
(2001) 02 JH CK 0068

In the Jharkhand High Court

Case No : Writ Petition (C) No. 5421 of 2001

Ritu Singh and Others

APPELLANT

Vs

State of Jharkhand and Others

RESPONDENT

Date of Decision : 28-02-2001

Acts Referred:

Constitution of India, 1950 — Article 226
Registration Act, 1908 — Section 35, 58, 61, 77

Citation : (2001) 02 JH CK 0068

Hon'ble Judges : Tapen Sen, J

Bench : Single Bench

Advocate : Anil Kumar Sinha and Manjul Prasad, for the Appellant; Pradeep Modi, G.P.-1, P.K. Prasad and Sumir Prasad, for the Respondent

Final Decision : Allowed

Judgement

Tapen Sen, J.—Heard the learned Counsels for the parties.

2. The grievance of the petitioners is that the Respondent Nos. 2 and 3 (Deputy Commissioner-cum-District Registrar. Ranchi and the Sub-Registrar, Ranchi) are not registering their sale-deeds which were executed and presented by the Respondent Nos. 4 and 5 in the office of the Respondent Nos. 3 on 7.06.2001.

3. The petitioners have submitted that the Respondent Nos. 2 and 3 have got no right or authority to keep in abeyance the registration of the sale-deeds on an application of a member of the All Jharkhand Students Union, namely, one Manendra Kashyap. They have also argued that inspite of the allegations having been found to be frivolous and inspite of repeated recommendations by the concerned authorities such as the Addl. Collector as also the opinion at the learned Govt. Pleader, the Respondents have not registered the sale-deed in question thereby acting contrary to the provisions of the Indian Registration Act read with Articles 14 and 300-A of the Constitution of India.

4. The petitioners have stated that the predecessor-in-interest of the Respondent

Nos. 4 and 5 was the recorded raiyat in respect of 4.06 acres in village Hinoo, Thana No. 225, Khata No. 183. Plot No. 454. 455 and 456 within Revenue Thana, Ranchi. According to the Petitioners, the Respondent Nos. 4 and 5 having power of attorney of eight co-sharers and also for self, executed sale-deeds in favour of the petitioners and presented the same for registration in the office of the Respondent No. 3 on 07.06.2001. The Registering Authority (Respondent No. 3) accepted the sale-deeds but refused to accept the registration fee on the ground that an enquiry was being conducted by the Deputy Commissioner with respect to the land in question. The Respondent No. 3, however, issued receipts which had been handed over to the petitioners since the Respondent Nos. 4 and 5 had received the entire consideration amount.

5. The petitioners have stated that they came to learn that the Respondent No. 2 by his letter dated 12.06.2001 called for a report from the Circle Officer, Ranchi, whereafter, the said Circle Officer submitted his report vide report dated 12.07.2001 as contained at Annexure-2 to the Writ Petition.

6. The petitioners have also stated that one of the purchasers namely. Subodh Kumar filed an application before the Deputy Commissioner. Ranchi wherein while giving details of the land in question he requested that appropriate remedial orders should be passed.

7. The petitioners have also brought on record office notes vide Annexure-4 to show that the matter moved from one officer to another and the question relating to the lands falling under the Ceiling Act was also referred to the Additional Collector and who on 02.08.2001 submitted his report saying that the land in question was not in the list of Urban Land Ceiling and there were also no cases pending. Thereafter, the matter was referred to the Government Pleader for his opinion and the said Government Pleader. Ranchi by his letter dated 28.08.2001 as contained at Annexure-5 and after having gone through the necessary records submitted his opinion saying that there was no legal impediment in admitting the deeds for registration under the Indian Registration Act. Thereafter, the Additional Collector by Annexure-6 put up a note before the Deputy Commissioner recommending that the District Sub- Registrar, Ranchi, may be directed to register the sale deeds. Instead of doing so, the Deputy Commissioner then asked/queried as to "what was the point of objection raised by the District Sub-Registrar?" consequently, the Additional Collector submitted his report afresh on 07.09.2001 once again reiterating that the District Sub-Registrar could be directed to register the sale-deeds. Instead of passing necessary orders, the Deputy Commissioner merely directed the Addl. Collector to talk to him ("Varta Karen").

