
(2016) 05 MEG CK 0005
In the Meghalaya High Court
Case No : WP (C) No. 249 of 2015

Dr. Valensha Surong

APPELLANT

Vs

State of Meghalaya

RESPONDENT

Date of Decision : 11-05-2016

Acts Referred:

Citation : (2016) 164 AIC 343 : (2016) 4 GauLT 236 : (2017) 1 NEJ 404

Hon'ble Judges : Mr. S.R. Sen, J.

Bench : Single Bench

Advocate : Mr. H.S. Thangkhiew, Senior Advocate and Mr. N. Mozika, Advocate, for the Appellant; Mr. B. Khyriem, G.A. and Mr. S. Jindal, Advocate, for the Respondent

Final Decision : Allowed

Judgement

Mr. S.R. Sen, J.—The brief fact of the case in a nutshell is that:

"The petitioner No. 1 is a member of Khasi Scheduled Tribe community of Meghalaya and the daughter-in-law of the petitioner No. 2. The petitioner No. 2 is the attorney of one Smti. Leela Choudhary, the lease-holder in respect of a plot of land measuring in area about 506.04 Sq. Mtrs. being Plot No. 4, Umpling Revenue Block, Umpling, Shillong having been so appointed vide registered Power of Attorney dated 17.06.1988.

Since the petitioner No. 1 is a member of Khasi Scheduled Tribe community of Meghalaya and the ban on transfer of land under the Meghalaya Transfer of Land (Regulation) Act, 1971 does not apply to the petitioner No. 1, the petitioner No. 1 (as the intending buyer) and the petitioner No. 2 (attorney of the land owner) submitted a joint application dated 05.05.2006 before the Deputy Commissioner, East Khasi Hills, Shillong, for grant of permission for transfer of leasehold right in the said property in favour of the Petitioner No. 1.

The said application was submitted on 05.05.2006, however, there was no positive action forthcoming from the respondents. In the meantime, the

landowner (Smti. Leela Choudhary) filed an objection dated 30.05.2013 before the Deputy Commissioner, East Khasi Hills District, Shillong objecting to grant of permission for transfer of leasehold right of the said property in favour of petitioner No. 1 and also issued another letter dated 28.08.2013 to the petitioner No. 2 purportedly revoking the General Power of Attorney dated 17.06.1988 with retrospective effect. Aggrieved by the same, the petitioner No. 2 then instituted a suit registered as Title Suit No. 414 of 2013 in the Court of Civil Judge No. 1, Kamrup (Metro), Guwahati. The said Title Suit was decreed in favour of the petitioner No. 2 vide judgment and order dated 25.06.2015 passed by the learned Court of the Civil Judge No. 1, Kamrup (Metro), Guwahati wherein it has been held that the General Power of Attorney dated 17.06.1988 and the Money Receipt dated 28.06.1985 are valid and binding on the parties and the revocation of Power of Attorney by Smti. Leela Choudhary is null and void. Further, the executant of the Power of Attorney dated 17.06.1988 is still alive and as such the said Power of Attorney dated 17.06.1988 is valid and operative till date. Further, the petitioner No. 1 (the proposed transferee of land) is a member of Khasi Schedule Tribe community of Meghalaya and there is absolutely no bar under any law to transfer of the said property from the petitioner No. 2 to the petitioner No. 1.

However, in spite of the facts - (a) that the judgment and order dated 25.06.2015 has been passed by the Court of the Civil Judge No. 1, Kamrup (Metro) in Title Suit No. 414 of 2013 in favour of the petitioner No. 2 by holding the General Power of Attorney dated 17.06.1985 are valid and binding on the parties and the revocation of Power of Attorney by Smti. Leela Choudhary is null and void. (b) that the petitioner No. 1 is a tribal and there is absolutely no bar under any law, including the Meghalaya Transfer of Land (Regulation) Act, 1971 to transfer of the said property in favour of the petitioner No. 1, and (c) that the Power of Attorney dated 17.06.1988 is valid till date as Smti. Leela Choudhary (the executants of the Power of Attorney dated 17.06.1988) is still alive - till date, even after lapse of more than 9 (Nine) years, the said application for permission of transfer of leasehold right in favour of the petitioner No. 1 is still pending and the respondents have failed till date to grant permission for transfer of the said Plot No. 4, Umpling Revenue Block in favour of the petitioner No. 1. Hence this writ petition".

