

केस का सं० और तारीख	आदेश और पदाधिकारी का हस्ताक्षर	आदेश पर की गई कार्रवाई के बारे में टिप्पणी, तारीख के साथ
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IN THE COURT OF THE DEPUTY COMMISSIONER, RANCHI

Rent Fixation Appeal No.-9 R 15/2017-18

01.04.2021

Ajay Kumar Jaiswal Son of Late Girja Shankar Jaiswal,
R/o Distillery Compound, Hazaribagh Road
P.S. Lalpur, District Ranchi Appellant

-Versus-

1- Shiv Narayan Jaiswal,
2- Jagat Narayan Jaiswal,
Both Sons of Late Rai Saheb Laxmi Narayan Jaiswal
3- Chitranjan Jaiswal
4- Pradeep Kumar Jaiswal
5- Praveen Kumar Jaiswal
6- Naveen Kumar Jaiswal
7- Amit Jaiswal
All Sons of Prabhu Shnakar Jaiswal,
8- Rohit Jaiswal
9- Rahul Singh Jaiswal
Both Sons of Late Ranjeet Singh Jaiswal
All Resident of Lalpur, P.S. Lalpur, District Ranchi

..... Respondents

ORDER

Present appeal has been preferred against the order dated 12.01.2012 passed by the Learned Deputy Collector Land Reforms, Sadar, Ranchi in Rent Fixation Case No.-04/2011-12/ 107/2011-12, wherein and whereunder the Learned DCLR allowed fixation of rent at the rate of Rs.4/- Per Katha with respect of land under M.S. Plot No.-1134 and 1138 area 0.709 Acres and 5.378 Acres i.e. measuring total area of 6.085 Acres (380 Kathas) of Village Lalpur, Ward No.-VII, Thana No.-197, District Ranchi in favour the present respondent.

According to the Learned Advocate appearing on behalf of the appellant:-

The land under MS Plot No. 1134 old Holding No. 248 area 3.472 Acre, Plot No. 1138 old Holding No. 248 area 5.596



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Acre is recorded in M.S record of right in the name of Laxmi Narayan Sahu Son of Binda Sahu, Ram Narayan Sahu Son of Shalik Sahu. The recorded tenant Laxmi Narayan Sahu died leaving behind his five sons namely Shiv Narayan Jaiswal, Uma Shankar Jaiswal, Prabhu Shnakar Jaiswal, Kuldeep Narayan Jaiswal, Jagat Narayan Jaiswal and Ranjeet Singh Jaiswal. Another recorded tenant/co-sharer Ram Narayan Sahu died leaving behind his four sons namely Kripa Shankar Jaiswal, Girja Shankar Jaiswal, Deo Narayan Jaiswal and Sangram Jaiswal. The present appellant is the son of Girja Shankar Jaiswal. Girja Shankar Jaiswal has three sons namely Ajay Kumar Jaiswal, Bijay Kumar Jaiswal and Binay Kumar Jaiswal.

Although it would be evident from the entry made in the record of right that, the land under Plot Nos. 1134 and 1138 is jointly recorded in the name of Laxmi Narayan Sahu and Ram Narayan Sahu, but the respondent No. 1 to 10, who are the heirs and successors of Laxmi Narayan Sahu filed impugned case for fixation of rent before the Land Reform Deputy Collector Ranchi, who without giving any notice to the appellant or the heirs of the Ram Narayan Sahu fixed the rent in favour of the respondent on the basis of alleged compromise decree passed in Title Suit No. 49/1977.

It would be evident from compromise decree passed in Title suit No.- 49/1977 that it was concerned with the right of firm namely M/s Laxmi Narayan Ram Narayan. The aforesaid property in question situated in village Lalpur was not the subject matter of the said suit. The Halka Karamchari and Circle Officer has not given the correct report regarding the entry made in the M.S record of right. No document was produced by the respondents before the Learned courts below, which could substantiate the claim that the land in question under M.S plot No 1134 & 1138 and other Plots i.e. Plot Nos.- 1133, 1136 or 1137 was given in the share of Laxmi Narayan Sahu in any partition, as such the lower court below has committed serious error in fixing the rent with respect of aforementioned land in

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favour of the respondents.

