

In the Court of Additional Collector, Ranchi
SAR Appeal 60 R 15/07-08

Yamuna Das Appellant
Versus
Munna Munda Respondent

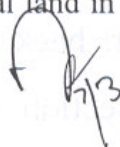
ORDER

7/07.03.2008 This appeal has been filed against the order dated 29.11.2007 passed by Sri Deonish Kiro, Special Officer, Ranchi in SAR Case no 175/05-06 by which the lower court decided to restore the following land in favour of the respondent.

<u>Village</u>	<u>Khata</u>	<u>Plot</u>	<u>Area</u>
Chadri	17	23	5 Decimal

The case of the appellant states that his father had built a kachcha house covered with khapra in the year 1947 and after sometime he constructed four rooms. The father of the respondents Etwa Munda agreed and allowed to make construction in the year 1950. The land in dispute is Bhuinhari by nature in RS Khatian and there is no provision to get permission from competent authority prior to 1947. The respondent filed restoration case after lapse of thirty years. It is claimed that the case of restoration is barred by law of limitation. The construction was made prior to 1969. R.R.D.A. and Municipal corporation had filed several cases against the appellant before competent authority. The name of appellant is entered in Municipal Records and he paying taxes regularly. It is alleged that the lower court ignored all these facts and passed order for restoration.

Both the parties has filed written arguments in support of their claim. The written argument of the appellant contains most of the facts stated in memo of appeal. It is added that the appellant has never used disputed plot for agricultural purpose. The appellant is in possession of only 2.5 decimal land in disputed plot no 23. The



appellant acquired the land from Etwa Munda on 21.06.1960. R.R.D.A. had filed some cases against the appellant vide case no 193/76 and 50/76 which shows that the appellant was in possession in 1976. The first rent receipt was issued by Ranchi Municipal Corporation in the year 1971. The judgments reported in 2006 (4) JLJR 146, 2005 (3) JCR 132, 1988 BLJ 270, AIR 1946 Patna 466, AIR 1935 Patna 102 has been cited in written argument to prove the appellants case.

In the written argument of the respondent, it is stated that the respondent is owner of disputed plot no 23 area 51 decimal. The appellant illegally occupied 5 decimal of land in disputed plot. The respondent is legal heir and successor of the recorded landlord Etwa Munda and the nature of land is Bakast Bhuinhari. No permission has been obtained by the appellant before transferring the land. The appellant has occupied the land prior to ten years ago. The appellant has made some illegal false and fabricated documents to grab the respondents land.

Coming to the facts of the case, admittedly the land was transferred by bhuinharidar Etwa Munda to Yamuna Das through sada hukumnama on 21.6.1960. No permission of the Deputy Commissioner was obtained in the said transfer. Oral evidence taken by the lower court suggests that Yamuna Das had constructed house as 45 years back i.e. 1962.

The second proviso of section 71 A refers to the determination of compensation in case structure was built before 1969 and substantial structure is valued at Rs 10,000 or above. In the present case the structure was made before 1969 but the value of the construction has not been assessed by the lower court.

The appellant has submitted municipal receipts, electricity bill payment receipts, notice of R.R.D.A. which suggests the existence of a substantial structure.

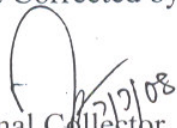


In the light of above discussions and findings given above, it is concluded that the lower court required to consider the element of substantial structure built by the appellant by taking into account various evidences and pass appropriate order afresh. In the result, the lower court order is set aside and the appeal is allowed.

Communicate the order to all concerned.

Dated:- 7.03.2008

Dictated & Corrected by


Additional Collector,
Ranchi