

In the Court of Additional Collector, Ranchi

SAR Appeal 54 R 15/08-09

Dhirendra Rathor

Appellant

Versus

Dhiraj Munda

Respondent

ORDER

5
5.09.2008

This appeal has been filed against the order dated 10.6.2008 passed by Sri Deonish Kiro, Special Officer, Ranchi in SAR Case no 715/05-06 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>
Kokar	200	645	96 Decimal

The case of appellant states that the land in question is recorded in the name of Bagru Munda son of Leta Munda who sold the same to Laxmi Bai Rathor through registered sale deed in the year 1945. It is said that purchaser constructed building and started running a factory of cement ventilators over the disputed land. A residential house was also constructed over the land. Later a title suit was filed by Laxmi Bai Rathor against Budhu Munda who was only son of the recorded tenant being Title Suit No. 242 of 1959. The suit was decreed in terms of compromise duly signed by both the parties on 29.8.1959. It is further stated that there was a family partition suit between Laxmi Bai Rathor and her son Dhirendra Rathor (present appellant) being Partition Suit No 106 of 1989 in which both they were got half share

each in the disputed land in terms of compromise decree. It is mentioned that in the year 1993, one Salo Devi wife of late Tunu Munda who was the mother of present respondent, had filed SAR Case No. 4 of 1993 against Laxmi Bai Rathor claiming herself as great grand daughter of recorded tenant Bagru Munda. The SAR Case was contested by Laxmi Bai Rathor and present appellant and ultimately compensation was fixed by the SAR Court. Salo Devi had received entire compensation amount of Rs 1,92,000.00 through four Drafts of Canara Bank. It is narrated that the land was regularized in favour of Laxmi Bai Rathor and present appellant. Thereafter the present respondent, who is the son of Salo Devi, again filed a SAR Case No. 715 of 2005-06 which was illegally allowed by the SAR Court on 10.06.2008.

Heard learned counsel for both the parties. The learned counsel of the appellant repeated the story as described in memo of appeal. It was pleaded that no opportunity was given to the appellant for producing evidences in lower court. It was informed that when SAR Case was again filed for the same land, the appellant filed a writ petition no. WP(C) 1014 of 2006 in High Court of Jharkhand. The hon'ble court remanded the matter to SAR Court vide order dated 13.3.2006. It is asserted that the SAR Case No. 715/05-06 is hit by the principles of *resjudicata* and barred by law of limitation. The learned counsel cited the decisions reported in 1987 BLT 234, 2004 (2) JCR 174 and 1994 (2) PLJR to prove appellants claim.

The learned counsel for the respondent submitted that the respondent is descendent of recorded tenant. The

appellant got the land through a collusive title suit no. 242 of 1959 which has no legal value in the eyes of law. It was pleaded that the said compensation was a fraud because in tribal customary law, said Salo Devi had no *locus standi* to get compensation when son was alive. It is narrated that Hon'ble High Court dismissed the petition of the appellant to stay the lower court case. The learned counsel stated that again a fraud committed on the part of appellant by saying that there was a stay from the Appellate Court when Circle Officer went for restoration. It is pleaded that the High Court had settled the issue of *resjudicata* by remanding the case.

At the outset it is necessary to mention that the present appellant had filed W.P.(C) No 1014 of 2006 wherein he had challenged the second proceeding u/s 71A of the CNT Act (hereinafter referred to as "Act") at the instance of Dhiraj Munda. The hon'ble High Court had directed the lower court on 13-06-06 to decide whether the petition of Dhiraj Munda was maintainable or not. The S.A.R. Court had concluded on 03.11.07 that the case was genuine and maintainable.

The learned counsel for the appellant has enumerated three distinct land marks in the acquisition of the disputed land:

- a) Registered Deed of Sale of 1945
- b) Title Suit No. 242 of 1959
- c) Fixation and Payment of Compensation through S.A.R. Case No. 4/93-94.

Taking the first issue of registered sale deed, the learned counsel emphasised that Bagru Munda had sold the

land to Laxmi Rathore in 1945. But no documentary evidence has been produced by way of primary evidence. When the document itself is not in possession of the appellant, the submission of the learned counsel cannot be allowed and the same cannot be accepted in evidence.

Coming to the Title Suit no 242 of 1959, the learned counsel submitted that Laxmi Bai Rathore had filed a Title Suit no 242 of 1959 against Daunda Munda alias Budhwa Munda which ended in compromise between the two. The learned Munsif had decreed in terms of compromise on 29.08.1959. But it has been well settled that nobody can be permitted to do indirectly when the same is prohibited from doing directly. A transfer in contravention of the provision of the Act will not cease to be so only because the parties have agreed in a compromise before a court to effect transfer in contravention of the Act.

In case of *Rambriksha Gupta vs. State of Bihar and others*, reported in 2003(3) *JLJR*, the hon'ble Jharkhand High Court discussed the issue of 'COMPROMISE DECREE ' and held that contravention of the Act is not cured despite the compromise agreement before court of law. Such a compromise agreement between the two parties may not be fraud upon the court but certainly a fraud against the statute.

So far as the third issue of compensation is concerned, the learned counsel for the appellant pleaded that the lower court had already regularised the transfer of land by ordering Laxmi Devi to pay a compensation of Rs 1,92,000.00 in SAR Case No. 4 of 93-94. The amount was paid through

four different drafts of Canara Bank dated 28.02.95 to Salo Bhengraj.

The second proviso of section 71A of the Act states:

"Provided further that where the Deputy Commissioner is satisfied that the transferee has constructed a substantial structure or building on such holding or portion thereof before coming into force of the Bihar Scheduled Areas Regulation, 1969, he may, notwithstanding any other provisions of the Act, validate such transfer where the transferee either makes available to the transferor an alternative holding or portion thereof as the case may be, of the equivalent value of the vicinity or pays adequate compensation to be determined by the Commissioner for rehabilitation of the transferor:"

In the instant case, a report was sought from the Circle Officer, Ranchi Town who has reported vide his letter no 1004(ii) dated 30.07.08 that only 10 decimals of land is covered by substantial structure. Rest of the 86 decimals has either temporary structure or the vacant land. The amin has reported that the 'pucca' house is a recent work constructed above 20 years back and therefore cannot be treated as pre-1969 construction.

It is now well established by facts and evidences that the presiding officer had committed a grave error by determining a compensation for the entire land in SAR Case no. 4 of 93-94. The Act does not permit any court to fix compensation for a vacant land devoid of any construction.

In the light of facts of the case and considering the law mentioned hereinabove, it is concluded that the order dated 08.11.94 of the SAR court in Case No. 4/93-94 cannot be sustained in the eyes of the law and the same is quashed. However, the respondent is directed to return the compensation amount of Rs. 1,92,000.00 by draft to the appellant by 10th September, 2008 in the SAR Court the Circle Officer, Ranchi Sadar shall restore the land to the respondent. In the result, the appeal is hereby dismissed.

Dictated & Corrected by

Date : -05-09-08

Sd./-
Additional Collector,
Ranchi.