

(2024) 02 PAT CK 0012

In the Patna High Court

Case No : Civil Writ Jurisdiction Case No. 21386, 21416, 21787, 22082, 23514, 25042 Of 2019

Amod Bihari Sinha

APPELLANT

Vs

State Of Bihar

RESPONDENT

Date of Decision : 09-02-2024

Acts Referred:

Bihar Registration Rules, 2008 — Rule 19, 19(xvii), 19(xviii), 22A
Registration Act, 1908 — Section 16A(1), 21, 22, 26A, 32A, 35, 52, 52(1)(c), 55, 55(3), 58, 62, 69, 69(1)(a), 69(1)(aa)

Citation : (2024) 02 PAT CK 0012

Hon'ble Judges : K. Vinod Chandran, CJ;Rajiv Roy, J

Bench : Division Bench

Advocate : Ranjeet Kumar, Ayush Kumar, Kanishk Kaustubh, Shikhar Mani, P.K.Shahi, Vikash Kumar, Dharendra Kumar

Final Decision : Dismissed

Judgement

1. The petitioners in the above writ petitions challenge the addition of sub-rule (xvii) and (xviii) to Rule 19 of the Bihar Registration Rules, 2008. It is argued that the same is ultra vires the Registration Act, 1908, and beyond the scope of clauses (a) and (aa) of sub-section (1) of Section 69.

2. We have heard Shri Ranjeet Kumar, Shri Pratik Kumar Sinha and Shri Abhinav Shandilya, learned counsel appearing for the petitioners and the learned Advocate General, Shri P.K.Shahi, for the State.

3. Shri Ranjeet Kumar took us to the amendment produced as Annexure-1 in the writ petition and pointed out that the same has been brought about under Section 69(1)(a) & (aa) of the Registration Act. The objectionable amendments require a 'Jamabandi/Holding' allotment under the Bihar Land Mutation Act, 2011 (hereinafter referred to as the 'Mutation Act') and the Bihar Municipal Act, 2007 (hereinafter referred to as the 'Municipal Act'); applicable respectively to rural areas and municipal areas, before seeking registration under the Act. It is

pointed out that neither clause (a) nor clause (aa) enables such an amendment, bringing in the requirement, which is also not in tune with the Registration Act.

4. The subject amendment does not deal with the safe custody of books, papers and documents, nor does it safeguard the data in electronic form under Section 16A (1) as is the purpose of sub-clauses (a) & (aa) of Section 69(1). Further, it is pointed out that the very prescription, in the teeth of the admitted fact that the survey of lands in Bihar is not completed, brings in unnecessary road blocks in the transactions of property. This totally dis-entitles the land owners, who could not create a 'Jamabandi/Holding', to deal with their properties freely and at their choice. It is argued that the amendment is inconsistent with Sections 21, 22, 35, 52, and 58 of the Registration Act. The State, in bringing out the Rules has totally ignored the hardships of the land owners and the ground realities. It is trite, that a mutation does not establish title, and in such circumstances, bringing in a Rule prohibiting registration is clearly in violation of the established tenets of law. The learned counsel would rely on the decisions of a learned Single Judge and Division Bench of this Court in Bihar Deed Writers Association v. State of Bihar; AIR 1989 Pat 144 and Dr. Madhu Sinha v. The State of Bihar & Ors.; 2015 (1) PLJR 957.

5. Shri Pratik Kumar Sinha adopts the above arguments and further adds that the power conferred on the registering authority to ensure mutation is an encroachment into the powers of the Civil Court, which alone can decide on the title. A decision of the Hon'ble Supreme Court in Satya Pal Anand v. State of M.P. & Ors; (2016) 10 SCC 767 is pointed out, wherein Rule 22A restricting registration on public interest was struck down. Reliance is also placed on State of Rajasthan v. Basant Nahata; (2005) 12 SCC 77.

6. The learned Advocate General, on the other hand, refers to the definition clause in the 'Mutation Act' and the 'Municipal Act' to impress upon us the meaning of the terms 'Jamabandi' and 'Holding'. The 'Jamabandi' and 'Holding', respectively in rural and municipal areas, refer to rights created in the ledger maintained by the revenue department; entrusted with the collection of land tax and rents. It is this record of rights which has been insisted upon for a registration, mainly to curb the menace of fraudulent transfers, which is a perpetual and recurrent source of multiplying crimes committed in the State.

