

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.4942 of 1988

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1. Nazbun Nesha wife of Abdul Kudus, resident village Jamalwa, P.O. & P.S. Thawe, District Gopalganj,
 2. Mukhtaul Haque son of Abdul Kudus, resident village Jamalwa, P.O. & P.S. Thawe, District Gopalganj,
 3. Noorul Haque sonof Abdul Kudus, resident village Jamalwa, P.O. & P.S. Thawe, District Gopalganj,
 4. Sakila Khatoon wife of Abdul Kalam, resident of villalge Pakahi, P.O. + P.S. Ramgarhwa, District East Champaran,
 5. Nooresha Khatoon wife of Riazul Rahman, resident village Jamalwa, P.O. & P.S. Thawe, District Gopalganj,
 6. Noordida Khatoon wife of IJaved Aslam, resident village Jamalwa, P.O. & P.S. Thawe, District Gopalganj,

.... Petitioners

Versus

1. The State of Bihar,
2. The Sub-divisional Officer, Gopalganj,
3. Bhudan Yagya Committee, through its District Secretary, Bhudan Yagya Committee, Gopalganj,
4. Nazir Ahmad son of Md. Amin, resident village Jamalwa, P.O, P.S. Thawe, District Gopalganj,

.... Respondents

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Appearance :

For the Petitioners : Mr. Y.V. Giri, Senior Advocate,
Mr. Vikas Ratan Bharti, Advocate
For the State: Mr. Purnendu Singh, GP 27
For the Respondent No. 4 : M/s Anirudh Kumar Verma
and Beyas Kumar Mishra, Advocates

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CORAM: HONOURABLE DR. JUSTICE RAVI RANJAN

ORAL JUDGMENT

Date: 22-06-2015

I have heard the parties and have perused the records of
the case.

The petitioner has filed this writ application, inter alia,
for grant of the following reliefs:-

- (i) To issue a writ of certiorari for
quashing the order/ judgment passed by the

Respondent- Sub-Divisional Officer, Gopalganj
on 13.06.1988 in Bhudan Rent Fixation Case
No. 18 of 1984;

(ii) To issue a writ of mandamus
commanding the Respondents not to interfere
with the possession of 8 decimals of land of
khata no. 112, Khesra no. 527 of village
Jagmalwa and further to fix the rent with regard
to the said land;

(iii) To any other relief or reliefs for
which the petitioner is entitled.

It is evident that the dispute relates to about 8 decimals
of land of plot no. 527 appertaining to Khata no. 112 of Mouja
Jagmalwa of Touzi No. 3947. It is claimed that in the entry in
Khatian entry with respect to the land concerned is “Gair
Majarua Malik-Parti Kadim”, however, Mahua’s trees have been
shown in the possession of one Amin son of Tajmul Quaum
Sheikh as “Bhaulidar”. It has further been stated that the
aforesaid land along with several others was donated to the
Bhoodan Yagna Committee(hereinafter to be referred to as “the
Committee”) by late Gopeshwar Prasad Shahi, the intermediary
of the concerned Khewat. It is claimed that the Deputy Collector,
Land Reforms, Gopalganj, after observing all the formalities for
issuance of notice vide its order dated 20.10.1970 in Case No.



13/70-71, confirmed the said donation to the Bhoodan Yagna Committee under section 11(4) of the Bihar Bhoodan Yagna Act, 1954(hereinafter to be referred to as “the Act”). It is further claimed that no appeal or revision having been filed against the aforesaid order, which has been appended as Annexure 2 to this writ application, the same became final. Thereafter, vide Annexure 3, the Committee distributed the donated lands to several persons including 8 decimals of land of plot no. 427 and 4 decimals of land of plot no. 792, both appertaining to khata no. 112, in favour of the original petitioner(since deceased). The original petitioner made an application before the Sub-Divisional Officer concerned for fixation of rent with respect to the lands allotted to him as the allotted lands were, admittedly, “Gair Majarua Khas-Parti Kadim”. However, the Sub-Divisional Officer, vide its order dated 13.06.1988 passed in Bhudan Rent Fixation Case No. 18 of 1984, not only declined to fix the rent of the said lands but has declared the grant of lands to the petitioner by the Committee as illegal and directed the Committee to cancel the certificate granted in favour of the original petitioner and issue such certificate of grant in favour of respondent no. 4.

