretariat of Jharkhand Tribes Advisory Councils under Administration and control of the Scheduled Areas of the Sixteen Districts of the State of Jharkhand under Article 244(1) and the provisions in the Fifth Schedule to the Constitution of India, based at the Dr. Ram Dayal Munda Tribal Welfare Research Institute, Morahabadi, PO-GPO Ranchi, PS-Kotwali, Ranchi
5. The Mayor of unconstitutionally constituted Ranchi Municipal Corporation Ranchi at Ranchi PO-GPO Ranchi, PS-Kotwali, Ranchi
6. The Municipal Commissioner of unconstitutionally constituted Ranchi Municipal Corporation Ranchi at Ranchi, PO-GPO Ranchi, PS-Kotwali, Ranchi
7. The Assistant Municipal Commissioner of unconstitutionally constituted Ranchi Municipal Corporation Ranchi at Ranchi, PO-GPO Ranchi, PS-Kotwali, Ranchi
8. The Chief Secretary, the Government of Jharkhand at Secretariat, Project Bhawan, HEC Compound, Dhurwa, PO-Dhurwa, PS-Dhurwa, Ranchi (Jharkhand)
9. The Secretary, Urban Development and Housing Department, Government of Jharkhand at Secretariat, Project Bhawan, HEC Compound, PO-Dhurwa, PS-Dhurwa, Ranchi (Jharkhand) **Respondents**

with

LPA No. 144 of 2022

Sonu Pascal Ekka, son of Late Esrael Ekka, resident of Village Bara Ghaghra, PO-Doranda, PS-Doranda, District-Ranchi **Appellant**

Versus

1. The Governor, through its Principal Secretary under Administration and control of the Scheduled Areas of the State of Jharkhand and under Article 244(1) and the Provisions in the Fifth Schedule of the Constitution of India, at Governor House, Andre House, PO GPO Ranchi, PS Kotwali Ranchi
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 4. The Joint Secretary to the Secretariat of Jharkhand Tribes Advisory Councils under Administration and control of the Scheduled Areas of the Sixteen Districts of the State of Jharkhand under Article 244(1) and the provisions in the Fifth Schedule to the Constitution of India, based at the Dr. Ram Dayal Munda Tribal Welfare Research Institute, Morahabadi, PO-GPO Ranchi, PS-Kotwali, Ranchi
 5. The Mayor of unconstitutionally constituted Ranchi Municipal Corporation Ranchi at Ranchi PO-GPO Ranchi, PS-Kotwali, Ranchi
 6. The Municipal Commissioner of unconstitutionally constituted Ranchi Municipal Corporation Ranchi at Ranchi, PO-GPO Ranchi, PS-Kotwali, Ranchi
 7. The Assistant Municipal Commissioner of unconstitutionally constituted Ranchi Municipal Corporation Ranchi at Ranchi, PO-GPO Ranchi, PS-Kotwali, Ranchi
 8. The Chief Secretary, the Government of Jharkhand at Secretariat, Project Bhawan, HEC Compound, Dhurwa, PO-Dhurwa, PS-Dhurwa, Ranchi (Jharkhand)
 9. The Secretary, Urban Development and Housing Department, Government of Jharkhand at Secretariat, Project Bhawan, HEC Compound, PO-Dhurwa, PS-Dhurwa, Ranchi (Jharkhand)
- Respondents

**CORAM : HON'BLE MR. JUSTICE SHREE CHANDRASHEKHAR
HON'BLE MR. JUSTICE RATNAKER BHENGRA**

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|--------------------------------|--|
| For the Appellants | : Mr. Kaushalendra Prasad, Advocate
[In both cases] |
| For the Respondent Nos. 5 to 7 | : Mr. R.S. Mazumdar, Sr. Advocate
Mr. Shashank Shekhar, Advocate |
| For the Respondent Nos. 8 & 9 | : Mr. Sachin Kumar, AAG-II
Mr. Piyush Chitresh, AC to AG
Mr. Ravi Prakash Mishra, AC to AAG-II |

JUDGMENTC.A.V on 08/06/2022Pronounced on 10/08/2022Per, Shree Chandrashekar, J.

WP(C) No. 4907 of 2021 filed by Sonu Pascal Ekka son of late Esrael Ekka and WP(C) No. 4953 of 2021 filed by Suresh Tirkey son of late Kanhu Tirkey both residents of village Bara Ghaghra within the district of Ranchi in the State of Jharkhand were dismissed on 31st March 2022. By this order, the writ Court rejected their challenge to the notice communicated through letter dated 25th October 2021 and public notice dated 23rd December 2021, for removing encroachments over the lands belonging to Ranchi Municipal Corporation (in short, RMC).

2. Suresh Tirkey and Sonu Pascal Ekka have challenged the aforesaid order dated 31st March 2022 passed by the writ Court.

3. The writ petitioners who are appellants before us claimed right, title and interest over Plot Nos. 57 and 58 under Khata No. 328 in village Bara Ghaghra which are recorded in the name of their ancestors in the cadastral survey record of rights. They pleaded that their fathers/forefathers were in *khas* possession of the aforesaid lands before 1908 (when Chota Nagpur Tenancy Act came into force) and after their death they have been peacefully enjoying the stated properties. On such pleadings, they took a stand that any wrong entry in the revisional survey record of rights in the name of Municipality would not divest them of their lawful rights over the said properties and merely by a notice they cannot be forcibly dispossessed from their properties.

4. Both writ petitions were taken up for hearing on a Sunday upon urgent mentioning by their learned counsel and the notice served upon them, both dated 23rd December 2021, issued by the Deputy Municipal Commissioner, RMC requiring the noticees to remove encroachments from Plot Nos. 57 & 58 within Khata No. 328 under Thana No. 221 at Mauza Bara Ghaghra, was stayed by the writ Court by an order dated 26th December 2021.

5. In the proceedings before the writ Court, the State of Jharkhand did not file any affidavit and the respondent nos. 6 and 7 which are the contesting parties pleaded that RMC claims the aforesaid lands comprised

within Khata No. 328 by virtue of an entry in the revisional survey record of rights.

6. RMC put forth the following stand:

9. *That it is stated and submitted that the lands pertaining to Khata No. 328, Plot No. 57 and 58 alongwith other plots under Khewat No. 21 of village Bada Gaghara, Thana No. 221 District-Ranchi stand recorded in the Revisional Survey Record of Rights in the name of Municipality.*

10. *That it is stated and submitted that the as per section 84 of the CNT Act every entry in the Revisional Survey Settlement Record of Rights so published shall be presumed to be correct.*

11. *That it is stated and submitted that in case of conflict between an earlier and a later entry, the Record of Rights of later entry shall prevail. In other words, the entry made in the Revisional Survey Record of Rights shall prevail over the entries of the Cadastral Survey Record of Rights. It is beyond doubt that the land in disputed is owned by Ranchi Municipal Corporation and the petitioner alongwith other over the land in question are none but, trespassers.*

12. *That it is stated and submitted that answering respondent, in the capacity of having title over the land in dispute, has executed a Deed of Lease deed on 27th July, 2016 in favour of M/s Apollo Hospitals Enterprise Limited and leased all that piece and parcel of land measuring an area 2.80 acres more or less under Khata No. 328, Plot No. 57 and 58 situated at village-Bada Ghagara, Thana No. 221 Ranchi for the purpose of construction of esteemed Multi-Speciality Hospital with a capacity of 200 beds at Bara Ghaghra, Doranda, Ranchi on Public Private Partnership (PPP) basis.*

13. *That it is stated and submitted that in the light of the above Deed of Lease, Urban Development and Housing Department, Government of Jharkhand vide its notification no. 167 dated 21st November 2016 had released and granted administrative approval for sum of Rs. 14,42,41,328/- for the purpose of land acquisition to construct an approach road from the Main Road to the proposed site of the hospital.*