7. The attempt of the State Government was only to ensure a semblance of rights on the vendor who executes a deed of conveyance which is in the public interest and also within the contours of the Registration Act. Section 21 of the Registration Act mandate that the description of property and maps of lands have to be mandatorily contained in a non-testamentary document relating to immovable property, for the purpose of registration. The 'Jamabandi/Holding' insisted upon by the State only furthers the cause and comes within the definition of a description. As far as the contention regarding the power conferred under Section 69(1) (a) & (aa), it is urged that the mere recital of a wrong provision would not lead to the Court setting aside the enactment itself. If there

is power found, then the legislative exercise has to be upheld.

8. Jamabandi is defined in the 'Mutation Act', as a number showing the page allotted to all tenants in Tenants Ledger Register where entries of details of their tenancies, as well as demand and collection of rent and cess are made. Jamabandi Register is also defined under Section 26(A), which is a Register of Raiyats, who own/possess land in the concerned revenue village. Various details of land and land rent are entered, with details of any cultivation, based on which rent is paid to the government. This Register is stated to be an "important register depicting exchange of land rent between Jamabandi Register Raiyat and owner (State Government) of the land" (sic). 'Holding' is defined under the Mutation Act as a part or parcel of land held by a raiyat and forming subject of a separate tenancy. The word 'Holding' has also been defined in the Municipal Act, under Section 2(44), meaning a land held under one title or agreement and surrounded by one set of boundaries. These definitions in the 'Mutation Act' and the 'Municipal Act' refer respectively to the rights of a holder of land in the rural and the municipal areas. The definition clauses indicate that it comes under the description of land, as found in the registers maintained by the Revenue Department, under the 'Mutation Act' and the 'Municipal Act'; the latter, with respect to buildings, the commonality of which and separate enjoyment if at all, are clearly specified in the description.

9. We have to immediately observe and affirm the trite principle, as argued by the learned counsel for the petitioners and not disputed by the State, that the 'Holding' or 'Jamabandi' recorded in a register maintained by the State or its authorities, does not necessarily confer title on the person whose name is entered in the register; on which if a dispute arises will have to be adjudicated by a court of law. However, it is also a trite principle that the entry in the register maintained by the State would be compelling evidence in favour of title, which could be displaced by more persuasive evidence, unsettling even a claim based on that entry.

10. Having said that, we have to notice that the arguments raised by the petitioners are conflicting and mutually destructive. It is argued that title cannot be decided on the mere entries made in the revenue register; which, as we noticed, is the established principle. But it was also argued that if the entry in the register is insisted upon, then it will be requiring the Sub-Registrar to adjudicate on the title of the land. The arguments, so addressed, are mutually destructive and going by the established principle, based on which the first argument is addressed, even if a registration is carried out of a document where the 'Jamabandi' or 'Holding' is specified, there is no bar from the Civil Court considering a dispute on title, in a properly instituted suit.

11. There is also an argument addressed that the provision now sought to be introduced runs contrary to the provisions of the Registration Act and in that context, the rules are ultra vires. We deal with the specific provisions put forth by both sides, in seriatim.

12. Section 21 of the Registration Act speaks of description of property and maps or plans. Sub-section (1) specifically provides that a non-testamentary document relating to immovable property shall be accepted for registration only if it contains a description of such property, sufficient to identify the same. Section 22 is complementary to Section 21 and explains what, a description of a house and land can be, with reference to Government maps or surveys. Sub-section (1) empowers the State Government to prescribe by way of rules that a land or house should be described with reference to a Government map or survey, if it is practicable so to do. This puts to rest any objection with respect to the hardship of the owners of land, since if there is absence of a 'Jamabandi' or 'Holding' by reason of no survey being conducted by the State, then it is for such individual owners to approach appropriate forum for relief, pointing out the absence of the entry, by reason of the survey not having been carried out. None can be heard to raise a claim of hardship only for reason of there being a necessity to approach a court of law.

