
(2008) 01 JH CK 0037
In the Jharkhand High Court

Doman Prasad Yadav

APPELLANT

Vs

State of Jharkhand and Others

RESPONDENT

Date of Decision : 28-01-2008

Acts Referred:

Registration Act, 1908 — Section 34

Citation : (2008) 3 JCR 322

Hon'ble Judges : Narendra Nath Tiwari, J

Bench : Single Bench

Judgement

N.N. Tiwari, J.—In this writ petition the petitioner has prayed for a direction on the respondent No. 3 to accept the execution of the deed of transfer and to register the transferred deed executed by the petitioner through his duly constituted attorney/power of attorney holder. The petitioner has further prayed for quashing the order of the Circle Officer dated 10.2.2007 (Annexure-5 Series) whereby the Circle Officer has rejected the petitioner's application and refused to grant no objection for execution of the sale deed.

2. The petitioner's case is that the land appertaining to plot No. 662, Zamnabandi No. 1239 of Mouza-Jhausagarhi within Deoghar Municipal Ward No. 16 recorded as Basauri (homestead) land was held and possessed by one Smt. Fibi Mehta, wife of Birchi Lal Mehta. The holder of the land Fibi Mehta transferred an area of 2 Kathas and 4 Dhurs of plot No. 662 to Bapi Chakraborty, son of Ramen Chakraborty and Subaul Noren, son of Late Babu Noren by virtue of a registered sale deed dated 7.4.1983. The purchasers Bapi Chakravorty and Subaul Noren by virtue of the sale deed dated 4.12.2000 transferred the said property to the petitioner Doman Prasad Yadav and his two brothers Yugal Prasad Yadav and Suresh Prasad Yadav. The petitioner in connection with his occupation had been residing out of Deoghar and therefore in order to negotiate the sale and to effect transfer, a general power of attorney was executed by the petitioner in favour of Abinash Kumar Sharma, son of Arun Sharma, resident of Vijay Path, Kester's Town, Deoghar. The said power of attorney was also

registered before the Registrar on 7.2.2007.

3. Basuari (homestead) land is dwelling unit and the same does not belong to any cultivator and does not come within the ambit of Section 20 of the Santhal Parganas Tenancy (Supplementary Provisions) Act, 1949. The said Section 20 creates bar for registration or transfer of a Raiyati land by sale and gift unless such transfer is permitted in the record of right.

4. The petitioner who was in need of money for medical treatment and other exigency, offered to transfer an area of 96 Sq. Feet of the portion of plot No. 662 allotted to the petitioner in family partition under Zamabandi No. 1327. One Narendra Kumar Ambastha accepted the offer of purchases through the petitioner's power of attorney holder Abinash Kumar Sharma. The sale deed was drafted on 9.2.2007 and was submitted for registration before the registering authority. The registering authority asked the power of attorney holder to bring no objection certificate from the Circle Officer pursuant to the direction contained in memo No. 10, dated 14.1.2004 issued by the Deputy Commissioner, Deoghar. The power of attorney holder of the petitioner then approached the Circle Officer, Deoghar and filed an application requesting him to issue the required no objection certificate. The Circle officer called for the report from Halka Karamchari. The Halka Karamchari submitted report that every thing was found in conformity with the law. In spite of the favourable report of the Halka Karamchari the Circle Officer refused to grant no objection to the petitioner by the impugned order dated 10.2.2007 on the ground that the direction was issued by the Deputy Commissioner. Deoghar by Office Order No. 32/06 dated 27.12.2006 to stop granting no objection certificate or giving the verification report to the power of attorney holder.

5. It has been submitted that the office of the Sub-Registrar maintains a list of the Basauri (homestead) lands of different circles of the district and he could have verified the genuineness from the said list itself. It has been further submitted that there is no legal basis for issuing such instruction and denying no objection certificate or verification report to the power of attorney holder. The Sub-Registrar in exercise of power conferred u/s 34 of the Registration Act has got the power to make a separate enquiry by himself and he has no jurisdiction to refuse or delay the documents on the ground of non-submission of any enquiry report which is beyond the provisions. The respondent No. 3 has no jurisdiction to return the sale deed duly executed without registering the same on the said alleged direction of the Deputy Commissioner (Annexure-4). The order of the Circle Officer refusing to issue the verification report to the power of attorney holder is also arbitrary and without jurisdiction.