Learned counsel for the petitioner submitted that the



Sub-Divisional Officer has over-stepped his jurisdiction in declaring the certificate granted by the Committee to be invalid or illegal document as he cannot undo the order of confirmation of donation under section 11(4) of the Act passed by the Deputy Collector, Land Reforms, after which the lands mentioned in Annexure 2 which also includes plot no. 527 vested in the Committee free from all encumbrances. The only mode to challenge the aforesaid order of confirmation of donation of land is available as an appeal under section 17(1)(b) of the Act either before the Commissioner if such order was passed by the Collector or before the Collector if such order was passed by any other officer. However, that not having been done, the order of confirmation became final and, thereafter, the land was distributed to several persons vide Annexure 3 which is a copy of the proceeding held on 25.08.1982 and, by accepting proposal no. 2, the lands were distributed amongst about 16 landless persons including the petitioner whose name stands mentioned at serial no. 15 with respect to 8 decimals of plot no. 527 and 4 decimals of plot no. 792. Thereafter, the petitioner was given the certificate of such grant a copy of which has been appended as Annexure 4. It is contended that the petitioner filed an



application for fixation of rent as, admittedly, the land stands described in the khatiyan as Gair Majarua Malik land and, therefore, the fair rent was to be fixed by the concerned revenue officer. It is contended that in place of making inquiry for the purpose of fixation of fair rent, the Sub-Divisional Officer concerned has gone beyond his jurisdiction and after inviting objection has made an inquiry as to whether the grant itself was correct or not and has come to the conclusion that the grant is illegal. A direction has been given to the District Authority of the Committee not only to cancel the certificate granted to the petitioner but also to grant such certificate in favour of respondent no. 4.

Though no counter affidavit has been filed on behalf of the respondent no. 4, however, at the time of hearing learned counsel for the respondent no. 4 has submitted that the petitioner's original case was that the land concerned was settled in his favour by Hathua Raj and, thereafter, he was delivered possession thereof. However, the factual position, according to the respondent no. 4, is that he and his ancestors were in possession of land concerned as "Bhaulidar" which would be apparent from the admitted entry in the records of right. The



dispute arose between the parties and a proceeding under section 144 of the Code of Criminal Procedure (hereinafter to be referred to as “Code”) was initiated. In the aforesaid proceeding, on the basis of police report, the Magistrate concerned passed order in favour of the petitioner, however, the respondent no. 4 challenged the same by filing Criminal Revision No.403 of 1981 before the Sessions Judge, Siwan, which was allowed and the order passed in the proceeding under section 144 of the Code was set aside. Thereafter, the petitioner applied before the Committee and the Committee, without ascertaining the position that the possession of the petitioner has been disbelieved in the revisional order passed by the Session Court, donated the land in favour of the original petitioner though the respondent no. 4 was all along in possession of the same. Thus, it has been contended that the revenue officer concerned was not at all bound to fix the rent of the land concerned as the grant appears to have been obtained by the original petitioner by playing fraud.

On appreciation of the rival contentions, this Court finds the following issues for determination in this case:

- (I) Whether the Sub-Divisional
Officer concerned was competent to take up

the issue of validity of the certificate granted by the Committee while examining the issue of fixation of rent of the granted land?

(II) Whether the Sub-Divisional Officer was competent to give a direction to the Committee to make a grant of the land concerned in favour of respondent no. 4?

(III) Whether the order passed in the proceeding under section 144 of the Code having been set aside by the revisional court, the possession of the respondent no. 4 stands declared?

(IV) Whether such revisional order passed in the proceeding under section 144 of the Code would be binding upon the statutory authority acting under the Act?

Issue Nos. I and II being inter-twinned are being considered together.