14. *That it is stated and submitted that the land acquisition for the construction of approach road was completed by the District Land Acquisition Officer, Ranchi and the acquired land was accordingly, handed over to the Ranchi Municipal Corporation vide letter no. 727 dated 17th May 2018.*

15. *That it is stated and submitted that the land for the construction of Apollo Hospital was to be transferred to the Hospital free from all encumbrance and encroachment.*

16. *That it is stated and submitted that Plot No. 57 and 58 Khata no. 328 of village Bada Ghagara, Doranda, District-Ranchi had some encroachments about 15.07 kathas of land, which required to be removed and freed from encroachment.*

17. *That it is stated and submitted that in the light of the aforesaid fact the Assistant Municipal Commissioner, Ranchi Municipal Corporation, Ranchi vide his letter no. 1368 dated 25th October 2021 requested Circle Officer, Argora Circle, Ranchi to initiate proceeding under the Jharkhand Public Land encroachment Act, 2000 for the removal of the encroachment made over Plot no. 57 and 58 under Khata No. 328 village Bada Ghagara, Doranda, District-Ranchi.*

7. The writ Court held that claim of the writ petitioners in respect of the lands which were recorded in the cadastral survey record of rights in the name of their ancestors cannot be considered by the Court under

extraordinary writ jurisdiction so as to interfere in the matter.

8. The writ Court has held as under:

19. *In the case in hand, the petitioners have not put challenge to the vires of the Jharkhand Municipal Act, 2011 or Section 606(2) of the said Act under which the impugned notices have been issued to them. The petitioners have also failed to show before this court that the Act, 2011 or the previous Municipal Act i.e Bihar Municipal Act, 1922 has been declared ultra vires by any competent court of law. It is also not the case of the petitioners that the Governor of Jharkhand has declared either Bihar Municipal Act, 1922 or the Jharkhand Municipal Act, 2011 as inapplicable within the Scheduled Areas in exercise of power conferred under 5 th Schedule of the Constitution of India.*

20. *The petitioners have neither averred in the writ petitions nor their learned counsel has been able to point out as to which provision of the Act, 2011 is inconsistent with Part IX-A of the Constitution of India and thus in view of the judgment of learned Division Bench of this court rendered in the case of Debashis Soren (supra.), there is no specific bar in continuance of the existing laws if they are consistent with the provisions of Part IX-A. Vague argument of learned counsel for the petitioners that the Act, 2011 will not be applicable within the District of Ranchi, has thus no leg to stand.*

21. *The other limb of argument of the learned counsel for the petitioners is that the petitioners have right, title and interest over their respective land as the same was recorded in the name of their ancestors in the cadastral survey record of rights and they have been in khas possession of their respective land since 1908, however in the revisional survey record of rights, these were wrongly recorded in the name of Municipality.*

22. *Though the petitioners have claimed that they are in khas possession over their respective land, however they have failed to bring on record any document in support of such claim i.e., opening of jamabandi in their name, entry in Register-II as well as rent receipts issued in respect of the land in question so as to show their lawful possession over the same. Moreover, the Circle Officer, Argora Circle, Ranchi, vide order dated 21.12.2021 passed in Encroachment Case No. 11/2021-22, has observed that the entry pertaining to the land in question made in the name of Municipality in the revisional survey record of rights will prevail over the entries made in the cadastral survey record of rights. It has further been observed that Ranchi Municipal Corporation has the authority to remove encroachment from the land belonging to it. The petitioners have also not averred in their rejoinder affidavits that the order dated 21.12.2021 passed in Encroachment Case No. 11/2021-22 has been set aside by any higher court of law. Moreover, the claim of the petitioners that their respective land were recorded in the name of their ancestors in the cadastral survey record of rights, cannot be entertained by this Court under extraordinary writ jurisdiction.*

23. *The writ petitions are accordingly dismissed. The petitioners are however at liberty to claim their title over the land in question before a competent court of civil jurisdiction, if so advised.*

9. Briefly stated, RMC executed a lease deed on 27th July 2016 on

payment of One rupee per annum for construction of a Multi Speciality Hospital of 200 beds at Bara Ghaghra in the district of Ranchi on Public Private Partnership basis. The leased lands are comprised under Khata No. 328 within Plot Nos. 57 and 58 admeasuring about 2.80 acres under Thana No. 221 at village Bara Ghaghra in Ranchi. According to RMC, it found encroachments over a part of Plot Nos. 57 and 58 and notices were issued to the encroachers. Simultaneously, RMC requested the Circle Officer, Argora Circle, Ranchi on 25th October 2021 to initiate proceedings under the Jharkhand Public Land Encroachment Act, 2000 for removing encroachments upon the lands in question. According to RMC, Encroachment Case No. 11/2021-22 (“*State v. Suresh Tirkey and others*”) was registered and an order for removing encroachments over the lands in question was passed on 21st December 2021. Thereafter, a notice labelled as public notice (not in the newspaper) was issued on 23rd December 2021 requiring the encroachers to remove the encroachments within 72 hours failing which the same was to be done forcibly. The writ Court passed an order on 26th December 2021 staying the aforesaid notice but after the writ petitions were dismissed fresh notice was issued to the appellants on 9th April 2022 and their houses were razed to ground on 11th April 2022.

10. The appellants have raised *inter alia* the following grounds to challenge the notice/public notice issued by RMC :

- (i) Notices were illegal as the same were issued in the name of dead persons;
- (ii) Notices were issued arbitrarily and against the rules of natural justice;
- (iii) Section 606(2) of the Jharkhand Municipal Act, 2011 is unconstitutional in view of Article 243-ZC of the Constitution of India;
- (iv) Notice under a statute which is unconstitutional does not carry any force of law; and
- (v) Ownership of RMC over the lands comprised under Plot nos. 57 and 58 under Khata no. 328, Thana no. 221 at village Bara Ghaghra, Ranchi is not established merely by showing extracts from revisional survey record of rights.

11. Several other grounds though not properly formulated but all revolving around Constitutionality of the Jharkhand Municipal Act, 2011 in general and section 606(2) in particular are formulated in the memorandum of Appeal.

12. The counter-affidavits filed on behalf of the respondent nos.6 and 7 in both matters proceed on similar lines taking identical objections as pleaded before the writ Court. RMC has challenged *bona fide* of the appellants and their entitlement for any relief on the ground that no material has been produced by them to substantiate their claim. RMC has contested the matter on the following grounds:

- (i) Encroachment by the appellants was a hurdle in construction of Apollo Hospital in the city of Ranchi;
- (ii) The appellants were not paying heed to the earlier notices for removing the encroachments;
- (iii) 9 days after the final order was passed in the writ petitions filed by them a notice through letter dated 09th April 2022 was issued to the appellants but they failed to remove the illegal structures within 48 hours;
- (iv) Payment of Holding tax by the appellants which is imposed upon the residents for availing amenities provided by RMC shall not create any title in their favour over the lands in question;
- (v) The appellants did not challenge the writ Court's order immediately and these Appeals have been filed after notice dated 09th April 2022 was duly served upon the appellants, to protract and complicate the litigation;
- (vi) The expression "municipal property" in section 606 of the Jharkhand Municipal Act 2011 cannot be limited to streets, footpaths and parks only and shall mean and include all properties owned by RMC;

13. We shall first see in what manner the appellants have challenged the aforesaid notices and public notice on the ground of jurisdiction of RMC. The plea raised by the appellants is that the district of Ranchi has been declared Scheduled Area by the President of India and unless the Governor of the State in exercise of the powers under 5th paragraph of the Fifth Schedule directs by a public notification that the Jharkhand Municipal Act, 2011 shall

apply to the Scheduled Areas or any part thereof in the State of Jharkhand, any provision under the Jharkhand Municipal Act, 2011 cannot apply in the district of Ranchi and while so the notices issued by RMC are without any authority of law vested in it.

