
(2013) 03 JH CK 0021

In the Jharkhand High Court

Case No : Writ Petition (C) No. 5222 of 2012

Nirbhay Kr. Shahabadi and Another

APPELLANT

Vs

The State of Jharkhand and Others

RESPONDENT

Date of Decision : 12-03-2013

Acts Referred:

Citation : (2013) 03 JH CK 0021

Hon'ble Judges : P.P. Bhatt, J

Bench : Single Bench

Advocate : Y.V. Giri and Mr. A.K. Yadav, for the Appellant; V.K. Prasad, S.C. (L and C), for the Respondent

Final Decision : Disposed Off

Judgement

P.P. Bhatt, J.—Petitioners, by way of filing the present writ petition under Article 226 of the Constitution of India, have prayed for issuance of an appropriate writ/order/direction, commanding upon the respondents particularly respondent Nos. 4 and 5 to register the sale deed executed by the vendor of the petitioners in favour of the petitioners with respect to 12.73 acres of land by sale deed dated 13.11.2007, as according to the petitioners, petitioners have got absolute right, title and the land being basauri land is being transferable under the provision of 25A(ii) of Regulation 1886. It is further prayed for issuance of an appropriate direction for quashing the letter bearing No. 4227 dated 15.9.2004 (Annexure-1) and letter No. 174 dated 14.2.2009 (Annexure-14), as according to the petitioners, the same are illegal, without jurisdiction and against the provisions of Registration Act. Heard the learned senior counsel for the petitioners as well as the learned counsel appearing for the respondents-State Government and perused the materials placed on record.

2. The learned senior counsel for the petitioners submitted that the land of 12.73 acres were acquired under regulation 25A of the Santhal Pargana Rent Regulation, 1886 (Regulation 11 of 1886) for Dabur India Ltd. It is submitted that the then Zamindar through Manager Rohini Wards Estate, Deoghar applied

for acquisition of land for erection of "manufacturing unit and construction of dwelling houses purposes" u/s 25A of the Santhal Pargana Rent Regulation Act, 1886 for an area of 12.73 acres for which a proceeding was initiated in the Court of S.D.O. in L.A. Case No. 3 of 1943-44. Upon the payment of compensation to the Raiyats permission was accorded to acquire the land for Mr. P.C. Burman of Dabur India Ltd. for manufacturing and construction of dwelling houses purposes. The Company Dabur India Ltd. further acquired 2.03 acres of land through the sale deed which is Basauri land over which there is no dispute. Further 0.63 acres of railway class-B Land was also settled by S.D.O. Deoghar for Dabur India Ltd. for the above purpose. Thus total of 15.39 acres of land was given to the Dabur India Ltd. and its name was also registered in Register II. Thereafter the Company set up its plant/factory and constructed several houses/residential buildings for its employees and officers. The purpose for which land was acquired continued for several decades. But since last few years the factory had to be closed down for several reasons and the land and structure were lying idle and unutilized, thereafter the said Company decided to sell and transfer the land as it was Basauri. The Deputy Commissioner, Deoghar issued a confidential letter bearing Memo No. 4227 dated 355.2004 whereby the concerned local officer/authorities including District Sub-Registrar were intimated that attempt is being made by the Company to transfer its valuable land and it is necessary to make an inquiry and take appropriate decision and therefore, till further order the transfer of lands of the Company shall remain stayed. The Deputy Commissioner, Deoghar objected to the sale/transfer of land. It is submitted that the Sub Divisional Officer, Deoghar vide his enquiry report dated 17.12.2004 discussed in detail the entire history of the land and came to the conclusion that the land belongs to the Company and accordingly the said Company was entitled to transfer the said lands. In support of this submission the learned senior counsel for the petitioners has referred photocopy of the report dated 17.12.2004 which has been annexed as Annexure-2 to the writ petition. It is submitted that District Land Acquisition Officer, Deoghar also submitted a similar report by giving conclusions that there is no legal hurdle in transfer of the land and in support thereof, the teamed senior counsel for the petitioners has referred to photocopy of the report dated 31.12.2004 which has been annexed as Annexure-3 to the writ petition. It is submitted that the Deputy Commissioner, Deoghar by letter No. 326 dated 17.4.2006 sought clarification from the Deputy Secretary, Department of Revenue and Land Reforms, Govt. of Jharkhand in the matter. Thereafter the matter was scrutinized by the Department and after the concurrence of the then Minister of Revenue, the Revenue Department issued Letter No. 278 dated 27.4.2006 to the Deputy Commissioner, Deoghar stating that the Company was entitled to transfer the land of 15.39 acres. It is further submitted that inspite of the aforesaid letter the Deputy Commissioner, Deoghar did not give permission to sell the land and again sent the file back on 16.8.2006 to the Minister, Revenue, Thereafter certain more documents were called for by the Department from the D.C. Deoghar which was given by the D.C. Deoghar vide letter dated 26.7.2008 in which an objection was raised on the basis of the

