

(2022) 11 PAT CK 0025

In the Patna High Court

Case No : Letters Patent Appeal No. 129 Of 2021 In Civil Writ Jurisdiction Case No. 12635 Of 2019, Letters Patent Appeal No. 582 Of 2021 In Civil Writ Jurisdiction Case No. 8233 Of 2020

Kumar Gaurav

APPELLANT

Vs

State Of Bihar

RESPONDENT

Date of Decision : 07-11-2022

Acts Referred:

Citation : (2022) 11 PAT CK 0025

Hon'ble Judges : Ashutosh Kumar, J; Nawneet Kumar Pandey, J

Bench : Division Bench

Advocate : J.S. Arora, Ranjan Kumar Dubey, Md. Khurshid Alam, Nutan Sahay, Vishambhar Prasad

Final Decision : Allowed

Judgement

Heard Mr. J.S. Arora, learned Senior Advocate for the appellants and Mr. Md. Khurshid Alam, learned AAG-12 for the State.

The appellants are primarily aggrieved for the reason that the land which they have sold is not being registered and therefore their respective purchasers/ vendees are insisting upon the appellants to get the sale-deed registered.

It appears from the records of both the writ petitions in which the two orders have been passed by two different Benches, which have been impugned in the present set of appeals, that the appellants had purchased the land in question from their vendor and had also got their names mutated in the revenue records. It further appears from the pleadings and the documents presented before the learned Single Judges in writ proceedings that because of certain wrong entries creeping in the revenue records, displaying the Government of Bihar as the owner of the land, the vendors of the appellants had preferred a title suit seeking correction in the revenue records. The suits were decreed but the decree was not being executed.

Hence, the writ petitions before the two learned Single Judges of this Court.

Before the writ court, it was urged by the State that title appeal against the aforesaid judgment in Title Suit at the instance of the State was pending final adjudication. It was under such circumstances that a decision had been taken at the Governmental level to direct all the registering authorities, not to register particular parcels of land for the reason of cloud over the proprietary rights over such land. The registering authority, in obedience to such administrative instructions, had refused to register the said lands.

Before the writ courts, it was further argued that there was a necessity of digitalizing the revenue records for convenience and till the time the digitalization process was over, it would be more convenient for the parties, especially the State not to register lands or else the digital records would not be correctly uploaded. It was for this reason that a direction was given to the registering authorities for not registering the lands in question, though the transfer of some other parcels of land in the same area were allowed to be registered.

The two orders which have been impugned in the present set of appeals are based on the premise that the parties would have fared better if they had approached the competent courts for execution of the decree in Civil Court which had permitted the correction of the revenue records and that against the order of the registering authority refusing to register the land on the asking of the appellants, there is a provision for appeal.

In one of the cases, it was urged before one of the learned Single Judges that the appeal lies before the Collector of a district, who, himself is part of the deliberation and decision in the administrative side that certain parcels of land including that which is a question in the present set of appeals ought not to be registered till the final digitization of the records and the disposal of the Title appeal preferred by the State, there is every likelihood of bias in preserving the afore-noted decision.

The learned Single Judge hearing the matter, found such apprehension of one of the appellants to be absolutely unfounded in law.

The fear of bias in the order of the appellate authority was found to be unreasonable/unrealistic and not worthy of acceptance/reliance. It was held that if the afore-noted fear of bias is accepted, then perhaps no order passed by any quasi-judicial authority would ever be challenged before any authority as the appellate authority also forms part of the same genre of officers. Since the appellate authority, which in this case would be the Collector of the district, cannot be said to have any personal bias or interest in such appeals, such fears were rejected.

Thus, in sum and substance, both the writ petitions were rejected on the ground that if the verdict of the trial court was not being carried to its logical conclusion, the appellants had a way-out by seeking execution of such decree and if an order

is appellable, the parties approaching the Court directly may not be countenanced under every circumstance.