Section 10(1) of the Act lays down that any person being owner of any land may donate such land to the Bhoodan Yagna Committee or to Shri Acharya Vinoba Bhave by a



declaration in writing in that behalf barring the exceptions laid down in the proviso thereof. Thereafter, Bhoodan Yagna Danpatra has to be filed before the Revenue Officer aforesaid under this Act. Such Revenue Officer, thereafter, under Section 11 of the Act, has to publish “Danpatra” in the prescribed manner inviting objections and after necessary inquiry having been made and objection, if any, having been considered after issuance of notice in terms of sub-sections (3) and (4) may, either supersede the Bhoodan Yagna Danpatra in whole or in part if the donor is incompetent to make a gift or the title of the donor is defective or if the donor is not found to be a person entitled to donate the land under the provisions of section 10 or section 12 of the Act or he would confirm the donation. The provision of donation of land by the proprietor or the tenureholder even after vesting of the estate or tenure in the State of Bihar under the Act is also there under section 12 of the Act.

Once the Danpatra is confirmed by the competent authority, the right, title and interest of the donor in any land donated to Shri Acharya Vinoba Bhave or to the Committee shall stand transferred to and vest in the Committee for the purposes of Bhoodan Yagna with effect from the date of donation as per



the provisions contained in Section 13 of the Act. The land vested in the Committee shall also not be liable to attachment or sale in execution of any decree or order passed by the Civil Court against the Committee. Thereafter, the Committee or such other authority or person, as specified by the Committee, either generally or in respect of any local area, would be entitled to make a grant of such vested land either to landless persons or to a village Community, Gram Panchayat, or a Cooperative Society under section 14 of the Act and the grantee of the land shall acquire the same right, title and interest as the donor had in such land. There is a provision of preferring appeal under section 17 of the Act.

For better appreciation, section 17 of the Act is quoted as under:-

“17. **Appeals.** – (1) An appeal shall lie within sixty days of the date of the order of the Revenue Officer-

(a) if passed under Sections 18, 21 or 22, to the prescribed authority; and

(b) if passed under Sections 11 or 15-

(i) to the Commissioner of the Division, if such order was passed by the Collector; and

(ii) to the Collector, if such order was passed by any other officer:

Provided that any such appeal may be admitted after sixty days of the date of the order appealed against if the appellate authority is satisfied that the appellants was prevented by sufficient cause from preferring the appeal within such period.

(2) Subject to the result of the appeal, the order of the Revenue Officer shall be final

(3) Notwithstanding anything to the contrary contained in any other law for the time being in force, a memorandum of appeal filed by the Committee shall be exempted from payment of any Court-fees.

(4) Notwithstanding anything contained in sub-section (2), any party aggrieved by the order or any other person interested in the land may, within six months, from the date of such order, institute a suit in the Civil Court having jurisdiction for setting aside the order.”

From perusal of the aforesaid provisions, it appears that there is a provision of appeal against the order passed under sections 18, 21 or 22 of the Act to the prescribed authority or if it is passed under sections 11 and 15 of the Act then appeal would lie either before the Commissioner of the Division or the Collector depending upon the authority which has passed the order assailed in the appeal. Though sub-section (2) of section 17 of the Act lays down that subject to the result of the appeal, the order of the Revenue Officer shall be final, however, there is also a provision under sub-section (4) of section 17 of the Act to the extent that any aggrieved party or interested person in the land can take a recourse of instituting a suit in the Civil Court of competent jurisdiction for setting aside the order concerned.

Thus, it appears from the aforesaid provisions that, though there is a provision of appeal against the orders passed under sections 11, 15, 18, 21 or 22 of the Act but no appeal is available against the decision of grant to landless persons under



section 14 of the Act. However, there is a provision under section 17-A of the Act empowering either the Board of Revenue or the Commissioner of the Division, at any time, for the purpose of satisfying itself as to the correctness, legality or propriety of any order made by any authority or officer under the Act or the Rules, to call for and examine the record of any case pending before or disposed of by such authority or officer and may pass such order as it thinks fit and proper.