earlier letter of the department that the land was acquired for the specific purpose and therefore the land could not be used for any other purpose and therefore the transfer of land for any other purpose was not legal and not in accordance with Section 44A of the I.A. Act, 1894 and/or Section 53(6) of the SPT Act. It is further submitted that thereafter Dabur India Ltd. again gave representation on 16.10.2006 in which enquiry report of S.D.O. Deoghar and L.A.O., Deoghar conducted in 2004 was referred in which it was held that there was no legal impediment in the transfer of land. Thereafter again after the approval of the Principal Secretary, Land Revenue Department. Departmental Letter No. 52 (Rev) dated 27.1.2009 was written to the Deputy Commissioner, Deoghar by reiterating and confirming the letter No. 278 dated 27.4.2006 in which specific order has been passed for compliance of the above order. In this context the learned senior counsel for the petitioners referred to photocopy of letter dated 27.1.2009 which has been annexed as Annexure-15 to the writ petition. It is also pointed out that thereafter the Deputy Commissioner ignoring the clear cut order passed by the Secretary, Land Reforms Deptt. again vide letter No. 174 dated 14.2.2009 by giving reference to the letter dated 24.8.2004 again sent the file to the Revenue Department requesting for a specific order/direction for the reasons best known to him and in support thereof photocopy of letter dated 27.1.2009 annexed as Annexure-14 to the writ petition has been referred. It is further submitted that in the meantime the Company executed a sale deed on 13.11.2007 in favour of the petitioners and the deed of sale was presented for registration on 3.11.2008. The District Sub Register, Deoghar made an endorsement on 24.11.2008 and returned the deed to the petitioners on 25.11.2008. In this context, photocopy of sale deed dated 13.11.2007 has been annexed as Annexure-11 to the writ petition. It is further submitted that the petitioners made a representation the Dy. Secretary, Revenue and Land Reforms Department, Govt. of Jharkhand who issued letter No. 52 dated 27.1.2009 re-affirming the earlier letter of the department dated 27.4.2006.

3. Learned senior counsel appearing on behalf of the petitioners has referred to and relied upon the judgment in the case of Doman Prasad Yadav versus The State of Jharkhand and others, reported in 2008 (1) JLJR 506. In addition to that he has also referred to and relied upon the judgment given in the case of Dhena Hansda and Others Vs. State of Jharkhand and Others, the decision rendered in LPA No. 321 of 2012 by the Division Bench of this Court as well other orders passed by this Court in WPC No. 2584 of 2008, WPC No. 5643 of 2008, WPC No. 4458 of 2011, WPC No. 822 of 2011 and Cont. Case (Civil) No. 265 of 2012 in support of his submissions.

4. As against that, learned counsel for the respondents-State Government while referring the counter-affidavit filed by respondent Nos. 4 & 5 tried to justify the view expressed by the Deputy Commissioner vide Annexure - 5 & 14 and submitted that same analogy as contained in the provisions of Land Acquisition Act shall apply to the acquisition made under the Santhal Pargana Tenancy Act. It is further submitted that so far as question of registration of land is concerned,

Section 20 sub-section (3) fit (4) of Santhal Pargana Tenancy (Supplementary) Act 1949 provides that no transfer in contravention of sub-section (1) & (2) of Section 20 of the Act shall not be registered or in any way recognized nor any Court or Officer shall pass any order or decree in respect thereto. It is submitted that registration cannot be done in contravention of Section 20 of sub-section (1) and (2), in view of the provisions contained in Section (3) and (4) of the Santhal Pargana Tenancy (Supplementary) Act of 1949. It is submitted that letter No. 278, dated 27-4-06 of the Department of Revenue fit Land Reforms does not provide any clear cut direction to the Deputy Commissioner. In fact the contents of the letter is contradictory to the letter issued by the Commissioner-cum-Secretary, Revenue & Land Reforms Department, bearing letter No. 569/Sa. Ko. dated 24/8/2004 and therefore Deputy Commissioner vide letter No. 634/Vidhi, dated 23/6/2006 has requested for dear-cut direction from the Department. It is also submitted that in continuation of the correspondence with the State Government the Deputy Commissioner sent compliance report vide letter No. 918/Ra dated 27/8/2009 to the Secretary, Revenue and Land Reforms Department But thereafter no direction has been received from the Department. It is submitted that matter is still under consideration before the Department. It is further submitted that the land in question acquired for specific purpose and therefore said land cannot be used for any other purpose and therefore, the transfer of land for any other purpose is not legal as the same is in contravention of Section 44A of the Land Acquisition Act, 1894 and Section 53(6) of the SPT Act.

