

(2012) 09 JH CK 0054

In the Jharkhand High Court

Case No : Writ Petition (C) . No. 3342 of 2006

Md. Zoolfar Ansari and Others

APPELLANT

Vs

The State of Jharkhand and Others

RESPONDENT

Date of Decision : 11-09-2012

Acts Referred:

Registration Act, 1908 — Section 68

Citation : AIR 2013 Jhar 65 : (2013) 2 AJR 1 : (2013) 1 JLJR 299

Hon'ble Judges : Aparesh Kumar Singh, J

Bench : Single Bench

Advocate : V. Shivnath, for the Appellant;

Judgement

Aparesh Kumar Singh

1. Heard learned counsel for the parties. The original writ petitioner, Muslim Ansari has been substituted by his legal heirs, i.e. the present

petitioners namely Md. Zoolfar Ansari & others during the pendency of the writ petition. The present petitioners are aggrieved by the refusal of the

respondent No. 3, District Sub- Registrar, Ranchi to register the sale deed presented on their behalf. The sale deed in question is Annexure-3 to

the writ petition.

2. The contention of the petitioner is that the lands appertaining to plot No. 718, Area 5 acres, plot No. 496, Area 1 acre of Khata No. 383 of

Khewat No. 2 of Thana No. 228 of Mouza Pundag was recorded as "gair majarua malik land" of Ex. Intermediaries, Bara Lal Kandarp Nath

Sahdeo. It is the contention of the petitioner that on the basis of "hukumnama" dated 5.2.1948 in favour of Sk. Sahmat and Sk. Ajmat by

registered kabuliyat by the Ex-Zamindar the lands were settled in their name

coupled with delivery of possession and rent receipts were also issued. In the return submitted by the zamindar at the time of vesting of zamindari the said raiyats were also shown as tenants. The deceased original petitioner, Muslim Ansari inherited the said rayati lands being descendant of the said Sk. Sahmat and Sk. Ajmat and "jamabandi" was opened in the name of said raiyats recorded in Register-II and correction slip were also issued in the year 1983-84. When the Circle Officer, Ratu Anchal (now Nagri) refused to grant rent receipt to the original petitioner, he was compelled to move this court in W.P.(C) No. 2496 of 2002.

The matter was remanded to the Additional Collector to consider the claim and take final decision by passing reasoned order. Thereafter, by order dated 12.12.2005 the Additional Collector rejected the claim of the petitioner and recommended for cancellation of his name in the "jamabandi" register. The original petitioner, being aggrieved preferred another writ petition being W.P.C No. 1119 of 2006 seeking quashing of the said order dated 12.12.2005 passed by the Additional Collector, Ranchi in Misc. Case No. 2 of 2005 and for seeking issuance of rent receipt in respect of lands in question. The said writ petition was allowed by this court vide judgment dated 9.8.2006 by directing the concerned Circle Officer, Ratu(now Nagri) to issue rent receipt to the original petitioner, Muslim @ Md. Muslim Ansari as his name was found running in Register-II, since 1983-84. The relevant Para 6 and 7 of the aforesaid judgment are as follows:-

Para 6:- When the case was again taken up on 20.7.2006, Mr. Manjul Prasad, learned Standing Counsel (Land Ceiling) stated in the Court that no such record is available in the concerned Anchal Office. Since the Additional Collector had mentioned that he had compared the record of Case No. 4 R 8 (II) of 1983-84, he was directed to appear in person and to produce the said record from which he had compared the petitioner's entry and on the basis of which the impugned order has been passed. The Additional Collector, Ranchi appeared, in person, today and produced some register which has no relation with the case in hand. Learned Additional Collector failed to produce the record of the Case No. 4 R 8 (II) of 1983-84 from which he had allegedly compared the petitioner's entry in Register II and found the same doubtful. The respondents, thus, failed to produce the very basis on which the impugned order has been passed.

Being without any basis, there is no option than to hold the impugned order as perverse and unsustainable and the same is held accordingly. The impugned order dated 12.12.2005 (Annexure-11) is quashed. It is held that the petitioner, whose name is running in Register II since 1983-84 is entitled to get rent receipt(s) on payment of rent. The respondent No. 3 is directed to accept rent in respect of Plot No. 71 and 496, Khata No. 383 of Village Pundag and grant proper receipt to the petitioner until the said jamabandi in his name is held illegal or is cancelled by the procedure established by law or by a Court of competent jurisdiction.

Para 7:- Mr. V. Shivnath, learned counsel submitted that the petitioner is ready to pay the entire arrears of rent in respect of his said land. If the petitioner pays arrears of rent/current rent, the same shall be accepted and proper receipt shall be issued to him forthwith.

This writ application is allowed with said direction.