For better appreciation section 17-A of the Act is also quoted as under:-

“17-A. Power of the Board of Revenue and the Commissioner to call for records.- The Board of revenue or the Commissioner may, at any time for the purpose of satisfying itself or himself as to the correctness, legality or propriety of any order made by any authority or officer under this Act or the rules made thereunder, call for and examine the record of any case pending before or disposed of by such authority or officer and may pass such order as it or he thinks fit:

Provided that no order modifying, altering or setting aside any order made by such authority or officer shall be passed by the Board of Revenue or the Commissioner unless the parties concerned have been given a reasonable opportunity of being heard.”

Thus, it is apparent from the aforesaid discussion that unless any order modifying, varying or setting aside confirmation of Dan Patra is passed under section 17 or any order setting aside the grant is passed under section 17-A, the

order of the Revenue Officer confirming the donation or grant made under section 14 would become final and cannot be questioned by any authority.

The petitioner claims that he has been granted 8 decimals of land of plot no. 527 and 4 decimals of land of plot no. 792 along with several other persons in the meeting held by the competent authority under the Act and a certificate was granted to him which has been appended as Annexure 4. Thereafter, he approached the Revenue Officer for assessment and fixation of rent in view of the fact that the land of plot no. 527 was Gair Majarua Malik's land and as such, the rent was never assessed.

It is contended on behalf of the petitioner that the proviso to section 18 of the Act though empowers the authority to hear and pass order as may be necessary but has to be confined only for the purpose of assessment of fair rent and not for the purpose of questioning or ascertaining the legality or otherwise of either the donation confirmed under section 11(4) of the Act or grant of land under section 14 of the Act.

For better appreciation section 18 of the Act is also extracted as under:-

“18. Division of holding and distribution and

assessment of rent.-(1) if any land, which has vested in the Committee under the provisions of this Act, is a portion of a holding, the Revenue Officer shall, on the application of the Committee of any person to whom such land has been granted.¹[or on his own motion] divide the holding and distribute the rent payable in respect thereof in such manner as he deems fair and equitable

Provided that before making any order under this sub-section, the Revenue Officer shall hear the parties and make such inquiry as may be necessary.

(2) If such land is proprietor's private land as defined in Section 120 of the Bihar Tenancy Act, 1885 (VIII, 1885), or a landlord's privileged land as defined in Section 18 or the Chota Nagpur Tenancy Act, 1908 (Ben. Act IV of 1908), or bakasht land or gairmazura malik land or any other class of land for which rent has not been assessed, the Revenue Officer shall assess the rent thereof in the prescribed manner.

Explanation.-For the purposes of this Section –

(a) “bakasht land” means any land, other than the proprietor's private land or landlord's privileged land, which is for the time being in the cultivating possession of a proprietor or tenure-holder;

(b) “holding” means a parcel or parcels of land held by a raiyat and forming the subject of a separate tenancy.”

It is apparent from sub-section (1) section 18 of the Act that if an application is filed either on behalf of the Committee or any person for whom the land has been granted or on his own motion, the Revenue Officer concerned shall divide the holding and distribute the rent payable in respect thereof in such manner as he deems fair and equitable.

Thus, it does not appear from the provisions contained in section 18 of the Act that the Revenue Officer, at the stage of assessment of rent has any power to either to question the confirmation of donation or the grant made in favour of any person by the Committee. The Revenue Authority has not at all

been authorised to give a direction for cancellation of the grant and make a further direction to the Committee to make a grant of such land in favour of a particular person.

From the bare reading of the Bihar Bhoodan Yagna Rules, 1955 (hereinafter to be referred to as “the Rules”) also, it is apparent that at the time of confirmation of Danpatra of the erstwhile intermediary or the proprietor there is provision of inviting objection and deciding it as to whether the donation was acceptable or not and for that purpose modes of service of notice and disposal of objection as well as the inquiry to be made by the Revenue Officer have been provided under Rules 3 to 7 of the Rules.

For the purpose of assessment of rent, Rule 11 is there which is extracted as under:

“Rule 11. Assessment of rent on proprietor’s private or landlord’s privileged lands, etc.”-(a) In determining the fair rent for the descriptions mentioned, in sub-section (2) of Section 18, the Revenue Officer shall have regard to the average rate of rent payable by occupancy raiyats for lands of similar class and with similar advantages in the vicinity.