14. The Constitution (Seventy-fourth Amendment) Act, 1992 brought Part IX-A in the Constitution which deals with the establishment, constitution, powers and functions of Municipality as institutions of self-government. The relevant provisions under Part IX-A are Articles 243-ZC, Article 243-ZF which are extracted as under:

243-ZC. Part not to apply to certain areas — (1) Nothing in this Part shall apply to the Scheduled Areas referred to in clause (1), and the tribal areas referred to in clause (2), of Article 244.

(2) Nothing in this Part shall be construed to affect the functions and powers of the Darjeeling Gorkha Hill Council constituted under any law for the time being in force for the hill areas of the district of Darjeeling in the State of West Bengal.

(3) Notwithstanding anything in this Constitution, Parliament may, by law, extend the provisions of this Part to the Scheduled Areas and the tribal areas referred to in clause (1) subject to such exceptions and modifications as may be specified in such law, and no such law shall be deemed to be an amendment of this Constitution for the purposes of Article 368.

243-ZF. Continuance of existing laws and Municipalities— Notwithstanding anything in this Part, any provision of any law relating to Municipalities in force in a State immediately before the commencement of the Constitution (Seventy-fourth Amendment) Act, 1992, which is inconsistent with the provisions of this Part, shall continue to be in force until amended or repealed by a competent Legislature or other competent authority or until the expiration of one year from such commencement, whichever is earlier:

Provided that all the Municipalities existing immediately before such commencement shall continue till the expiration of their duration, unless sooner dissolved by a resolution passed to that effect by the Legislative Assembly of that State or, in the case of a State having a Legislative Council, by each House of the Legislature of that State.

15. Article 243-ZC confers powers upon Parliament to extend the provisions of Part IX-A to a Scheduled Area subject to exceptions and modifications by making a law in this regard. Therefore, Part IX-A does not *ipso facto* apply to Scheduled Areas and it is an admitted position that Parliament has not made any law extending the provisions of Part IX-A to the Scheduled Areas of Jharkhand. Article 243-ZF is an enabling provision which permits the existing laws relating to municipalities to remain in force for one year, even if inconsistent with Part IX-A. Such existing laws may,

however, continue to remain in force if amended within one year to make those in consonance with Part IX-A.

16. Article 244 of the Constitution of India which deals with the administration of Scheduled Areas and Tribal Areas provides that Fifth Schedule to the Constitution shall apply to the administration and control of the Scheduled Areas and Scheduled Tribes in any State other than the States of Assam, Meghalaya, Tripura and Mizoram, which are administered under the provisions of Sixth Schedule. Paragraph 6(1) of Fifth Schedule to the Constitution provides that “Scheduled Areas” means such areas as the President may by order declare to be Scheduled Areas. Under the Scheduled Areas (Part A States) Order 1950 issued on 26th January 1950 few districts/divisions including the district of Ranchi were declared Scheduled Areas. Subsequently, different Presidential Orders were issued in 1977, 2002 and 2007 by which parts of the State of Jharkhand were declared Scheduled Areas. Under the Scheduled Areas (State of Jharkhand) Order, 2007 which was issued vide Notification dated 11th April 2007, the districts of Ranchi, Lohardaga, Gumla, Simdega, Latehar, East-Singhbhum, West-Singhbhum, Saraikela-Kharsawan, Sahebganj, Dumka, Pakur, Jamtara and parts of the districts of Palamu, Garhwa and Godda have been declared Scheduled Areas.

17. Therefore, 15 districts of the State of Jharkhand including the areas under the district of Ranchi which are declared by the President as Scheduled Areas shall be governed by Fifth Schedule to the Constitution.

18. Prior to the Constitution, the excluded areas were dealt with by sections 91 and 92 of the Government of India Act, 1935 to the effect that the excluded and partially excluded areas were those areas declared so by the order by the Governor-in-Council. The laws made by the Federal Legislature or the Provincial Legislature were not to apply to an excluded or a partially excluded areas, unless the Governor by public notification so directed. After the Constitution, the laws in force are to continue until altered or repealed or amended by a competent Legislature.

19. The Bihar and Orissa Municipal Act, 1922, predecessor of the Jharkhand Municipal Act, 2000, is an existing law applicable in relation to excluded areas which now fall under the Scheduled Areas in Jharkhand. We may indicate that preamble to the Bihar and Orissa Municipal Act, 1922 contained a recital that previous sanction of the Governor-General under

sub-section (3) of Section 80A of the Government of India Act was obtained to the passing of the Act. Therefore, it is saved by Explanation-I to Article 372 which provides that the laws in force under Article 372 shall include a law passed or made by the Legislature or other competent authority in the territory of India before the commencement of the Constitution. 5th paragraph of Fifth Schedule to the Constitution empowers the Governor of the State to issue a public notification to exclude operation of an Act of Parliament or State Legislature to a Scheduled Area. The Governor may also by a public notification direct that any particular Act of Parliament or of the State Legislature shall apply to a Scheduled Area subject to the specific exceptions and modifications. However, there is no public notification by the Governor of the State of Jharkhand excluding operation of the Jharkhand Municipal Act, 2000 in the Scheduled Areas of Jharkhand.

20. The Jharkhand Municipal Act, 2000 was made applicable to the whole of the State of Jharkhand except Cantonment areas; and this has been replaced by the Jharkhand Municipal Act, 2011. The preamble to Jharkhand Municipal Act, 2011 provides that this Act has been framed in conformity with the provisions of the Constitution (Seventy-fourth Amendment) Act, 1992. The writ Court referred to the decisions in “*Debashish Soren v. State of Jharkhand & Ors.*”¹, “*Ram Kirpal Bhagat v. State of Bihar*”² and “*Sundargarh Zilla Adivasi Advocates Association & Ors. v. State of Odisha & Ors.*”³ to come to a conclusion that there is no specific bar in continuance of the existing laws if they are consistent with the provisions of Part IX-A of the Constitution of India. In “*Debashish Soren*”¹ amendments incorporated in Jharkhand Municipal Act, 2000 were challenged on the ground that those provisions cannot be extended to the Scheduled Areas in the district of Ranchi, as Parliament alone can extend Part IX-A of the Constitution to the Scheduled Areas. A Division Bench of this Court held that the Bihar and Orissa Municipal Act, 1922 which was applied and made applicable to the State of Jharkhand prior to 74th amendment to the Constitution is an existing law which shall continue to operate even in the Scheduled Areas of Ranchi.

21. In our opinion, the writ Court rightly held that the Jharkhand Municipal Act, 2011 which amended laws relating to the municipal

1. 2008 (1) JCR 542 (Jhr)

2. (1969) 3 SCC 471

3. (2013) 14 SCC 217

governance in the State of Jharkhand is in conformity with provisions of the Constitution (Seventy-fourth Amendment) Act, 1992, and there is no challenge before us to this finding of the writ Court. Therefore, the challenge by the appellants to the notices issued to them on the above ground must be rejected.

22. Suresh Tirkey claimed right, title and interest over 76 decimal lands in Plot no. 151 within Khata No. 39, Khewat No.1, Pargana Khukra, Mouza Bara Ghaghra No. 221 within Thana Ranchi. The aforesaid lands comprised under Plot No. 151 are recorded in cadastral survey in the name of late Barka Tutang Oraon who was his ancestor. Sonu Pascal Ekka claimed right, title and interest over 0.73 acres land in Plot No. 148 within Khata No.73, Khewat No.1, Pargana Khukra, Mouza Bara Ghaghra on the basis of entries in the record of rights in cadastral survey in the name of his ancestor Budwa Oraon. The appellants have pleaded that the descendants of the recorded tenants remained in peaceful possession of the stated lands, enjoyed their right, title and interest over such lands and resided in their house constructed thereon and have been paying Holding tax, Municipal tax and other taxes.