2. Heard Mr. H.S. Thangkhiew, learned Sr. counsel assisted by Mr. N. Mozika, learned counsel appearing for and on behalf of the petitioners who submits that the petitioner No. 1 is a member of the Scheduled Tribe belonging to the Khasi community of the State of Meghalaya and the petitioner No. 2 is the mother-in-law of the petitioner No. 1. He further submits that the respondent No. 3 had executed a registered Power of Attorney in favour of the petitioner No. 2 at Guwahati Sub-Registrar Office which is at Annexure-5 Page 20 of the writ petition and as per the Power of Attorney; the petitioner No. 2 was looking after the property in question and develop the property and since she is old now, she has decided to sell the property to the petitioner No. 1.

The learned Sr. counsel also further contended the actual fact that the petitioner No. 2 purchased the land from the respondent No. 3 for a sum of Rs. 1,50,000/- (Rupees one lakh fifty thousand) only, but since the sale was banned, the transfer of property was also banned in the year 1978 till date between the non-tribals. The Power of Attorney was given by the respondent No. 3 in favour of the petitioner No. 2. The learned Sr. counsel also contended that the petitioner No. 2 had applied for permission to sell/transfer the said property to the petitioner No. 1 and the said application was made in the year 2006, but till date no permission was given by the Deputy Commissioner, East Khasi Hills District, Shillong. Hence, compelled the petitioners to approach before this court.

The learned Sr. counsel also submits that, there was a Title Suit between the petitioner No. 2 and the respondent No. 3 at Guwahati, but the said Title Suit has been decided in favour of the petitioner No. 2. Therefore, he prayed that necessary directions may be issued to the Deputy Commissioner, East Khasi Hills District, Shillong to grant the permission immediately.

3. In reply to the submission advanced by Mr. H.S. Thangkhiew, learned Sr. counsel for the petitioners, Mr. S. Jindal, learned counsel for the respondent No. 3 submits that, when the respondent No. 3 came to know about the sale of property, she made an objection to the Office of the Deputy Commissioner, East Khasi Hills District, Shillong and the matter is still pending.

The learned counsel for the respondent No. 3 also submits that, since the property is in Shillong, the Power of Attorney should have been registered in the Sub-Registrar Office at Shillong only not at Guwahati. Therefore, the Power of Attorney is not in accordance with the Registration Act, 1908. As such, this court cannot take cognizance of the matter. He further contended that till date the respondent No. 3 is the owner though, the Power of Attorney has been given and nobody can restraint the respondent No. 3 to apply her rights as the owner.

4. Mr. B. Khyriem, learned GA appearing for the State submits that, they could not processed the file for permission of sale in spite of calling the respondent No. 3, she never appeared and finally due to the pendency of the Title Suit No. 414 of 2013 in the Court of Civil Judge No. 1: Kamrup (Metro), Guwahati.

5. The cases relied on by the learned counsels are mentioned herein below:

(i) Shanti Budhiya Vesta Patel and Ors. v. Nirmala Jayprakash Tiwari and Ors., (2010) 5 SCC 104.

(ii) Syed Abdul Khader. v. Rami Reddy and Ors., (1979) 2 SCC 601.

(iii) Suraj Lamp & Industries (P) Ltd. Thru. DIR. v. State of Haryana & Anr., AIR 2009 SC 3077.

(iv) Veeran & Ors. v. State of M.P., AIR 2011 SC 1655.

(v) Suraj Lamp & Industries Pvt. Ltd. v. State of Haryana & Anr., AIR 2012 SC 206.

(vi) Suraj Lamp and Industries Private Limited (2) Through Director v. State of Haryana & Anr., (2012) 1 SCC 656.

6. After hearing the submissions advanced by the learned counsel noted above, the question raised before this court is whether the petitioner No. 2 has the right to transfer the property in favour of the petitioner No. 1? It is an admitted fact from the submissions as well as the documents placed before this court that, there is a registered General Power of Attorney,

Agreement for sale, Application for permission and other Documents which are without any dispute. After scanning the case file and keeping in mind the submissions advanced by the learned counsel, the question raised before this court is whether there is a genuine General Power of Attorney and the Agreement for sale executed by the respondent No. 3 in favour of the petitioner No. 2? To answer the question framed above, after perusal of the Agreement for sale dated 28.06.1985 between the respondent No. 3 and the petitioner No. 2 which is at Annexure-B find attached with the counter affidavit filed on behalf of the respondent No. 3 wherein, it is clearly mentioned that, due to the banned of transfer of land between the non-tribals, both the respondent No. 3 and the petitioner No. 2 had entered into an Agreement for sale of the land in question and it appears further that the value was settled at Rs. 1, 50, 000/- (Rupees one lakh fifty thousand) only with a condition that, as and when the banned will be lifted, the respondent No. 3 shall execute a proper Sale Deed in favour of the petitioner No. 2.

