
(2025) 11 SC CK 1733

In the Supreme Court Of India

Case No : Civil Appeal No (S). 13429 Of 2025 Arising Out Of Special Leave
Petition (Civil) No(S). Of 2025 @ Diary No. 12674 Of 2024

Samiullah

APPELLANT

Vs

State Of Bihar & Ors

RESPONDENT

Date of Decision : 07-11-2025

Acts Referred:

Registration Act, 1908 — Section 3, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 53(3), 54, 55, 69, 69(1)(aa), 69(1)(a), 69(1)(e), 69(1)(g), 69(1)(gg), 69(1)(h), 69(1)(i), 69(1)(j)
Bihar Land Mutation Act, 2011 — Section 2(26), 2(26A)
Bihar Registration Rules, 2008 — Rule 19, 19(i), 19(ii), 19(i), 19(iii), 19(iv), 19(i), 19(v), 19(vi), 19(vii), 19(viii), 19(ix), 19(x), 19(xi), 19(xii), 19(xiii), 19(xiv), 19(xv), 19(xvi), 19(xvii), 19(xviii)

Citation : (2025) 11 SC CK 1733

Hon'ble Judges : Pamidighantam Sri Narasimha, J;Joymalya Bagchi, J

Advocate : A Velan, Navpreet Kaur, Prince Singh, Nilay Rai, Manan Kumar Mishra, Anjul Dwivedi, Dr. Ram Sankar, Harini Ramsankar, M/s Ram Sankar & Co, Ranjit Kumar, Manish Kumar, Divyansh Mishra

Final Decision : Allowed

Judgement

Pamidighantam Sri Narasimha, J

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Introduction.

1. Delay condoned. Leave granted.

2. The constitutionally protected right to own immovable property inherently includes the freedom to freely acquire, possess and dispose it at will. The efficiency and transparency with which immovable property is bought and sold is demonstrative of a nation's institutional maturity and a testament of the confidence and trust its citizens repose in the integrity of its legal and transactional framework.

2.1 Rather curiously, our property laws have long sustained a dichotomy between registration and ownership. The Registration Act, 1908 "the Act" mandates the registration of documents, not titles, and this distinction forms the cornerstone of our country's presumptive titling system. Since this presumption is rebuttable in a court of law, a substantial burden rests on the prospective buyer, who must undertake a painstaking search of title. There is no doubt that this uncertainty has been distressing for those seeking to purchase property. Property disputes, in fact, constitute nearly sixty six percent of all civil litigation. It is therefore fair to ask whether the time has come to move towards a system in which the sale and purchase of immovable property becomes simpler, and registration serves as a conclusive proof of ownership guaranteed by the State. We have explored this possibility and found promise in emerging technologies such as Blockchain, which we have directed the government to examine. Until the convergence of conclusive titling with registration is achieved, constitutional courts must balance the freedom to buy and sell property with the Governmental duty to ensure integrity in transactions. Guided by this principle, we have examined the present case and found that the measure adopted by the State has unduly restricted the freedom to sell property. These perspectives gain relevance in the following context.

2.2 Sub-rules (xvii) and (xviii) were introduced by way of amendments to Rule 19 of the Bihar Registration Rules, 2008 "the Rules", empowering registering authorities to refuse registration of documents, if proof of mutation of the

property under sale in favour of the vendor is not produced along with the registering document. These sub-rules were challenged unsuccessfully before the High Court of Patna. In these Civil Appeals, we have accepted the submissions and allowed the appeals on the ground that the impugned sub-rules are ultra vires the rule making power under Section 69 of the Act. We have also come to the conclusion that, as the said sub-rules tilt the balance and empower the registering authorities to produce collateral evidence of title to the property as a pre-condition for registration, such a measure, through subordinate legislation, is also against the purpose and object of the Act. Further, the requirement under the impugned sub-rules is arbitrary as the process of mutation and its certification is uncertain and virtually unavailable in near future, as the Bihar Mutation Act, 2011 and the Bihar Special Survey and Settlement Act, 2011 are said to be nowhere near implementation.

2. Facts.

3. These appeals arise out of the judgment of the High Court of Patna dismissing writ petition 'CWJ No. 21386/2019 dated 09.02.2024' filed by the appellants herein, challenging the vires of sub-rules (xvii) and (xviii) of Rule 19, introduced through the 2019 amendment to the Rules on 10.10.2019.

4. The Rules, as well as the amendment in 2019, were made in exercise of the rule making power of the Inspector General of Registration under Section 69 of the Act. The newly added sub-rules empowering the registering authority to refuse registration of a duly presented document in circumstances as indicated therein are as follows;

"Rule 19 Refusal of duly presented document - A duly represented document may be refused for registration under following circumstances -

...

(xvii) If a document is related to sale/gift of property, in which Jamabandi allotment to seller/donor is not mention in the deed and no proof is produced about the Jamabandi allotment to the seller/donor.

Provided that, it will have no effect on the document related to the transfer of flat/apartment.

(xviii) If a document is related to sale/gift of property, in which holding allotment to seller/donor of the flat/apartment in urban region is not mentioned in the deed and no proof is produced about the holding allotment to the seller/donor.

Provided that, it will have no effect on the document related to the first transfer of flat/apartment."

