In the Court of Additional Collector, Ranchi

SAR Appeal 78 R 15/08-09

Versus

Ashok Kumar

Appellant

Budhwa Oraon

Respondent

<u>ORDER</u>

7/28.11.2008 This appeal has been filed against the order dated 30.05.2008 passed by Sri Deonish Kiro, Special Officer, Ranchi in SAR Case no 227/06-07 by which the lower court decided to restore the following land in favour of the respondent.

Village	<u>Khata</u>	<u>Plot</u>	Area
Pugru	64	584	44 Decimal
		585	20 ,,

The case of the appellant states that the land in question was recorded in the name of Malku Oraon. The recorded tenant sold the land to one Ramgati Singh through sada sale deed who came in possession of the disputed land in the year 1941. Ramgati Singh sold the land to Ramnika Prasad and Rajendra Prasad through registered deed on 20.6.1960. The purchasers came in peaceful possession. Later they sold the land to the father of appellant's father by virtue of registered deed on 8.2.1961. Appellant's father came into possession and got his name mutated in Circle Office. He also constructed rooms in disputed plot. It is further stated that earlier a SAR Case No. 69/97-98 was filed by the respondent along with his mother in the court of DCLR, Ranchi Sadar in which an amount of Rs 18,600 was fixed as compensation in terms of second proviso of section 71 A of the CNT Act. The amount of compensation was deposited through Bank Draft which was received by the respondent with his mother and accordingly land revalidated in favour of the father of appellant. it is claimed that the case of respondent is hit by principles of resjudicata and barred by law of limitation.

Heard learned counsel for the appellant who repeated the story as stated in memo of appeal. The counsel of the respondent did not argue but has filed written argument in which it is stated that admittedly disputed land belonged to heirs and successors of recorded tenant. It is stated that Ramgati Singh acquired disputed land through sada deed and title suit which is clear violation of section 46 of the CNT Act. Earlier no SAR Case was filed by the respondent because he was out of station at Maharastra for livelihood. The alleged compensation of Rs 18,600 for 64 decimal of land is very low. It is stated that respondent had not signed in receiving of said amount because he was in Maharastra and is illiterate person. It is claimed that the land in question is still vacant and hence question of second proviso does not arise. It is asserted that the land was transferred by violation of section 46 of the CNT Act.

Perusing the documents, it is clear that the learned DCLR, Ranchi Sadar had regularised the land concern by ordering the payment of compensation in SAR Case No. 69/97-98. Accordingly Ganga Prasad had submitted compensation of Rs 18,600 vide draft no. 3228826 dated 18.1.1999. The payment was received by Budhua Oroan.

Apparently the present case suffers from principle of Res Judicata. The learned SAR Court has taken note of the compesation but has treated the same as wrong. But the lower court cannot exercise the power of an appellate court which can decided whether the compensation was right. The same court should not have passed another order of restoration.

In the result, the appeal is allowed and order of the SAR Court is quashed.

Dted:- 28.11.2008

Dictated & Corrected by

Additional Collector. Ranchi.