8. Being aggrieved, the petitioners have filed this Writ Petition. A supplementary affidavit has been filed in the instant case wherein the Petitioner No. 1 has stated that although an order has been passed (sic) 20.11.2001, by this Court, yet the Respondents have not taken any action till now.

9. A counter-affidavit has been filed on behalf of the Respondent Nos. 2 and 3 wherein they have stated at paragraph-5 that this case relates to land situated in village-Hinoo, P.S.- Doranda. Thana No. 225. Khata No. 184. Plot No. 454. 455 and 456 measuring an area of 116 Kathas. They have further stated that one Nilika Loll (w/o Late Shaildhari Lalli and Braj Dhari Lall (S/o Late Kamaladhari Lall) have executed 21 sale-deeds in favour of the petitioners claiming to be the owner of the property and presented 21 sale-deeds for registration before Respondent No. 3 on 07/06.2001. Thereafter, some complaint was received and the office of the Commissioner, South Chotanagpur Division. Ranchi directed the Deputy Commissioner, Ranchi to enquire into the matter and submit Report.

10. It has further been stated that after due enquiry the Respondent No. 2 (Deputy Commissioner-cum-District Registrar. Ranchi) vide Order dated 01.02.2002 held that it was not clear as to who are the successors of the recorded tenant and as such till the same was established no decision could be taken for registration of the sale- deeds. According to the deponent of the said counter-affidavit since the Deputy Commissioner has refused to register the sale-deed presented by the petitioner vide his order dated 01.02.2002 (a copy whereof has been marked as Annexure-A to the counter-affidavit) it has been submitted that a suit will lie before a Civil Court under the provisions of the Section 77 of the Registration Act and since the present Writ Petition involves disputed question of facts, therefore, the same can be determined by the Civil Court by competent jurisdiction.

11. A Counter-affidavit has also been tiled by Respondent Nos. 4 and 5 wherein they have stated that they are the real owners of the property in question. They have further stated that sale-deeds in respect of 4.06 Acres comprised within Plot No. 454. 455 and 456 appertaining to Khata No. 183 have been duly executed by them and presented on 07.06.2001 before the District Sub-Registrar for registration. According to them the sale deeds were duly stamped as per the requirement and. therefore, under such circumstances the District Sub-Registrar was under a legal obligation to register the sale-deed. They have further stated that the aforesaid land was recorded in the name of Mini Lall in the Revisional Survey Records of right and in support thereof these respondents have annexed a copy of the Khatian in respect of Khata No. 183 which has been marked as Annexure-A. According to these respondents Mini Lall W/o. Tilakdhari lall was the true and lawful owner and Jamabandi had also been made in her favour and she died leaving behind two sons namely Kamaladhari Lall and Samaladhari Lall. They have stated that the legal heirs and successors of Late Kamaladhari Lall and Samaladhari Lal executed the sale-deeds in question either through themselves or through their power of attorney holder (Respondent No. 5).

12. They have also stated that the sale-deeds were executed after necessary permission u/s 26 of the Urban Land Ceiling (Regulation and Development) Act. 1976. They further stated that the Authorities had initiated a proceedings being

Misc. Case No. 6-R-28/1988-89 in the Court of Deputy Commissioner, Ranchi, where an ex-parte order had been passed which was subsequently set-aside by the Commissioner-in-Appeal and thereafter, the order was passed on 05.04.1989 by the Deputy Commissioner giving liberty to the parties to approach the Civil Court. The order dated 05.04.1989 has been marked as Annexure-B of the counter-affidavit.

