IN THE HIGH COURT OF JUDICATURE AT PATNA

Govt. Appeal (SJ) No.1 of 2015

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The State of Bihar through the Inspector General Special Vigilance Unit, Patna.

.... Appellant/s

Versus

1. Y.k. Jaiswal, S/o Late Jagarnath Prasad, R/o Mohalla-H.N.27, Sheopuri, Professor Colony Road, P.O.+P.S.-Shastri Nagar, District-Patna-800023.
2. Sushila Jaiswal, W/o Y.K. Jaiswal, R/o Mohalla-H.N.27, Sheopuri, Professor Colony Road, P.O.+P.S.-Shastri Nagar, District-Patna.

.... Opposite Party/s

WITH

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Criminal Appeal (SJ) No. 387 of 2016

Arising Out of PS.Case No. -2 Year- 2010 Thana -C.B.I CASE District- PATNA

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Sushila Jaiswal, W/o Sri Yogendra Kumar Jaiswal, Resident of Mohalla-Sheopuri, P.O. & P.S.-Shastri Nagar, Patna.

.... Appellant/s

Versus

The State of Bihar through Special Vigilance Unit, Patna.

.... Opposite Party/s

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Appearance :

(In G. APP. (SJ) No.1 of 2015)

For the Appellant/s : Mr. Arvind Kumar, Adv.

For the Opposite Party/s : Mr.

(In CR. APP (SJ) No.387 of 2016)

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

For the Opposite Party/s : Mr. Arvind Kumar, Adv.

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CORAM: HONOURABLE MR. JUSTICE ASHUTOSH KUMAR

ORAL JUDGMENT & ORDER

Date: 20-02-2018

Govt. Appeal (SJ) No. 1 of 2015, filed on behalf of the Vigilance, as well as Cr. Appeal (SJ) No. 387 of 2016, preferred by Sushila Jaiswal, have been heard together and a common order is being passed.

2. On the basis of Special Vigilance Unit P.S. Case No. 3 of 2017, Confiscation Case No. 2 of 2010 was initiated before the learned Special Court-II-Cum-Authorized Officer, Patna against Y.K. Jaiswal and his family members; Sushila Jaiswal being his wife, under the provisions of Bihar Special Courts Act, 2009 *(hereinafter referred to as **"the Act"**)*.

3. In the aforesaid confiscation proceedings, the delinquent officer and his relatives were issued show-cause notices, asking them to explain the details of their assets which were acquired during the period of service of Mr. Y.K. Jaiswal and which was found to be *prima facie* more than the disclosed known sources of income.

4. During the pendency of the confiscation proceeding, an application was filed on behalf of Sushila Jaiswal under Rule 11(g) of the Bihar Special Courts Rules, 2010 *(hereinafter referred to as **"the Rules"**)* for getting the residential house in her name evaluated by any other agency or

certified valuer. A prayer also was made for appointing a certified valuer for the correct valuation of ornaments, according to the age of the ornaments.

5. The aforesaid applications preferred by the delinquent officer and his wife were opposed by the State Vigilance.

6. The learned authorised officer, by order dated 28.09.2011, refused to get the house evaluated by a certified valuer, but permitted the re-evaluation of the ornaments, kept in the locker at Mirzapur.

7. The appellant/Sushila Jaiswal, (Cr. Appeal (SJ) No. 387 of 2016) aggrieved by the order of the learned authorised officer in not allowing the re-evaluation of the residential house, preferred Cr. Appeal (SJ) No. 260 of 2013 before this Court and this Court, *vide* order dated 01.07.2013, set-aside the order and directed the learned authorised officer to examine the matter afresh and pass an appropriate order. Thereafter, the learned authorised officer, on giving a fresh hearing to the parties *vide* order dated 12.03.2014, directed the ornaments kept in the locker at Mirzapur only to be re-evaluated by any other certified valuer, but refused to permit re-evaluation of residential premises of the appellant/Sushila Jaiswal.

8. The aforesaid order dated 12.03.2014 is under challenge in Cr. Appeal (SJ) No. 387 of 2016 by her.

9. Appellant/Sushila Jaiswal had also filed a separate petition under Section 11(g) of the Rules, seeking ornaments kept in the locker of Central Bank of India, Boring Road Branch, Patna and Punjab National Bank, Budhha Colony Branch, Patna also to be re-evaluated by any other independent agency as it had been verified by a non-certified valuer. On the aforesaid petition, the learned authorised officer *vide* his order dated 20.09.2014, directed the State Vigilance Department to re-evaluate the ornaments.

10. The aforesaid order dated 20.09.2014 has been appealed against by the State Vigilance *vide* Govt. Appeal (SJ) No. 1 of 2015.