23. Chapter-XII in the Chota Nagpur Tenancy Act, 1908 (in short, CNT Act, 1908) titled “record of rights and settlement of rents” deals with preparation of record of rights under sections 83 and 84 of CNT Act, 1908. RMC has set up a case that section 84 of CNT Act, 1908 shall apply *ex proprio vigore* and entries in its name in the revisional survey record of right are conclusive proof of its right, title and interest over the lands comprised in Plot nos. 56, 57, 58 and 69 under Khata No. 328 at village Bara Ghaghra.

24. Sections 83 and 84 of CNT Act, 1908 are extracted below:

“83. Preliminary publication, amendment and final publication of record-of-rights. - (1) *When a draft record-of-rights has been prepared under this Chapter, the Revenue Officer shall publish the draft in the prescribed manner and for the prescribed period and shall receive and consider any objections which may be made to any entry therein, or to any omissions therefrom, during the period of publication.*

(2) When such objections have been considered and disposed of in the prescribed manner, the Revenue Officer shall finally frame the record, and shall cause it to be finally published in the prescribed manner, and the publication shall be conclusive evidence that the record has been duly made under this Chapter.

(3) Separate draft or final records may be published under sub-section (1) or sub-section (2) for different local areas, estates, tenures or parts thereof.

84. Presumptions as to final publication and correctness of record-of-rights - (1) *In any suit or other proceedings in which a record-of-rights prepared and published under this Chapter or a duly certified copy thereof or extract therefrom is produced, such record-of-rights shall be presumed to have been finally published unless such publication is expressly denied and a certificate, signed by the Revenue Officer, or by the Deputy Commissioner of any district in which its local area, estate or tenure or part thereof to which the record-of-rights relates is wholly or partly situate, stating that the record-of-rights has been finally published, under this Chapter shall be conclusive evidence of such publication.*

(2) *The State Government may, by notification, declare with regard to any specified area, that a record-of-rights has been finally published for every village included in that area; and such notification shall be conclusive evidence of such publication.*

(3) *Every entry in a record-of-rights so published shall be evidence of the matter referred to in such entry and shall be presumed to be correct until it is proved, by evidence, to be incorrect.”*

25. The effect of section 84 of CNT Act, 1908 which raises a statutory presumption of correctness as to publication and entries made in the record of rights so published is a matter for trial. The presumption raised under sub-section (3) to section 84 that every entry in the record of rights shall be presumed to be correct until it is proved by evidence to be incorrect is a rebuttable presumption. The legislative intendment behind section 84 is protection of the rights of the raiyats and tenure-holders. Section 6 of CNT Act, 1908 provides that “raiyat” means primarily a person who has acquired a right to hold and for the purpose of cultivating it by himself or by members of his family, or by hired servants or with the aid of partners; and includes the successor-in-interest of persons who have acquired such a right. The explanation to section 6 clarifies that a tenant having right to cultivation shall be deemed to have acquired a right to hold it for the purpose of cultivation, notwithstanding that he uses it for the purpose of gathering the produce of it or of grazing cattle on it. The raiyats, tenure holders including under-tenure holders, occupancy raiyats, tenants holdings, under-raiyats and Mundari khunt-kattidars fall under the category of tenants, who are entitled to hold lands on payment of rent. Under CNT Act, 1908, a “tenure-holder” is a person who has acquired from the proprietor, or from another tenure-holder, a right to hold land for the purpose of collecting rents or bringing under cultivation by establishing tenants on it and includes (a) successor-in-interest of persons who have acquired such a right and, (b) the holder of tenures entered in any register prepared and confirmed under Chota Nagpur Tenures Act, 1869 (Beng. Act 2 of 1869). Under section 16, every “raiyat” who

immediately before the commencement of the Act has any right of occupancy in any land by the operation of any enactment or by local custom or uses or otherwise shall have right of occupancy in that land, notwithstanding the fact that he may not have cultivated or held the land for a period of 12 years.

26. The CNT Act, 1908 is a piece of beneficial legislation which is intended to extend protection to a class of citizens who constitute a weaker section in the society unable to protect their property. The protection mechanism envisaged under CNT Act, 1908 must be given full effect so as to work out the protection to the tribals, even by adopting liberal construction wherever necessary⁴. CNT Act, 1908 covers whole of the North Chota Nagpur, South Chota Nagpur and Palamau Division including the areas or parts of the areas which have been constituted into a Municipality or a Notified Area Committee under the Bihar and Orissa Municipal Act, 1922 (Bihar and Orissa Act 7 of 1922) or which are within a Cantonment.

27. In the aforesaid background, one can see the reasons why several particulars, such as, name and class of tenant/occupant, name of the landlord/proprietor, mode in which rent was fixed, easement rights, right and obligation of each tenant and landlord etc. are required to be specified in the order made under section 80 on the basis of which a draft record of rights is prepared under section 83. Under sub-section (2) to section 83, the objections made to any entry or any omission are considered and disposed of and then the record of rights is finally published in the prescribed manner. RMC has produced extract from revisional survey record of rights to lay its claim over about 2.80 acres of land under Khata No. 328 comprised in Plot Nos. 56, 57, 58 and 69 at village Bara Ghaghra, but without any corroboration. The extract from the revisional survey record of rights is not even authenticated by a competent authority or supported by any other corroborative evidence, as indicated under sections 80, 81 and 83 of CNT Act, 1908. The entries made in the revisional survey record of rights are not supported by any statement by RMC, and it is not known since when the aforesaid lands comprised in Plot Nos. 56, 57, 58 and 69 under Khata No. 328 are held in its possession and used for a particular purpose – to say, dump yard.

28. On the other hand, the entries made in the name of predecessors

4. “*D (A Minor) v. Berkshire County Council*” (1987) 1 All ER 20 HL : Broad and liberal construction should be given to give full effect to the legislative purpose.

of the appellants in the revenue records/Khatiyani are not disputed and by virtue of non-transferable nature of the lands the presumption envisaged under sub-section (3) to section 84 does not come in aid of RMC. That is more so because RMC does not even know since when and the manner how the aforesaid lands came in its possession. The plea urged by RMC that by operation of section 84 of CNT Act, 1908 entries made in the revisional survey record of rights in favour of RMC is a conclusive proof of its ownership over the lands in question cannot be accepted – at least, possession of RMC over the said lands is not established. This cannot be overlooked that RMC does not even claim that it exercised its ownership rights and continued in possession of the said lands since 1932, whereas long continuous possession of the appellants coming to them through their predecessors is established.

29. The writ Court was not justified in holding that it shall not look into cadastral survey record of rights – presumably in view of section 84(3) of CNT Act, 1908. The appellants are in possession of the disputed lands, their possession has been continuous and uninterrupted coming to them and they are tenants under CNT Act, 1908. Therefore, notwithstanding entries in the revisional survey record of rights, the appellants can very well use entries in the cadastral survey record of rights as corroborative piece of evidence to establish that they have valid claim over the aforesaid lands comprised under Plot Nos. 148 and 151.

30. To lay a foundation for ignoring entries in the cadastral survey record of rights, judgment in “*Shri Raja Durga Singh of Solon v. Tholu & Ors.*”⁵ wherein the Hon'ble Supreme Court observed that where there is conflict between prior and latter entries the entry made in the new records must prevail, has been relied upon by RMC. No doubt a presumption of correctness of new entry may be raised but entries in the record of rights, old as well as new, must be proved in accordance with the laws of evidence, and this is no answer to a claim raised on the basis of old entry in the cadastral survey record of rights that new entry in the revisional survey record of rights has not been challenged in any judicial proceeding. The writ Court shall not act on such pleadings by the respondent(s) to take a final decision without calling for and verifying the records.

