

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

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IN THE COURT OF THE DEPUTY COMMISSIONER, RANCHI

S.A.R. Appeal -334 R 15/2014-15

State - Appellant

Vs

Rajeev Prasad & Others - Respondents

ORDER

17
6-9-16

This appeal has been suo-motto preferred by the State against the order passed in SAR Case No.-213/11-12 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 02.07.2013 validated the transfer with respect of land appertaining to Khata No.-281, Plot No.-3752 measuring an area of 5 Decimals of Village Ratu, P.S. Ratu, within the District of Ranchi in favour of the present respondent namely Rajeev Prasad Son of Ashok Prasad Resident of Village Ratu, P.S. Ratu, District Ranchi upon payment of compensation at the rate of Rs.1,00,000/- Per Decimals.

The facts giving rise to present appeal in nutshell is that, present performa respondent namely Suresh Pahan Son of Ram Lagan Pahan Resident of Village Ratu, P.S. Ratu, 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.-281, Plot No.-3752 measuring an area of 5

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	<p style="text-align: center;">-:2:-</p> <p>Decimals of Village Ratu, P. Ratu, within the District of Ranchi against the present respondents, which was registered as impugned Case bearing SAR Case No.- 213/11-12, wherein and whereunder the Learned Special officer, Ranchi vide impugned order validated transfer of land under Khata No.-281, Plot No.- 3752 measuring an area of 5 Decimals of Village Ratu, P.S. Ratu, within the District of Ranchi in favour of the respondent Rajeev Prasad upon payment of compensation at the rate of Rs. 1,00,000/- 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>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 1954-55 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</p>	

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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 1954-55 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 15 years ago house has been constructed upon the land in question by the respondent. 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.

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

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	<p style="text-align: center;">-:4:-</p> <p>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>On the other hand according to the Learned Advocate appearing on behalf of the respondents, the appeal has been preferred much after expiry of the period of limitation and as such the same is barred by limitation and the court without issuing notice upon the respondent has condone the delay caused in preferring this appeal and moreover, the appellant has failed to bring on record any evidence with respect of the averments made in the petition for condonation of delay. The Respondents claim their right, title, interest and possession over the land in question by virtue of purchase made their ancestor in the year 1954-55 and immediately thereafter he constructed house over the same</p>	

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and there is also electric connection over the same house and so the proceeding initiated below is hopelessly barred under limitation. It is admitted by the applicant of the impugned SAR Case that there are old house which area 60-65 years old belonging to the respondent over which they are residing with their family member and the fact regarding existence of substantial structure over the land in question has also been admitted by the applicant in his deposition.

Further, it is contended that, out of the awarded compensation, performa respondent has readily accepted the Rs.1,00,000/- paid to him through Bank Draft as per the direction of the Learned Courts below and the respondent is ready to pay rest amount, so the respondent has acquired valid right, title, interest and possession over the land in question.

Placing reliance upon the verdicts of Hon'ble Supreme Court and High Court reported in AIR 2000 SC 2276, 2004 (4) JLR 253, 1997 BLR 456 etc Learned Advocate assails that the proceeding initiated below is barred under limitation and since much before the promulgation of Schedule Area Regulation, building exists over the land in question and the land in question has been used for non-agricultural purpose, the provision of Section 71A of the CNT is not at all applicable in view of the verdict of Hon'ble Court reported in 1987 BLT 305, 1987 BLT 332, 1989 BLT 404, 1989 BLT 207 etc.

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Further, it is stated that, the respondent has paid much more than the amount of sale of land according to the value fixed by the Government to the applicants of SAR Case and there is no question of giving relief what so ever to the appellant in the above appeal and the Special Officer, Schedule Area Regulation, Ranchi who himself has passed the impugned order has no legal right to represent the State of Jharkhand and prefer this appeal and moreover the allegation levelled in the Memo of Appeal is false and baseless.

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 1954-

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55 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.

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 performam respondent.

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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 Ranchi for information and n-a vide Memo no 2576 (1) 21-9-16

21-9-16