5. Learned counsel appearing for the respondents-State Government also submitted that the present petitioners are not having any locus to file such petition as the right, title and interest have not been validly transferred in their favour. In this context, learned counsel for the respondents-State Government has also referred to and relied upon the provisions as contained in Section 54 of the Transfer of Property Act and Sections 17 and 49 of the Registration Act.

6. As against that, the learned senior counsel appearing for the petitioners, while referring the documents (Annexure-11) and the various clauses of the said documents, pointed out that the petitioners have, purchased the land in question and consideration has been paid to the vendor and therefore petitioners are legally entitled to pursue the remedy under Article 226 of the Constitution of India as the petitioners are aggrieved persons. It is further stated that the petitioners are also having right to prefer an appeal against the refusal/rejection of registration by the respondents-authorities and therefore, if the petitioners are having right to prefer an appeal under the provision of Registration Act, petitioners can certainly prefer a writ petition under Article 226 of the Constitution of India.

7. Now considering the aforesaid rival submissions, first of all, the question with regard to locus of the present petitioner and maintainability of the writ petition is required to be considered and dealt with. Ordinarily, a person whose legal rights

or other legally protected interests are likely to be affected adversely should approach the Court for appropriate relief. The existence of the right or interest is the essential requirement for seeking relief in a petition filed under Article 226 of the Constitution of India. On perusal of the document (Annexure-11) and various clauses mentioned therein and taking into consideration the provisions of the Registration Act as also the endorsement put on the said document, it appears that the present petitioners are having locus to file such writ petition seeking writ of mandamus under Article 226 of the Constitution of India as the petitioners are appears to be aggrieved persons. In view of the provisions contained in the Registration Act, the petitioners being aggrieved persons has a right to prefer an appeal against the refusal/rejection of registration by the respondents-authorities and in that view of the matter, if the petitioners are having right to prefer an appeal under the provisions of Registration Act, petitioners can certainly prefer a writ petition under Article 226 of the Constitution of India. Therefore, arguments advanced by the teamed counsel for the respondent-State Government regarding maintainability of the writ petition cannot be accepted.

8. Now while analysing the facts as well as proposition of law, it appears that the land in question has been acquired under the Land Acquisition Case No. 3/43-44 u/s 25A of the Rent Regulation (ii) of 1886 for the purpose of establishing/setting up manufacturing unit/factory and construction of residential building of Dabur India Ltd. and the said land was handed over to the Dabur India Ltd. after acquisition u/s 25A in 1943-44.

9. The Santhal Parganas Tenancy (Suppl. Provisions) Act 1949 was made effective and came into force w.e.f. 1.11.1949 in the entire Santhal Pargana Division. The provisions as contained u/s 53 of the S.P.T. Act provides for acquisition of land. Section 25A of the Regulation II of 1886 was repealed by this Act (S. 3 read with the schedule). Section 53(6) of the Santhal Parganas Tenancy Act, 1949 contains the provisions that if the lands which have been acquired for a particular purpose is not utilized for that purpose then certain powers has been given to the Deputy Commissioner to restore the land to the original raiyats.

10. In view of above facts and circumstances of the case, certain provisions of law and the judgments of this Court are to be examined in its proper perspective.

11. In this context, for ready reference Section 25A of the Regulation II of 1886 is quoted herein below:-

Acquisition of land for buildings and other purposes:

25A-(1) The Zamindar or other proprietor of a village, who is desirous of acquiring the holding or part of the holding of any raiyat in such village, or any land over which the inhabitants of such village have any common right for any reasonable purpose having relation to the good of the holding, village or estate, or for the erection of buildings or for any religious, educational or charitable purpose, may apply to the Deputy Commissioner for authority to acquire the same.

(2) on being satisfied that the purpose stated in the application made under sub section (1) is reasonable and sufficient, and that the objections, if any, taken to the application are such that they may fairly be disregarded, the Deputy Commissioner may authorize the applicant to take possession of the land on such terms and on payment to the raiyat or other person interested (if any) of such compensation as he thinks fair and reasonable.

12. Section 3 read with Schedule of the Santhal Pargana Tenancy (Suppl. Provisions) Act, 1949 repealed Section 25 and 25A of the Regulation II of 1886 and new Section 53 was substituted which is quoted as under:

53. Acquisition of land by landlord for building and other purposes-(1)(a). The landlord of village who is desirous of acquiring the holding or part of the holding or any raiyat in such village or any land over which the inhabitants of such village have any common right for any reasonable and sufficient purpose having relation to the good of the holding, village or estate, or for the erection of building or for any religious, educational or charitable purpose, or irrigation, or effecting any agricultural or horticultural improvement or giving effect to any national policy of the Govt. may apply to the Deputy Commissioner for sanction to acquire the same.

(b) The Deputy Commissioner may, on the application of a village headman, mul raiyat or raiyat of the Village or of his own motion, sanction, acquisition proceedings to be started with respect to such land as is referred to in clause (a), if he is satisfied after due enquiry that the acquisition is to be made for any of the purposes specified in the said clause.