There was a partition between the family of the appellant and respondent in year 1954 vide registered deed of partition, which clearly establishes that the land in question forming the subject matter of this appeal was not included in the said family partition. It remained joint.

The learned courts below also has violated the principle of natural Justice. The legal heirs and successor of the recorded tenant namely Ram Narayan Sahu were necessary parties and their presence was necessary for the complete and proper adjudication of the case, but the learned courts below did not impleaded them as party and passed order without issuing notice upon them.

In reply, according to the learned Advocate appearing on behalf of the respondents:-

The present appeal is hopelessly barred by Limitation. The appeal is against the order dated 12.01.2012 passed by L.R.D.C., Ranchi in Rent Fixation Case No.04/2011-2012 / 107/2011-12 has been preferred after lapse of almost 5 years 04 months. The appellant has assigned reason for not filing appeal within limitation stating inter alia that, he after getting knowledge of the Rent Fixation Case from office of the Circle Officer as well as from the office of the Land Reform Deputy Collector, applied for certified copy of impugned order on 23.04.2017, which was delivered to him on 03.05.2017. No cogent reasons has been assigned by the appellant for condonation of delay caused in filing of this appeal.

It is settled law that if delay has been condoned ex - parte, the aggrieved party has right to raise objection at the time of final hearing. In the matter of condonation of delay explanation of delay is very material. Delay may be condoned if valuable Right of party is being defeated on technical ground. In the instant case this learned Court will find the Appellant has filed the instant appeal to harass respondent no.1 to 9. He has

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no interest in the property subject matter of Rent Fixation Case because the property has been given to respondent no.1 and others in the compromise decree passed in T.S. 49 of 77. The Appellant was Power of Attorney Holder of his father Girija Shankar Jaiswal who along with other heirs / sons of Ram Narayan Jaiswal had executed several Deed of Sale in respect of the property being subject matter of Para 2 (e) of the compromise petition. Instant appeal has been filed when map of construction of multi - storied building on M.S. Plot No.1138 has been sanctioned by Ranchi Municipal Corporation vide B.P. - 02/2014/160 (104/2014/CA). The Appellant has filed objection in the year 2017 which has been rejected by Municipal Corporation by terms of order dated 15.05.2019. This goes to show that present Appellant waited till sanction of map and raised and filed Appeal in 2017. He had full knowledge of Rent Fixation Case . There is no proper explanation of condonation of delay of 5 years 4 months.

The land in question stands recorded in the Municipal Survey record of right in the name of Rai Saheb Laxmi Narayan Jaiswal and Ram Narayan Jaiswal. M.S . Plot No.1134 has area 3-472 karies and it is recorded as " Pucca Makan mai Hata Distillery " and Plot No.1138 area 5-596 karies has been recorded as " Pucca Makan Khaparposh mai Hata " in the year 1929. The entry made in the M.S. Record of Right is not disputed. Apart from Municipal Survey record of right there is Registered Deed of Sale being Sale Deed No.4253 of 1944 executed by Governor of Bihar through Deputy Commissioner, Ranchi. This deed of Sale is with respect of 6.622 acres (6-622 Karies) of land of M.S. Plot Nos. 1133, 1134, 1136, 1138 and 1139. This Deed of Sale is very important for identity of M.S. Plot No.1138 . At page 3 of the said Deed of Sale, boundary of M.S. Plot No.1136, 1138 and 1139 situated towards South of Ranchi, Hazaribagh Road containing staff quarter and Mahua Godown etc of the Ranchi Distillery properties has been given North- Ranchi Hazaribagh Road, East - Continuation of Plot

