

(2019) 04 PAT CK 0050

In the Patna High Court

Case No : Civil Writ Jurisdiction Case No. 21840 Of 2018

Uma Shankar Prasad Singh And Ors

APPELLANT

Vs

State Of Bihar And Ors

RESPONDENT

Date of Decision : 16-04-2019

Acts Referred:

Bihar Public Land Encroachment Act, 1956 — Section 4(h)
Registration Act, 1908 — Section 35

Citation : (2019) 2 PLJR 1077

Hon'ble Judges : Anil Kumar Upadhyay, J

Bench : Single Bench

Advocate : J.S. Arora, Uma Shankar Prasad Singh, Md. Khurshid Alam

Final Decision : Allowed

Judgement

1. The instant writ petition was initially filed for release of the petitionersâ?? land from the notification contained in Annexure-3 to the writ petition,

i.e. the list of land prohibited for transfer and registration and consequently to allow sale and registration of the land bearing Plot Nos. 266 and 267,

Khata No. 97 Touzi No. 929, Thana No. 198, total area of 3 Katha 10 Dhurs situated in Mohalla- Bahadurpur, District- Samastipur.

2. During the pendency of the writ petition the petitioners have filed I.A. No. 1 of 2019 for amendment of the writ petition and for the following

additional reliefs:

â??(iii) Quash the report of the Committee constituted and submitted its report, vide letter no. 1672, Bhu. Su. Dated 28.11.2018, by holding the same to

be illegal, unlawful, misconceived, against the facts and against the law.

(iv) Quash the entry in regard to the plot no. 266 in the Panji register relating to Halka No. 8, as contained in Annexure-3 being illegal, unlawful and

unsustainable in the eye of law.

3. Mr. J.S. Arora, learned senior counsel appearing on behalf of the petitioners has, in fact, advanced arguments that the registering authority has

absolutely no business to enter into the issue as to title of the transferor at the time of registration. He also questioned the action of the respondents for

including the land of the petitioners in the register of 'prohibited land for transfer'.

4. The factual matrix relevant for adjudication are set out as follows: The ancestor of the petitioners owned and possessed the Plot Nos.266 and 267,

Khata No. 97, Touzi No 929, Thana No. 198, total area of 3Katha 10 Dhurs. In the year 1950 when the ancestors of the petitioners sought permission

for construction of the house from the Municipality, it has refused to give permission to construct house over the land in question on the ground of

decree in T.S. No.394/434 of 1939 and delivery of possession. The ancestors of the petitioners when learnt about the decree in Suit No. 394/434 of

1939 and its showy delivery of possession in 1942, they filed Title Suit Nos. 32 of 1911/51 of 1953 and sought declaration of title and confirmation of

possession and also for recovery of possession over the land in question. The suit was decreed in favour of the ancestors of the petitioners. The

appeal preferred against the decision in Title Suit was also dismissed and the judgment of the original Court was upheld. On 25.09.1991 the father of

the petitioner No. 1 Uma Shankar Prasad Singh along with others filed an application before the Circle Officer, Samastipur for Rent Fixation and after

due notice and following the procedure prescribed under the law, rent was fixed in view of the judgment of the Title Suit No.32 of 1911/51 of 1953

which was affirmed in Title Appeal No. 257 of 1954.

5. Learned counsel for the petitioners submitted that the competent court in Title Suit and in Title Appeal declared the title and confirmed the

possession of the petitioners over the land in question and in rent fixation case the competent authority passed order for fixing rent, he submitted that

the petitioners' family are coming in possession over the land in question for the last more than 50 years and in the backdrop of the aforesaid facts

Mr. Arora submitted that the action of the respondents in including the land of the petitioners in the category of 'prohibited land for transfer' is

illegal, arbitrary and without jurisdiction. The learned counsel for the petitioners

further submitted that when the petitioners approached for permission to transfer the land by way of registered sale deed, it was refused. The petitioners thereafter approached the Additional Collector for correction in the register meant for 'prohibited for transfer land', the Additional Collector passed order contained in memo no. 4073 dated 27.10.2018. The Additional Collector, Samastipur instead of directing correction in the record and excluding the land of the petitioners from the list of 'prohibited land for transfer', directed an enquiry into the revenue record and submit a report. Mr. Arora submitted that such action of the Additional Collector is without jurisdiction as it was none of the business of the Additional Collector to direct enquiry in the case of the petitioners' land which was held to be a raiyati land and the competent civil court as the civil court declared right, title and interest of the petitioners over the land which was affirmed even by the appellate court.