7. Further, on perusal of the money receipt dated 28.06.1985 issued by the respondent No. 3 in favour of the petitioner No. 2 which is at Annexure-4 of the writ petition, the same is reproduced herein as under:

"Money Receipt

Received a sum of Rs. 1,50,000/- (one lakh and fifty thousand only) as price of my house in plot No. 4 in the revenue block Umpling (Rynjah) Shillong today from Mrs. Bina Saikia wife of Dr. (Col.) D.R. Saikia of Itasali, Nawgong, Assam pending execution of proper sale deed.

Sd/-

Dated: 28 June 85

(Mrs. Leela Choudhury)

Wife of Shri A.R. Choudhury

Office of the IG (Prison) Assam

Gauhati, Assam".

8. Now, on further perusal of the registered General Power of Attorney which is at Annexure-5 of the writ petition, it is admitted and clear that the respondent No. 3 executed the General Power of Attorney in favour of the petitioner No. 2 in

support of her Agreement for sale dated 28.06.1985.

9. On perusal of Para 6-12 at Annexure-5 of the writ petition which is the General Power of Attorney dated 17.06.1988, it is amply clear that the respondent No. 3 has alienated her property in favour of the petitioner No. 2. For ready reference Para 6-12 at Annexure-5 of the writ petition is reproduced herein below:

"6. To negotiate sale and transfer of the said plot of land along with the house thereon as aforesaid and enter into agreement for sale, take proper permission for effectuating the agreed sale and execute proper Deed/Deeds for sale in favour of the intending purchaser and to get it duly registered by the Competent authorities/authority that is necessary under law on strict condition however that she shall not be entitled to demand any payment on any ground/grounds whatsoever from me on that score and she would be solely and entirely responsible for all or any of her action concerning sale and/or transfer of the aforesaid property and also for all consequences resulting therefrom".

7. To represent me before all authorities in connection with the management of the house and the plot of land as aforesaid.

8. To defend my right, title and interest in the said property if anybody challenges the same in any court of Law and persevere it to the finish at her own cost.

9. To resort to legal proceedings at her own cost for keeping the property absolutely secured from encroachment from any side or any other type of invasion from any quarter on my right or title to the said house and the plot of land.

10. To engage lawyers, if necessary for the purpose of proper management etc, of the aforesaid property as my said Attorney may consider necessary and proper to do at her own expenses.

11. To file applications and sign on my behalf, petitions complaints, written statements and memorandum of appeal etc, and swear affidavits that my said Attorney may consider fit and proper in the interest of the aforesaid property, all at her own costs.

12. To do and execute all other acts, deeds and things that may have to be done and executed for efficient management of the aforesaid house and the plot of land as I would do the same myself all at her own costs. Be it said here that a copy of the Govt. lease Deed and other connected documents concerning the said property have already been handed over to my said constituted Attorney duly".

10. From record it appears that there was litigation between the petitioner No. 2 and the respondent No. 3 as Title Suit bearing Title Suit No. 414 of 2013 a copy of the judgment dated 25.06.2015 which is at Annexure-9 of the writ petition. On perusal of the said judgment dated 25.06.2015, it is clearly mentioned at

Para 16 that:

"16. In view of the discussions made the suit of the plaintiff is decreed on contest holding that the Power of Attorney dated 17-06-88 and Money receipt dated 28-06-1985 are all binding on the parties, that the revocation of the Power of Attorney by the defendant on 28-08-2013 with retrospective effect is null and void.

Permanent injunction is also granted restraining the defendant and her representative from disturbing the peaceful possession and enjoyment of the suit land and house by the family of the plaintiff. However there is no order as to cost. Prepare the decree accordingly.

The Judgment is pronounced and delivered in the open Court this 25th day of June, 2015.

Sd/-

Sri Chatra Bhukhan Gogoi

Civil Judge-1 Kamrup (M),

Guwahati".