5. The effect of the amended sub-rules is simply that the registering authorities can refuse registration of an otherwise validly presented document on the ground that it did not mention and carry the proof of jamabandi allotment or holding allotment in favour of the seller. In other words, it is now a condition precedent

to get jamabandi or holding allotment certificate under the Bihar Land Mutation Act, 2011 or allied laws for sale or transfer of immovable property.

6. Aggrieved by the additional requirement, introduced by way of the amended sub-rules, several writ petitions came to be filed before the High Court of Patna on two grounds; (i) that the addition of sub-rules (xvii) and (xviii) to Rule 19 is ultra vires the Act and beyond the scope of Section 69(1)(a)(aa), (ii) that it is an admitted fact that the process of land surveys is yet incomplete in Bihar, making it impossible for owners to obtain jamabandi or holding allotment in order to be able to freely deal with their properties, (iii) that it is a settled position of the law that mutation does not create title and therefore, making it mandatory for purpose of registration is arbitrary, and (iv) enquiry into title falls within the jurisdiction of civil courts and the registering authorities have no jurisdiction to refuse registration on the ground of defective title.

7. The Division Bench of the High Court, by the judgment impugned before us, dismissed the writ petitions on the grounds;

(i) That jamabandi or holding allotment does not necessarily confer title on the person whose name is entered in the register, however it is indeed a compelling, although rebuttable, evidence in favour of title. "9. We have to immediately observe and affirm the trite principle, as argued by the learned counsel for petitioners and not disputed by the State, that the 'Holding' or 'Jamabandi' recorded in a register maintained by the State or its authorities, does not necessarily confer title on the person whose name is entered in the register; on which if a dispute arises will have to be adjudicated by a court of law. However, it is also a trite principle that the entry in the register maintained by the State would be compelling evidence in favour of title, which could be displaced by more persuasive evidence, unsettling even a claim based on that entry."

(ii) That arguments of the writ petitioners are mutually destructive, wherein on the one hand it is contended that revenue entries confer no title and yet on the other hand, their grievance is that the amendment empowers the registering authorities to adjudicate on question of title. "10. Having said that, we have to notice that the arguments raised by the petitioners are conflicting and mutually destructive. It is argued that title cannot be decided on the mere entries made in the revenue register; which, as we noticed, is the established principle. But it was also argued that if the entry in the register is insisted upon, then it will be requiring the SubRegistrar to adjudicate on the title of the land. The arguments, so addressed, are mutually destructive and going by the established principle, based on which the first argument is addressed, even if a registration is carried out of a document where the 'Jamabandi' or 'Holding' is specified, there is no bar from the Civil Court considering a dispute on title, in a properly instituted suit."

(iii) That if there is an absence of jamabandi or holding allotment by reason of an ongoing survey process in the State, then it is for the individual owners to approach the appropriate forum for the same. "12. Section 21 of the Registration

Act speaks of description of property and maps or plans. Sub-section (1) specifically provides that a non-testamentary document relating to immovable property shall be accepted for registration only if it contains a description of such property, sufficient to identify the same. Section 22 is complementary to Section 21 and explains what, a description of a house and land can be, with reference to Government maps or surveys. Subsection (1) empowers the State Government to prescribe by way of rules that a land or house should be described with reference to a Government map or survey, if it is practicable so to do. This puts to rest any objection with respect to the hardship of the owners of land, since if there is absence of a 'Jamabandi' or 'Holding' by reason of no survey being conducted by the State, then it is for such individual owners to approach appropriate forum for relief, pointing out the absence of the entry, by reason of the survey not having been carried out. None can be heard to raise a claim of hardship only for reason of there being a necessity to approach a court of law."

(iv) That the provisions of the Act taken together mandate a clear description of the property for purpose of registration and the impugned amendments fall right within the ambit of this requirement. "14. Section 52 is not to be read as an obligation of the Registering Officer, on presentation of a document, to enter the same on the mere requirement under Section 52 being satisfied. No provision in the statute can be read in isolation and the provisions read together, would take in the other requirements also, which mandates a clear description of the property; within which ambit would lie the present amendments too. 15. We also have to emphasize that Section 52(1)(c) requires such entry to be made of a document presented, only if that document is 'admitted' to registration; obliging the Registering Officer to look at the other provisions of the statute so as to find the document to be capable of being admitted to registration. Section 55, in relation to the indexes made by the Registering Officer and their contents, also does not militate against the requirement of 'Jamabandi/Holding' being mandatory in a document presented for registration."

(v) That clause (a) and (aa) of Section 69(1) indeed do not empower the Inspector General to make the impugned sub-rules, however, merely mentioning the wrong provision won't vitiate the general rule-making power vested in him. "16. Now, we have to deal with Section 69, which empowers the Inspector-General to supervise registration offices and make rules. The registration rules have been made under Section 69. The present amendment specifically refers to Clause (a) and Clause (aa) of Section 69(1). We are clear in our minds that the said sub-clauses would not empower the Inspector General to make the subject amendments, but we have to pertinently observe that the mere mentioning of a wrong provision would not vitiate the subordinate legislation; if power can be found under the provision enabling such prescription.

17. Section 69 enables Inspector General to make a prescription by rules, consistent with the Act and Clause (j) permits general regulation of proceedings under Registrars and SubRegistrars. Clause (h) also requires the particulars to be

contained in Indexes Nos. I, II, III and IV respectively, which deal with "description of property....A reading of Section 69, as a whole, along with Sections 21, 22 & 55, does not persuade us to find an absence of power to make the subject amendment. The impugned prescription is one, which is enjoined under Section 69."