11. From the perusal of the order dated 12.03.2014, which has been challenged by the appellant/Sushila Jaiswal, it appears that the learned authorised officer has not taken into account the fact that land with appurtenant structure thereon was purchased by her *vide* two sale-deeds dated 10.08.1988 and 26.09.1988 respectively. By the first sale-deed dated 10.08.1988, a total land area of 23.10 Sq. Ft. with a constructed area of 13.56 Sq. Ft. was conveyed to her. Thereafter, by the second sale-deed dated 26.09.1988, total land area of 23.83 Sq. Ft. with constructed area of 13.19 Sq. Ft. was acquired by the aforesaid appellant. It is the case of the appellant/Sushila Jaiswal that the constructed area over the land

which was conveyed by the second sale-deed on 26.09.1988, which originally was over 13.19 Sq. Ft., was in a dilapidated condition and, therefore, the same was demolished and a fresh structure over 12.96 Sq. Ft. area was erected. The entire first floor, thereafter, was constructed by the appellant (which area on calculation would come to 26.52 Sq. Ft.). But while evaluating the price of the house, unreasonable parameters were adopted by the Technical Cell of the State Vigilance Unit and the entire area, comprising the first floor as well as the ground floor, were evaluated as having been purchased and constructed by the appellant/Sushila Jaiswal.

12. Learned counsel for the appellant/Sushila Jaiswal (Cr. Appeal (SJ) No. 387 of 2016) has pointed out that an amount of Rs. 64,000/- and odd only was reduced from the cost which was calculated of the entire constructed area which was assumed to be the cost of construction of 13.19/12.96 Sq. Ft. area which was further constructed. It has, therefore, been submitted that the Technical Unit of the Vigilance Department ought to have deducted the cost of the constructed area of 13.56 Sq. Ft., which stood on the land conveyed to her by the first sale-deed dated 10.08.1988 with an area of 23.10 Sq. Ft. over which the entire first floor was constructed.

13. Mr. Arvind Kumar, the learned Special Public Prosecutor, Vigilance, while assailing the order dated

20.09.2014, directing for re-evaluation of the ornaments kept in different lockers by a certified valuer, has stated that the order has not taken into account the fact that different references of lockers were taken by the delinquent officer and his wife and the whole purpose of seeking re-evaluation was to delay the disposal of the case and, thereby, delaying the confiscation of the property which was amassed beyond the known sources of income of delinquent officer as well as his family members.

14. Before adjudicating the divergent contentions of the appellants herein, it would be necessary to first examine the provisions of the Bihar Special Courts Act, 2009 and Rules, 2010 respectively.

15. Under the Bihar Special Courts Act, 2009, a Special Court has been given the jurisdiction to try any person alleged to have committed the offence in respect of which a declaration has been made under Section 5 of the Act, either as a principal conspirator or abettor and all of them could be jointly tried at one trial in accordance with the Act.

16. Chapter-III of the Act, referred to above, deals with confiscation of property. Section 13 of the Act delineates that on the satisfaction of the State Government, on the basis of *prima facie* evidence that an offence has been committed, without even cognizance being taken by the Special Court, can authorized the Public Prosecutor to make an application to the

authorised officer for confiscation of the money and other property under this Act, which in the opinion of the State Government has been procured by means of an offence. Whenever such an application is made by the Special Public Prosecutor on the direction of the State Government, under Section 14 of the Act, the authorised officer is enjoined upon to notice the delinquent and others for seeking explanation about the source of income, earnings and assets within a period of 30 days.

17. Clause (3) of Section 14 of the Act reads as hereunder:

> *"**(3)** Notwithstanding anything contained in sub-section (1), the evidence, information and particulars brought on record before the authorised officer, by the person affected or the State Government shall be open to be rebutted in the trial before the special court provided that such rebuttal shall be confined to the trial for determination and adjudication of guilt of the offender by the Special Court under this Act."*

18. Under Section 15 of the Act, the authorised officer, after considering the explanation, if any, to the show-cause notice, issued under Section 14 of the Act and the materials available before it, can pass order for confiscation of the property after satisfying that such money or property which is to be confiscated, has been procured by means of an offence. Thereafter, the property and money would stand confiscated to

the State Government free from all encumbrances.

19. Thus, from the conspectus of the provisions contained in Chapter-III of the Act, it would become very evident that the first reference point of the trial and assessment of the authorised officer about the tainted property/money is the assessment of the value of the property/money which is said to have been obtained by a delinquent officer in disregard of the legal provisions. If the assessment made in the first instance is faulty, the concerned delinquent officer would only be able to rebut the same later in trial but before such rebuttal, his property would be confiscated if found to the satisfaction of the authorised officer that the valuation was more than the known sources of his income.

20. In that view of the matter, it is of utmost importance that the assessment of the property, so delineated and marked, be properly made so that the delinquent and his family members are aware of the assessment for offering their defence.

21. The Rules which have been framed under the Act *vide* Bihar Special Courts Rules, 2010, provide that the authorised officer has to follow a summary procedure in dealing with confiscation proceedings.

