

आदेश क्रम संख्या और तारीख	आदेश और पदाधिकारी का हस्ताक्षर	आदेश पर की गई कारवाई के बारे में टिप्पणी, तारीख के साथ
1	2	3

-:1:-

IN THE COURT OF THE DEPUTY COMMISSIONER, RANCHI

S.A.R. Appeal No.-327 R 15/2014-15

State - Appellant

Vs

Jyanti Devi & Others - Respondents

ORDER

17
22-8-16

This appeal has been suo-motto preferred by the State against the order passed in SAR Case No.-244/11-12 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 NIL validated the transfer with respect of land appertaining to Khata No.-23, Plot No.-34 measuring an area of 13 Katha 5 chattak of Village Harmu, P.S. Argora, within the District of Ranchi in favour of the present respondents namely (1) Jyanti Devi Wife of Ramesh Rai, (2) Shiv Shankar Rajak Son of Nepali Rajak, (3) Meena Devi Wife of Vikash Dangi, (4) Lalwanti Yadav Wife of Amarnath Prasad Yadav, (5) Draupadi Devi Wife of Hareram Singh, (6) Police Rai Son of Late Dev Narayan Rai, (7) Roshan Kumar Son of Late Gauri Narayan Rai Resident of Village Harmu, P.S. Argora, District Ranchi upon payment of compensation at the rate of Rs. 2,53,000/- Per

Jyanti

आदेश का क्रम संख्या और तारीख	आदेश और पदाधिकारी का हस्ताक्षर	आदेश की गई कारवाई के बारे में टिप्पणी, तारीख के साथ
1	2	3
	<p style="text-align: center;">-:2:-</p> <p>Decimals.</p> <p>The facts giving rise to present appeal in nutshell is that, present performa respondent namely (1) Barnabas Tigga Son fo Late Duicha Krishtan and (2) Dasrath Gari Son of Late Bhudhwa Oraon Resident of Village Harmu, P.S. Argora, 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.-23, Plot No.-34 measuring an area of 13 Katha 5 chattak of Village Harmu, P.S. Argora, within the District of Ranchi against the present respondents, which was registered as impugned Case bearing SAR Case No.- 244/11-12, wherein and whereunder the Learned Special officer, Ranchi vide impugned order validated transfer of land measuring an area of 1 Katha 7 Chattak, 1 Katha 12 Chattak, 2 Katha, 3 katha 2 Chattak, 2 Katha, 1 ½ Katha and 1 ½ Katha under Khata No.-23, Plot No.-34 of Village Harmu, P.S. Argora, within the District of Ranchi respectively in favour of the respondent nos 1 to 7 upon payment of compensation at the rate of Rs. 2,53,000/- 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</p>	

Handwritten signature

आदेश क्रम संख्या और तारीख	आदेश और पदाधिकारी का हस्ताक्षर	आदेश पर की गई कारवाई के बारे में टिप्पणी, तारीख के साथ
---------------------------	--------------------------------	--

1

2

3

-:3:-

issued to file this instant appeal.

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, this appeal has been fixed for passing final order.

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 40 - 45 years ago and since then there exists substantial structure over the land in question, but the Learned Courts below failed to 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 40 - 45 years ago through Sada Sale Deed and there exist substantial structure before promulgation of the Regulation of 1969 and moreover, on perusal of record, it

g. m. d. i.

आदेश का क्रम संख्या और तारीख	आदेश और पदाधिकारी का हस्ताक्षर	आदेश पर की गई कारवाई के बारे में टिप्पणी, तारीख के साथ
1	2	3
	<p style="text-align: center;">-:4:-</p> <p>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.</p> <p>Further it is averred that, it is crystal clear from the enquiry report and photographs submitted by the team of experts constituted under the instruction of the then Deputy Commissioner, Ranchi that, the respondent Jyanti Dewi has constructed asbestos sheet roof house 4-5 year ago, the land in possession of respondent Shiv Shankar Rajak is still lying vacant, the asbestos sheet roof house of respondent Meena has been constructed 4-5 years ago, the respondent Dropadi Devi has constructed a Pucca house 4-5 years ago, the land in possession of respondent Police Rai is vacant, the respondents Roshan Kumar and Lalwanti Rai has constructed house 4-5 years ago and since the respondent has failed to bring any cogent evidence on record before the learned courts below which could prove that, the substantial structure over the land in question has been erected prior to promulgation of Schedule Area Regulation, 1969. 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</p>	

Jyanti

आदेश क्रम संख्या और तारीख	आदेश और पदाधिकारी का हस्ताक्षर	आदेश पर की गई कारवाई के बारे में टिप्पणी, तारीख के साथ
---------------------------------	--------------------------------	--

1

2

3

-:5:-

substantial structure has been erected prior to promulgation of Schedule Area Regulation.

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.

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 BLR 1970 (1) 216, that, - *"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."*

Having regard to the discussions made hereinabove, I find that, the impugned order has been passed in haste without

gomez

आदेश का क्रम संख्या और तारीख	आदेश और पदाधिकारी का हस्ताक्षर	आदेश जारी की गई कारवाई के बारे में दिप्पणी, तारीख के साथ
1	2	3

-:6:-

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 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 40 - 45 years ago 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 and Moreover, upon enquiry made

(Handwritten signature)

आदेश का क्रम संख्या और तारीख	आदेश और पदाधिकारी का हस्ताक्षर	आदेश पर की गई कारवाई के बारे में टिप्पणी, तारीख के साथ
1	2	3

-:7:-

by the teams of experts, it was found that, substantial structure over some portion out of the land in question has been erected 4-5 years ago and still the rest portion of the same is lying vacant.

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 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
[Signature]
 28/9/16
 Deputy Commissioner
 Ranchi

[Signature]
 28/9/16
 Deputy Commissioner
 Ranchi

Order communicated to SAB officer with SAR case no 244/11-22 (Barnawas Jigra vs Jayanti Devi and others) for information & n-a vide memo no 2474 (1) dt 14.9.16