

NAFR

**HIGH COURT OF CHHATTISGARH, BILASPUR**

**WP No. 188 of 1997**

1. Smt.Jyoti Dixit W/o Shri B. K. Dixit, Aged About 32 Years R/o C/o Chandra Kumar Shukla, Opp. Central Bank Of India, Civil Lines Branch, Raipur M. P.
2. Dr. Smt. Manju Shukla W/o Dr. Ravi Shukla, Aged About 30 Years R/o C/o Chandra Kumar Shukla, Opp. Central Bank Of India, Civil Lines Branch, Civil Lines, Raipur M. P.

**---- Petitioner**

**Versus**

1. Raipur Development Authority A Body Corporate Having Common Seal And Perpetual Succession Constituted Under The M. P. Nagar Tatha Gram Nivesh Adhiniyam, Having Its Principal Office At R D A, Buildings, G. E. Road, Raipur, Chhattisgarh
2. The Chief Executive Officer, Raipur Development Authority, R D A Buildings, G. E. Road, Raipur, Chhattisgarh
3. Shri Ramadhar S/o Itwari Kumhar, Aged About 55 Years R/o Village Mowa, Post Mova, Tah. and Distt. Raipur Chhattisgarh

**---- Respondents**

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For Petitioners  
For Respondent-RDA

Shri P. N. Bharat, Advocate  
Shri Kashif Shakeel, Advocate

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**Hon'ble Justice Mr. Prashant Kumar Mishra**

**Order On Board**

**14/11/2018**

1. The land belonging to Ramadhar and Itwari at Devendra Nagar, Raipur was exchanged with the Raipur Development Authority, who was executing a residential scheme at Devendra Nagar. It was agreed between Ramadhar, Itwari and RDA by way of two separate AGREEMENTS OF EXCHANGE (Annexure-P-6 & P-8) that in lieu of exchange, Ramadhar would get Plot Nos.E-28, E-29 and E-30 & E-31, total area 4000 sq. feet, whereas Itwari

would get Plot Nos.E-39, E-40, E-41 & E-42 , total area 3905 sq. feet. The parties specifically agreed as follows in paras 7, 8 & 9:-

- “7. whereas the parties hereto have agreed to exchange the said plots described in schedule I and II.
  8. The plots hereto exchanged are free from encumbrances of each and every kind.
  9. whereas the parties have hereto exchanged the plots as referred to above and each one accordingly holds it absolutely as full owner”
2. The petitioners subsequently purchased a part of the area of the said plots belonging to Ramadhar and Itwari by way of two separate sale deeds. The occasion to file the present petition arose when the RDA started demanding ancillary charges from the petitioners treating them to be a transferee from a person who had obtained plots on lease from the RDA. The petitioners have deposited the said charges under protest.
  3. It is argued that under the specific clause of agreement, the said Ramadhar and Itwari became full owner of the plots, therefore, the petitioners would also become full owner in their own capacity having no privity or relation with the RDA as part of its development scheme. The RDA therefore has no authority to demand transfer charges and other ancillary charges.
  4. Learned counsel for the RDA would refer to the decision taken by the Board of RDA to apply transfer charges upon the petitioners. According to him, once a scheme is floated, any plot under the scheme is subjected to transfer charges, whenever such transfer is made by the plot holder.

5. There is no document available in the record pointing to any relation between Ramadhar and Itwari on the one side with RDA on the other side as lessor and lessee. Ramadhar and Itwari were offered land in exchange, because RDA was using their land for execution of the development scheme. Those two persons never applied for obtaining any plot from the RDA rather it was RDA who approached them for exchange of land, because otherwise the RDA would have been required to acquire the land under the Land Acquisition Act, 1894 or under the Nagar Tatha Gram Nivesh Adhiniyam, 1973. It is exactly for this reason the date of agreement provided that both the parties i.e. Ramadhar and Itwari as well as RDA would become full owner of the plot or the land, as the case may be. Once it is found that Ramadhar and Itwari were not lessees of the RDA, the petitioners cannot be treated as lessee of the RDA nor Ramadhar and Itwari have transferred any such lease rights agreement on allotment of plot by the RDA. Therefore, the petitioners, who are purchasers of part of the area belonging to Ramadhar and Itwari, are not liable to pay transfer charges or any other ancillary charges. If the petitioners have paid any such charges to the RDA, they are entitled to refund of the said amount.
6. In view of the aforementioned reasons, the writ petition is allowed to the extent indicated above. No order as to costs.

Sd/-  
Prashant Kumar Mishra  
Judge

Nirala