

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (SJ) No.2003 of 2017

Arising Out of PS.Case No. -3 Year- 2007 Thana -VIGILANCE District- PATNA

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1. Sri Santosh Kumar Jaiswal, S/o Late Suresh Chandra Gupta, Resident of
B/12/84, Gauriganj, P.O. & P.S.- Bhelupura, Varanasi (U.P.).

.... Appellant/s

Versus

1. The State of Bihar through Special Vigilance Unit, Patna.

.... Respondent/s

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Appearance :

For the Appellant/s : Mr. Hemant Kumar, Advocate

For the Respondent/s : Mr. Arvind Kumar, Law Officer, Vigilance

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CORAM: HONOURABLE MR. JUSTICE ADITYA KUMAR TRIVEDI

ORAL JUDGMENT

Date: 30-11-2017

Heard Mr. Hemant Kumar, learned counsel for the appellant
as well as Mr. Arvind Kumar, Law Officer, Vigilance.

2. The delinquent is taking tooth and nail to defeat the
objective of the Bihar Special Court's Act whereunder Confiscation
Proceeding 02/2010 has been initiated still pending before Authorized
Officer, Special Court-II, Vigilance, Patna for hearing. The aforesaid
Special Case originated on account of initiation of Vigilance Case No.
03/2007 on account of amassing huge property moveable and
immovable disproportionate to his income, that means to say, happens
to be ill gotten acquisition.

3. From Annexure-1 of the memo of appeal which happens
to be the original petition of confiscation whereunder under heading-
1, immovable property there happens to be details of immovable
property acquired by the delinquent at Serial No.2, there happens to



be disclosure with regard to acquisition of a plot under Adarsh Vihar Sahkari Grih Nirman Samiti Ltd, Patna located at Rajiv Nagar, Road No.24 having in the name of Jaggannath Prasad, father of the delinquent. Though, the allotment letter has been disclosed in Serial No.2 as 09.04.1988, it has been pleaded on behalf of appellant that the aforesaid acquisition was under registered sale deed dated 19.08.1979 but the aforesaid sale deed is not on the record. However, there happens to be Annexure-2, the sale deed dated 19.08.1989 executed by the Adarsh Vihar Sahkari Grih Nirman Samiti Ltd, Patna in favour of Jaggannath Prasad relating to the said plot. Although, it has been pleaded that Jaggannath Prasad was licensee moneylender so, was in possession of sumptuous money to purchase the aforesaid land but since when it has not been disclosed nor, license is on the record.

4. Be that as it may, the land having in the name of Jaggannath Prasad having acquired in the year 1989 is out of controversy. Delinquent, Y.K. Jaiswal happens to be son of late Jaggannath Prasad who died leaving behind two sons, another one is Suresh Chandra Gupta and the appellants are sons of Suresh Chandra Gupta. Suresh Chandra Gupta is also dead.

5. Contention is that the property as it stood in the name of Jaggannath Prasad, their forefather. On account of his death and as, no codicil has been executed by Jaggannath Prasad, therefore, this



property has become ancestral property of the appellants along with delinquent whereupon, they have got inherent right. That being so, any kind of encroachment over their legal right would be illegal and for that, they have got right to defend. Having been deprived of to contest the confiscation proceeding by the learned lower court by the order impugned happens to be illegal in the background of the fact that in terms of Section 14(2) of the Act which has been magnified in the case of *S.S. Verma v. State of Bihar* reported in **2011(3) PLJR 813** and followed in *Kapilmuni Rai v. State of Bihar* in **2012(1) PLJR 194**, the persons in whose name property stands is to be noticed, heard, being necessary party.

6. That being so, the order impugned is fit to be set aside allowing the appellants to participate as well as permitting him to substantiate his plea by way of cogent, reliable, legal evidence.

7. The learned Law Officer, Vigilance has submitted that all these activities have been at the instance of delinquent in pre-planned manner to defeat the objective of the statute. Furthermore, it has also been submitted that anyhow, delinquent is bent upon to put hurdle and that happens to be reason behind pendency of instant case since 2010. As such, submission is that the prayer of the appellant should be out rightly rejected. So far legal position is concerned, the learned Law Officer has fairly conceded that it has been decided by



the High Court that all the persons in whose name the property stands is to be noticed. As property does not stand in the name of these appellants, therefore, the ratio having been decided at an earlier occasion in the case of *S.S. Verma* as well as *Kapilmuni Rai* (supra) is not at all applicable.

8. Without dipping depth over the controversy, the sole motto in terms of Section 14(2) to notice those persons having the property in their name happens to be found involved with the property is to be heard before passing of the order and that happens to be based upon principle of natural justice. The root of the property happens to be acquisition standing in the name of Jaggannath Prasad, admittedly, forefather of the appellants. Whether it happens to be ill gotten property of delinquent exclusive or it is the acquisition of Jaggannath Prasad from his known sources is the subject matter of controversy and the confiscation relating thereto is to be guided by finding on that very score.

9. Accordingly, presence of appellants is found necessary and that being so, the order impugned is fit to be set aside and is accordingly set aside. Appeal is allowed.

10. However, it is made clear that this proceeding is lingering since 2010 and furthermore having acknowledged with the contents of confiscation petition, would not be show-caused afresh



along with documents rather the appellant and his two brothers will appear before the learned lower court within a fortnight and will file show-cause within one week next thereto, and then, the learned lower court will decide the issued on priority. Whole exercise must be completed within three months.

11. Let the lower court records be returned back to the learned lower court by special messenger forthwith.

(Aditya Kumar Trivedi, J)

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AFR/NAFR	AFR
CAV DATE	N/A
Uploading Date	01.12.2017
Transmission Date	01.12.2017