13. Now, we come to Section 35, which delineates the procedure on admission and denial of execution respectively; which is more or less adopted in Rule 19 of the Bihar Registration Rules, 2008, wherein the subject requirement of mention of the 'Jamabandi' or 'Holding' has been brought in by the impugned amendment. Section 35 deals with the identification of the person/persons executing the document, his presence, absence and authorization; wherever permissible. Section 52 speaks of the duties of a Registering Officer when a document is presented for registration and insist upon the day, hour and place of presentation with photographs as also fingerprints affixed under Section 32-A and the signature of every person presenting a document to be endorsed on every such document. The Registering Officer is obliged to give a receipt for such document to the person presenting the same and subject to the provisions contained in Section 62, every document admitted to registration shall be copied in the book appropriate therefor, according to the order of admission, without any unnecessary delay. The books maintained by the Registering Officer shall also be authenticated at such intervals and in such manner as prescribed by the Inspector General.

14. Section 52 is not to be read as an obligation of the Registering Officer, on presentation of a document, to enter the same on the mere requirement under Section 52 being satisfied. No provision in the statute can be read in isolation and the provisions read together, would take in the other requirements also, which mandates a clear description of the property; within which ambit would lie the present amendments too.

15. We also have to emphasize that Section 52(1)(c) requires such entry to be made of a document presented, only if that document is 'admitted' to registration; obliging the Registering Officer to look at the other provisions of the statute so as to find the document to be capable of being admitted to registration. Section 55, in relation to the indexes made by the Registering

Officer and their contents, also does not militate against the requirement of 'Jamabandi/Holding' being mandatory in a document presented for registration.

16. Now, we have to deal with Section 69, which empowers the Inspector-General to supervise registration offices and make rules. The registration rules have been made under Section 69. The present amendment specifically refers to Clause (a) and Clause (aa) of Section 69(1). We are clear in our minds that the said sub-clauses would not empower the Inspector General to make the subject amendments, but we have to pertinently observe that the mere mentioning of a wrong provision would not vitiate the subordinate legislation; if power can be found under the provision enabling such prescription.

17. Section 69 enables Inspector General to make a prescription by rules, consistent with the Act and Clause (j) permits general regulation of proceedings under Registrars and Sub-Registrars. Clause (h) also requires the particulars to be contained in Indexes Nos. I, II, III and IV respectively, which deal with "description of property". The indexes are provided for in Section 55 and Index No II, as per Section 55 (3), should contain such particulars mentioned in Section 21, relating to every such document and memorandum as the Inspector General, from time to time, directs. This is the prescription now incorporated in the rules of a description of the property. A reading of Section 69, as a whole, along with Sections 21, 22 & 55, does not persuade us to find an absence of power to make the subject amendment. The impugned prescription is one, which is enjoined under Section 69.

18. Bihar Deed Writers Association (supra) was a case in which a Division Bench of this Court held that "a document otherwise complying with the various statutory requirements and formalities if presented for registration, the registering authority is bound to register. It is not for the registering authority to enquire and ascertain the title to its own satisfaction" (sic-paragraph-3). We bow to the said proposition, but do not find it to be sufficient to set aside the statutory requirement prescribed as per the rules. Therein, the refusal was on the directions given by the Registrar to the Sub-Registrar concerned to check and verify facts so that the provisions of the Ceiling Act are not violated. First of all, it was an administrative instruction and not a statutory requirement. The Division Bench also held that the registration of the document would not absolve the vendee, the purchaser or the person to whom the conveyance is made, from being saved from the Ceiling Act; proceedings under which enactment would be possible in accordance with law, despite the registration of the document.

19. Dr. Madhu Sinha (supra), by another Division Bench of this Court, again looked at the Registration Act and the Rules and the stipulation for presentation of a document by the parties. The decision proceeded on the basis of the established principle that the registration provides unimpeachable evidence of execution of the document and does not involve adjudication of any question of title. The principles squarely apply insofar as 'Jamabandi/Holding', which only identifies the person who is paying rent to the Government for the land; which

right would be totally effaced when the title of the land is questioned and adjudicated upon, adverse to the person whose name is found in the register. Therein, the Government leased out the property in the year 1936 and in 1999 the legal representative of the original lessee sold the property to another. Whether the transferee, under the sale deed, derives any valid title, would arise for consideration only when the Government asserts its right in the capacity of the lessor; which eventuality had not taken place, was the finding. The Division Bench also reiterated the principle that the Sub-Registrar can refuse registration on the grounds that are mentioned under the Act and the Rules. There was a reiteration of the principle that, unless the authorities are empowered to insist on something, which is also statutorily enjoined, there cannot be a refusal. But that applies only till the amendment came and afterwards it becomes a statutory prescription. 'Jamabandi/Holding' could not have been insisted upon by the Registering Officer, but for the prescription being made in the statutory rules framed under Section 69. The Registering Officer's hands are tied and they cannot digress from the specific stipulation prescribed by rules.