Mr. Arora, learned Senior Advocate has tried to assail the aforesaid orders on the ground that both the reasons do not meet the main plank of the argument of the appellants/writ petitioners that right to property is a constitutional right, which could not have been diluted by any administrative fiat under any circumstance. No reason or logic would obviate the necessity of compliance of statutes and if the registering authority is beset with the power to register on the basis of rightful/unimpeachable documents showing the transfer of the land, no reason would prevent such officers from registering the document. The effect of registration is only qua the parties.

If a vendor alienates his property without any right or title, the principle of "caveat emptor" would apply on the buyer and he would not get a title even though it is registered. This was the line of reasoning of a Division Bench judgment of this Court in Bihar Deed Writers Association and Others Vs. the State of Bihar & Ors., reported in AIR 1989 Patna 144. Though a short judgment but the issue was very pithily put by the Hon'ble Judges, who found that the power to register was an administrative power, which could not be exercised to direct the Sub-Registrars not to register a document presented for registration, if the document complied with the statutory requirements and other formalities. Any document which is otherwise complies with the statutory requirements and the formalities, if presented for registration, the registering authority is bound to register it. It is not for the registering authority to inquire and ascertain the title to its satisfaction.

Under the provisions of Transfer of Property Act, 1888, if the transferor does not have any title or has imperfect title to the property, the transferee on transfer will either get no title or will get an imperfect title, which will be to the prejudice of the transferee and which shall be of no concern to the registering authority.

With these propositions having attained finality, it was highly unjustified on the part of the senior Government functionaries to have directed the registering authorities not to register particular parcels of land in some districts of Bihar. Even if it were to be assumed that it was only a temporary cessation of the power for the purposes of uploading and upgrading the records digitally, such stoppage could not have been for an indeterminate period.

We have not been informed whether the digitization of the records in that particular districts, where the appellants had offered their documents for registration, the digitization is still pending or has been completed.

The argument of the learned AAG-12 that during the pendency of the appeal, no direction can be issued for registration of records as ultimately it would lead to confusion over the title to property, is not acceptable to us. The right to property is required to be as zealously guarded as any other right. The entire purpose of owning a property is to have freehold over such property for it to be sold in times

of distress or at freewill. Any cloud over such right of a property-owner renders his right to hold his property emasculated by a large measure, which cannot be justified on any count whatsoever.

In the present set of cases, the registering authority has refused to register the sale-deed with respect to the land in question on the lame plea that there is an administrative prohibition for the same and that only after the disposal of the Title Appeal, would the rights of the parties finally stand adjudicated.

As noted above, both these grounds are fit to be rejected in the light of the provisions contained in Transfer of Property Act, 1888 and the Indian Registration Act, 1908 as well as the purpose of registration which is only qua the parties. It is not justified on the part of the authorities including the registering authority to refuse to register the land on the ground that the parcels of land in question fall in the list of such lands for which such embargo has been put by an administrative order. As has been noted above, the provisions of statute cannot be limited by any administrative fiat.

For the reasons noted above, we allow both the appeals holding (a) that the registering authority cannot refuse to accede to the request of the parties for registering a document on being shown valid title documents; (b) even for the purposes of digitizing and upgrading the revenue records, the right to have a transfer deed registered cannot be stopped for an indefinite/indeterminate period; (c) relegating the parties to the appellate authority for challenging the refusal to register the land is not based on sound reason and lastly that (d) the learned Single Judge in one of the cases was not justified in asking one of the set of appellants to have the verdict of the trial court executed through due process of law.

We reiterate that an authority cannot abdicate its functions and similarly a superior authority cannot direct the statutory authority to cease to operate and decide in accordance with the well-laid principles of the statute.

The administrative instruction directing the registering authority not to register the land is thus quashed.

The registering authority is directed to register the land after being satisfied that the documents offered on behalf of the appellants satisfy other requirements and formalities.

Both the appeals are allowed.