13. Being aggrieved by the said order dated 05.04.1989, the same was challenged before Commissioner. South Chotanagpur in Misc. Case No. 119 of 1990 which was allowed on 06.07.1990 vide Annexure-C to the counter-affidavit. According to these respondents after passing of the order dated 06.07.1990 nothing had been done and apparently no claim had been made till date. They have also stated that in respect of the same property a sale-deed dated 27.12.1969 executed by the same very heirs of late Mini Lall had been duly registered vide Annexure-D to the counter-affidavit but by the reasons best known to the respondents these sale-deeds have not been registered. They have further stated that by Notification dated 14.07.1953 the State Government had mentioned Kamaldhari Lall as son of Tilakdhari Lall (husband of the recorded tenant) vide Annexure-E to the counter-affidavit. According to these respondents the question relating to inheritance or succession is totally beyond the jurisdiction of either Deputy Commissioner or Commissioner or the Authorities under the Registration Act.

14. By an Amendment Application, the petitioners after having received the counter-affidavit of the Respondent Nos. 2 and 3, by which the order of the Deputy Commissioner dated 01.02.2002 was brought on record, the petitioners have stated that they had absolutely no knowledge of the said order and came to know about it only on service of the counter-affidavit. They have further stated that this order was passed during the pendency of the writ petition and accordingly by the amendment application they have also prayed for issuance of an appropriate writ or the writ in the nature of writ of certiorari for quashing the said order dated 01.02.2002 passed by the Deputy Commissioner. Ranchi. According to them the said order is absolutely without jurisdiction and it was passed in utter haste without giving an opportunity of hearing to the petitioners or the vendors and it is totally beyond the provisions of the Indian Registration Act and consequently, wholly without jurisdiction.

15. Under the provisions of Sections 17 and 18, the Registration Act. 1908 reference has been made to documents for which registration is either compulsory or optional. A sale-deed obviously is a document which is compulsorily required to be registered, u/s 28 of the said Act, such a document is to be presented for registration in the office of the Sub- Registrar within whose jurisdiction the whole or some portion of the property to which such document relates is situated. u/s 32, every document shall be presented by some person executing or claiming under the same or by a representative or assign of such person or by the agent of such person representative or assignee, duly

authorised by power of attorney, executed and authenticated. Provisions of Section 32 excludes, however, those cases mentioned in Sections 31, 88 and 89 which in the instant case, are not relevant for the purposes of this case.

16. Thus, from a perusal of the aforesaid provisions of the Registration Act it is clear that three basic ingredients are necessary and, they are that there must be a valid presentation, a valid execution and the stamp duty should be adequate. If these three ingredients are present, then under the provisions of Section 35 the registering authority has no option but to register the document because the word used therein is that the registering officer "shall register" document as directed in Sections 58 to 61 inclusive which relates to the procedure to be followed for admitting a document for registration. In the instant case one of the most important documents which clinches the issue is the well reasoned opinion given by the Government Pleader of Ranchi on 28.08.2001. This apart, the notings of the Additional Collector, Ranchi, repeatedly stating that the Sub-Registrar can be ordered to register the document is also another important feature of this case.

17. The learned Counsel for the petitioner has relied upon a Judgment of a Division Bench of the Hon'ble Patna High Court, reported in Bihar Deed Writers Association and Others Vs. State of Bihar and Others, comprising of the Hon'ble Chief Justice O.K. Sen sitting with his Lordship the Hon'ble Mr. Justice S.K. Jha. In the said Judgment their Lordships were of the view that if a document, which otherwise complies with the statutory requirements and formalities as required under the Registration Act, is presented for registration, the registering authority is bound to register it and it is not for the registering authority to inquire and ascertain the title for its own satisfaction. Their Lordships have further said that under the provisions of Transfer of Property Act, 1888, if the transfer does not have any title or has an imperfect title to the property, the transferee on transfer will either get no title or he will get an imperfect title. This will be to the prejudice to the transferee and is not of any concern to the registering authority.

18. In yet another Judgment which appears to have a direct bearing on the issues involved in this case is the case of Dinesh Kumar Singh v. The State of Bihar, reported in 1999 (1) All PLR 103. wherein an Hon'ble Single Judge of the Hon'ble Patna High Court also took a similar view.