5. AIR 1963 SC 361

31. RMC next turned to the order passed by the Circle Officer, Argora Anchal, Ranchi to support its direction to the violators by a simple notice to remove encroachments. As noticed above, Encroachment Case No. 11/2021-22 was drawn by the Circle Officer on the basis of the letter dated 25th October 2021 by RMC. A show-cause notice under section 3 of the Jharkhand Public Land Encroachment Act 2000 was issued to Birsa Oraon, Smt. Sushma Ekka and Suresh Tirkey, who produced cadastral survey record of rights and evidence regarding payment of Holding tax and other taxes to RMC. The Circle Officer was, however, of the view that RMC has powers under section 606(2) of the Jharkhand Municipal Act, 2011 to remove any encroachment and obstruction on the municipal property. Taking note of the notice dated 25th October 2021 issued by RMC to the appellants, the Circle Officer declined to proceed further in the encroachment case and proceedings in the said case were dropped. It is a matter of record that no direction was issued by the Circle Officer, Argora Anchal, Ranchi to the appellants to remove encroachments, as RMC would try to contend. Rather, the proceedings in Encroachment Case No. 11/2021-22 were dropped and a decision in this regard was communicated to RMC.

32. For a better appreciation of the aforesaid controversy, the order dated 21st December 2021 passed by the Circle Officer, Argora Anchal, Ranchi is extracted as under:

“Present proceeding has been initiated upon the request made by the Assistant Municipal Commissioner, Ranchi, Municipal Corporation, Ranchi, who vide Letter No.-1368 dated 25.10.2021 has requested to initiate a proceeding under the Bihar (Now Jharkhand) Public Land Encroachment Act, for removal of encroachment made by the Opp. Party namely (1) Sadho Oraon Son of Sri Duiya Oraon, (2) Sri Sabhal Oraon Son of Mahadeo Oraon, (3) Sri Kanhu Tirkey Son of Sri Jituwa Tirkey and (4) Sri Mahadeo Oraon All Resident of Bara Ghaghra, P.S. Doranda, District Ranchi upon the land measuring an area of 10,848 Sq. Ft. (approx 15.07 Kathas) pertaining to Khata No.-328, Plot No.-57 & 58 of Village Bara Ghaghra, Thana No.-221, District Ranchi. The aforesaid land belonging to Ranchi Municipal Corporation has been leased out by it for construction of Apollo Hospital.

A report upon the matter was called from the RSI, CI and Amin. The Anchal Amin of Argora Anchal and Amin of Ranchi Municipal Corporation have submitted a joint report upon the matter on 20.11.2021. As per the report, demarcation of the land pertaining to Khata No.-328, Plot No.-57 & 58 area 2.74 Acres of Village Bara Ghaghra, Thana No.-221, District Ranchi was done by them. They have reported that, (1) Birsa Oraon Son of Tuiya Oraon has encroached upon 7.14 decimals of land under Khata No.-328, Plot No.-58/Part of Village Bara Ghaghra, Thana No.-221, District Ranchi by constructing boundary wall, (2) Sushma Ekka W/o Late

Israil Ekka has encroached upon 7.78 decimals of land under Khata No.-328, Plot No.-58/Part of Village Bara Ghaghra, Thana No.-221, District Ranchi by constructing boundary wall and house with asbestos sheet roof and (3) Suresh Tirkey Son of Kanhu Tirkey has encroached upon 11.50 decimals of land under Khata No.-328, Plot No.-57 & 58/Part of Village Bara Ghaghra, Thana No.-221, District Ranchi by constructing boundary wall and Pucca house over the same.

A notice U/s 3 of the Jharkhand Public Land Encroachment Act, 1956 was issued upon the aforesaid (1) Birsa Oraon Son of Tuiya Oraon (2) Sushma Ekka W/o Late Israil Ekka and (3) Suresh Tirkey Son of Kanhu Tirkey on 20.11.2021 calling upon them to show-cause, why the encroachment made by them shall not be removed.

As per the Opp. Parties, the Assistant Municipal Commissioner of Ranchi Municipal Corporation, Ranchi has already issued letter No. 1369(ii) dated 25.10.2021 under Section 606(2) of the Jharkhand Municipal Act 2011 for removal of the encroachment made upon the land forming the subject matter of the Notice dated 20.11.2021 issued to the Opp. Party in the instant case. The instant parallel proceeding is not maintainable in the eyes of law. The land of mauza Bara Ghaghra, Thana No. 221, Thana- Ranchi stands recorded in Cadastral Survey Record of Right in the name of his ancestor Barka Tutang Oraon. The Opp. Party Mr. Suresh Tirkey is paying holding tax and other taxes of the same land to the Ranchi Municipal Corporation. The ancestor of the Opp. Party and after them the Opp. Party is coming in possession of the land since the publication of the cadastral survey record of right.

On going through the record, I find that the aforementioned land in question pertaining to Khata No.-328, Plot No.-57 & 58 of Village Bara Ghaghra, Thana No.-221, District Ranchi stands recorded in the R.S Record of Right in the name of Municipality. As per Section 84 of the CNT Act, every entry in a record-of-rights so published shall be evidence of the matter referred to in such entry and shall be presumed to be correct until it is proved, by evidence, to be incorrect. The entry made in the R.S. Record of Right shall prevail over the entries of the Cadastral Survey record of right. It is beyond doubt that the land belonging to the Ranchi Municipal Corporation i.e. local bodies is a public land within the meaning of Jharkhand Public Land Encroachment Act and the Opp. Party have encroached and constructed substantial structure upon the same, which is purely an act of un-authorized construction upon the land of RMC.

As per Section 606 (2) of the Jharkhand Municipal Act, The Municipal Commissioner or the Executive Officer has power to remove any encroachment and obstruction on the municipal property if it is not authorized, or if it objectionable or obstruct traffic. The Ranchi Municipal Corporation has full authority and ample resources to remove encroachment from the land belonging to the Municipality. The Corporation has already instituted an encroachment proceeding with respect of the land in question forming the subject matter of the instant case by issuing letter No. 1369(ii) dated 25.10.2021 under Section 606(2) of the Jharkhand Municipal Act 2011 for removal of the encroachment made upon the land forming the subject matter of the instant case.

Hence in order to avoid multiplicity of orders/directions for removal of encroachment with respect of the same land against the same persons, I think it would be expedient for the ends of justice to drop the instant proceeding. Therefore the instant proceeding is hereby dropped.

The Office is directed communicate this order to the Assistant Municipal Commissioner, Ranchi Municipal Corporation, Ranchi, so

*that he could proceed with the case U/s 606 of the Jharkhand Municipal Act initiated against the Opp. Parties.
Also send a copy to the Opp. Parties for information.”*

33. In the aforesaid order of the Circle Officer, there is a reference of a Joint Report of the Anchal Amins of Argora Anchal and RMC but a copy of the said report dated 20th November 2021 has not been found in the records of RMC, when the original records were produced before us. The observations of the Circle Officer that entries in the revisional survey record of rights shall prevail over the record of rights prepared during cadastral survey or the aforesaid Joint Report dated 20th November 2021 cannot be used by RMC to direct the appellants by a notice to remove encroachments. In fact, there is no material on record to establish that the appellants have encroached upon the lands belonging to RMC.

34. Now we turn to the stand taken by RMC that in exercise of the powers conferred upon it under sub-section 2 to section 606 notices were issued to Birsa Oraon, Smt. Sushma Ekka and Suresh Tirkey, and encroachments were removed 9 days after the writ petitions were dismissed by the High Court.

35. The Jharkhand Municipal Act, 2011 is divided into 9 parts which contain 48 Chapters spread over 617 provisions for municipal governance in the State of Jharkhand. Under section 131, the Municipal Commissioner or the Executive Officer is required to maintain a register and a map of all immovable properties of which the Municipality is the owner or which is vested in it or which the Municipality holds in trust for the Government. No register containing a list of municipal properties has been produced before us, and RMC has admitted in its affidavit that in the past 5 years no notice was issued to anyone for removing encroachments, except Sonu Pascal Ekka, Suresh Tirkey and Birsa Oraon.