3. The appeal preferred against the said judgment dated 9.8.2006 passed in W.P.C. No. 1119 of 2006 by the State of Jharkhand being L.P.A.

No. 474 of 2006 was also dismissed by order dated 2.11.2006. It is contention of the petitioner that rent receipt, thereafter, have been issued but

when the petitioner wanted to sell the said land in favour of another person by virtue of the sale deed, Annexure-3 to the main writ petition, the

same has been refused by the respondent No. 3.

4. Learned counsel for the petitioner has also relied upon the judgment delivered by the Division Bench of this court in L.P.A. No. 08 of 2007

dated 3. 7.2007 wherein similar issue was raised on account of refusal of the Sub Registrar, Dhanbad to register the document on the ground that

the land in question is "gair abad land". However, the aforesaid contention of the respondent- State were repelled in view of the categorical stand

taken by the counsel for the State as referred in the judgment dated 3.7.2007, which is quoted herein below:-

Pursuant to the aforesaid order show cause has been filed by the District Sub-Registrar, Dhanbad stating inter-alia that he joined on 29.5.2007

and his predecessor-in-office as a matter of fact, refused to register the document on the ground that the land in question is Gair Abad Land.

Mr. Manjul Prasad, Learned Counsel appearing for the State submitted that the

action of the then Sub- Registrar refusing to register the document was wholly against law and he assured this court that in future this will not be repeated. Mr. Manjul Prasad further submits that necessary instruction shall be issued from the Office of the Advocate General to all the Sub-Registrars to act strictly in accordance with law and also as per the direction by this Court in series of decisions. Mr. Prasad further submits that as and when the respondents writ petitioner appears before the Sub- Registrar and presents the documents, the same shall be registered on the same day.

5. Learned counsel for the petitioner further submitted that the order passed by the Deputy Commissioner contained in Memo No. 1203/

Gopnia/12.7.2004, annexed as Annexure-A to the counter affidavit is wholly illegal and he could not have directed the Sub Registrar to refuse to

register the document of sale deed on the sole ground that the said piece of land is alleged to be "gair majaruwa land".

6. Learned counsel for the respondent- State, however submitted that the impugned action has been taken pursuant to the order dated 12.7.2004

passed by the Deputy Commissioner cum District Registrar to protect the interest of the State and the Sub- Registrar acted in accordance with the

order of the Deputy Commissioner, who is also the District Registrar.

7. I have heard learned counsel for the parties and also gone through the relevant documents including the impugned order. It appears that the land

in question was settled by the Ex-Zamindar in favour of the concerned raiyats from whom the original petitioner derives his title and thereafter,

"jamabandi" was opened in the name of said raiyats in the year 1983-84. However, on refusal to issue rent receipt of the same, the original

petitioner had moved this court, wherein this Court vide judgment dated 9.8.2006 passed in W.P.C. 1119 of 2006 (Annexure 4 to the

supplementary affidavit) directed the concerned respondent, Circle Officer, Ratu anchal (now nagri) to issue rent receipt in favour of the said

petitioner. Thereafter, on attempt to sell the part of the said land by virtue of sale deed, annexed as Annexure-3, the impugned action has been

taken by the respondent No. 3 in refusing to register the sale deed.

8. The Division Bench of this court in the case of State of Jharkhand & others Vrs. Sri Mohini Mohan Das & others in L.P.A. No. 08 of 2007, as

relied by the counsel for the petitioner, had an occasion to consider this question wherein on the basis of the specific stand of the respondent-State

it was recorded that registration of sale deed cannot be refused on the ground that the land in question is "gair abad land". Therefore, it appears

that the decision of the Sub- Registrar refusing to register the sale deed based upon the direction of the Deputy Commissioner have been made

without proper application of mind and also without taking into account the specific case of the petitioner, which has been brought on record by

way of the present writ petition.

9. Learned counsel for the petitioner has also relied upon the decision of the Division Bench of the Patna High Court delivered in the case of Bihar

Deed Writers Association and others Vrs. The State of Bihar and others reported in 1988 PLJR page 671 and submitted that under the provision

of Registration Act, the Registrar is suppose to exercise superintendence and control over the Sub- Registrar. As has been laid down in para 5 of

the said judgment the Registrar in exercise of power u/s 68 of the Registration Act cannot direct the Sub- Registrar not to register a document

presented for registration if the document complies with the statutory requirements and formalities.

10. In view of the aforesaid facts and circumstance, petitioner is allowed liberty to approach the Sub-Registrar, Ranchi for consideration of his

case for registration of sale deed in question, if petitioner fulfills all necessary statutory requirements and formalities as contemplated under the

provisions of Registration Act. With the aforesaid observation and direction, this writ petition is disposed of.