Explanation.- The expression “average rate of rent” shall mean the average of money rents paid during the previous agricultural year by occupancy raiyats for lands of similar class with advantages in the vicinity.

(b) The fair rent determined under this Rule together with the requisite participants shall be entered in the rent roll in Form V under the signature and seal of the Revenue Officer. Such rent roll shall form part of the records of proceedings to which it

relates:

Provided that a gairmazrua parti land shall be exempt from payment of rent for a period of at least three years from the first crop is harvested thereon.”

It has been clearly laid down in Rule 11 of the Rules that determination is of fair rent to be levied upon the grantee and, for that purpose, the Revenue Officer shall have regard to the average rate of rent payable by occupancy raiyats for lands of similar class and with similar advantages in the vicinity. The fair rent determined as such under the Rules shall be entered in the rent roll provided in Form V under the signature and seal of the Revenue Officer. So far the Gair Majarua Malik- Parti land is concerned, it shall be exempted from payment of rent for a period of at least three years from the first crop is harvested thereupon.

Thus, it does not appear from the conjoint reading of section 18 of the Act and Rule 11 of the Rules that at the time of fixation of rent, the Revenue Officer has an authority to invite objection for the purpose of determining as to whether the confirmation of donation or grant to the grantee by the Committee is good or bad. One would come to the same irresistible conclusion upon appreciation of the form provided in the schedule of the Rules. The Danpatra is filed before the



Revenue Officer in terms of Rule 3(2) of the Rules in Form I and notice of publication of Bhoodan Yagna Danpatra is to be under Form II. Register of objections filed before the Revenue Officer in terms of Rule 4 of the Rules is to be maintained in Form III whereas public notice under Rule 4(1) of the Rules shall be in Form IV and the rent roll showing fair rent determined in respect of the donated lands of the description mentioned in section 18(2) of the Act read with Rule 11(b) of the Rules is to be in Form V. There is no Form for inviting objections regarding propriety or legality of the grant made on behalf of a person under section 18 of the Act read with Rule 11 of the Rules.

Having regard to the aforementioned facts and circumstances, one would have to come to irresistible conclusion that the Revenue Officer acting under section 18 of the Act read with Rule 11 of the Rules does not have any power to question the authority of the Committee in granting such land in favour of landless person. Such objection or such challenge to the decision of grant can be, in my considered opinion, made only under section 17-A of the Act either before the Commissioner of the Division or the Board of Revenue. The Revenue Officer is not an authority under the Act to pass such orders while doing

assessment of rent as he is only authorised to enquire about and assess the fair rent which is to be levied upon the grantee and necessary inquiry has to be made in that regard only.

However, a question remains as to what would happen if the document of grant itself is forged and fabricated or the order has been obtained by playing fraud. In such a situation, in my considered opinion, since it is well settled that fraud vitiates the very solemnity of the proceeding he may refuse to assess the fair rent but before doing that there should be impeccable and unimpeachable material on record showing that the fraud or fabrication of the document has been done.

In the present case, he has stated that the decision of grant has not been made by the Anchal Adhikari or before that any objection was not raised. However, learned counsel for the respondent no. 4 has not been able to show as to why the Anchal Adhikari has to be there at the time of distribution of the land. Section 14(1) of the Act lays down in clear terms that the grant of land to landless persons has to be made by the Committee or such other authority or person specified the Committee, either generally or in respect of any local area, in the prescribed manner. It is evident from Annexures 2 and 3 that grant has been



made to the petitioner and 14 other persons. There is no material on record showing that the petitioner has played some fraud at the time of obtaining such grant or the document itself is forged and fabricated. If some illegality has been committed by Committee while making such grant then that would be required to be challenged under section 17-A of the Act, however, not at the time of fixation of rent. Fraud, though vitiates the solemnity of the proceeding, at the same time has to be pleaded and proved.