36. Part-IX of the Jharkhand Municipal Act, 2011 is captioned as “powers, procedures, offences and penalties”. Sections 490 to 498 provide the procedure how public notices and advertisements shall be issued by the Municipality. Section 493 provides that any notice, bill, order, or requisition issued or made under the Act or the Rules or Regulations made thereunder shall specify a “reasonable time” for doing some act for which no time is fixed, and all such notices, bills, summons etc. shall bear signature of the

Municipal Commissioner or the Executive Officer or any other officer of the Municipality, except a cheque drawn upon the Municipal Fund (see, section 494).

37. Sub-section 1(d) to section 496 which specifically deals with “service of notices etc.” provides that every notice, bills, summons, orders, requisitions or other documents shall be tendered to the person to be served and, if such person cannot be found notices, bills, summons etc. shall be given or tendered to some adult member of his family or affixed on some conspicuous part of the land or building to which it relates, or, alternatively it may be sent through registered post. Sub-section 2 to section 496 provides that any document which is required or authorised to be served on the owner or the occupier of any land or building may be addressed to “the owner” or “the occupier” and shall be delivered in accordance with clause(d) of sub-section (1). It further provides that any document shall be deemed to be duly served if it is delivered to some person on the land or building or where there is no such person to whom it can be delivered may be affixed to some conspicuous part of the land or building.

38. A glance at the notice/public notice dated 25th October 2021, 23rd December 2021 and 9th April 2022 reveal the arbitrary manner in which these notices were issued to the appellants. RMC issued notice dated 25th October 2021 in the name of Late Kanhu Tirkey who was 3rd descendant of the recorded tenant Late Barka Tutang Oraon – Suresh Tirkey who is the appellant in LPA No. 143 of 2022 is the son of Late Kanhu Tirkey. A similar notice was issued in the name of Sambhal Oraon son of Late Mahadeo Oraon both of whom according to the appellants are not descendants of the recorded tenant. Moreover, the said notice was not even issued in the name of the father of Sonu Pascal Ekka – Late Esrael Ekka was 3rd descendant of the recorded tenant Late Budwa Oraon. They submitted their reply-cum-application on 29th October 2021 and challenged legality of notice dated 25th October 2021.

(A) Notice dated 25th October 2021:

Letter No. 1369 (ii)

Date : 25.10.2021

To,

*Sri Kanhu Tirkey,
S/o Sri Jituwa Oraon,
Address: Bara Ghaghra, Ranchi*

It is informed through this notice that the lands under Mauza Bara Ghaghra, Thana No. 221, Khata No. 328, Plot Nos. 57 and 58, area-2.83 acres are Khatiyani land of the Municipal Corporation. In course of the survey, it came to notice that you have constructed a pucca house, hand pump and temporary boundary wall by encroaching upon 3004 square feet land of Plot No. 57 and 1336 square feet land of Plot No. 58 under Khata No. 328.

Therefore, you are directed to present your case before the undersigned on 29.10.2021 at 12:00 A.M, if you have any order/document/paper etc. related to the above plot or if you have to say anything in person/through your authorized representative failing which action shall be taken to remove the structure u/s 606(2) of the Jharkhand Municipal Act, 2011 considering the same as encroachment.

Treat it as most urgent.

(B) Public Notice dated 23rd December 2021:

Letter No. 1585

Date : 23.12.2021

Public Notice

Mauza-Bara Ghaghra, Thana No. 221, Khata No. 328, Plot No. 57 and 58 is recorded in the R.S. Khatiyani in the name of Municipality. Sri Birsa Oraon, S/o Tuiya Oraon encroached some part of this land by constructing a boundary wall over 07.14 decimals land in Khata No. 328, Plot No. 58, Mauza-Bara Ghaghra and Thana No. 221. Smt. Sushma Ekka, W/o Esrael Ekka encroached upon 07.78 decimals land in Khata No. 328, Plot No. 58, Mauza-Bara Ghaghra, Thana No. 221 by constructing boundary wall and house having asbestos-sheet roof. Sri Suresh Tirkey, S/o Kanu Tirkey encroached upon Khata No. 328, Plot No. 57 and 58, Mauza-Bara Ghaghra, Thana No. 221 by constructing boundary wall and pucca house.

It is hereby informed that this land has been given to Apollo Hospital on lease by Ranchi Municipal Corporation for the construction of Apollo Hospital. Therefore, all encroachers are directed to ensure to vacate the above mentioned lands within 72 hours. Otherwise, encroachment shall be removed forcefully without any prior information and cost incurred for the same shall be recovered from the encroachers.

(C) Notice dated 9th April 2022:

Letter No. 444

Date : 09/04/22

Notice

Sri Suresh Tirkey, S/o Kanu Tirkey

Some portions of land of Ranchi Municipal Corporation situated at Mauza Bara Ghaghra under Thana No. 221, Khata No. 328, Plot No. 57 and 58 have been encroached by Sri Birsa Oraon, S/o Tuiya Oraon over 07.14 decimals land, by Smt. Sushma Ekka, W/o Late Esrael Ekka over 07.78 decimals land and by Suresh Tirkey, S/o Kanu Tirkey over 11.50 decimals land. Ranchi Municipal Corporation vide Letter No. 1585 dated 23.12.2021 had given notice to the aforesaid three persons for removing the encroachments. All of them were directed through notice to remove the encroachment within 72 hours from receiving this notice. But you have challenged the notice as well as this matter before the Hon'ble

High Court through writ petition W.P. (C) No. 4907/2021 and W.P. (C) No. 4953/2021. The Hon'ble High Court heard both writ petitions and thereafter dismissed the petitions agreeing with the view/the notice of the Municipal Corporation. The decision of the Hon'ble High Court was pronounced on 31.03.2022 in presence of your lawyer. It is 9th day since the order passed by the Hon'ble Court from 09.04.2022, but till now you have not removed the encroachments. It is made known to you that due to not removing of the encroachments, the construction of proposed hospital is obstructed.

You are given 48 hours' time from 09.04.2022 as last chance with direction to ensure removal of aforementioned encroachments on your own failing which Ranchi Municipal Corporation would be compelled to remove the encroachments over the aforesaid lands forcefully after 48 hours.

39. The aforesaid notices issued by RMC which are said to have been served upon the noticee did not provide sufficient time to them to remove encroachments, and it is not explained how those notices were addressed to dead persons. The notice dated 25th October 2021 was addressed to dead persons and provided 3 days' time to the noticees to produce documentary evidence as to their right, claim and interest over the lands in question. However, RMC did not examine the evidence produced on behalf of the noticees and no action was taken pursuant thereto and the matter was referred to the Circle Officer for initiating the encroachment case. Next a public notice was issued on 23rd December 2021 asking the encroachers to remove within 72 hours the boundary wall and other constructions made over Plot Nos. 57 and 58 comprised under Khata No. 328. By the said public notice, the encroachers were informed that the aforesaid lands have been leased by RMC to Apollo Hospital and encroachments shall be removed forcibly without any prior notice. 3rd notice was issued on the ground that the noticees had failed to remove encroachments which was causing obstructions in construction of Apollo Hospital, even 9 days after the writ petitions were dismissed. Therefore, fresh notice was issued to Birsa Oraon, Smt. Sushma Ekka and Suresh Tirkey on 9th April 2022. The records which were produced before us did not contain any communication by the lessee about encroachment or obstruction in construction of Apollo Hospital. It is also a matter of record that a certified copy of the writ Court's order was not made available to RMC by 9th April 2022 or even on 11th April 2022 and, therefore, RMC had no occasion to examine the contents of the order and directions issued by the writ Court. What is more disturbing is the timings when public

notice dated 23rd December 2021 and notice dated 9th April 2022 both were issued by RMC – during Christmas and Ramnavami vacations.

