

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, RANCHI

S.A.R. Appeal No.- 328 R 15/2014-15

State - Appellant  
 Vs  
 Avinash Kumar & Others - Respondents

ORDER

15  
8-4-16

This appeal has been suo-motto preferred by the State against the order passed in SAR Case No.-462/12-13 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 12.09.2013 validated the transfer with respect of land appertaining to Khata No.-94, Plot No.-1238 measuring an area of 7 Katha of Village Hatma, P.S. Lalpur, within the District of Ranchi in favour of the present respondent namely (1) Avinash Kumar Son of Brahmdeo Prasad and (2) Satrugan Sahu Son of Ram Ayodhya Prasad Resident of Village Hatma, P.S. Lalpur, District Ranchi upon payment of compensation at the rate of Rs.2,10,000/- Per Decimals.

The facts giving rise to present appeal in nutshell is that, present performa respondent namely (1) Dhuchu Munda Son of Late Berga Munda Resident of Karamtoli, P.S. Lalpur, District Ranchi being the legal heirs and successors of the recorded tenant

*[Handwritten signature]*

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	<p style="text-align: center;">-:2:-</p> <p>preferred an application U/s 71A of the CNT Act for restoration of land under Khata No.-94, Plot No.-1238 measuring an area of 7 Katha of Village Hatma, P.S. Lalpur, within the District of Ranchi against the present respondent, which was registered as impugned Case bearing SAR Case No.-462/12-13, wherein and whereunder the Learned Special officer, Ranchi vide impugned order validated transfer of land measuring an area of 5 Katha and 2 Katha under Khata No.-94, Plot No.-1238 of Village Hatma, P.S. Lalpur, within the District of Ranchi respectively in favour of present respondent namely (1) Avinash Kumar Son of Brahmedo Prasad and (2) Satrugan Sahu Son of Ram Ayodhya Prasad upon payment of compensation at the rate of Rs. 2,10,000/- Per Decimals</p> <p>Recently, upon enquiry conducted by the team experts certain irregularities were detected in the impugned proceeding, hence directions were issued to file this instant appeal.</p> <p>Inspite of proper notice served upon the respondent, no one appeared on behalf of them to argue the appeal, hence after hearing the State this appeal was fixed for ex-parte order against the respondents</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</p>	

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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 1944 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 in the year 1944 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. The aforementioned fact goes to prove that, the Learned Special Officer without taking in consideration the provision contained in Schedule Area Regulation passed the impugned order.

Further it is averred that, it is crystal clear from the reports submitted by the team of experts constituted under the instruction of the then Deputy Commissioner, Ranchi that, a

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pucca asbestos sheet roof house of Avinash Kumar upon an area 40' X 88' exists over 5 Katha out of the land in question and the there exists a small house of Satrugan Sahu over the land in question and still rest portion of land in question is lying vacant, Hence on the basis of enquiry report and photographs submitted by the team of experts, 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.

Further, it is contended that, the oral settlement 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 settlement 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 BLJR 1970 (1) 216, that, - "It is settled proposition of law that a judgement or decree obtained by playing fraud on the court is a nulity and non est in the eyes of law, such judgement/decree - by the first court

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*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 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 in the year 1944 and there exists substantial structure upon the land in question before promulgation of the Schedule Area Regulation, 1969. Moreover, from the report and photographs submitted by the team of experts, it appears that, recently substantial structure has been erected over the land in question.

All the above fact goes to fortify that, neither the land in

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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

*Ranchi 8/4/16*  
Deputy Commissioner  
Ranchi

*Ranchi 8/4/16*  
Deputy Commissioner  
Ranchi

order communicated to S.A.R. officer with SAR case no 4631 12-13 (Dhuchu mandr rs Arinach Kr. others) for information and n.a. vide memo no 11470 d: 26.4.16  
56.4.16