(c) On receipt of such application as is referred to in clauses (a) and (b) the Deputy Commissioner shall scrutinize it with a view to see that it satisfies the conditions of acquisition prescribed by the Government in this behalf if on such scrutiny of Deputy Commissioner considers the application to be not maintainable on the face of it, he may reject the application summarily.

(2) If the application is not rejected summarily under clause (c) of sub section (1) the Deputy Commissioner shall issue notice to the raiyats and other persons interested to appear before him and to file objections, if any. If after due enquiry the Deputy Commissioner is satisfied that the purpose stated in the application is as specified in clause (a) of sub section (1) and that the objections, if any taken to the application are such that they may fairly be disregarded, the Deputy Commissioner may by order sanction acquisition proceedings to be started.

(3) On the passing of an order under sub section (2) the Deputy Commissioner, shall after issuing notice to the raiyats and other persons interested, decide claims and objections as to compensation, and may authorize the landlord, village headman, mul raiyat or raiyat, as the case may be, to take possession of the land on such terms and on payment to the raiyats whose land is acquired or other persons interested of such compensation as he thinks fit and reasonable.

(4) If the applicant landlord, village headman, mul raiyat or raiyat, as the case may be, tenders to the raiyat whose land is acquired or other interested persons such sum as the Deputy Commissioner has approved under sub section (3) as compensation and the latter refuses to receive the same, the Deputy Commissioner may, on the land lord, village headman, mul raiyat or raiyat, as the case may be, depositing the said sum with the Deputy Commissioner, give possession of the land to him in the prescribed manner and may execute a lease in the prescribed form in his favour.

(5) The raiyat whose land is so acquired shall be entitled to receive proportionate reduction of rent in addition to compensation.

(6) If the land so acquired is not utilized for the purpose for which it was required within five years of taking possession, the Deputy Commissioner may pass an order restoring the land to the original raiyat or his heirs or to the persons interested on such terms as he thinks fair and reasonable and, on the failure of such persons to take back the land, the Deputy Commissioner may settle the land as if it were village waste land.

13. Thus it would be apparent that similar provisions with some modifications was inserted u/s. 53 of the Santhal Pargana Tenancy (Supplementary Provision) Act, 1949. This provision is under Chapter VI under the heading "Acquisition of the land by the landlord" for certain purposes. Section 53 of the Santhal Pargana Tenancy (Supplementary Provision) Act, 1949 is similar to the provisions for Section 25A of the Santhal Pargana Tenancy Act, 1886 with exception of sub clause 6 of Section 53, it gives power to the Deputy Commissioner for the restoration of land to the original raiyats or his heirs or to the person interested on such term as he thinks fair and reasonable and, on failure of such persons to take back of the land, the Deputy Commissioner may settle the land as it were village waste land. Deputy Commissioner can exercise this power within 5 years of taking possession. In present case the land in question is acquired in L.A. Case No. 3/1943-44 and L.A. Case No. 24/1944-45 u/s 25(A) of the Santhal Pargana Rent Regulation Act, 1886. The similar controversy arose in the case of Smt. Sugiya Devi vs. Chando Kapri (1959 BLJR PG 95). It was held that the Amending Act 14 of 1949. Santhal Pargana Tenancy (Supplementary Provision) Act, 1949 came into force on 1st November, 1949 is not having retrospective effect and the amended Act shall apply prospectively. In present case the settlement of the disputed land has taken place in the year 1943-44. So it is clear that the effect of Section 53(6) of Santhal Pargana Tenancy (Supplementary Provisions) Act, 1949 has no effect in respect of settlement which has taken place prior to 1st November, 1949. Relevant abstract from judgment is reproduced hereinbelow.

3. We are unable to accept the argument of learned counsel for the appellants as correct. It is the admitted position in this case that the plaintiffs had taken settlement of the disputed land from the landlords on the 28th May. 1949. That is a crucial date, because the amending Act, namely, (Bihar Act 14 of 1949) came into force on the 1st Nov., 1949, and so it is obvious that the plaintiffs had

taken settlement of the disputed land before the promulgation of the amending Act. In other words, the plaintiffs had acquired a vested right before the amending Act came into force, and it is a well established principle that we cannot give such retrospective construction to an amending Act as to affect past transactions, and so as to affect vested rights which had sprung up before the Amending Act came into force. The law on the subject has been recently expounded by this bench in *Lakhmir Singh v. Commissioner of income tax* where it was pointed out that the presumption against retrospective operation of a statute as regards vested rights applies not only to substantive rights but applies equally to remedial rights, like rights of action, including rights of appeal. A similar view has been taken by the Judicial Committee in *Delhi Cloth and General Mills Company v. income tax Commissioner, Delhi* where the law is stated as follows:-

.....While provisions of a statute dealing merely with matters of procedure may properly, unless that construction be textually inadmissible have retrospective effect attributed to them, provisions which touch a right in existence at the passing of the statute are not to be applied retrospectively, in the absence of express enactment or necessary intendment. Their Lordships can have no doubt that provisions which if applied retrospectively, would deprive of their existing finality orders which, when the statute came into force, were final, are provisions which touch existing rights. Accordingly, if the section now in question is to apply to orders final at the date when it came into force, it must be clearly so provided. Their Lordships cannot find in the section even an indication to that effect.