(vi) That public policy considerations behind the impugned amendment do not impair the prescription in the amended Rules, given the identification of the source of power to validly do so under section 69. "21. The learned Advocate General only pointed out the rising criminal tendencies, by reason of land disputes and the requirement by amendment having aimed at curbing such multiplicity of claims being raised on an identical piece of land. The requirements brought in only describe the property by way of the entries in the Register of Raiyats, which is permissible under the Registration Act. The intention of the Legislature or the State Government or the rule making authority, however laudable, cannot be upheld unless the source of power to make such prescription is well defined. As a corollary, if the source is clear and there is power on the rule making authority then merely based on intentions, unless it shocks the conscious or is arbitrary and perverse, valid prescriptions cannot be unsettled. The source we have found clearly under Section 69 of the Registration Act and the argument advanced of an attempt to curb the menace of rising criminal activities, does not make the amendment invalid. Merely because public policy having weighed with the rule making authority, would not impair the prescription, since the power can be easily found under Section 69."

3. Submissions.

8. On behalf of the appellants, we heard Mr. Manan Kumar Mishra, Senior Advocate and Mr. A. Velan, AOR. They made detailed submissions on the impugned amendments and have also brought to our notice certain precedents that have a direct bearing on the issue arising for consideration, including the recent decision of this Court in K. Gopi v. Sub-Registrar and Others 2025 INSC 462. On behalf of the State, Mr. Ranjit Kumar, Senior Advocate, assisted by Mr. Manish Kumar, AOR, has brought to our notice the purpose and object of the amendment, intending to subserve integrity in sale transactions. They have submitted that the impugned sub-rules are in consonance with Section 69 of the Act and are not arbitrary.

4. Distinction between the existing sub-rules (i) to (xvi) and the impugned sub-rules (xvii) and (xviii) of Rule 19.

9. Rule 19 in its entirety is extracted hereinbelow for ready reference and this includes the newly introduced sub-rules (xvii) and (xviii).

"Rule 19. Refusal of duly presented document - A duly presented document may be refused for registration under following circumstances -

(i) If the description of identification of the property as defined in Rule-5 has not

been given as required under the Act and Rules.

(ii) If the executant denies execution. (Section 35)

(iii) If the executant fails to appear and admit execution. (Section 34)

(iv) If the person by whom the document purported to have been executed were dead and his representative or assign deny execution. (Section 35)

(v) If the person purporting to have executed the document appear to be a minor an idiot or a lunatic. (Section 35)

(vi) If the Registering Officer is not satisfied by the identity of the person appearing before him claiming that he has executed the document. (Section 35)

Provided that a document shall not be refused under this clause unless the party fails to prove this identity within the time allowed under Section 34.

(vii) If the Registering Officer is not satisfied of the truth of the allegation that person who executed the document is dead. (Section 35)

Provided that a document shall not be refused for registration under this clause unless the party fails to prove the death of the executant within the time allowed in Section 34.

(viii) If the admitting agent's power-of-attorney has not been made in accordance with the Act or if any alleged representative or assign has failed to prove his status. (Section 35)

(ix) If the partes fail or refuse to mention the additions of executants and claimants.

(x) If the prescribed fee or fine has not been paid under Section 25, 34 and 80 of the Act.

(xi) If a document is said to be executed by a deaf and dumb person who does not understand the transaction nor express himself by signs or in writing.

(xii) Where a person admits his signature to a document but states that he signed the paper when it was blank and no document was written thereon.

(xiii) If a deed of surrender of lease which claimed exemption from stamp duty because the original lease was so exempt is presented and the party refuses to produce the original lease or a certified copy of it in order to satisfy the Registering Officer that the document is either properly stamped or not liable for stamp duty.

(xiv) Where any or some of the representatives of a deceased executant deny execution while others admit it registration of the document shall be wholly refused subject to the provisions of Section 73 of the Act.

(xv) On refusal or neglect to appear on an appointed date after services of

summons under Section 36 of the Act.

(xvi) [-]

[Provided further that it will not affect the registration of units/flats of those multi-storied buildings/apartments of which at least one unit/flat has been registered before the Bihar

Registration (Amendment) Rules, 2018 notified on 30.8.2018 came into force.]

[(xvii) If a document is related to sale/gift of property, in which Jamabandi allotment to seller/donor is not mentioned in the deed and no proof is produced about the Jamabandi allotment to the seller/donor.

Provided that, it will have no effect on the document related to the transfer of flat/apartment.

(xviii) If a document is related to sale/gift of property, in which holding allotment to seller/donor of the flat/apartment in urban region is not mentioned in the deed and no proof is produced about the holding allotment to the seller/donor.

Provided that, it will have no effect on the document related to the first transfer of flat/apartment]."

10. Circumstances in which a duly presented document can be refused by registering authority under sub-rules (i) to (xv) of Rule 19 can broadly be divided into following categories.