19. The learned Counsel for the respondents have stated that in view of the order dated 01.02.2002 the petitioners have a valid alternative remedy and they can file a suit under the provisions of Section 77 of the Registration Act, 1908. This submission made by the Counsel for the respondents must be rejected for the simple reason that the order dated 01.02.2002 is not a final order of refusal. On the contrary the Deputy Commissioner has said that:

"Jamin ke bikretaon ne khatiyam raiyat ke utradhikari hone ke praman patra nahin samarpit kiya hai. Iski jameh ke liye upper Samaharta, Ranchi ko ad-hikrit kiya gaya hai aur yeh bhi nirdehit kiya gaya hai ki sikhra iski jameh sum-pann kar

li jaye taki is vishay per antim roop se nirnay ho sake."

20. This order, therefore, clearly shows that it is not a final order of refusal. u/s 77, a suit can be filed only when Registrar refuses the document to be registered. Even otherwise, in view of the nature of the inquiry that appears to have been entered upon inter se between the Deputy Commissioner, Collector and the opinion given by the learned Government Pleader. It is apparent that the Revenue Authorities have attempted to enquire into the right and the of the property in question. Such an exercise by Revenue Authorities and specially by Authorities under the Registration Act is wholly without jurisdiction. In that view of the matter even if there is a provision u/s 77 relating to filing of a suit. I refuse to accept the submission of the respondents and reject the same, as according to me the entire exercise of the Registering Authority in refusing to register is wholly without jurisdiction. The power to issue high prerogative writs in Article 226 of the Constitution of India is plenary in nature and is not limited by any other provisions of the Constitution. The High Court, having regard to the facts of the case, has a discretion to entertain or not to entertain a Writ Petition. But the High Court has imposed upon itself certain restrictions one of which is that if an effective and efficacious remedy is available, the High Court would not normally exercise its jurisdiction. But the alternative remedy has been consistently held by the Hon"ble Supreme Court not to operate as a bar in at least three contingencies, namely, when the Writ Petition has been filed for the enforcement of any of the Fundamental Rights or where there has been a violation of the principle of the natural justice or where the order or proceedings are wholly without jurisdiction or the vires of an Act is challenged. These lines have been taken from a judgment of the Hon"ble Supreme Court of India in the case of Whirlpool Corporation Vs. Registrar of Trade Marks, Mumbai and Others, where their Lordships have further held that the jurisdiction of the High Court in entertaining a Writ Petition under Article 226 of the Constitution, in respect of the alternative statutory remedy, is not affected, specially in a case where the Authority against whom the writ is filed is shown to have had no jurisdiction or had perpetrated to usurp a jurisdiction without any legal sanction.

21. In the instant case there was a valid presentation of document. There was also a valid execution and adequate stamp duties were also paid. All of a sudden, the registration was kept in abeyance and thereafter, an enquiry was ordered to be made but in spite of repeated recommendations coming from the Government Pleader as also from the Additional Collector, the Deputy Commissioner went on putting incryptic remarks like "what was the point of objection raised by the District Sub-Registrar thereof"; "Varta Karen" etc.

What is most shocking is that even during the pendency of this Writ Petition, the Deputy Commissioner suddenly passed an order on 01.02.2002 keeping the entire matter in abeyance and ordered that till the matter relating to the successors of the vendors were not established by the Additional Collector. Ranchi through an enquiry, no final orders could be passed and, therefore,

according to him till the legal successors of the Khatiyani Raiyats were not established, till then it would not be proper for passing an order in relation to the registration of document. This, in my opinion, is an order passed completely and totally without jurisdiction. I, therefore, have no option but to allow this Writ Petition and direct the Authorities to proceed to register the document strictly in accordance with the provisions of the Indian Registration Act.

Let appropriate writ be issued quashing the impugned orders by which registration of the sale deeds have been ordered to be kept in abeyance vide order dated 01.02.2002 of the Deputy Commissioner and directing the respondents to register the sale-deeds in question.

It is made clear that in the event it is found that any of the provisions of any Statute including those under the Ceiling Act have been violated by the parties, it will be open to the Respondents to take steps in accordance with law and it is also made clear that this order will not stand in the way of such proceedings. It is also made clear that mere registration of a document does not confer any valid title unless the same is proved in accordance with law it and when challenged.

The Writ Petition is allowed.