22. Rule 11(g) and (h) of the Rules is being extracted for the sake of completeness:

"***11.(g)*** *If the delinquent public servant* *proposes to contest the valuation of the property, the authorised officer may take assistance of such State Government agency or Central Government agency or any other officer or person technically qualified as he may deem fit and proper.*

(h) *The authorised officer, on consideration of statement of defence, reply of public prosecutor and report of experts, if any, shall adjudicate the proceeding and will pronounce final verdict within a maximum period of 6 months from the day of service of notice.*

(i) The authorised officer, after final adjudication, may proceed to confiscate the property in accordance with Section 15 of the Act."

23. The Rules quoted above provide that if a delinquent public servant contests the valuation of the property, an assistance of a different agency, which could be a State Government agency or Central Government agency or any other officer or person technically qualified, could be taken by the authorised officer, but that would be subject to his satisfaction.

24. The authorised officer is required to pass a final verdict within a period of six months from the date of service of notice on the delinquent officers on the basis of his consideration over the statement of defence, the reply of the Prosecutor and of the report of the experts, if any.

25. From a conjoint reading of Section 14 sub-Clause (3) of the Act and sub-Rules (g) and (h) of Rule 11 of the Rules, it would become very evident that the only stage at which the valuation of the property in question could be contested at

the stage of its assessment only and which would be the basis for confiscation of the aforesaid property by the authorised officer, leading to the vesting of such property in the State Government. Though the word *'may'* has been used in sub-Clause (g) of Rule 11 of the Rules, but looking at the other provisions of the Act, there cannot be any doubt that the responsibility cast upon the authorised officer is very onerous and he has to be satisfied that the assessment on which a person is being tried and his property is sought to be confiscated is genuine and correct. It needs no adumbration of the principles of law that if the provisions of a particular Act are stringent in nature, stricter compliance of the same ought to be insisted upon and any departure from the same would lead to further litigation without any purpose. The use of word *'may'* in Rule 11(g) of the Rules may, on face of it, appear to be permissive, but seeing in the context of the strict requirement of law, this Court is of the view that in case of any serious contest about the assessment by the Vigilance Unit to be faulty, the learned authorised officer ought to consider re-evaluation of the said property by a technical expert. This would obviate the dissatisfaction of the delinquent with regard to the assessment and would also give an opportunity to the authorised officer to decide the issue with a scientific or proper assessment of the valuation of the property.

26. Acquisition of property is not an offence until it is found to have been acquired by wrong means. A wrong/exaggerated valuation of property may lead to unjust results which is not the spirit behind enacting the aforesaid Act and Rules. The requirement of ordering for re-evaluation or seeking an expert opinion in cases of contest of the valuation of the property in question may be directory in nature in the Act, but in all fitness of things, since this is the first stage at which the assessment can be challenged, it ought to be exercised by the authorised officer or else it might lead to further litigation and delay in the process of confiscation.

27. This Court has been informed that the Adjudicating Officer is proceeding in the matter on day-to-day basis, which is quite laudable.

28. The learned Advocate appearing for the appellant/Sushila Jaiswal has very candidly stated that appellant would be satisfied by re-evaluation of the residence by any certified agency/valuer, which may be on the election of the State Vigilance and she would not raise any objection to the result of such re-evaluation and would accept the same.

29. Thus, considering the circumstances that there is a huge difference between the valuation assessment of the property, which was made privately by the appellant/Sushila Jaiswal and the acceptance of the appellant for re-evaluation by

any authorized agency, at the choice of the Prosecution/State Vigilance Unit, it would only be reasonable to allow such a prayer and direct the learned authorised officer to order for a re-evaluation of the subject property by any expert valuer, to be chosen by the State Vigilance Department.

30. The order by which the State Vigilance has been directed to evaluate the ornaments of the delinquent officer/Y.K. Jaiswal and his wife, appears to this Court to be justified.

31. Thus, it is directed that the learned authorised officer shall ask the State Vigilance to get the ornaments re-evaluated by a third party/certified valuer and also employ any expert to re-evaluate the residential premises of the appellant/Sushila Jaiswal, on the production/communication of a copy of this order, with a direction to complete the process of re-evaluation/re-assessment positively within a period of 45 days from the date of passing of the order.

32. Any effort at delaying the evaluation process within the aforesaid period of 45 days, by either party shall be taken serious note of by the learned authorised officer.

33. The learned authorised officer shall, after ordering for a re-evaluation, resume the proceedings with respect to the house in question and the ornaments kept in the locker of the Central Bank of India, Boring Road Branch, Patna and Punjab National Bank, Buddha Colony Branch, Patna on

completion of the 45th day from the date of ordering for re-evaluation and shall proceed accordingly.

34. In the meantime, the proceedings with respect to the aforesaid house and the ornaments before the court below shall remain stayed.

35. It is however made clear that the proceedings with respect to other property, if any, shall continue.

36. Both the appeals are, accordingly, disposed of with the aforesaid direction.

(Ashutosh Kumar, J)

Praveen-II/-

AFR/NAFR	NAFR
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