

(2009) 12 JH CK 0032
In the Jharkhand High Court

Bhuneshwar Narayan Mehta

APPELLANT

Vs

The State of Jharkhand

RESPONDENT

Date of Decision : 14-12-2009

Acts Referred:

Citation : (2009) 12 JH CK 0032

Hon'ble Judges : Dabbiru Ganeshrao Patnaik, J

Bench : Single Bench

Judgement

D.G.R. Patnaik, J.—Heard the learned Counsel for the parties.

2. The petitioner, in this writ application, has challenged the order vide letter dated-13.01.2003 (Annexure-2), issued under the signature of the Respondent No. 2, whereby the petitioner has been asked to deposit a sum of Rs. 90,000/- for mutating his name in the Khas Mahal Register. Challenge also is to the order dated-31.01.2003 (Annexure-4), passed by the Respondent No. 2 in Lease Transfer Case No. 35 of 2000-01, whereby the Review application filed on behalf of the petitioner, has been rejected. The petitioner has further prayed to direct the Respondents to mutate his name in the Revenue records without calling upon him for payment of any such fee, as demanded vide Annexure-2.

3. Facts of the petitioner's case in brief are that the petitioner had purchased nine decimals of land in the Khasmahal Estate, comprising within Plot No. 28, Holding No. 15 of Village Sirka, from the heirs of late Babu Prafulla Chandra Mitra, by virtue of a Registered sale deed dated-11.12.1990. Before purchasing the property, the petitioner had obtained due sanction and permission from the competent authority and pursuant to a direction given in the sanction order, the petitioner had deposited the amount whereafter execution and registration of the sale deed was allowed on 11th December, 1990.

4. After having acquired the property and coming into possession of the same, the petitioner submitted his application for mutating his name in the year 1991-92 before the Circle Officer. Subsequently, when no action was taken on his

application, the petitioner filed a fresh application for mutation before the Circle officer, which was numbered as Mutation Case No. 7 of 1995-96. Even when thereafter no order was passed, he filed yet another application on 17.11.2000 on the basis of which a fresh mutation case No. 35 of 2000-01 was initiated. Ultimately, vide the impugned order dated-13.01.2003, the petitioner has been directed to deposit a sum of Rs. 90,000/- towards Salami for allowing mutation of his name in respect of the lands in question in the revenue records.

5. The petitioner has assailed the impugned order on the ground that it is totally illegal, arbitrary and against the provisions of law as well as against the spirit of the judgment passed by the Division Bench of this Court in the case of the State of Jharkhand through the Deputy Commissioner -versus-Mina Devi vide L.P.A. No. 40 of 2007.

6. Learned Counsel for the petitioner submits that the Respondents have sought to prospectively apply a Circular, which was published sometime in the year 1994 to the petitioner's case, although the land stood already transferred in favour of the petitioner even on the date of execution of registration of the sale deed i.e. on 11.12.1990, after obtaining due permission from the competent authority for such transfer. The petitioner had applied promptly for mutation of his name but no action was taken by the concerned authorities and it was after more than 13 years that the impugned order has been passed, illegally and arbitrarily calling upon the petitioner to deposit a further amount of Rs. 90,000/- by way of Salami.

7. Per contra, the stand taken by the Respondents in their counter affidavit is that the petitioner had obtained the requisite sanction and permission for purchasing the land under reference in this case from the competent authorities and thereafter, the sale deed was registered in the month of December, 1990 but even as stipulated in the sanction order itself, the petitioner was required to promptly apply for and get his name mutated in the Revenue records. The petitioner, instead of promptly applying for mutation, had allowed precious time to pass and it was more than five years later, some time in the year 1995 that he had filed his application for mutation of his name in the revenue records.

8. Learned Counsel for the Respondents has sought to distinguish the facts of this case from the facts of the case in the Division Bench judgment of this Court in the case of State of Jharkhand and Ors.-versus-Mina Devi, by stating that in the aforesaid case, the amount of Salami/premium, which was required of the transferee, was duly deposited by her, whereas in the present case, the petitioner did not deposit any such amount at the relevant time.

9. Learned Counsel for the petitioner objects to such submissions on the ground that such submissions appears to be misconceived. Learned Counsel explains with reference to the sanction order dated-10.09.1990, issued by the Deputy Commissioner, Hazaribagh, that the sanction, permitting the petitioner to obtain the sale deed in his favour in respect of the lands under reference, was allowed by imposing a premium of Rs. 50,000/- and it was only after the petitioner had

deposited the aforesaid sum that the sanction order was applied for whereafter the sale deed was registered.

10. In the case of Mina Devi (Supra), it appears that an identical issue came up for consideration before a Division Bench of this Court and in which although, the registration of the sale deed was effected in the year 1990 itself but the transferee filed his application for mutation of his name in the Khasmahal office, Hazaribagh, much later. By the order passed in the Mutation Proceedings in April, 2003, the Khasmahal Officer had directed the transferee to deposit a sum of Rs. 80,000/- more towards Salami. Such a direction was given on the basis of the departmental instructions/Circular dated-16.09.1994. This Court had held after considering the facts and circumstances, that the Circular of 1994 cannot be retrospectively applied to the transferee, in respect of the transfer of the land made in the year 1990 and the Respondents have no authority to realise any amount by increasing the amount of Salami in respect of the transfer made and completed in favour of the transferee way back in the year 1990, as a condition of granting mutation in her review application. The ratio decided in the case of Mina Devi (Supra), applies squarely to the facts of the present case.

11. In the light of the facts and circumstances, I find merit in this writ application. This writ application, is accordingly allowed. The impugned order dated-13.01.2003 (Annexure-2) as passed by the Khas Mahal officer (Respondent No. 2) and the order dated-31.01.2003 (Annexure-4), passed in the Review application of the petitioner, are hereby quashed. The Respondents are directed to mutate the name of the petitioner in respect of the lands under reference in this case, in the relevant revenue records pertaining to Khas Mahal lands. This exercise must be carried out and completed within two months from the date of receipt/production of a copy of this order.

12. Let a copy of this order be given to the learned Counsel for the Respondents.