

In the Court of Additional Collector, Ranchi

SAR Appeal 12 R15/08-09

Ratnaprabha Das & others

Appellant

Versus

Lilu Oraon

Respondent

ORDER

14/27.10.2008 This appeal has been filed against the order dated 7.2.2008 passed by Shri Deonish Kiro, Special Officer, Ranchi in SAR Case No. 809/05-06 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>
Hesal	13	1017	3 Katha

The case of appellant states that recorded tenant sold the disputed land to Jaddu Choudhary through sada sale deed in the year 1944 and delivered possession to him. The purchaser constructed residential house over the land and were residing in that house. Shrimati Uma Rani Das Charmakar w/o Krishna Das Charmakar and mother of the appellants has purchased the land with house from Lalu Choudhary vide registered sale Deed No. 906 dated 12.5.1973. The respondent had also filed several cases of restoration of the land under khata no. 13 plot no. 1017 against different persons. Out of those cases, one SAR Case No. 458/94-95 filed against one Nand Kishore Choudhary for the land of same khata plot was decided in terms of second proviso of the CNT Act. It is stated that the presiding officer of lower court also visited the land in dispute and found that the nature of land is completely changed and is not fit for agriculture. But the lower court ordered to restore the

land without considering the facts. It is submitted that the land in question is under subjudice in Probate Title Suit No. 1/2005 in the court of Additional Judicial Commissioner, Ranchi.

Heard learned counsel for both the parties. the learned counsel of the appellant stated the same facts and points as raised in memo of appeal. It is added that Holding of the land was established in the year 1978. It is also submitted that in other cases compensation has been fixed in which seller was the same.

The learned counsel for the respondent argued that the land is situated at Indrapuri Road. It is narrated that the house is old. He submitted that present case should be remanded to the lower court. Written arguments has also filed by both the parties stating the facts and points as stated above.

Perusing the lower court and the present appeal record it appears that the lower court did not record findings regarding the nature of land. The learned counsel for the appellant submitted that there is residential house over the land in question which was constructed before 1969. The advocate of opposite party has also admitted in written argument that there is structure over the land. The learned counsel for the appellant submitted that an another SAR Case No. 458/94-95 of the same plot was decided in terms of second proviso of section 71 A of the CNT Act. But the lower court is required to determine whether the structure existing on the land was constructed prior to 1969.

In the interest of justice, the lower court should provide proper opportunity to both the parties to adduce evidences. The SAR Court also needs to ascertain whether the land is agricultural land or a homestead land. It is also needs to be determine whether the appellants have constructed the house before 1969 and then it should pass order in accordance with law.

In the result, appeal is allowed and the case is remanded back to the lower court to reconsider afresh and decide all the points involved in the case in the light of observations mentioned above.

Dated :- 27.10.2008

Dictated and Corrected by

Sd./-

Additional Collector,
Ranchi.