11. After considering the submissions advanced by the learned counsel and on perusal of the documents as discussed above and after giving my conscious thought, I am of the view that the Agreement for sale dated 28.06.1985 and the registered General Power of Attorney dated 17.06.1988 cannot be read in isolation. On combined reading of both the documents, it is amply clear that the General Power of Attorney has been executed by the respondent No. 3 in favour of the petitioner No. 2 in lieu of consideration. Thus, the respondent No. 3 has no scope to come back or to revoke the Power of Attorney as and when she desires without due process of law. Therefore, I agree with the findings of the learned Civil Court, Kamrup, Guwahati as discussed above.

12. I have also gone through the Annexure-8 of the writ petition which is the intimation of revocation of General Power of Attorney dated 17th June, 1988 dated 28th August, 2013. For easy reference the said revocation of General Power of Attorney dated 17th June, 1988 dated 28th August, 2013 is reproduced herein below:

"Dated: 28th August, 2013

To,

Mrs. Bina Saikia,

W/o Dr. (Col.) D.K. Saikia,

?Saikia Bhawan?, Itachali Road,

Nagaon,

Assam

Subject : Intimation of Revocation of General Power of Attorney Dated 17th June, 1988

Madam,

As mentioned in the subject cited above, I am writing to you this letter intimating to you that the said General Power of Attorney is hereby revoked.

This intimation letter is in continuation to my express instructions which were given to you earlier also, whereby I had refrained you from exercising as my attorney holder, but I have come to learn that you still had against my instructions gone ahead intending to dispose me of my property without my knowledge or will for your ulterior motive and gains.

With this letter I also would like to bring in to your notice that the said General Power of Attorney stands null and void having retrospective effect and therefore you are not entitled to act on my behalf by virtue of the said General Power of Attorney.

Therefore you are strictly directed to abstain from acting as my attorney holder as I have lost all my trust in you as my attorney holder for all times to come. As at the time of executing the said General Power of Attorney you were required to take care of my property with good will and intent, however over a period of time you have tried to devolve me off my property, thereby shattering my trust.

I also hereby declare that I am the lawful owner of the said property, enjoying an absolute right, title and interest over the said property.

The General Power of Attorney which was misused by you is hereby revoked by me having a Retrospective Effect and you no longer exist to be my Attorney.

Thanking You

Yours Sincerely,

Sd/-

(Smti. Leela Choudhury)".

On bare perusal of the said letter indicated above addressed to the petitioner No. 2, I find that the said intimation letter has no value in the eye of law. When the Power of Attorney is registered, it carries sanctity of its own and it just cannot be revoked by a letter.

When the Power of Attorney is registered, it can be revoked only by a registered Deed of Revocation of Power of Attorney.

13. The Respondent No. 3 had enough time to revoke the said Power of Attorney since 2006, but the question remains unanswered why she had planned to revoke the Power of Attorney only in 2013. The respondent No. 3 had no answer,

but it can easily be inferred that the revocation letter dated 28.08.2013 is with certain ulterior motive or may be to abstract more money from the petitioner No. 2.

14. The Hon"ble Supreme Court in the case of Shanti Budhiya Vesta Patel and Ors. v. Nirmala Jayprakash Tiwari and Ors., (2010) 5 SCC 104 has clearly held, "registered document has a lot of sanctity attached to it and this sanctity cannot be allowed to be lost without following the proper procedure - Merely by filing complaints with police, deeds, documents and powers of attorney cannot be revoked - Practise and Procedure - Power of attorney". For ready reference Para 37 to 43 of the said judgment are reproduced herein below:

"37. The appellants also alleged that they had revoked the powers of attorney executed by them in favour of Respondent 9 by filing complaints with the police. We are of the considered opinion that this contention of the appellants is devoid of merit. Although there is no denying the fact that three police complaints had been filed on three different dates with the police against the alleged harassment and threats by Respondents 8 and 9, it is difficult to understand how the powers of attorney executed by the appellants or their predecessor-in-interest stood revoked. The record of the case reveals that each of the complaints was filed by a separate person; the first complaint was filed by the appellants themselves, the second by an advocate and the third by one Narendra M. Patel, who is himself a builder. It is significant to note that all these complaints came to be filed when the said Narendra M. Patel came into the picture. Further, it is important to take note of the fact that all the powers of attorney executed in favour of Respondent 9 as also all the deeds and documents entered into between the predecessor-in-interest of the appellants and Respondent 9 were duly registered with the Office of the Sub-Registrar. Neither any document nor any of the powers of attorney was ever got cancelled by the appellants.

38. The appellants also further contended before us that they had revoked the powers of attorney executed in favour of Respondent 1 by executing a fresh power of attorney in favour of the said Narendra M. Patel.