6. A counter affidavit has been filed on behalf of the State- respondents contesting the writ petition. It has been stated that the writ petition is not at all maintainable and the same is liable to be dismissed. The impugned instruction of the Deputy Commissioner is purely administrative in nature and the same is intended to protect the illegal registration of the lands by the Mafias and also to

avoid other legal complications. Such instruction has been issued to safeguard the interest of the lawful owners of the land and to prevent intervention of land Mafia on the basis of take power of attorney obtained by putting pressure or undue influence. It has been stated that the similar prayer was made in WP(C) No. 1325/04. by one Shyam Sunder Barnwal which has been rejected by this Court. It has been further stated that the provision of Section 20 of the said Act creates bar for transferring the land by a Raiyat unless that right is recorded in the record of right. The said instruction of the Deputy Commissioner has been issued in view of the provisions of Section 20 of Santhal Parganas Tenancy Act, read with Rule 6 of the Bihar Stamp (Prevention of under Valuation of Instruments) Rules, 1995 and there is no arbitrariness or illegality in the said instruction and the petitioner is not entitled to any relief prayed for.

7. I have heard learned Counsel for the parties and perused the facts and materials on record. In the instant case it is almost admitted that the said land is not a Raitati land. Section 20 of the Santhal Parganas Tenancy Act, 1949 does not put any restriction on the transfer of Basauri (homestead) land. The case of Shyam Sunder Barnwal, (supra), was different and regarding the transfer of a Raiyati land for which there is a statutory bar u/s 20 of the Santhal Parganas Tenancy Act. The said decision of this Court is not applicable to the facts of this case, as the land in question is a Basauri land. The instruction of the Deputy Commissioner was issued in view of the provisions contained in Section 20 of the Santhal Parganas Tenancy Act, read with Bihar Stamp (Prevention of Under Valuation of Instruction) Rules, 1995. The said instruction as contained in Annexure-4 has got no application in the matter of transfer of a Basauri land. The very opening line of Annexure-6 which is the Order No. 1/07 of the Deputy Commissioner clarifies that the said instruction has been issued for the purpose of protecting the transfer of land which is otherwise restricted by the provisions of Section 20 of the Santhal Parganas Tenancy Act. The said instructions cannot be applied in the instant case in which a Basauri land has been sought to be transferred. The registering authority had erroneously asked for such verification in view of the said instruction of the Deputy Commissioner being the Office Order No. 10 dated 14.1.2004 and Order No. 1/07 dated 4.1.2007. It has been fairly conceded by learned J.C. to S.C. (L&C) that the Basauri land does not come within the ambit of Section 20 of the Santhal Parganas Tenancy Act and the said instructions of the Deputy Commissioner cannot be made applicable in the cases of transfer, execution and registration of the sale deed.

8. In view of the above discussion, it is held mat in the instant case of transfer of Basauri land, the registering authority has no ground for asking for no objection certificate from the Circle Officer. Refusal of the Circle Officer to grant such certificate by the impugned order contained in An-nexure-5 series is mechanical and the same appear to be issued without any application of mind. The petitioner's land, sought to be transferred, being not a Raiyati land, there was no application of the said instructions as contained in Annexures-4 and 6 of the Deputy Commissioner. The order of the Circle Officer (Annexure-5 series) thus

being unfounded is, hereby, quashed. The registering authority is directed to accept the sale deed for registration, if there is no other legal impediment, without compelling the petitioner to produce no objection certificate on the basis of the said instruction or the administrative order of the Deputy Commissioner as contained in Annexures-4 and 6. With the said observations/directions this writ petition is disposed of.