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Court : Jharkhand Ranchi

Decided On : Mar-01-2011

Judge : Mr. Justice R.K.Merathia, J.

Acts : Jharkhand Regional Development Authority Act 38 , 37.

Appeal No. : W.P.C. No. 4016 of 2010.

Appellant : Prabhunath Tiwari and ors.

Respondent : Ranchi Regional Development Authority and ors.

Advocate for Def. : Mr. Jai Prakash; Mr. Amar Kr. Sinha; Mr. P.K.Singh, Advs.

Advocate for Pet/Ap. : Mr. P.K.Prasad; M/s. S.N.Prasad; Abhishek, Advs.

Judgement :

1. A suit being Title Suit No. 266/2006 was instituted by the petitioners inter alia against defendant respondent no. 4 Md. Anwar, who appeared in the suit. Thereafter, he filed an application for sanction of map, which was sanctioned on 08/03/2008. The suit land and the land for which the map was sanctioned is the same.

2. But in the application for sanction, respondent no. 4 did not mention anything about the pendency of the said suit. The petitioners filed an application, which was

registered as U.C Case No. 43 of 2008 invoking section 38 of Jharkhand Regional Development Authority Act (the Act for short) on or about 29/08/2008 interlay alleging that the factum of the pendency of the suit was a suppression and thus material misrepresentation on the part of respondent no. 4 and, therefore, the action under section 38 of the Act be taken against him. On 21/11/2008, a time petition was filed on behalf of respondent no. 4, which was allowed but in the meantime, it was ordered that no construction work will be done. On 26/11/2008, the Estate Officer, was directed to examine the paper and put up on the next date for final hearing.

3. The Estate Officer, submitted a report on 15/01/2009 with his opinion that the decision on the said application be taken only after disposal of the suit.

4. By the impugned order dated 17/01/2009, referring to the said report, the said U.C. Case, filed by the petitioners, was dropped.

5. Mr. P.K. Prasad, learned senior counsel for the petitioners submitted that the said U.C. Case was dropped wrongly and that the Vice Chairman, RRDA, should have decided whether there has been violation of Section 38 of the Act or not?

6. On the other hand, Mr. Jai Prakash, learned senior counsel appearing for respondent no. 4 supported the impugned order and submitted that the petitioners filed petitions for injunction in the said suit but could not obtain any order thereon; and, that the Vice Chairman was justified in dropping the U.C. Case. He further submitted that there is no material misrepresentation or fraudulent statement in the information furnished by the respondent no. 4 under Section 37.

7. Mr. P.K.Singh, learned counsel appearing for the RRDA referring to Clause 7.5 of the bylaws submitted that the petitioners have got remedy of appeal; and that as the respondent no. 4 satisfied RRDA about the prima facie ownership/title and produced documents as provided under Clause 5.3 (v) of the bylaws, the plan was sanctioned.

8. In reply, Mr. Prasad, submitted that the said clause 7.5 of the bylaws is not applicable in the present case and there is no provision of appeal. He also tried to

explain under what circumstances, the injunction matter was not heard and was not pressed.

9. I am inclined to agree with the submission of Mr. Prasad that Clause 7.5 of the bylaws does not provide for appeal against an order passed on the application filed under Section 38 of the Act.

10. In my opinion, the said U.C. Case No. 43/2008 should have been decided in one way or the other but it could not have been dropped. As the matter is being remitted, I am not expressing any opinion on the merits thereof.

11. In the result, the impugned order dated 17/01/2009 is set aside and the matter is remitted to the Vice Chairman for passing a reasoned order in accordance with law after giving opportunity of hearing the parties as early as possible and preferably within four weeks from the date of receipt/production of a copy of this order.

12. Till the matter is decided by the Vice Chairman as aforesaid, the interim order of statusquo shall continue.

13. The parties will appear before the Vice Chairman along with a copy of this order on 8th March 2011 at 11.00 A.M. The parties are directed to cooperate in early disposal of the matter.

14. It is made clear that this order has been passed testing the legality of the impugned order dated 17/01/2009 dropping the case and it will not prejudice the respective cases of the parties before the Vice Chairman, RRDA

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