39. It is significant to note that despite filing of the complaints with the police nothing was done by the appellants to bring the allegations contained in the said complaints to the notice and knowledge of the High Court although that could have been comfortably done had the appellants wished to do so. The power of attorney in favour of the said Narendra M. Patel was executed by the appellants on 26.04.2006 whereas the first complaint was filed with the police on 1.5.2006 and the consent terms were entered into on 22.5.2006. The consent decree was actually passed by the High Court on 13.6.2006. The appellants, thus, had ample time and opportunity with them to bring the said allegations to the notice and knowledge of the High Court at any time between 26.4.2006 and 13.6.2006. The appellants had considerable amount of time available with them. As noted earlier, with regard to the complaints filed, the appellants did not take any follow up action to bring them to their logical end.

40. It is crystal clear that the appellants chose not to avail an opportunity which was available to them. In such circumstances, it will not be appropriate to say that the deeds and documents as well as the powers of attorney executed in favour of Respondent 9 stood revoked merely by filing complaints with the police. We cannot lose sight of the fact that a registered document has a lot of sanctity attached to it and this sanctity cannot be allowed to be lost without following the proper procedure.

41. In any event, if we direct our attention to the contents of the power of attorney executed by the appellants in favour of the said Narender M. Patel, we find that the stand taken by the appellants throughout that they had, by executing a power of attorney in favour of Narender M. Patel, revoked the powers of attorney executed in favour of Respondent 9 to be baseless. In fact, a look at the terms of the power of attorney executed in favour of Narender M. Patel would show to the contrary. The relevant portion of the said power of attorney is being extracted herein below:

"6. To correspond with all the body cooperate for otherwise including Government and semi-government bodies and Municipal Corporation of Greater Bombay and make applications, etc. in respect of any of the matters pertaining to the said property and the said premises.

And Further that these presents and the powers hereby given shall in nowise extend or be deemed or continued to extend to repeal, revoke, determine or make void any other power or powers of attorney at any time heretobefore or hereafter given or executed by us to or in favour of any other person or persons for the same or any distinct or other purpose or purposes but such power or powers shall remain and be of the same authority, validity and power, force and effect as if these presents had not been made."

(emphasis supplied)

42. Before we part with the discussion, we wish to make note of the fact that Respondent 9 has, in the counter-affidavit filed in this Court, prayed for declaring the consent terms to be cancelled and annulled on the ground that the consent terms have been rendered infructuous due to the failure of Respondent 8 to perform his obligations as per the consent terms. We have a strong feeling that a money game is being played. Since the stakes are high, each party before us is trying to draw the maximum advantage. To us, there seems to be no other reason for Respondent 9 having adopted such a course of action.

43. In view of the foregoing discussion, we are of the considered view that entering into the compromise as also filing of the same in the High court of Bombay by Respondent 9 on behalf of the appellants was without any fraud and well within the scope of his authority. Accordingly, we find no merit in the present appeals and the same are hereby dismissed. There will be no order as to costs".

15. Similarly, in this instant case in hand also, no procedure has been followed to

revoke the General Power of Attorney dated 17th June, 1988. Hence, the Power of Attorney is still valid in the eye of law.

16. After going through the other judgments relied by the learned counsels, I am of the humble view that the principles laid down in those judgments do not match with the facts and circumstances of this instant case. Further more, when a document is presented before the District Registrar Office or Sub-Registrar Office, it is their duty to register the document if the documents are in order and stamp duty paid are in accordance with the Stamp Act. The Registrar Authority has no power to ask or to decide the title. Registration of documents is purely an executive work, and not at all judicial work. So, the Registering Authority is not supposed to ask for unnecessary documents or proof, as if, it is sitting as court to adjudicate the matter. Besides that, here the intending purchaser i.e. the petitioner No. 1 is a Scheduled Tribe belonging to the Khasi community of the State of Meghalaya, as such; the Land Transfer Act, 1971 is not a barrier at all. After considering the facts and circumstances of this case and the laws laid down as discussed above, I hereby direct the respondent No. 1 and 2 to grant the permission for transfer of the said land (Annexure-6 of the writ petition) as applied by the petitioner No. 2 vide letter dated 05.05.2006 within a week from the date of receipt of a certified copy of this judgment and order as the matter is pending since 2006.

17. With these observations and directions, this instant writ petition is allowed to that extent and stands disposed of.

18. No order as to costs.