40. Apparently, RMC issued the aforesaid notices with oblique motives and its actions lack bonafide.

41. Chapter-47 of the Jharkhand Municipal Act, 2011 captioned as “Offences and Penalties” contains various provisions for fine, penalty, punishment, offences by companies, prosecution and compounding of offences under sections 600 to 611. RMC has taken a specific stand that the impugned actions are authorised under sub-section (2) to section 606 of Jharkhand Municipal Act, 2011.

42. Section 606 of Jharkhand Municipal Act, 2011 is extracted below:

“606. Encroachment on streets.-

(1) No person shall cause any encroachment or obstruction on any municipal property such as a street or footpath or park without specific permission of an officer of the municipality duly authorized to grant such permission. Any person causing such encroachment or obstruction on any municipal property as aforesaid shall, on conviction, be punishable with fine which may extend to five thousand rupees.

(2) The Municipal Commissioner or the Executive Officer shall have power to remove any encroachment and obstruction on the municipal property if it is not authorized, or if it objectionable or obstructs traffic.”

43. Section 606 is a specific provision making encroachment or obstruction on any street, footpath, park and other municipal property an offence which shall be punishable with a fine which may extend to Rs. 5,000/-. Sub-section (1) and sub-section (2) to section 606 are not isolated provisions and they have to be read together in conjunction with each other and once section 606 is read as a whole it becomes clear that the Municipal Commissioner or the Executive Officer shall have powers to remove any encroachment and obstruction over street, park etc. However, there is no procedure prescribed under the Jharkhand Municipal Act, 2011 for removing encroachment from other municipal properties . Therefore, RMC is required to follow the rules of natural justice even where there is no dispute as regards right, title and interest over the encroached lands. The phraseology used under sub-section (2) such as “if it is not authorised”, or, “if it is objectionable”, or, “obstructs traffic” cannot confer draconian powers on the Municipal Commissioner or the Executive Officer or any other officer of

RMC to direct a person in settled possession to remove encroachment within 72/48 hours' time.

44. No one can raise a claim of ownership over streets, footpaths or parks. Mere stray or even intermittent acts of trespass do not give any right against the true owner, and a casual act of possession would not have the effect of interrupting possession of the rightful owner. Therefore, the encroachments over streets, footpath, park etc. stand on a different footing, particularly because of inconvenience caused to the general public. Chapter-29 which deals with public streets provides under section 291 that all public streets and parking areas within the municipal area shall vest in the Municipality. The alleged encroachments by the appellants are not on any public road and RMC does not even claim that the lands in question vested in the Municipality by virtue of section 291. Furthermore, various provisions under the Jharkhand Municipal Act, 2011 clearly lay down a procedure for proceeding against a violator. Section 284 and other provisions indicate that cognizance of an offence can be taken by the Court only upon a complaint in writing made by any officer duly authorized. Alongwith the other provisions, section 610 provides that no Court shall proceed to the trial of any offence punishable by or under this Act except on the complaint of, or upon information received from the Municipal Commissioner or the Executive Officer or any person authorised by him by general or special order in this behalf. The aforesaid provisions provide sufficient guidelines to RMC wherever it intends to proceed under sub-section (2) to section 606 that RMC has to follow the procedure prescribed under the general laws in this regard.

45. Sir John Edge⁶ speaking for the Privy Council observed that in India persons are not permitted to take forcible possession; they must obtain such possession as they are entitled to through a Court. The law in India does not permit even a lessor to use force to throw out the lessee⁷. In "*Munshi Ram v. Delhi Admn.*"⁸ the Hon'ble Supreme Court has held that no one including the true owner has a right to dispossess the trespasser by force if the trespasser is in settled possession of the land and, in such a case, unless the lessee is evicted in the due course of law, he is entitled to defend his possession even against the rightful owner. About quarter a century

6. "*Midnapore Zamindary Company, Limited v. Naresh Narayan Roy and others*" - 1924 SCC OnLine PC 18 : (1923-24) 51 IA 293

7. "*Lallu Yeshwant Singh v. Rao Jagdish Singh*" AIR 1968 SC 620

8. AIR 1968 SC 702

thereafter, in “*Krishna Ram Mahale v. Shobha Venkat Rao*”⁹ the Hon'ble Supreme Court has held that where a person is in settled possession of property, even on the assumption that he has no right to remain on the property, he cannot be dispossessed by the owner of the property except by recourse to law.

46. The expression due process of law may take different colors in different situations but when such expression is used to question ejection from settled possession the stated expression would mean that a person in settled possession cannot be ejected without a Court of law having adjudicated upon his rights qua true owner. In “*Sopan Sukhdeo Sable v. Asstt. Charity Commr.*,”¹⁰ the Hon'ble Supreme Court has observed as under:

*“24. There are two different sets of principles which have to be borne in mind regarding course to be adopted in case of forcible dispossession. Taking up the first aspect, it is true that where a person is in settled possession of property, even on the assumption that he has no right to remain in property, he cannot be dispossessed by the owner except by recourse to law. This principle is laid down in Section 6 of the Specific Relief Act, 1963. That section says that “If any person is dispossessed without his consent of immovable property otherwise than in due course of law, he or any person claiming through him may, by suit, recover possession thereof, notwithstanding any other title that may be set up in such suit.” That a person without title but in “settled” possession — as against mere fugitive possession — can get back possession if forcibly dispossessed or rather, if dispossessed otherwise than by due process of law, has been laid down in several cases. It was so held by this Court in *Lallu Yeshwant Singh v. Rao Jagdish Singh*, *Krishna Ram Mahale v. Shobha Venkat Rao* (SCC at p. 136), *Ram Rattan v. State of U.P.* and *State of U.P. v. Maharaja Dharmander Prasad Singh*. The leading decision quoted in these rulings is the decision of the Bombay High Court in *K.K. Verma v. Union of India.*”*

47. We are, therefore, not inclined to accept the plea that RMC has powers to remove any encroachment over the municipal property merely by a notice providing 48 hours' time. No such power for removing the encroachments over the municipal property by a simple notice has been conferred by the Legislature either to the Municipal Commissioner or the Chief Executive Officer or any other officer of the municipality, except acting in accordance with the procedure established by law.

48. Besides the above, notice dated 09th April 2022 which is impugned in the present proceeding suffers from vice of arbitrariness and unreasonableness and must be held against natural justice.

9. (1989) 4 SCC 131

10. (2004) 3 SCC 137

49. The time of 48 hours provided by RMC through notice dated 09th April 2022 for removing encroachments militates against natural justice and fair play in action. The “*State of Maharashtra v. Alka B. Hingde*”¹¹ and “*State of J&K v. Haji Wali Mohd.*”¹² provide specific instances where time granted for removing the encroachment within 2-3 days was found not a reasonable time for doing the acts required to be done by the notice.

50. Reliance has been placed on the decisions in “*Ratansingh v. Vijaysingh & Ors.*”¹³ and “*Hans Raj Dhir v. State of Himachal Pradesh & Ors.*”¹⁴ to support demolition of the appellants' properties after the writ petitions filed by them were dismissed. The writ petitions were filed questioning legality of the notice/public notice issued by RMC and not against demolitions and, therefore, judgments referred to by the learned Senior counsel for RMC are not relevant for the present purposes and, moreover, those judgments do not support issuance of notice in an arbitrary manner – subsequent actions by RMC are being separately dealt with by this Court in WP(C) No. 2066 of 2022.