In view of these well established principles we are of opinion that the present case is governed by the old law as it stood before the amending Act, namely, Bihar Act 14 of 1949, and it follows, therefore, that the Deputy Commissioner had no jurisdiction u/s. 53(6) of Bihar Act 14 of 1949 to order restoration of the land to the defendants. We accordingly hold that there is no substance in this appeal and dismiss this appeal. There will be no order as to costs.

14. The provisions of Section 25A of Santhal Pargana Tenancy Act, 1886 and Section 44A of Land Acquisition Act, 1894 are completely different.

Section 44-A of Land Acquisition Act, 1894 provides as under:

No company for which any land is acquired under this Part B shall be entitled to transfer the said land or any part thereof by sale, mortgage gift, lease or otherwise except with the previous sanction of appropriate Government.

Going through the said provisions it is clear that the word "under this part" is used in Land Acquisition Act, 1894. Section 38 to 44A is kept under Part VII under the heading as a "Acquisition of the land for the companies". The land in question was not acquired under Part VII of the Land Acquisition Act, 1894. Therefore, in my view, the provisions of Land Acquisition Act cannot be used as an instrument for restoration of land which is acquired u/s. 25A of the Santhal Pargana Rent Regulation Act II of 1886 under the law.

Under the circumstances, Land Acquisition Act, 1894, Section 44-A cannot be made applicable in the instant case to deny permission to transfer the land acquired u/s 25A of Regulation II of 1886.

15. In view of the judgment reported in 2003 (3) JCR pg 320 in the case of Dhenan Hansda and Ors. vs. State of Jharkhand it is clearly held in any case even if the provisions of Section 25A of Regulation II of 1886 is declared ultra vires, such finding will be prospective and cannot affect the action already taken u/s. 25A including the acquisition of land, in question as it was made more than 65 years back. It is also held that the land which is acquired u/s. 25A of the Santhal Pargana Rent Regulation Act II of 1886 will be treated as Basauri Land which is heritable and transferable.

16. In the case of Budhinath Mishra vs. State of Bihar, reported in AIR 1970 Patna 358 Section 53 of the Act of the Santhal Pargana Tenancy (Suppl. Provisions) Act, 1949 has been declared to be ultra vires. In the case of Budhinath Mishra Section 53 has been declared ultra vires and unconstitutional and as a invalid law. The Division Bench of the Patna High Court also held that even if Section 53 is valid the same could not be made applicable to the land acquired u/s 25A of Regulation II of 1886.

17. In the case of Smt. Sugiya Devi vs. Chando Kapri, reported in 1959 BLJR 95 the Hon'ble Division Bench of the Patna High Court held that Bihar Act 14 of 1949 i.e. Santhal Pargana Tenancy (Suppl. Provisions) Act, 1949 is prospective in nature and will not affect vested and accrued right and transaction which has already taken effect prior to coming into the force of Santhal Pargana Tenancy Act and the same would not affect any accrued right u/s 25A of the Regulation II of 1886.

18. Thus any acquisition and settlement taken u/s 25A of Regulation II of 1886 would not be affected by Section 53 of the Santhal Pargana Tenancy Act. S. 53 and 53(6) of the Bihar Act 1949 would be prospective in effect and operation.

19. Again in the case of Dhenan Hansda and Others Vs. State of Jharkhand and Others, held that Section 25A of the Regulation II of 1886 permits the agricultural land to be changed to Basauri settlement and there is no restriction on such transfer u/s 20 of the SPT Act and the proceedings u/s 20 of the SPT Act would not be maintainable in respect of land settled u/s 25A of the Regulation II of 1886.

20. As per the Final Report on the Revision Survey and Settlement Operations in the District of Santhal Parganas, 1922-35 by J.F. Gantzer, a Basauri tenancies may be created in two ways:-

(a) By settlement of waste land under Clause 3 of the record of rights and duties and

(b) By acquisition under the provisions of Section 25A of Regulation II of 1886.

According to custom and practice all Basauri holdings are transferable and no distinction is ordinarily made in the incidents of such holding whether obtained by settlement under Clause-3 of the record of right or by acquisition u/s 25A of Regulation-II.

21. This is not in dispute that the lands were acquired between the year 1943-1945 u/s 25A of Regulation II of 1886.

The above referred various judgments delivered by this Court makes clear legal proposition that the new Act is always prospective in character and does not take away any right accrued prior to coming of the new Act.

