

आदेश का क्रम संख्या और तारीख	आदेश और पदाधिकारी का हस्ताक्षर	आदेश पर की गई कारवाई के बारे में टिप्पणी, तारीख के साथ
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IN THE COURT OF THE DEPUTY COMMISSIONER, RANCHIS.A.R. Appeal No.-325 R 15/2014-15

State - Appellant
 Vs
 Md Aftab Khan & Others - Respondents

ORDER

17
6.5.16

This appeal has been suo-motto preferred by the State against the order passed in SAR Case No.-575/13-14 by the Sri Matiyas Vijay Toppo, the then Learned Special Officer, Schedule Area Regulation, Ranchi, wherein the Learned Special Officer, Ranchi vide its order dated 20.10.2013 validated the transfer with respect of land appertaining to Khata No.-18, Plot No.-363 measuring an area of 6 Katha of Village Bhitha, P.S. Gonda, within the District of Ranchi in favour of the present respondent namely Md Aftab Khan Son of Late Imamuddin Khan Resident of Village Bhitha, P.S. Gonda, District Ranchi upon payment of compensation at the rate of Rs.2,20,000/- Per Decimals.

The facts giving rise to present appeal in nutshell is that, present performa respondent namely Bhagat Oraon Son of Ram Oraon Resident of Village Bhitha, P.S. Gonda, District Ranchi being the legal heirs and successors of the recorded tenant preferred an application U/s 71A of the CNT Act for restoration of land under Khata No.-18, Plot No.-363 measuring an area of 6 Katha of

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	<p style="text-align: center;">-:2:-</p> <p>Village Bhitha, P.S. Gonda, within the District of Ranchi against the present respondents, which was registered as impugned Case bearing SAR Case No.- 575/13-14, wherein and whereunder the Learned Special officer, Ranchi vide impugned order validated transfer of land under Khata No.-18, Plot No.-363 measuring an area of 6 Katha of Village Bhitha, P.S. Gonda, within the District of Ranchi in favour of the respondent Md Aftab Khan upon payment of compensation at the rate of Rs. 2,20,000/- Per Decimals</p> <p>Recently, upon enquiry conducted by the team experts certain irregularities were detected in the impugned proceeding and since the State Government is the custodian of the property belonging to member of Schedule tribe, hence directions were issued to file this instant appeal.</p> <p>Inspite of publication of notice in daily newspaper Dainik Jagran on 10.03.2016, no one appeared on behalf of the respondent to argue this appeal, hence after hearing the State, the instant appeal was fixed for passing final order</p> <p>According to the Learned Government Pleader, appearing on behalf of the State, it has been claimed by the opp. Parties/ respondent that, applicant has himself admitted in the application as well as in his deposition that, the land in question has been transferred in favour of the ancestor of the respondent in the year 1956 and since then there exists substantial structure over the land in question, but the Learned Courts below failed to</p>	

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consider that, according to the Bihar Schedule Area Regulation, 1969, the legislation has empowered the authority to ignore the admission made by the member of Schedule tribe unless corroborated through cogent evidence, and in case at hand, the Learned Special Officer, without corroborating the admission made by the member of Schedule tribe in the application and deposition with cogent evidence, has believed that the land in question was transferred in the year 1956 through Sada Sale Deed and there exist substantial structure before promulgation of the Regulation of 1969 and moreover, on perusal of record, it would be apparent that, the respondents have also failed to bring any cogent evidence regarding the valid procurement of the land in question and/or erection of substantial structure before the year 1969.

Further it is averred that, it is crystal clear from the enquiry report and photographs submitted by the team of experts that, recently 3 years ago asbestos sheet roof house has been constructed upon 800 Sq. Ft. out of the land in question by the respondent and rest land is lying vacant within the boundary wall erected upon the land in question. Hence on the basis of aforementioned report and photographs, it can safely be inferred that, the Courts below has illegally validated the transfer in favour of the respondent on the pretext that substantial structure has been erected prior to promulgation of Schedule Area Regulation.

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	<p style="text-align: center;">-:4:-</p> <p>Further, it is contended that, the oral sale upon which the Learned Courts below has relied upon has got no legal sanctity, as according to Section 46 of the CNT Act, no land belonging to member of Schedule tribe can be transferred to a person belonging to member of non-schedule tribe and also according to Indian Registration Act, the oral sale has got no legal sanctity and the land in question has been transferred in violation of the provisions of CNT Act.</p> <p>It is further averred that, on the basis of aforesaid, it can safely be inferred that, the impugned order is an outcome of fraud and misrepresentation and, in this context, according to the verdict laid by our Hon'ble High Court - reported in BLJR 1970 (1) 216, that, - <i>"It is settled proposition of law that a judgement or decree obtained by playing fraud on the court is a nullity and non est in the eyes of law, such judgement/decree - by the first court or by the high court - has to be treated as a nullity by every court, whether superior or inferior. It can be challenged in any court even in collateral proceedings."</i></p> <p>Having regard to the discussions made hereinabove, I find that, the impugned order has been passed in haste without following the proper procedure laid U/s 71 A of the CNT Act. It is settled law that, according to Provision II of Section 71A of the CNT Act, where the Deputy Commissioner is satisfied that the transferee has constructed a substantial structure before coming</p>	

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in force of Bihar Schedule Area 1969, he may notwithstanding any other provision of the Act, validate such transfer either upon payment of adequate compensation determined by the Commissioner for rehabilitation or making available to the Scheduled tribe an alternate holding or portion thereof of the equivalent value in the vicinity, but in case at hand, the Learned Special Officer without corroborating the admission made by the member of Schedule tribe through cogent evidence has relied that the land in question has been transferred in the year 1956 and there exists substantial structure upon the land in question before promulgation of the Schedule Area Regulation, 1969. Moreover the sada sale deed upon which the respondent has based their claim has got no evidentiary value in the eyes of law and since the respondent has failed to bring on record any cogent evidence which could prove that substantial structure has been erected prior to promulgation of Schedule Area Regulation, hence the respondent is not entitled get relief envisaged under Proviso II of Section 71A of the CNT Act. Furthermore, upon enquiry made by the teams of experts, it appears that, substantial structure over the land in question has not been erected in the year 1969, but the same has been erected merely three year ago.

All the above fact goes to fortify that, neither the land in question has been transferred before the promulgation of Schedule Area Regulation, 1969 nor there existed any substantial

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structure over the land in question prior to the year 1969, hence, it can safely be inferred that, the impugned order is bad, irregular and was obtained by fraud and mis-representation and is nonest in the eyes of law.

For these reasons, after condoning the delay, this appeal is allowed and the impugned order passed by the Learned Courts below is hereby set-aside and the authority below is directed to restore the possession of the land in question in favour of the present performa respondent.

Communicate this order to the Learned Special Officer, Schedule Area Regulation, Ranchi for information and necessary action.

Dictated & Corrected

Deputy Commissioner
Ranchi

Deputy Commissioner
Ranchi

Order communicated to SAR officer Banchi with SAR case no ST/13-14.
(Bhagat orans) Agutab (chod) for information and necessary action vide Memo no 2597(M) dt. 21.9.16
21.9.16