(2021) 02 JH CK 0126

In the Jharkhand High Court

Case No : Writ Petition (C) No. 515 Of 2021

Dhanya Bhooti Enterprises APPELLANT

Vs

State Of Jharkhand & Ors RESPONDENT

Date of Decision : 12-02-2021

Acts Referred:

Specific Relief Act, 1963 — Section 31
Code Of Civil Procedure, 1908 — Section 9
Registration Act, 1908 — Section 82, 83

Citation : (2021) 02 JH CK 0126

Hon'ble Judges : Rajesh Shankar, J

Bench : Single Bench

Advocate : Anil Kumar Sinha, Mohan Dubey

Judgement

1. This case is taken up through video conferencing.

2. Mr. Anil Kumar Sinha, learned senior counsel for the petitioner, on instruction, submits that all the defects pointed out by the office have

subsequently been removed.

3. Office to verify the same.

4. The present writ petition has been filed for quashing the proceeding of Revenue Misc. Case no.15 of 2020-21 initiated by the District Registrar-

cum-Deputy Commissioner, Deoghar- respondent no.2 on the basis of a complaint made by the private respondents (respondent nos.4 to 15), seeking

cancellation of registration of the sale deed executed between the owner of the land and the petitioner to which the complainants (respondent no.4 to

15) were not the parties, as initiation of the said proceeding by the respondent no.2 is without jurisdiction. The petitioner has also prayed for quashing

the circular as contained in memo no.930 dated 21st September, 2016

(Annexure-7 to the writ petition) issued under the signature of the Secretary,

Department of Revenue, Registration and Land Reforms, Government of Jharkhand, Ranchi- respondent no.1, which confers power to the District

Registrar to cancel a registered document, which is beyond the scope of Registration Act, 1908 and the same is also contrary to the provision of

Section 31 of Specific Relief Act, 1963 read with Section 9 of the Code of Civil Procedure, 1908, which confers power on Civil Courts to declare any

registered document as null and void on the ground of fraud or otherwise.

5. Mr. Anil Kumar Sinha, learned senior counsel for the petitioner, submits that the petitioner is a proprietorship firm, operating through its proprietor-

Anamika Gautam. The petitioner purchased the aforesaid land/property appertaining to Khata nos.5 & 6, plot nos.7, 8, 9, 10, 13, 14, 15, 18, 21, 24, 27,

28, 29, 30, 31, 33, 36, 37, 43, 45, 52, 60, 74, 11, 16, 19, 23, 25, 26, 44, 63, 61 & 88, measuring total area of 30.95 acres, situated at Mouja Hadokura

no.42 by virtue of registered sale deed no.1381 dated 14th December, 2020, registered as Document no.2020/DEO/1542/BK1/1381, in Book no.BK1,

Volume no.418, from Page no.489 to 588 at the office of Sub Registrar, Deoghar. Learned senior counsel for the petitioner, while taking the Court to

different paragraphs of the writ petition, submits that the vender had lawful right to execute the aforesaid sale deed in favour of the petitioner. The

petitioner, subsequently, came to know about initiation of the impugned proceeding i.e. Revenue Misc. Case no.15 of 2020-21 by the respondent no.2

and then it applied for obtaining certified copy of the order-sheet of the said proceeding which was made available on 29th January, 2021.

6. Learned senior counsel for the petitioner further submits that the respondent no.2 is not the competent authority to decide as to whether registration

of an instrument/document has been done fraudulently or otherwise. The District Registrar is also not conferred with any power to cancel the sale

deed registered by the Sub Registrar. Hence, initiation of the proceeding being Revenue Misc. Case no.15 of 2020- 21 by the respondent no.2 is

completely illegal. Moreover, Sections 82 and 83 of the Registration Act, 1908 also do not confer power to the District Registrar to cancel a registered

document, rather the same only speak about penalty and prosecution, respectively. Thus, the impugned circular dated 21st September, 2016 issued by

the respondent no.1 is also without jurisdiction, as by issuing the same, the respondent no.1 has gone beyond the legislative intent of the Registration Act, 1908.

7. Learned senior counsel for the petitioner lastly submits that Revenue Misc. Case no.15 of 2020-21 has been fixed by the respondent no.2 today at 3:00 p.m. and as such the petitioner has reasonable apprehension that final order may hurriedly be passed by the respondent no.2 even without providing due opportunity of hearing to the petitioner in the said case, which otherwise is illegal and without jurisdiction. He further submits that in a similar case being W.P.(C) No.07 of 2021 (Mrs. Arati Roy Choudhary Vs. The State of Jharkhand & Ors.), this Court while granting time to the State respondents to file counter affidavit has stayed the proceeding initiated by the respondent no.2 vide order dated 8th February, 2021.

8. Mr. Mohan Dubey, learned A.C. to A.G., appearing on behalf of the State respondents submits that on receipt of the complaint of the private respondents, the respondent no.2 was of the prima facie view that the concerned sale deed was executed by one Umesh Kumar in favour of the petitioner in a fraudulent manner and, therefore, Revenue Misc. Case no.15 of 2020-21 was initiated by the respondent no.2 in terms with the circular dated 21st September, 2016 issued by the respondent no.1. Hence, it cannot be said that the said proceeding initiated by the respondent no.2 is illegal and without jurisdiction. However, learned A.C. to A.G. prays for and is allowed four weeks' time to seek instructions and file counter affidavit on behalf of the State respondents.

9. Having heard learned counsel for the parties and on perusal of the contents of the writ petition, this Court is of the view that the petitioner has been able to make out a prima facie case in its favour. The balance of convenience also lies in its favour.

10. Hence, it is ordered that the proceeding of Revenue Misc. Case no.15 of 2020-21 pending before the respondent no.2 shall be kept in abeyance till further order of this Court.

11. Put up this case along with W.P.(C) No.7 of 2021 and W.P.(C) no.3876 of 2020.