It has also been held that even if Section 53 of the SPT Act is valid then also it would not affect the right accrued u/s 25A of Regulation II of 1886 prior to the coming of the SPT Act i.e. Bihar Act 14 of 1949. As of now Section 53 has been declared ultra vires and invalid and does not exist in statute as held by judicial pronouncement which has become final. However, even if Section 53(6) was valid and operational prior to the case of Buddinath Mishra and Others Vs. State of Bihar and Others, the same would not affect the land acquired by the Dabur India Ltd in 1943-44 u/s 25A of Regulation II of 1886.

22. Now the another issue which falls for consideration before this court is whether a registering authority has power to refuse to register a document validly executed.

23. In a case of Doman Prasad Yadav Vs. State of Jharkhand and Others, it has been held that Section 20 of the Santhal Pargana Tenancy Act does not put any restriction on the transfer of Basauri land and as such registering authority has erroneously asked for such no objection. In para - 7 & 8 of the said judgment, it is held as under:

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 Raiyati 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 Instruments) 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 14.1.04 and Order No. 1/07 dated 4.1.07. 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 that in the instant case of transfer 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 Annexure-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 & 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 & 6.

The above referred judgment has been followed by this Court in W.P. (C) No. 2584/08, W.P. (C) No. 5643/08, W.P. (C) No. 4458/11, W.P. (C) No. 822/11 and L.P.A. No. 321/12.

Thus Section 20 of the Act does not put any restriction on the transfer of Basauri (Homestead) land.

24. This Court has delivered number of judgments by holding that under the Registration Act only three basic ingredients are necessary, (a) there must be valid presentation (b) valid execution (c) adequate stamp duty. If the above conditions apply then u/s 35 of the Registration Act there is no option for the registering authority but to register the same.

25. This issue has been decided by this Court in number of cases and principle of "buyer be aware" is well known. If any buyer purchases any property without enquiry about the title of the property then he does so at his own risk but registration cannot be denied on this ground.

26. It appears that similar issue came up for decision before a Division Bench of this court in L.P.A. No. 08/2007, State of Jharkhand & Ors. vs. Sri Mohini Mohan Das & Ors. and the case was disposed of with an instruction to all the sub-registrar to act strictly in accordance with law and also as per direction given by the court in series of decisions. In an another case L.P.A. No. 321/2012 State of Jharkhand & Ors. vs. Pritindra Narayan Roy & Ors., a division bench of this court held that one cannot get title merely by registered Sale Deed and it is an instrument only of transfer of what is possessed by the vendor and not more

than that The title is not created by only Sale Deed but it is created in favour of the person from whom he purchased the property subject to foundational fact that sellers should be the owner and should have saleable right. It is also a well know principle that "buyers beware" which also indicates that if a buyer purchases any property without inquiring about the title of the property then he does so at his own risk. In some other cases also this court decided that the registering authority got no jurisdiction to refuse to register a document validly executed.

While disposing of L.P.A. No. 8/2007 by terms of judgment dated 3.7.2007 this Court also directed that necessary instruction should be issued from the Office of the Advocate General, Jharkhand to all the Sub Registrars to act strictly in accordance with law and as per direction given by this Court in a series of decisions.

That accordingly in compliance of the said judgment, the then Advocate General, Jharkhand, Ranchi by terms of his letter No. 6848 dated 24.8.2007 issued instruction directing that the Sub Registrars cannot verify the title of the vendor and refuse registration.

That it appears that the State of Jharkhand challenged the order dated 3.7.2007 passed in L.P.A. No. 8/2007 (Annexure-7) before the Hon''ble Supreme Court of India by filing SLP but the same was also dismissed by terms of the order passed by the Hon''ble Supreme Court of India dated 13.12.2007.

27. This issue thus, is no more res integra as the Division Bench of this court in number of cases held that registering authority have got no jurisdiction to refuse to register a document validly executed.

Therefore, on these facts the land is transferable and the Registering Authority is duty bound to register the sale deed presented for registration.

28. In the light of above discussion, Annexure-1 & 14 are required to be quashed and set aside. Accordingly, Annexure-1 & 14 are ordered to be quashed and set aside. District Registrar, Deoghar i.e. respondent No. 4 is directed to register the said document expeditiously in accordance with law, if there is no other legal impediment exists, and preferably within a period of two months from the date of receipt/production of a copy of this order.