1. Circumstances where identification of property is uncertain - sub-rule 19(i).

2. Circumstances relating to uncertainty about the executant such as; the executant denying execution - sub-rule 19(ii), the executant failing to appear and to admit execution - sub-rule 19(iii), executant dies - sub-rule 19(iv), executant appears to be a minor, idiot or a lunatic - sub-rule 19(v), parties fail or refuse to mention the addition of executants and claimants - sub-rule 19(ix), executant being a deaf and dumb person who does not understand the transaction -sub-rule 19(xi), persons admitting signatures but on a blank paper - sub-rule 19(xii), where some representatives of a deceased executant deny execution while others admit registration - sub-rule 19(xiv) and executants refusing or neglecting to appear - sub-rule 19(xv).

3. Circumstances where the Registering Officer is not satisfied about the identity of person claiming to be executant - sub-rule 19(vi), or about the truth of alleged death of executant - sub-rule 19(vii). However, the proviso to these sub-rules interestingly mandates registration of the documents, unless the concerned party fails to satisfy the authority within the time allowed under Section 34.

4. Circumstances in which the legal requirements of law are not satisfied, such as the admitting agent's power of attorney is not legal - sub-rule 19(viii), the prescribed fee or fine under Sections 25, 34 and 80 are not paid - sub-rule 19(x) or that the claim of exemption from stamp duty is not proved - sub-rule 19(xiii).

11. It is evident from the above, that the four categories encompassing the existing sub-rules (i) to (xv) of Rule 19 are relatable either to the identity of the property, of the condition or the conduct of the executant, the registering officer not being satisfied with the identity of the property or the death of the executant and the legal requirements of law with respect to POA, fee, fine or exceptions not being satisfied. It is evident that these circumstances have no relation to proof of title of the property. They are conditions precedent to enable the registering authority to be certain about the identity of the property of the executant.

12. On the other hand, the impugned sub-rules 19 (xvii) and (xviii) are qualitatively distinct from any of the circumstances provided under sub-rules (i) to (xv). Sub-rule 19(xvii) empowers the registering authority to refuse registration of the document if the Jamabandi allotment of the seller is not mentioned in the deed and also if the proof of such allotment is not produced. For the first time, the sub-rule prescribes 'mentioning' with 'proof' of the transaction of the registrable property under another statute, namely the Bihar Land Mutation Act, 2011. Similarly, Rule 19(xviii) empowers the registering authority to refuse registration of a legally presented document relatable to a flat or an apartment in an urban region if the holding allotment is not 'mentioned' and the 'proof' is not produced.

13. The requirement under newly added sub-rules is starkly different from the existing sub-rules.

5. Scope of rule-making power under Section 69.

14. It was argued before the High Court, and likewise before us, that the impugned sub-rules are ultra vires the rule-making power of the Inspector-General of Registration. For this purpose, our attention is drawn to Section 69 of the Act, empowering the Inspector-General to make rules. We will reproduce Section 69 in its entirety to examine if sub-rules 19(xvii) and (xviii) could legally and validly be made in exercise of power under Section 69, which is as follows:

"Section 69 - Power of Inspector-General to superintend registration offices and make rules.-

(1) The Inspector-General shall exercise a general superintendence over all the registration offices in the territories under the State Government, and shall have power from time to time to make rules consistent with this Act-

(a) providing for the safe custody of books, papers and documents;

(aa) providing the manner in which and the safeguards subject to which the books may be kept in computer floppies or diskettes or in any other electronic form under sub-section (1) of section 16A;

(b) declaring what language shall be deemed to be commonly used in each district;

(c) declaring what territorial divisions shall be recognized under section 21;

- (d) regulating the amount of fines imposed under sections 25 and 34, respectively;
- (e) regulating the exercise of the discretion reposed in the registering officer by section 63;
- (f) regulating the form in which registering officers are to make memoranda of documents;
- (g) regulating the authentication by Registrars and Sub-Registrars of the books kept in their respective offices under section 51;
- (gg) regulating the manner in which the instruments referred to in sub-section (2) of section 88 may be presented for registration;
- (h) declaring the particulars to be contained in Indexes Nos. I, II, III and IV, respectively;
- (i) declaring the holidays that shall be observed in the registration offices; and
- (j) generally, regulating the proceedings of the Registrars and Sub-Registrars.

(2) The rules so made shall be submitted to the State Government for approval, and, after they have been approved, they shall be published in the Official Gazette, and on publication shall have effect as if enacted in this Act."

15. The Parliament has delegated the 'power to superintend registration offices' and also the power to make rules to the Inspector General of Registration. The Inspector General is granted the power to make rules, consistent with the provisions of the Act, to (i) provide safe custody of books and papers - Section 69(1)(a), (ii) safeguard books and other electronic material as per Section 16(A)- Section 69(1)(aa), (iii) declare the language that is to be used in the district - Section 69(1)(b), declare the territorial division under Section 21 - Section 69(1)(c), specify amounts of fines under Sections 25 and 34 - Section 69(1)(d), regulate the discretion of the registration officer under Section 63 - Section 69(1)(e), regulate the forms for memoranda of documents - Section 69(1)(f), regulate authentication by registering officers of books kept under Section 51 - Section 69(1)(g), regulate the procedure for registration under Section 88(2) - Section 69(1)(gg), declare particulars to be contained in indexes I to IV under Sections 54 and 55 - Section 69(1)(h), declare holidays - Section 69(1)(i) and regulate proceedings of the registrars and sub-registrars in general - Section 69(1)(j).

