

(2001) 04 PAT CK 0041
In the Patna High Court
Case No : C.W.J.C. No. 4235 of 2001

Maitri Charitable Trust and Another

APPELLANT

Vs

State of Bihar and Others

RESPONDENT

Date of Decision : 26-04-2001

Acts Referred:

Citation : (2001) 04 PAT CK 0041

Final Decision : Allowed

Judgement

Aftab Alam, J.—Petitioner No. 1 before this Court is a Charitable Trust registered under the Indian Registration Act, 1888. Petitioner No. 2 is a citizen of India and one of the Trustees of the Trust. He states that he is duly authorised to file this writ petition on behalf of the trust.

2. The trust was registered on 23-12-1993, it was originally established by a gentleman called Mr. Lama Thubten Zopa Sherpa who is foreign national. Later on, amendments were made in its constitution and under the amended constitution, no foreign national can be its trustee. Presently, all its four trustees are Indian citizens.

3. The Trust has acquired through purchase certain immovable properties in the District of Gaya. But, it is facing difficulties in getting the sale-deeds duly registered under the Indian Registration Act. It is stated that initially the District Registrar declined to accept the transfer-deeds for registration and the petitioners were forced to move before the Districts Magistrate, Gaya. The District Magistrate directed for the registration of the transfer-deeds but when the transfer- deeds were presented for registration, the Registrar once again declined to accept them, this time, on the basis of an order passed by the Commissioner, Magadh Division.

4. The order of the Commissioner has come on the record as Annexure-B to the counter-affidavit filed on behalf of the respondents. It is contained in a letter dated 25-9-1997 addressed from the Commissioner, secretary to the District

Magistrate, Gaya. The letter simply states, without assigning any reason, that the petitioner Trust and one other Trust by the name of Buddhist Thai Bharat Society did not have the right to acquire any property in India and any permission granted to these organisations to purchase land, was "unconstitutional".

5. As noted above, the Commissioner's view as expressed in the aforesaid letter, is not supported by any reasons. But, the reasons are to be found in the body of the counter-affidavit wherein it is stated that the Government Pleader, Gaya gave such an opinion on the basis of two decisions of the Supreme Court, one in *Hans Muller of Nuremburg Vs. Superintendent, Presidency Jail, Calcutta and Others*, and the other in *Tata Engineering and Locomotive Co. Ltd. Vs. State of Bihar and Others*, .

6. I have examined those decisions and I am surprised that the Government Pleader could give such an opinion on the basis of the aforesaid two decisions. These two decisions of the Supreme Court highlight the distinction between different fundamental rights guaranteed by the Constitution; it is pointed out that the freedoms guaranteed under Article 19 were available only to the citizens of India whereas some of the other fundamental rights such as those under Articles 14 and 21 were available to any person. These two decisions provide absolutely no basis for holding that a Trust, under the Constitution of which all the Trustees can only be Indians and all the Trustees, of which are, in fact, Indian citizens, cannot acquire any land for the reason that it was established by a foreign national.

7. Mr. S.J. Rahman, G.P. 7 fairly stated that he was not aware of any provision in any law much less the Constitution which would create a bar against the petitioner Trust lawfully acquiring property in India. Mr. Rahman submitted that in a case involving a similar issue, he had earlier given a written opinion, dated 17-9-1998 which was supported by a decision of the Andhra Pradesh High Court and letter dated 8-5-1998 issued by the Minister of Home Affairs, Government of India. Mr. Rahman stated that he wished to adopt his earlier opinion as submissions in this case and he took the stand that there was no legal impediments in the way of the petitioner Trust in lawfully acquiring property in India and getting the sale-deed through which the property was acquired duly registered under Indian Registration Act.

8. This Court appreciates the fair stand taken by Mr. Rahman. Speaking for myself, I too am not aware of any provision either in the Transfer of Properties Act or the Indian Registration Act or the Constitution of India which could bar a Charitable Trust of which all the Trustees are Indians to acquire and hold property in India. This writ petition is accordingly allowed. The direction contained in the Commissioner's letter dated 19-9-1997 is set aside insofar it relates to the petitioners and the Registration authorities are directed to duly accept and register the sale-deeds produced by the petitioners.

9. In the result, this writ petition is allowed but having regard to the fair stand taken by the State Counsel, there shall be no order as to costs.