
(2002) 04 PAT CK 0012
In the Patna High Court
Case No : C.W.J.C. No. 134 of 1998

Arun Kumar Mahatha and Others	Vs	APPELLANT
The State of Bihar and Others		RESPONDENT

Date of Decision : 04-04-2002

Acts Referred:

Constitution of India, 1950 — Article 14, 254
Registration Act, 1908 — Section 30(2)

Citation : (2002) 2 PLJR 582

Hon'ble Judges : Ravi S. Dhavan, C.J.; Shashank Kr. Singh, J

Bench : Division Bench

Advocate : Madhuresh Prasad, for the Appellant; V.N. Sinha, for the Respondent

Judgement

1. The present application has been filed for issuing a writ of mandamus declaring the Registration (Bihar Amendment) Act, 1991 purporting to delete Sub-section 2 of Section 30 of the Registration Act, 1908 unconstitutional and void and further for a direction to the State of Bihar to grant mutation in favour of the Petitioner in respect of lands which were in their possession and in respect of which sale deeds were registered in the Metropolitan city at Calcutta. Consequential order passed on 9.9.92 and notices published in local newspaper have also been prayed to be quashed.
2. Contention of learned Counsel for the Petitioners is that Respondent by refusing to give credence to the documents in respect of the Petitioner's land which had bonafidely been registered in their names in the Metropolitan city at Calcutta as provided for under the Registration Act, 1908, infringes upon the Petitioners' fundamental right guaranteed under Article 14 of the Constitution and the aforesaid amendment to the Act is repugnant to the extent that it purports to take away powers of the registration vested in the authority by the central statutes.
3. In the present case admittedly both the vendors and the vendees and the land in question are in the State of Bihar. Earlier, prior to the enactment of the

present Act, by issuing an ordinance the State Government had made Sub-section 2 of Section 30 of the Registration Act, non-applicable as far as State of Bihar was concerned after obtaining the assent from the President of India. The aforesaid ordinance was challenged before a Bench of this Court by filing C.W.J.C. No. 3835 of 1991 (Chandra Shekhar Bajpai and Anr.) A Division Bench of this Court by its order dated 24.6.1991 taking into consideration that as registration of deeds and documents come under Entry-6 of the concurrent list, held that the State of Bihar was competent in issuing ordinance or promulgating an Act making some provision of the Act (Registration Act, 1908) applicable or non-applicable so far as State of Bihar was concerned. As the property in question mentioned in paragraphs-4A and B of the writ application pertains to certain land in the town of Gaya, as such, under Article 254 of the Constitution of India the properties related to urban properties in the State of Bihar, both the Parliament and the State were equally competent to make law subject to the provision of Article 254 of the Constitution of India which enjoins on the State Legislature the power to make Amendment or make law which may even be contrary to the law, laid down by the Parliament or existing law, provided the same is assented by the President of India.

4. It is an accepted fact that the ordinance which was subject to the approval of the bill, was assented by the President of India and was subsequently passed as an Act by the State Legislature.

5. In view of discussions as made above and as the ordinance has already been considered and found intra vires by a Division Bench of this Court, this Court in its considered opinion do not find any new ground to interfere with the amendment, earlier brought as ordinance, after assent of the President of India and held to be intra-vires and now an Act.

6. The present writ application fails being devoid of merit.