16. The rule making power extends to the Inspector General provisioning the safe custody and procedure for maintaining books and documents, the conduct of the proceedings including language and holidays, territorial divisions, imposition of fines and regulating discretion. There is nothing in Section 69 that would enable the Inspector General to make rules enabling or requiring declaring or enclosing proof of mutation in favour of the vendor, as a condition precedent for registration of documents for sale of property.

17. Interestingly, while the notification introducing impugned sub-rules 19 (xvii) and (xviii) sources the power of making it to Section 69(1)(a) and (aa), the High Court came to the conclusion that the power to introduce sub-rules (xvii) and (xviii) of Rule 19 is not relatable to 69(1)(a) and (aa). High Court, however, traced the power to make the impugned sub-rules to Section 69(1)(h) and Section 55 (3), read with Sections 21 and 22 of the Act, or in the alternative to the Inspector General's general rule-making power under Section 69(1)(j). We will now refer to these provisions and at the same time consider other provisions of the Act to examine the legality and authority of sub-rules 19(xvii) and (xviii).

6. Sourcing the rule-making power under other provisions of the Registration Act.

18. The Registration Act, 1908 was enacted to consolidate laws relating to registration of documents. In Part II of the Act, comprising Sections 3 to 16A, the Parliament's endeavor to institutionalize 'Registration Establishment' is evident 'Section 5'. The Inspector General of Registration appointed under Section 3 of the Act, has the power of general superintendence over all registering offices in the territories of the State Government. He is also empowered to make subordinate legislation, as provided under Section 69. We are of the opinion that, following good governance through modern legislation, it is necessary to fully institutionalize the registration offices by establishing a permanent regulatory body. This will enable real time assessment and development of the establishment through institutional efficiency and expertise. A permanent body will enable institutional memory for upgradation and improvement. It will also enable course correction and modernization.

19. Part III of the Act provides for documents that are mandatorily registrable 'Section 17' and those that are optionally registrable 'Section 18' and this is followed by provisions laying down conditions precedent for successful registration of a document. They are as follows; - firstly, the document has to be in a language that is understood by the registrar or must be accompanied by a true translation in a language commonly used in the district Section 19; secondly, the document must not have interlineations, blanks, erasures or alterations 'Section 20'; thirdly, under Section 21, a non-testamentary document with respect to an immovable property must contain a description of subject property sufficient to identify the same [Section 21 - Description of property and maps or plans.-(1) No non-testamentary document relating to immovable property shall be accepted for registration unless it contains a description of such property sufficient to identify the same. (2) Houses in towns shall be described as situate on the north or other side of the street or road (which should be specified) to which they front, and by their existing and former occupancies, and by their numbers if the houses in such street or road are numbered. (3) Other houses and lands shall be described by their name, if any, and as being the territorial division in which they are situate, and by their superficial contents, the roads and other properties on to which they abut, and their existing occupancies, and also, whenever it is practicable, by reference to a Government map or

survey. (4) No non-testamentary document containing a map or plan of any property comprised therein shall be accepted for registration unless it is accompanied by a true copy of the map or plan, or, in case such property is situate in several districts, by such number of true copies of the map or plan as are equal to the number of such districts.]. Further, for description of houses and land, under Section 22, reference may be made to Government maps or surveys [Section 22 - Description of houses and land by reference to Government maps or surveys.- (1) Where it is, in the opinion of the State Government, practicable to describe houses, not being houses in towns, and lands by reference to a Government map or survey, the State Government may, by rule made under this Act, require that such houses and lands as aforesaid shall, for the purposes of section 21, be so described. (2) Save as otherwise provided by any rule made under sub-section (1), failure to comply with the provisions of section 21, sub-section (2) or sub-section (3), shall not disentitle a document to be registered if the description of the property to which it relates is sufficient to identify that property.]. However, sub-section (2) to Section 22 also clarifies that, save as otherwise provided by any rule by the State Government, failure to comply with the provisions of Section 21 shall not disentitle a document to be registered if the description of the property to which it relates is sufficient to identify that property.

20. In ensuing Parts, IV (Sections 23 to 27), V (Sections 28 to 31) and VI (Sections 32 to 35), the Act provides for proper time, place and presentation of documents for registration. Under Section 34 [Section 34 - Enquiry before registration by registering officer.- (1) Subject to the provisions contained in this Part and in sections 41, 43, 45, 69, 75, 77, 88 and 89, no document shall be registered under this Act, unless the persons executing such document, or their representatives, assigns or agents authorised as aforesaid, appear before the registering officer within the time allowed for presentation under sections 23, 24, 25 and 26: Provided that ... (2) Appearances under sub-section (1) may be simultaneous or at different times. (3) The registering officer shall thereupon- (a) enquire whether or not such document was executed by the persons by whom it purports to have been executed; (b) satisfy himself as to the identity of the persons appearing before him and alleging that they have executed the document; and (c) in the case of any person appearing as a representative, assign or agent, satisfy himself of the right of such person so to appear.], the registering authority shall enquire whether the document is duly executed and shall satisfy himself of the identity of the persons. Under Section 35 [Section 35 - Procedure on admission and denial of execution respectively.- (1) (a) If all the persons executing the document appear personally before the registering officer and are personally known to him, or if he be otherwise satisfied that they are the person they represent themselves to be, and if they all admit the execution of the document, or (b) if in the case of any person appearing by a representative, assign or agent, such representative, assign or agent admits the execution, or (c) if the person executing the document is dead, and his representative or assign appears before the registering officer and admits the execution, the

registering officer shall register the document as directed in sections 58 to 61 inclusive. (2) The registering officer may, in order to satisfy himself that the persons appearing before him are the persons they represent themselves to be, or for any other purpose contemplated by this Act, examine any one present in his office. (3) (a) If any person by whom the document purports to be executed denies its execution, or (b) if any such person appears to the registering officer to be a minor, an idiot or a lunatic, or (c) if any person by whom the document purports to be executed is dead, and his representative or assign denies its execution, the registering officer shall refuse to register the document as to the person so denying, appearing or dead: Provided that ...], the registering authority shall register the document if he is satisfied or, shall refuse to register if conditions are not satisfied and if so, follow procedure under Part-XII.