20. Basant Nahata (supra) interfered with Section 22A of the Registration Act, as brought in by the Rajasthan Government. Similar provision has been brought in by the State of Bihar in the Registration Act. The cited decision affirmed the judgment of the High Court of Rajasthan, which held Section 22A of the Act to be unconstitutional. While upholding the judgment of the High Court, the Hon'ble Supreme Court made the declaration prospective insofar as saving the refusal by the Registering Officers based on identical provisions, across the country, not possible of being reopened. Section 22A, hence, cannot be said to be remaining in the statute and even the Government does not have a plea that the requirement is made on public policy.

21. The learned Advocate General only pointed out the rising criminal tendencies, by reason of land disputes and the requirement by amendment having aimed at curbing such multiplicity of claims being raised on an identical piece of land. The requirements brought in only describe the property by way of the entries in the Register of Raiyats, which is permissible under the Registration Act. The intention of the Legislature or the State Government or the rule making authority, however laudable, cannot be upheld unless the source of power to make such prescription is well defined. As a corollary, if the source is clear and there is power on the rule making authority then merely based on intentions, unless it shocks the conscious or is arbitrary and perverse, valid prescriptions cannot be unsettled. The source we have found clearly under Section 69 of the Registration Act and the argument advanced of an attempt to curb the menace of rising criminal activities, does not make the amendment invalid. Merely because public policy having weighed with the rule making authority, would not impair the prescription, since the power can be easily found under Section 69.

22. We have to extract Paragraph 15 from Basant Nahata (supra), which is as follows:-

"15. Indisputably, there exists a presumption as regards the constitutionality of a statute. Rule of presumption in favour of constitutionality, however, only shifts the burden of proof and rests it on the shoulders of the person who attacks it. It is for that person to show that there has been a clear transgression of constitutional principles. (See *Chiranjit Lal Chowdhuri v. Union of India* [1950 SCC 833 : 1950 SCR 869 : AIR 1951 SC 41].) But this rule is subject to the limitation that it is operative only till the time it becomes clear and beyond reasonable doubt that the legislature has crossed its limits. This rule in its application as principle of construction means that if two meanings are possible then the courts will reject the one which renders it unconstitutional and accept the other upholding the validity of the impugned legislation."

What applies to the constitutionality of the statute, can be applied to the question raised of vires of the rule. As long as there is no clear transgression of the rule making power as conferred by the statute, the rule has to be upheld. The petitioners have been unable to show us that the rule making authority has crossed its limits, in making the impugned amendment.

23. *Satya Pal Anand* (supra) considered the question whether cancellation of registration, applied for, unilaterally by the vendor, can be sustained. On difference of opinion, the matter was placed before a Three-Judge Bench. The question raised was with respect to the registration of a cancellation deed, by a Society, which had earlier allotted the property to the appellant's mother. The cancellation, termed as an extinguishment deed, was held to be a manifestation of a decision of the Society to cancel the allotment of the subject plot. The principle in *Thota Ganga Laxmi v. Govt. of A.P.*, (2010) 15 SCC 207 was found to be not applicable generally, since the cited decision revolved around a specific provision enabling cancellation only when it is done by a competent court, that too after notice to the parties concerned. While upholding the decision of the High Court refusing to interfere with the registration carried out of the cancellation deed, the appellant was permitted to pursue the statutory remedy resorted to, by him. In the said case, the facts also disclose subsequent conveyance having been effected on a tripartite settlement in which the appellant before the Hon'ble Supreme Court had also accepted compensation.

24. The facts are distinct and, in any event, the emphasis laid, again, was on the availability of a statutory prescription or the absence of it. The declaration would only persuade us to find that, if the prescription for 'Jamabandi/Holding' to be mentioned in the deed of conveyance was not prescribed in the rules; the Registering Officer couldn't have insisted upon the same. When it is available, as a prescription, it has to be scrupulously complied with and any failure would empower the Registering Officer to decline acceptance of the deed for registration.

25. We find absolutely no reason to interfere with the amendment incorporated. We reject the writ petitions.