

(2023) 11 JH CK 0027

In the Jharkhand High Court

Case No : Writ Petition (C) No. 2733 Of 2023

Azadul Haque And Others

APPELLANT

Vs

State Of Jharkhand And Others

RESPONDENT

Date of Decision : 08-11-2023

Acts Referred:

Constitution Of India, 1950 — Article 226

Citation : (2023) 11 JH CK 0027

Hon'ble Judges : Gautam Kumar Choudhary, J

Bench : Single Bench

Advocate : Amar Kumar Sinha, Kundan Kumar Ambastha, Prabhat Kumar Sinha, Chaitali C. Sinha, Yogesh Modi

Final Decision : Allowed

Judgement

Gautam Kumar Choudhary, J

I.A. No.10226 of 2023

1. I.A. No.10226 of 2023 has been filed on behalf of intervener-Kaustub Sarkar for being impleaded as party respondent in the instant writ petition on the ground that intervener has right, title and interest over the land in question on which vide the impugned order, restriction on registration of transfer of land has been imposed vide letter No.1700 dated 19.09.2016 and further vide order dated 15.04.2023 contained in Memo No.1253.

Learned counsel on behalf of petitioners submits that the intervener is neither a necessary party to be impleaded in the present writ petition and no document with regard to the claim of title or possession has been enclosed with the intervener application. Earlier restriction on transfer of land was imposed by the order of the Deputy Commissioner dated 19.09.2016.

Thereafter, the Deputy Commissioner constituted the Committee to enquire into the lands on which restrictions were made. Vide letter dated 05.07.2021 and

Aam Istehar was issued by the Circle Officer inviting objections from the person concerned. After full-fledged enquiry, the report was submitted on 10.12.2021 in which it was found that the petitioners were Raiyat with respect to the land purchased by them by registered sale deeds. On the basis of said report, the restriction on sale was lifted and revoked on 17.03.2023.

It is submitted that thereafter on 15.04.2023 restrictions have been again imposed on the sale of those land referred to above, without assigning any reason or giving any opportunity to the petitioners for registering their objection to the said restriction.

After having considered the submission advanced on behalf of petitioner, it is to be noted at the outset that inter se rights, title and interest of the parties with respect to the plots of land on which the restrictions have been imposed, is not a matter of adjudication. The only short question that falls for consideration is whether restrictions on registration of sale of plot was just and reasonable as per the law. The intervener had failed to make out a case as to how he is necessary party in the instant writ petition. The claim of title is not an issue to be adjudicated upon.

Under the circumstance, I do not find any merit in the intervener application which accordingly stands rejected.

I.A. No.10226 of 2023 is disposed of.

W.P.(C) No. 2733 of 2023

Instant writ petition has been filed under Article 226 of the Constitution for quashing the order dated 15.04.2023 passed by Deputy Commissioner, Giridih whereby and whereunder the Deputy Commissioner, Giridih has nullified the order dated 17.03.2023 passed by the Additional Collector, Giridih lifting ban on the registration for the land pertains to Plot No.1400, 1401, 1402, 1403, 1404 and 1405, Khata No.157 situated at Mauza Jaridih. The petitioners being aggrieved by the order of restriction on sale of these lands, have preferred the instant writ petition.

2. It is submitted by learned counsel on behalf of petitioners that these plots were in possession of Md. Nizamuddin Hasan who had gifted it to Dr. Syed Mahmood who had come in possession of the same and was making payment of rent. On application filed by Dr. Syed Mahmood in Case No.423 of 1937-38 and Case No.115 of 1937-38 were initiated before the Ward and Encumbered Estate and he was recognized as a Raiyat with respect to the aforementioned lands and order was passed on 30.10.1938 to issue rent receipts in the name of Dr. Syed Mahmood in Case Nos.115 and 423 of 1937-38.

3. After vesting, Dr. Syed Mahmood was recognized as Raiyat after vesting. Apart from the above, land were sold by registered sale deed dated 06.02.2009 and 04.02.2009 by the heirs and descendants of Dr. Syed Mahmood to Petitioner nos.1 and 2, who came in possession of the land which has now been duly

mutated in their name. The Land Possession Certificate was also issued to the petitioners by the Circle Officer and the Jamabandi with respect to the land in question was running in the name of petitioners.

4. Against this background, it is argued that the restriction on the registration of land has been imposed by the impugned order of Deputy Commissioner without any specific reason. Further, no notice was served on the petitioners before passing the said order whereas earlier after full-fledged enquiry conducted by the Committee constituted by the Deputy Commissioner, restriction on registration was lifted by the order of Additional Collector.

5. Learned counsel on behalf of State submits that the order under challenge is an internal communication which does not affect the rights of the petitioners which can make out a cause of action for filing instant writ petition.

6. After having considered the submissions advanced on behalf of both sides, admitted position that emerges is that initially restriction on transfer of the plots referred to above was made on 19.09.2016 by the order of Deputy Commissioner and Committee was constituted comprising of Additional Collector, Giridih.

7. Committee comprising of Land Reforms Deputy Collector, Giridih, District Sub Registrar, Giridih, Circle Officer, Giridih was constituted to enquire into the matter regarding the forgery being committed by the land Mafia with respect to these plots. The Committee after holding enquiry submitted its report on 10.12.2021 in which it was inter alia held that the petitioners were bona fide purchasers of the land and after which the land in question was duly mutated in their name.

8. In the light of the enquiry report of the Additional Collector, Giridih, got the approval of lifting of ban from the Deputy Commissioner in File No.XXXIV 06/ 2021 dated 15.03.2023 on the basis of which the restriction on transfer was lifted vide order dated 17.03.2023.

9. It is intriguing as to how subsequent restriction only after about a month has been imposed by the impugned order without assigning any specific reasons for the same or any fresh materials for imposing it. Restriction on transfer of property interferes with the valuable right of a citizen and cannot be passed in perfunctory manner. Such restriction can be imposed as per statute and by a reasoned and speaking order. The impugned order is non-speaking and without any rational basis and is accordingly, is set aside.

The writ petition is allowed. Interlocutory Application, if any, is disposed of.