21. Part VII provides for procedure for enforcing appearance of executants and witnesses for purpose of registration. This is followed by Parts VIII and IX, which pertain to specific procedural requirements for presenting of wills and authorities to adopt and deposit of wills, respectively. Part X of the Act expounds the effects of registration and non-registration of documents.

22. Part XI lays down the duties and powers of the registering officers and for this purpose, this Part is divided into five sub-parts. Sub-part A deals with maintenance of Register-books and Indexes. Sub-part B deals with the procedure on admitting to registration. Sub-parts C and D deal with special duties of Sub-Registrar and Registrars respectively. Finally, sub-part E deals with the controlling powers of the Registrars and the Inspector-General of Registration.

22.1 In sub-part A, Section 51 mandates maintenance of Register-books 1 to 5, to be kept in all registration offices. Sections 52 deal with the duties of the registering officers when the document is presented. Section 53 and 54 [Section 54 Current indexes and entries therein.-In every office in which any of the books hereinbefore mentioned are kept, there shall be prepared current indexes of the contents of such books; and every entry in such indexes shall be made, so far as practicable, immediately after the registering officer has copied, or filed a memorandum of, the document to which it relates.] requires entries and current indexes of the books to be maintained. Section 55 in particular details the indexes and the contents to be maintained by the registering officers.[Section 55 - Indexes to be made by registering officers, and their contents.-(1) Four such indexes shall be made in all registration offices, and shall be named, respectively, Index No. I, Index No. II, Index No. III and Index No. IV. (2) Index No. I shall contain the names and additions of all persons executing and of all persons claiming under every document entered or memorandum filed in Book No. 1. (3) Index No. II shall contain such particulars mentioned in section 21 relating to every such document and memorandum as the Inspector-General from time to time directs in that behalf. (4) Index No. III ... (5) Index No. IV ... (6) Each Index shall contain such other particulars, and shall be prepared in such form, as the Inspector-General from time to time directs.] There shall be four indexes;

Index I contains the names of all persons executing and persons claiming under the document, Index II shall contain particulars in Section 21 and as prescribed by the Inspector-General from time to time, similar prescriptions are provided for Indexes III and IV. It is imperative to note that the question of particulars to be filled in respective Indexes comes in at a stage succeeding the registration process and not at a stage prior it.

23. A detailed examination of the relevant provisions of the Act, coupled with Sections 21 and 22 and also Section 69(1)(h) read with Sections 55(3), do not indicate anything as assumed by the High Court. At the same time a detailed examination of Sections 21, 22 and 55(3) only evidences the requirement of sufficient description to property. All these requirements are intended only to identify the property and for this purpose the provisions enable reference to maps, plans or surveys, if practicable. The reality is that, none of these provisions require reference to or production of proof of mutation in the name of the owner. That is to say, the provision does not relate to the right of disposition of the executant in respect of a property which is otherwise physically identifiable. The power to make the impugned sub-rules 19 (xvii) and (xviii) cannot be traced to these provisions.

24. We will now examine Section 69(1)(a) and (aa), as referred to and relied on by the Government to frame the impugned sub-rules. These provisions only relate to the power of Inspector General of Registration to frame rules for "safe custody of books, papers and documents" and also for "providing the manner in which and safeguards subject to which books may be kept in electronic form." Equally, Section 69(1)(j) also does not legitimize making of the impugned sub-rules, as it only enables making of rules for "generally regulating the proceedings of registrars and sub-registrars".

25. In view of the above, we have no hesitation in concluding that the impugned sub-rules are ultra vires the rule-making power under Section 69 or any other provisions of the Act.

7. Concerns arising out of Bihar Land Mutation Act, 2011.

26. In addition to the above, Mr. Ranjit Kumar has submitted that the impugned sub-rules must be understood in the context of the endeavor of the state to synchronize registration of documents with the reality of actual land holding. This submission is well articulated in the written submission of the State;

"8. The Bihar Land Mutation Act, 2011 was enacted to make the mutation concomitant with the needs of the present time. The Act provides for mutation of all the Revenue records/Jamabandi by the owners acquiring or have acquired any interest in the property before or after the 2011 Act. Section 4 prescribes that after registration of any document the Authority shall inform the Circle Officer of the Area. This is for the purpose of Mutation of the land records. In the absence of Jamabandi/holding details the very purpose of 2011 Act would be defeated.

12. The name of owner in Jamabandi (rural land) or holding number (urban land) is essential for land revenue and municipal taxes/property taxes etc. Whenever, there is a change of ownership of the land or flat, the new owner gets the mutation done in the revenue or municipal records in accordance with the Land Mutation Act, 2011. A person can apply for online mutation of his/her name and this is done in a fixed time frame.