No counter affidavit has been filed on behalf of the respondent no. 4 and the Sub-Divisional Officer has also not been able to establish in the impugned order that some fraud has been played by the petitioner. Indeed, he has stated that the petitioner has claimed his possession over the land concerned as a settlee from Hathua Raj in a proceeding under section 144 of the Code and in the present proceeding he has claimed it as grant from the Committee but that itself does not amount to fraud. Even if it is assumed that the petitioner was never in possession of the land concerned that would be of no help to the respondent no. 4. Section 14 of the Act does not lay down anywhere that the grant has to be made to a landless person who somehow or the other is in possession of the land concerned. The order of grant is

subsequent to the order of revisional order passed by the Sessions Court in Criminal Revision No. 403 of 1981. A certified copy of the aforesaid order has been produced at the time of hearing of this application and is available on the record.

Accordingly, Issue Nos. I and II stand decided in favour of the petitioner.

Issue Nos. III and IV:

Both the issues being inter-twinned are being considered together.

For better appreciation of the issues concerned, Section 144 of the Code is being quoted as under:

“S.144. Power to issue order in urgent cases of nuisance of apprehended danger- (1) In cases where, in the opinion of a District Magistrate, a Sub- divisional Magistrate or any other Executive Magistrate specially empowered by the State Government in this behalf, there is sufficient ground for proceeding under this section and immediate prevention or speedy remedy is desirable, such Magistrate may, by a written order stating the material facts of the case and served in the manner provided by section 134, direct any person to abstain from a certain act or to take certain order with respect to certain property in his possession or under his management, if such Magistrate considers that such direction is likely to prevent, or tends to prevent, obstruction, annoyance or injury to any person lawfully employed, or danger to human life, health or safety, or a disturbance of the public tranquility, or a riot, of an

affray.

(2) An order under this section may, in cases of emergency or in cases where the circumstances do not admit of the serving in due time of a notice upon the person against whom the order is directed, be passed ex parte.

(3) An order under this section may be directed to a particular individual, or to persons residing in a particular place or area, or to the public generally when frequenting or visiting a particular place or area.

(4) No order under this section shall remain in force for more than two months from the making thereof:

Provided that, if the State Government considers it necessary so to do for preventing danger to human life, health or safety or for preventing a riot or any affray, it may, by notification, direct that an order made by a Magistrate under this section shall remain in force for such further period not exceeding six months from the date on which the order made by the Magistrate would have, but for such order, expired, as it may specify in the said notification.

(5) Any Magistrate may, either on his own motion or on the application of any person aggrieved, rescind or alter any order made under this section, by himself or any Magistrate subordinate to him or by his predecessor-in-office.

(6) The State Government may, either on its own motion or on the application of any person aggrieved, rescind or alter any order made by it under the proviso to sub-section (4).

(7) Where an application under sub-section (5) or sub-section (6) is received, the Magistrate, or the State Government, as the case may be, shall afford to the applicant an early opportunity of appearing before him

or it, either in person or by pleader and showing cause against the order; and if the Magistrate or the State Government, as the case may be, rejects the application wholly or in part, he or it shall record in writing the reasons for so doing.”

Section 144 of the Code is part of Chapter X which has been provided under the Code for maintenance of public order and tranquility. Within such Chapter, Part A deals with unlawful assemblies, Part B deals in public nuisances, whereas Part C is to deal with urgent cases of nuisance or apprehended danger. Bare reading of section 144 of the Act would reveal that the same is for taking a prohibitory step to prevent public nuisances or the apprehended danger by directing any person to abstain from a certain act or to take certain order with respect to certain property in his possession or under his management, if the Magistrate considers that such direction is likely to prevent or tends to prevent obstruction, annoyance or injury to any person lawfully employed or danger to human life, health or safety, or disturbance of the public tranquility, or a riot, or an affray. Such order has to be passed by the Magistrate in the cases of emergency. In cases of emergency, the Magistrate can pass such preventive order ex parte also. But, at the same time, sub-section (4) of section 144 of the Code clearly lays down that no order

under this section shall remain in force for more than two months from the making thereof.



