

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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-:1:-

IN THE COURT OF THE DEPUTY COMMISSIONER, RANCHI

S.A.R. Appeal No.-335 R 15/2014-15

State - Appellant

Vs

Pramod Pandey & Others - Respondents

ORDER

17  
5-9-16

This appeal has been suo-motto preferred by the State against the order passed in SAR Case No.-33/09-10 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 26.06.2013 validated the transfer with respect of land appertaining to Khata No.-153, Plot No.-407 measuring an area of 3 Katha of Village Tiril, P.S. Sadar, within the District of Ranchi in favour of the present respondent namely Pramod Kumar Pandey Son of Late Basuki Pandey Resident of Village Tiril, P.S. Sadar, District Ranchi upon payment of compensation at the rate of Rs.1,51,000/- Per Decimal.

The facts giving rise to present appeal in nutshell is that, present performa respondent namely Krishan Pahan Son of Late Birsa Pahan Resident of Village Tiril, P.S. Sadar, 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.-153, Plot No.-407 measuring an area of 3 Katha of Village Tiril, P.S. Sadar, within the District of Ranchi

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*J. Pandey*

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against the present respondent, which was registered as impugned Case bearing SAR Case No.- 33/09-10, wherein and whereunder the Learned Special officer, Ranchi vide impugned order validated transfer of land under Khata No.-153, Plot No.- 407 measuring an area of 3 Katha of Village Tiril, P.S. Sadar, within the District of Ranchi in favour of the respondent upon payment of compensation at the rate of Rs.1,51,000/- Per Decimal.

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.

Inspite of seeking several adjournments, no one appeared on behalf of the Respondent to argue this appeal and later on the learned Advocate appearing on behalf of the respondent filed a written argument, which is on record.

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 1960 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,

*Yamali*

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	<p style="text-align: center;">-:3:-</p> <p>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 through Sada Sale Deed in the year 1960 and since then 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.</p> <p>Further it is averred that, it is crystal clear from the enquiry report and photagrphas submitted by the team of experts that, recently five year ago pucca house over 1900 Sq.ft has been constructed upon the land in question by the respondents. In the said house, a school namely Ravindra Academy has been established and since the respondent have failed to prove through cogent evidence that the substantial structure has been erect before the year 1969, hence, 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.</p>	

*J. B. Mahi*

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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 BLR 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>As per the written argument filed by the respondent, the present appeal is not maintainable in the eyes of law on the ground of lack of capacity to file this appeal. The appellant who is the State of Jharkhand through the Special Officer, Schedule Area Regulation, Ranchi can't appeal against the order of its own predecessor officer of the same level. It is settled law that an</p>	

*Jamal*

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	<p style="text-align: center;">-:5:-</p> <p>appeal can be filed U/s 215 of the CNT Act only by any aggrieved party of the proceeding and in this case, the appellant is not the aggrieved party of the proceeding.</p> <p>Further, it is submitted therein that, the appeal is barred by law of limitation and is liable to be rejected. The appellant has failed to show any reasonable ground for not filing this appeal within the stipulated period of limitation.</p> <p>It is also submitted therein that, the enquiry report submitted by the Sub-Divisional Officer, Sadar, Ranchi vide Letter No.-2456 dated 08.11.2013 is false and not proper, as the respondent was not informed about the said enquiry and same was done behind the back of the respondent. the photographs attached with the enquiry report is not the photographs of the house of the respondent. It is apparent from the memo of appeal that the appellant is not sure about the fact that whether there is any substantial structure over the land in question or the land in question is vacant. In fact the appellant is residing in the house for last 78 years. The allegation of collusiveness levelled against the respondent is merely an imagination and without any proper proof. The deposition of the performa respondent cannot be doubted on the basis of imaginary ground.</p> <p>Further, it is submitted that the allegation of trial not been properly conducted in totally false and is denied. As per the Memo of Appeal, the appellant itself has stated that the Deputy</p>	

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	<p style="text-align: center;">-:6:-</p> <p>Commissioner Ranchi vide his order contained in Memo No.-1015 dated 11.11.2013 has directed the Special Officer, Ranchi not to try and pass any further order and since the order in the case at hand has been passed on 26.06.2013 almost 4 to 5 months before, it cannot be said the impugned order has been passed in violation of the aforesaid order dated 11.11.2013.</p> <p>Further, it is also submitted that, the father of the respondent has been in possession of the land in question since the year 1947, when the grand father of the perma respondent Madi Pahan executed a transfer deed and since then the land in question is coming in possession of the father of the respondent, who after investing huge amount constructed house thereupon and now the respondent has perfected his right, title and interest over the land in question.</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 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</p>	

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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 1960 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, it is apparent from the report submitted by the team of expert that, recently five years ago pucca house has been constructed by the respondent.

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

*(Signature)*



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	<p style="text-align: center;">-:8:-</p> <p>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.</p> <p>Communicate this order to the Learned Special Officer, Schedule Area Regulation, Ranchi for information and necessary action.</p> <p>Dictated &amp; Corrected</p> <p><i>[Signature]</i> 21/9/16 Deputy Commissioner Ranchi</p> <p><i>[Signature]</i> 21/9/16 Deputy Commissioner Ranchi</p>	<p>order communicated to S.A.R. officer Ranchi with SAR case no 33/03-20 (Krishna Bahon vs subodh Pandey) for information and n.a vide memo no 2591/11 dt 21-9-16</p> <p>21-9-16</p>