13. Bihar Mutation Act, 2011 provides for mutation of records in the name of the person holding rights in a property either through transfer or inheritance. Entire land records in the State have been digitalized and a person can apply online for mutation of his/her name in the Jamabandi/land records. The process is ongoing. The petitioners are those persons who wanted to sell the property despite their names not being recorded in the revenue records. They may have their personal reasons for not getting the Mutation done, but this cannot be a ground to challenge the validity of a Rule made by the State.

15. The present amendment in Registration Rules aims to address the public interest and compliance of Mutation Act, 2011. Once the mutation is done, there shall be no problem in compliance with the Rules.

18.A person can always apply for mutation of Jamabandi and 2011 Act provides a fixed time frame (within 21 days) for grant of mutation.

20. Jamabandi (Section 2(26)) and Jamabandi register (26-A) has been defined under the Bihar Mutation Act, 2011 and Registration Rules refers to such a definition."

27. Instead of joining issue on the intentions and good governance of the State to take corrective measure through the 2011 legislation, Mr. Manan Kumar Mishra has drawn our attention to the ground reality of mutations, surveys and settlement in Bihar. He would submit that 80% jamabandis are in the names of the ancestors of the real and current land holders/owners. In fact, 95 to 98% of the persons in whose names jamabandi runs, are dead, and even their legal heirs upto two-three generations are no more. Moreover, there are several legal heirs of one jamabandidar.

28. In addition to the above, Mr. Velan has submitted that the Cadastral Survey of lands in the State of Bihar is traceable to the year 1911 and no statewide survey was undertaken post 1950. Though localized surveys in some districts were undertaken, the Revenue Records/Jamabandi on the strength of the said surveys were not mutated. Mr. Velan has submitted that the State of Bihar taking cognizance of this reality legislated the Bihar Special Survey and Settlement Act, 2011 (Act 24 of 2011), with the object to effect survey of the entire state. It is to be noted that the said Act acknowledged that the tenancy register has not been maintained and mutations effected are not reflected. The relevant portions are extracted below;

"(vi) WHEREAS, Continuous Khatian (Register-1B), Khesra Register and Register-

II (Tenants' Ledger) supposed to be maintained in the Anchal Offices in an up-to-date manner, have not been maintained as such, and consequently, transfers, successions, mutations, etc., taking place from time to time, have not been reflected therein;

(vii) WHEREAS, computerization of land records as sponsored by the Government of India some years ago has not followed a uniform approach;

(viii) WHEREAS, in the event of non-synchronisation of data put into the computer with to-date ground realities, there has been a gap between successive claims of title and a reflection of the same through land records;

(ix) WHEREAS, modern technology is available to minimize time spent on survey part, while the settlement aspect may be judiciously squeezed without sacrificing quality, transparency and grievance redressal;

(xi) WHEREAS, digital maps prepared through modern technology need be verified and compared with the maps prepared through conventional methods as well as a ground truthing of the same is necessary, the technically qualified Licensed Surveyors may be assigned with this task.

(xiii) WHEREAS, an in-built computerized and digital system of the maintenance of the Record of Rights including maps in a sine-qua-non for all development processes and the aforesaid technically qualified persons may be assigned with this task on a regular basis."

29. Having considered the rival submissions, we are of the opinion that while we appreciate the intention of the state to synchronize the registrable document with real time land holding, there is a big missing link given that the process of mutation and the process of survey and settlement are nowhere near completion. Under these circumstances and considering the nascent stage at which the empirical data is translated as mutation into the relevant records and the fact that for this purpose survey and settlement are to be conducted, interlinking and restraining registration till the jamabandi or holding allotment is effected would be illegal, as it has a direct impact on the right and freedom to purchase and sell property. A requirement of rules, regulations or even law that impedes or restrains easy and effective transfer of property will be illegal as it has the direct effect of 'depriving of property' to that extent, and such delays, caused due to unreasonable and arbitrary restrictions, impinge the right to hold and dispose of property. We therefore hold that the prescription of mentioning and production of jamabandi allotment or holding allotment as a pre-condition for registration of a legally presented document under impugned sub-rules 19 (xvii) and (xviii) is arbitrary and illegal and as such, liable to be set aside.

8. Dichotomy between registration and title.

8.1 Existing legal structure.

30. Right to own immovable property naturally encompasses the freedom to

purchase and sell property. The ease by which such property is bought and sold is reflective of the confidence and trust in institutional transactions.

31. The legal architecture for property transactions in India continues the colonial construct of real property and operates on the basis of three primary legislations—all of them century-old, the Transfer of Property Act, 1882, the Indian Stamp Act, 1899 and the Registration Act, 1908.