Thus, in my considered opinion, nobody's possession is decisively declared by any authority under section 144 of the Code. For that purpose, a decision has to be taken under section 145 of the Code. Secondly, the enforcing period of the order passed under section 144 of the Code is only of two months. Thereafter, the order itself fizzles out. The Session Court, as would be evident from the order, a copy of which has been produced at the time of hearing, has set aside the order passed by the Magistrate on the ground that he has passed such order without considering the records. He has also noticed that the order passed under section 144 of the Code has lost its force in view of passage of time as the order was passed on 16.11.1981 and the revisional order was passed on 13.07.1982, however, the Sessions Court has set aside the order passed by the Magistrate as the same was not valid for the aforesaid reason.

In my considered view, any order passed under section 144 of the Act does not declare possession of a particular person and would not be binding upon the statutory authority under the Act. That apart, even if the petitioner has made out a case before



the police that he is in possession of the land concerned through settlement from Hathua Raj, the Sessions Court has also not considered the fact that the right, title and interest of the land concerned was vested in the Committee after the same was donated and such donation was confirmed by the Committee vide Annexure 2 dated 20.10.1970 itself.

Thus, neither the petitioner nor the respondent no. 4 could have claimed their possession or right and title over plot no. 527 independently in view of its vesting in Committee. If the respondent no. 4 was aggrieved by such confirmation of donation by the proprietor then he would have either moved in appeal within 60 days under section 17 of the Act or should have filed a suit within a period of six months. That having not been done, the confirmation is final and now that cannot be challenged by the respondent no. 4. Thus, in my considered opinion, the order of the Sessions Court would have no effect upon the proceeding under the provisions of the Act.

Accordingly, the Issue Nos. (III) and IV) are also decided in favour of the petitioners.

So far the entry in record of right is concerned, the respondent no. 4 has not been able to show as to how he claims



the land as the entry itself shows that his ancestors were “Bhaulidars” of two Mahua trees only standing over the plot concerned. Thus, he could have claimed only for the products of Mahua trees. He cannot claim right, title and interest upon the land on the basis of such entry. However, if he wanted to contest the claim of the petitioner either on the ground that the Committee was incompetent to distribute it or the confirmation of donation was itself bad or illegal then he could have taken recourse to section 17-A of the Act by filing an application either before the Commissioner of the Division or Board of Revenue. Such grant or confirmation of donation cannot be questioned by the Sub-Divisional Officer at the time of assessment and fixation of rent.

That being the situation, in my opinion, there was no authority vested in the concerned Revenue Authority to direct the Committee to cancel the Danpatra granted in favour of the petitioner and make a grant in favour of the respondent no. 4. If he had any apprehension that the document of donation is forged or fabricated, he could have noticed the Committee and, thereafter, if satisfied, he could have only refused to fix fair rent.

Thus, in my view, the Sub-Divisional Officer concerned

has since overstepped his jurisdiction, the order impugned has to be held to be arbitrary and illegal. Accordingly, the same is quashed and set aside.

However, the matter is remitted back to the Revenue Officer concerned to make an inquiry for further assessment of rent. If he has still some apprehension that the authority which has made a grant in favour of the petitioner was not competent then he can issue notice to the Committee itself and ascertain the same but even if he comes to the conclusion that the Committee was not empowered then he can only refuse to assess and fix fair rent as he does not have power to give further direction for cancellation of grant made in favour of the petitioner and, further, for making a grant in favour of respondent no. 4.

However, the respondent no. 4 would be at liberty to take a remedial measure under section 17-A of the Act for the concerned purpose, if so advised.

It is needless to say that if such application is filed then the same has to be decided by the authority concerned in accordance with law by passing a reasoned order after granting reasonable opportunity to all concerned without being prejudiced by any finding or observation made by this Court in the present

order as this Court has gone to decide the jurisdiction of the Revenue Officer acting under section 18 of the Act read with Rule 11 of the Rules but has not formed any final opinion regarding the issue of legality or otherwise either of the proceeding in which a decision was taken to make a grant in favour of the petitioner or regarding the certificate issued in favour of the petitioner. However, the order of confirmation of donation in favour of the Committee cannot be examined by it as the same has already attained finality.

Accordingly, this writ application is allowed to the extent as indicated above.

(Dr. Ravi Ranjan, J)

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SC/-

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