51. To recapitulate, by virtue of the order of Hon'ble the Chief Justice passed on administrative side on 11th April 2022 these Letters Patent Appeals were assigned to Division Bench-III and upon the matter being mentioned by the learned counsel for the appellants these Letters Patent Appeals were directed to be posted at 2:15 PM on the same day. The order dated 11th April 2022 passed by Division Bench-I records that these Letters Patent Appeals shall be posted before another Bench “forthwith”. A brief narration of the events which preceded hearing of these Letters Patent Appeals is recorded in the order passed on 11th April 2022. The learned State counsel made a statement in the Court that he duly informed the learned counsel for RMC about filing of these Letters Patent Appeals and the order passed by Division Bench-I. The learned State counsel further informed the Court that the learned Advocate-General had also spoken to the learned counsel for RMC. It appears that these communications were exchanged between 12:30 PM to 1:13 PM and according to the learned counsel for RMC demolitions at the site were stopped at 14:35 PM on instructions of the

11. *AIR 1998 SC 2342*

12. *(1972) 2 SCC 402*

13. *AIR 2001 SC 279*

14. *1985 CRI. L. J. 1030*

Municipal Commissioner, Ranchi who was informed by the learned counsel/vice-counsel for RMC about the order passed by Division Bench-I. In paragraph no.19 of the order dated 11th April 2022 this Court has recorded that : “The tearing hurry with which RMC has proceeded in the matter is astonishing and the Court is left wondering what could be the motive behind such an action”. The Advocate Commissioners appointed by this Court inspected the properties demolished by RMC and submitted report in sealed cover. The Deputy Commissioner, Ranchi was also directed to make arrangements for photography and videography of the properties under demolition. By an order dated 25th April 2022, these materials were directed to be supplied to the parties.

52. The report of Advocate Commissioners and photographs submitted by the Deputy Commissioner, Ranchi show that the dwelling houses of Suresh Tirkey, Sanjay Tirkey and Sonu Pascal Ekka were completely demolished and household articles such as beds, kitchenware, doors, windows, water connections etc. were damaged. Altogether 22 persons including 8 children were residing there and marriage of Nikita Tirkey who is niece of Suresh Tirkey was to be solemnised on 19th April 2022 at his house. The photographs provided by the Deputy Commissioner, Ranchi captured old women and minor children sitting outside the demolished houses under the scorching sun – on 12th April 2022, Mercury had risen to 41°C.

53. Relevant extracts of the order dated 25th April 2022 passed by this Court are reproduced below:

“12. During hearing of the present Letters Patent Appeals, a statement has been made, on instructions, that encroachments by the appellants are over a part of 2.80 acres of land recorded in revisional survey records in the name of municipality. RMC on the basis of the entries in revisional survey records is claiming that 7.14 decimal of land is under occupation/ encroached upon by Birsa Oraon; 7.78 decimal of land by Sushma Ekka and; 11.50 decimal of land by Suresh Tirkey, and for removing the encroachments by them a notice was issued to them on 23rd December 2021 directing them to remove the encroachments within 72 hours.

13. RMC is claiming right over 2.80 acres of land comprised under Khata No. 328, Plot Nos. 57 & 58 situated at village Bara Ghaghra which is the proposed site for construction of Multi Speciality Hospital on Public-Private Partnership basis. It is stated that land was acquired by the District Land Acquisition Officer, Ranchi for construction of the approach road and the same has been handed over to RMC vide letter No. 727 dated 17th May 2018. We have been taken through the counter affidavit filed by RMC in the proceeding before the writ Court in which Annexure-C is a letter

issued from the Urban Development and Housing Department which refers to 1.34 acres of land acquired for the approach road to Apollo Hospital.

14. In the counter affidavit, RMC has produced a copy of the wireless information dated 9th April 2022 sent by Sub-Divisional Magistrate, Sadar, Ranchi to Additional Municipal Commissioner, Circle Officer, Junior Engineers, Officer-in-charge of Doranda PS and Deputy Superintendent of Police. In the said wireless message, it is stated that letter No. 443 dated 9th April 2022 was received from the Additional Municipal Commissioner for removing the encroachments upon a part of the lands comprised under Khata No. 328, Plot Nos. 57 & 58 over which construction of Apollo Hospital is proposed. It is further recorded in the wireless message that requisition has been made for providing sufficient number of Armed Police Force and Executive Magistrate for forcible removal of the encroachments and for maintaining law and order and safety of the employees of RMC.

15. The demolition on 11th April 2022 has been carried out pursuant to notice dated 9th April 2022 which records that a notice on 23rd December 2022 was already given to Birsa Oraon, Sushma Ekka and Suresh Tirkey and the writ petitions filed by them were dismissed on 31st March 2022. In the notice dated 9th April 2022, the Additional Municipal Commissioner has indicated that due to encroachments by the aforesaid persons construction of the hospital has been obstructed. By the said notice, 48 hours time was given to the aforesaid persons for removing the encroachments failing which they shall be forcibly evicted from the land belonging to RMC.

16. We are informed that on 11th April 2022 by 09:00 AM the demolition team accompanied by police force and Executive Magistrate reached the site. This is confirmed by the report of the Advocate Commissioners also. In the report submitted by the learned Advocate Commissioners it is stated that the notice dated 9th April 2022 was served upon the aforesaid persons around 03:30 PM on 9th April 2022.

17. Therefore, by any account the time gap between service of notice dated 9th April 2022 and the start of demolition work was definitely less than 48 hours.

18. We further find that out of 2.80 acres of land which part was occupied by the aforesaid persons has not even been indicated in the aforesaid notices. The photographs of the demolition site produced by the Deputy Commissioner, Ranchi would indicate that houses of the aforesaid persons were in the middle of the area. In the wireless message or any of the documents produced before us, we do not get even an inkling as regards the identification of the land encroached by the writ petitioners – except the extent of the lands encroached upon.

19. All that we find is that a joint report dated 20th November 2021 was submitted by Anchal Amin of Argora Anchal and Amin of Ranchi Municipal Corporation in the proceeding in Encroachment Case No. 11 of 2021-22, but before that, the Additional Municipal Commissioner had already issued notice on 25th October 2021 for removing the encroachments. There is no statement made on behalf of RMC before us that any information with documents was provided to the demolition team for identification of the lands under encroachment by the appellants. The notice was issued on 9th April 2022 and 10th April 2022 was Sunday. This period was under Chaiti Durga Pooja/Chhath Pooja and on 11th April 2022 the demolition was carried out. There is no explanation why the Assistant Municipal Commissioner did not issue instructions for stopping the demolition work the moment he received an information about mentioning of the matter before DB-I. We have already recorded in the order dated 11th April 2022 that the tearing hurry with which RMC proceeded in the matter was astonishing and the Court was left wondering what could

be the motive behind such action. Any demolition even sanctioned by any law cannot be approved by us because definitely the demolition team started demolition without any definite information and razed the whole construction to the ground. The actions by RMC appear to be wholly illegal. ”

54. The right to shelter is a fundamental right of every citizen under the Constitution and any infraction of this right by State action must invite judicial intervention to protect the occupants of a dwelling house. Across the world, the law recognises rights of even an encroacher to be protected from State action which is not in consonance with the procedure established by law. Except in a very few exceptional kind of cases such as encroachments on public roads and pavements, the issue of illegal constructions and encroachments is not a simple one and invariably the Courts are confronted with contentious issues which cause delays in rendering decisions. But then, this is the procedure in law we have chosen for ourselves. In a country like India which professes high democratic values, the Constitution of India stands like a lighthouse illuminating life aspirations of the people of India that every State action must follow the procedure established by law. RMC being an instrumentality of the State under Article 12 of the Constitution of the India is governed by the rule of law in a welfare State and cannot arrogate to itself a status beyond what is provided by the Constitution.

55. In view of the aforesaid discussions, in summation, we hold that the writ Court committed serious errors in law in not entertaining the writ petitions and, accordingly, the order dated 31st March 2022 passed in WP(C) No. 4907 of 2021 with WP(C) No. 4953 of 2021 is set aside.

56. The aforesaid writ petitions are allowed and, consequently, notice dated 25th October 2021, public notice dated 23rd December 2021 and notice dated 9th April 2022 are quashed.

57. LPA No. 143 of 2022 and LPA No. 144 of 2022 are allowed, without any order as to costs.

(Shree Chandrashekhar, J.)

(Ratnaker Bhengra, J.)

(Ratnaker Bhengra, J.)