8.2 The problems relating to the legal structure.

32. Rather strangely these legislations have long sustained dichotomy between ownership and registration. While Transfer of Property Act provides substantive legal framework for purchase and sale of immovable property and the Stamp Act imposes a fiscal charge on the transferable property as a precondition for registration, the Registration Act institutionalizes the process of registering documents to create a public record of immovable property transactions. The Registration Act mandates registration of documents, not the title and this distinction is the fundamental character of our country's presumptive titling system through registration. Thus, registration of a document recording purchase of immovable property does not confer guaranteed title of ownership, instead it only serves as a public record of the transaction having presumptive evidentiary value, but it is never a conclusive proof of ownership. The presumption is rebuttable and can always be challenged in a court of law. This system has therefore placed a significant burden of due diligence on a prospective buyer who must undertake a painstaking title search, examining the chain of ownership through a series of past deeds, sometimes going beyond 30 years or more, to ensure marketable title. The uncertainty also compels obtaining a no encumbrance certificate from the sub registrar's office to confirm that the property is free from legal liabilities or mortgage. Property purchase has not been easy, it is not difficult to find people grudgingly telling us that it is in fact traumatic. The present system of presumptive title through registration is also the primary contributor to high volume of land related litigation in India. Property disputes account for an estimated 66% of all civil cases. More than a century has passed by, and we must dare to think and look for alternatives.

33. The legal framework for purchase and sale of immovable properties suffer from several systemic deficiencies that undermine reliability, transparency and efficiency. There are problems relating to i) fake and fraudulent property documents, ii) rights and liabilities, iii) land encroachments, iv) delay in verification processes, and v) role of intermediaries etc. In addition to these, there are also administrative problems at the office of the sub-registrar of registration, involving the statutory and regulatory requirements of the presence of the buyer and seller along with two witnesses for document verification, legal authentication collection, and official recording, all of which require coordination, synchronization, and our experience has shown us that this process is cumbersome and time consuming. Moreover, land being a state subject under the Constitution, these procedures vary from state to state and are highly

fragmented.

8.3 Technological possibilities.

34. Recognizing the profound inefficiencies and vulnerabilities in recording the real-estate transactions, Government in its effort to modernize these transactions has adopted certain measures such as the Digital India Land Records Modernization Programme (DILRMP) and the National Generic Document Registration System (NGDRS). These measures involve computerization of land records, cadastral maps, integration of textual and spatial data and digitization of registration. Digitization is the process of creating an electronic copy of the existing paper record and if the original record is inaccurate, incomplete or subject to dispute, the digital version will simply perpetuate the flaw. The process of digitization does not by itself resolve the underlining title disputes or correct inaccuracies. Reformation based on conclusive titling is a colossal administrative and legal challenge. Under the Madras Presidency, a massive survey and settlement was undertaken to rectify and authenticate grant and subsistence of Inams, leading to making of the Inam Fair Registration, commonly called the IFR. Because of the comprehensive and accurate recording, the IFR came to be relied on as a conclusive proof of title and the IFR was called the great act of the State. We cannot hazard a guess as to the possibility of such an exercise for conclusive proof of title through registered documents. However, due to technological advancement, it is now possible to reflect on the possible convergence of title perfection in a registered document. "No sensible decision can be made any longer without taking into account not only the world as it is, but the world as it will be." 'Isaac Asimov; Asimov on Science Fiction'

8.4 Reformation of Land Registration processes and to eschew "fraudulent/multiple registrations".

35. Fortunately, due to technological advancement this process is duly and more accurately achievable. We have incorporated emerging technologies as instruments of institutional reform. Blockchain technology has garnered particular attention for its potential to transform land registration into a more secure, transparent and tamper-proof system. It is suggested that adoption of Blockchain technology would ensure immutability, transparency and traceability, thereby minimizing fraud and unauthorized alterations. Blockchain technology is said to offer an alternative paradigm by encoding land titles, ownership histories, encumbrances, and by recording transfers on a Distributed Ledger in an immutable and time stamped form. Each entry, once validated into the Distributed Ledger, becomes part of a cryptographically linked chain of information that cannot be retroactively altered without detection. This property of immutability could enhance the integrity of title records and strengthen public trust in the ownership framework. This cryptographic immutability could perhaps address the structural fragility of Indian record keeping system. The Blockchain design could integrate cadastral maps, survey data, and revenue records into a single verifiable framework, which, while maintaining a transparent audit trail, is

accessible to multiple departments and the public.

8.5 Suggestions and Direction to constitute a committee.

36. We take note of the technological advancement only to suggest that there is now a possibility of overcoming the binary that our laws have created in maintaining a register for transfers for long, but have neither granted credibility or conclusiveness of title. At the same time, the process of registration is cumbersome and time-consuming. Registration of deeds being a concurrent list subject, Government of India must take lead in constituting a body, with the participation of the States, to examine this issue in light of the technological advancement for integrating the property registration regime with conclusive titling. The process may involve restructuring and reviewing our existing laws, i.e. the Transfer of Property Act, 1882, Registration Act, 1908, Stamp Act, 1899, Evidence Act, 1872, Information Technology Act, 2000, Data Protection Act, 2023 and may require introduction of new laws for incorporating Blockchain technology with necessary safeguards. This will necessarily require establishing regulatory framework which institutionalizes processes with integrity and efficiency.

37. We, therefore, request the Law Commission to examine this issue in detail, consult the Union, the States and all other stakeholders as well as experts in the field of information and technology, and prepare a report on the issue that we have highlighted.

9. Conclusion.

38. Returning to the dispute under consideration, we hereby allow Civil Appeals arising out of Diary Nos. 12674 of 2024 and 18064 of 2014 and set aside the judgment and order passed by the High Court and quash Notification No.- IV.M-1-12/2019-3644 dated 10.10.2019 introducing Rule 19 (xvii) and (xviii).

39. Parties shall bear their own costs.