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केस का लॉ
और तारीख

आदेश और पराधिकारी का हस्ताक्षर

आदेश पर की गई कार्रवाई के
बारे में टिप्पणी, तारीख के साथ

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No.1138 Jamunia Dhora (Streamlet). South and West- Plot No. 1140 belonging to Bankim Das, Plot No. 1158 belonging to Dhelo Ram and Plot No. 1141, 115, 1160, 1171, 1173, 1174 and 1176 belonging to Secretary of State for India in Council. Municipal map of the ward will go to show towards South of Hazaribagh Rond there in is Plot No. 136 and in the South of M.S. Plot No.1136 there M.S. Plot No.1138 which has been described as Mahua Bagan in Clause 2 (d) of the compromise petition. In the aforesaid Sale Deed boundary of Plot No.1133 and 1134 situated at North of Ranchi Hazaribagh Road has also been given containing the distillery building etc. in boundary of Plot No.1133 and 1134 towards South - Jamunia Dhora Ranchi - Hazaribagh Road and East (Streamlet) apart from North and West has been given. If this Deed of Sale would be read with Clause 2 (d) of the compromise petition there will be no doubt that M.S. Plot No.1134 and 1138 along with other lands with Distillery of Ranchi with building and quarters for Excise Officers and Distillery Staff and adjoining lands with Opposite Side of road with building known as Mahua Bagan, Garage, Gora Bagan as well as Distillery of Mankatha has been allotted to Sri Shiv Narain Jaiswal and others being Sons of Late Laxmi Narain Jaiswal.

The learned Circle Officer after making inquiry has recommended for rent fixation of land. Spot enquiry and measurement of land was also been done at the time of sanction of map. The ownership of respondents also got fortified from the fact that the respondents have donated portion of Plot No.1138 for construction of Samadhi of great warrior Birsa Munda.

Heard both the parties. On perusal of materials available on record, I find that, it is an undisputed fact that, the land under MS Plot No. 1134 old Holding No. 248 area 3.472 Acre, Plot No. 1138 old Holding No. 248 area 5.596 Acre is recorded in M.S record of right in the name of Laxmi Narayan Sahu Son of Binda Sahu, Ram Narayan Sahu Son of Shalik Sahu. The appellant is one of the legal

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heirs and successors of the recorded tenant Ram Narayan Sahu, while the respondents are the legal heirs and successors of recorded tenant Laxmi Narayan Sahu. It has been claimed by the respondents that the land in question has been allotted to them vide compromise decree passed in Title suit No.- 49/1977. In this context, I find that, in the decree passed in aforementioned title suit, it has not been specifically mentioned that the land in question being part and parcel of Plot No.-1134 and 1138 has been allotted to the respondents. The respondents by interpreting that the Mahua Bagicha appertains to Plot No.-1138, has claimed the land in question to be their exclusive property.

Hence, I find that the learned court below without making proper enquiry with respect of the aforementioned facts has allowed the fixation of rent with respect of land in question exclusively in favour of the respondents.

For the reasons aforementioned, this appeal is allowed. The impugned order dated 12.01.2012 passed by the Learned Deputy Collector Land Reforms, Sadar, Ranchi in Rent Fixation Case No.- 04/2011-12/ 107/2011-12 is hereby set-aside. The matter is remanded back to the DCLR, Sadar, Ranchi for passing fresh order after making enquiry in the light of discussion made hereinabove.

Communicate the order to the Deputy Collector Land Reforms, Sadar, Ranchi for information and necessary action.

[Signature]
Deputy Commissioner,
Ranchi.

Dictated and Corrected by

[Signature]
Deputy Commissioner,
Ranchi.

order
communicated to
D.R.S. & Sadar
Ranchi alongwith
to record and
04/11/12 TR
107/11-12 (shiv-
narayan Jaiswal
of State) for
information of
D.R. vide
Memo No 425/01
dt 14-2-12
14-2-12