29. Now the question which requires consideration is as to whether petitioner is required to be put to some term & condition keeping in mind the object of the Santhal Pargana Tenancy (Supplementary Provisions) Act, 1949? This Court is of the view that looking to the object of the Act and considering the peculiar facts and circumstances of the present case appropriate term and condition is required to be imposed upon the purchaser (petitioner herein) to pay just, fair and reasonable compensation to the mul raiyat or raiyat or their heirs as the case may be. According to the custom and practice all basauri holdings are transferable under the peculiar land system of the Santhal Parganas. But the

object and reason for permitting acquisition under the provision of Section 25A of Regulation-II of 1886 is required to be seen. The land in question was acquired u/s 25A of Regulation of 1886 for the specific purpose from the mul raiyats. The Dabur India in whose favour acquisition was made sold it to the petitioner. Therefore, when the Dabur India as well as petitioner after acquisition u/s 25A of Regulation 1886 taking benefit and advantage of transferring the land in question being Basauri and generating and earning profit out of it, the original raiyat or his heirs are also required to be compensated in a just and fair manner in the interest of justice as they have given up and lost their land at a very meagre amount of compensation i.e. Rs. 3182/- as per award given by the SDO, Deoghar in L.A. Case No. 3/43-44, when it was acquired for the development purpose. The main objects of the Santhal Pargana Tenancy Act is to protect the rights of raiyats and thereby to prevent the exploitation of raiyats. Therefore, in view of the peculiar facts and circumstances of the present case, the petitioner is required to be directed to deposit consignable amount. Accordingly, the petitioner shall deposit Rs. 15,00,000/- (Rupees Fifteen Lakhs) before the Member-Secretary, Jharkhand State Legal Services Authority, within one month from the date of order, who shall transmit the said amount to the District Legal Services Authority, Deoghar. The said deposited amount be distributed amongst the raiyats or their legal heirs, as the case may be, whose land has been acquired in pursuant to land acquisition made u/s 25-A of Regulation-II of 1886. The copy of the above referred award produced by the learned counsel for the petitioner at the time of hearing which is taken on record be forwarded to the Member-Secretary, Jharkhand State Legal Services Authority, who shall transmit the same to the District Legal Services Authority, Deoghar. The Chairman, District Legal Services Authority, Deoghar shall nominate any Officer/Secretary of District Legal Services Authority for the purpose of proportionate distribution of the deposited amount. The Officer/Secretary of District Legal Services Authority nominated by the Chairman, District Legal Services Authority shall call upon the original raiyat/raiya or their legal heirs as the case may be of L.A. Case No. 3/43-44 and 24/44-45 and shall disburse the amount in proportion taking into consideration the area of land acquired from the respective raiyat after proper verification. The above exercise be monitored and undertaken under the supervision of Member-Secretary, Jharkhand State Legal Services Authority with the help of Chairman/Secretary, District Legal Services Authority, Deoghar within six months from the date of receipt of the order. The Secretary, District Legal Services Authority may call for required information from the Office of Deputy Commissioner and may ask for any kind of assistance required for the purpose. If the whereabouts of the original raiyats and/or their legal heirs are not available the said amount be utilized for the benefit of poor and needy persons by the Jharkhand State Legal Services Authority.

30. Moreover it appears that the livelihood of tribal community of Santhal Pargana Division is mainly based and dependent on Agricultural activities. The legislature from the very beginning tried to protect the interest of the Raiyats/

Mool Raiyats and their Raiyati rights under the Santhal Pargana Division by incorporating some laws. To safeguard the interest of the aboriginal raiyats, Sec. 20 of the Santhal Pargana Tenancy (Supplementary Provisions) Act, 1949, has been incorporated and some legislative restrictions had been imposed on the transfer of tribal lands in Santhal Pargana. The very purpose for which the Act was incorporated is not being achieved and the land of the poor tribal are going into the hands of the non-aboriginals. There may be instances where lands of aboriginals were acquired u/s. 25-A of Regulation by awarding meagre compensation under the pretext of carrying out development activities such as industry, housing etc and subsequently for the sake of satisfying the condition of allotment such activities might have been done for some time and thereafter the lands are being sold free from any restriction with a plea that the land once used for such purpose become Basauri and such Basauri Land is transferable.

The case in hand is a peculiar case and a good example of the instance referred above where the Learned Deputy Commissioner raised objection and thereby tried to restrain the petitioner from having registration of document in respect of land in question as the condition for which land was allotted to Dabur India is violated and not fulfilled. But as discussed above as per the settled position of law the Basauri land are transferable and saleable and registering authority cannot deny registration for want of no objection from Revenue Authority. Since it is settled position of law that registration of a particular document cannot be restricted if no other legal impediments exist and therefore this proposition of law shall have to be followed. But the situation which has taken place and which is likely to arise in future required serious consideration and some concrete steps is require to be taken in this direction whereby the exploitation of poor people of Santhal Pargana region can be avoided and their rights in respect of such land can be protected otherwise such un-organised, under privileged, and poor community of this region will be exploited by such organized and resourceful people under the pretext of development. Therefore this court is of the view that suitable changes/amendment in the existing law are require to be introduce whereby interest of such poor people of this region can be protected and they can be compensated in a appropriate and just manner in such eventuality.

So the question arises for consideration as to whether the land acquired under 25-A of Rent Regulation of 1886 can be allowed to transfer and sale being a Basauri land and the parties in whose favour allotment has been made can be allowed to transfer and generate profit out of it without previous approval of the state government and whether such person can be allowed to generate profit without giving any just compensation in favour of Raiyat/Mool Raiyat. Accordingly, suitable provision is required to be made which will help the executive body as well as the courts to check such type of misuse of law.

A judgment delivered by a Division Bench of Patna High Court in a case of Buddinath Mishra and Others Vs. State of Bihar and Others, is relevant in this context. Relevant abstract of the aforesaid judgment is as under:-

5.It is now well settled that compensation means the amount equivalent to the loss which a person suffers on account of such acquisition. It is clear from the provisions of Section 53 of the Act that the law does neither fix the amount of compensation nor specify the principles on which and the manner in which it is to be determined. The Sub-divisional Officer is the Judge for the determination of compensation to be paid for the acquisition of the land under this section. It is true that the provisions for appeal, revision and review have been made in the Act, but under the Act, appeal or revision could be filed by the person aggrieved before the Executive Officers who are to decide the matter as they may think fit. There is no standard or basis laid down in the Act for the determination of such compensation.

10.Therefore, the law contemplates acquisition both for private and public purposes in terms of Section 299(2) of the Government of India Act, 1935. After its enforcement, the Provincial Legislature could not certainly enact law for the acquisition of a land for private purposes.....The impugned enactment has been passed by the Provincial Legislature after the enforcement of the Government of India Act, 1935 and, therefore, the validity of the Act has got to be judged in the light of the provisions of Section 299 of the Government of India Act, 1935. Though section 53 of the Act provides for the payment of compensation but they do not fix the amount of compensation or specify the principle on which and the manner in which the compensation is to be determined and given as laid down in section 299(2). The amount of compensation has got to be determined by the Deputy Commissioner or other superior Executive authorities to whom the appeal or the revision could be filed whose decisions may be arbitrary and the desired end may not be achieved as no principles or manner of determination of compensation are given in the Act. Therefore, judging the provisions of section 53 of the Act in the light of the conditions laid down in Section 299(2) of the Government of India Act, it is clear that they do not fulfill the requirements of Section 299 and the Provincial Legislature had no power to enact them and, as such, they could not be held valid and constitutional.

11. From the aforesaid discussion it is also clear that Section 53 of the Act makes naked encroachment on the fundamental rights guaranteed to the petitioners under the Constitution to hold their properties and their properties could not be acquired save for public purposes under the process of laws which are in conformity with the provisions of Article 31(2) of the Constitution.....

14. The impugned Act was passed within eighteen months of the commencement of the Constitution. Therefore, the provisions of Section 53, though offending Sec. 299(2) of the Government of India Act, 1935, and Article 31(2) of the Constitution could be saved only if the Act was submitted to the President for his certification within three months from the commencement of the Constitution.....Therefore, we presume that

the Act was not certified as laid down in Article 31(6) of the Constitution and the provisions of Section 53 of the Act as they offend Section 299(2) of the Government of India Act, 1935 and Article 31(2) of the Constitution, could not be saved from being struck down as unconstitutional and invalid on the ground that it was beyond the competency of the Provincial Legislature to enact it.

15. For the reasons stated above, it must be held that the provisions of Section 53 of the Santhal Parganas Tenancy (Supplementary Provisions) Act, 1949, are violative of the provisions of Section 299(2) of the Government of India Act, 1935 as well as Article 31(2) of the Constitution and, as such, they are void and unconstitutional and could not be regarded as a law on the Statute book and the acquisition proceeding started under such invalid enactment could not be sustained on this ground alone.

21. On a careful consideration of the authorities and the facts and circumstances of the case, I am of the opinion that the provisions of S. 53 of the Act are discriminatory and are violative of Article 14 of the Constitution and must be struck down on this ground also.

22. For the reasons stated above, the provisions of Section 53 of the Act are violative of both Articles 14 and 31(2) of the Constitution and also Section 299(2) of the Government of India Act, 1935 and have got to be struck down and the proceeding for acquisition taken under Sec. 53 of the Act (annexure E) must be quashed.

In view of above, the State Government is directed to consider to bring appropriate amendment in Section 53 of the Act so as to prevent misuse of law and thereby safeguard the interest of raiyat by providing suitable provision and adequate machinery for fair and just compensation.

Therefore, respondent State Government is directed to consider the prevailing position in this region and accordingly introduce suitable amendment in the existing law so as to safeguard the interest of Raiyats in such eventuality. The State Government shall also consider to bring amendment in law, in case where the condition of allotment are not fulfilled after acquisition of land u/s. 25A of the Regulation to forfeit/vesting of such land in government so that government can make use of such land for any public purpose whereby public at large of that area can be benefited.

With the aforesaid observation and direction, this writ petition stands disposed of.