6. In the instant case a counter affidavit has been filed on behalf of the respondent-Circle Officer, Samastipur in which he has taken the stand that the rent fixation was made after the enquiry but on the application of the petitioners dated 6.8.2018 the Additional Collector, Samastipur called for the record from the Circle Officer and the LRDC regarding the entry into the register for 'prohibition for registration' of land of plot No. 266. The Circle Officer, Samastipur forwarded the report to the LRDC for releasing of the land from 'Prohibition of Registration'. The Additional Collector on perusal of the record directed for constitution of a team comprising of SDO, LRDC and the Circle Officer, Samastipur to enquire into the matter related to Plot No. 266. The three-men committee enquired into the matter and submitted report on 28.11.2018 wherein they have categorically mentioned that the land in question i.e. Plot No. 266 having an area of 11 decimal is Gair Majarua Khas mentioned in the Register of Anchal. In the letter of the DCLR, Samastipur it has come that the rent fixation was done on the basis of the judgment in Title Suit No. 32 of 1911/ 51 of 1953 but after vesting of Jamindari the Gair Majarua Khas land vested to the Government of Bihar and as such the judgment of the Title Suit and the Title Appeal is not binding on the State as the State was not party in the Title Suit. In the aforesaid backdrop the petitioners filed I.A. No. 1 of 2019 for amendment in the writ petition and for additional relief in the nature of quashing

of letter No. 1672 dated 28.11.2018 and for quashing of the entry in the Panji related to Halka No. 8 as contained in Annexure-3.

7. On behalf of the respondents a supplementary counter affidavit has been filed in which the Circle Officer, Samastipur highlighted the decision of the Revenue Department contained in letter No. 8 dated 25.8.1990 issued by the Land Reforms Commissioner regarding the conservation of the details of land related to Aam/Khas Plot.

8. Learned counsel for the respondents on the strength of the aforesaid Annexure-A submitted that the Department has come to know that in connivance with the Halka Karamchari and other officials of the Revenue Department, Gair Majarua Aam, Khas and Kaisre Hindlands lands have been shown as raiyati land and in order to check on such fraudulent transfer, decision was taken to undertake an enquiry has been taken. However, in para-10 there is statement to the effect that "register of Gair Mazxarua Aam Gair mazarua Khas and Kaisare Hind" can be corrected on the basis of order passed by the competent Civil Court.

9. In the backdrop of the aforesaid facts, following issues require adjudication:-

(I) Whether the respondents were justified in including the land of the petitioners in the category of "Prohibited land for Registration" vide

Annexure-3 ?

(II) Whether the respondents were justified in taking such action in purported exercise of letter dated 25.5.1990 ?

(III) Whether the State was a necessary party in the Title Suit and the Title Appeal and even if the State was not impleaded as party whether the respondents were justified in holding the decree of the title suit and the title appeal as nullity?

(IV) Whether the registering authority can refuse registry of the document when other formalities are completed for registration of the document and reject the same?

10. So far as the judgment of competent civil court is concerned, as referred to above, there is admission in the counter affidavit that correction in the record on the basis of the judgment of the competent civil court is permissible and once the Civil Court in the Title Suit and the Title Appeal has already declared the right, title and interest over the land of Plot No. 266 on

contest, the Court does not find any substance in the contention of the respondents that the State was not party in that case and as such the judgment and decree is not binding upon the State.

11. Learned counsel appearing on behalf of the petitioners submitted that State was neither necessary party nor proper party as it is not a case of

fraudulent transfer where the authorities have jurisdiction to re-open the proceeding. It is nobody case that the Collector has exercised power under

Section 4(h) of the Bihar Land Encroachment Act. He submitted that the judgment of the competent civil court cannot be ignored by the revenue

authority even if it is passed without hearing the proper and necessary party. If any person is aggrieved by the judgment of the competent court,

remedy is available under the provisions of the Code of Civil Procedure and the revenue authority has absolutely got no jurisdiction to sit in appeal

against the judgment of the competent civil court and declare that order to be nullity.

12. It is now well settled that even an order passed not in good faith, it is still capable of legal consequences. It bears no seal of invalidity upon its

forehead. Reliance in this connection may be made to the judgment of the Apex Court in the case of Sultan SadikVs.Sanjay Raj Subha and others:

AIR 2004 Supreme Court 1377. The relevant part of the judgment contained in para- 39 is quoted below:-

â??39. In Administrative Law, Eighth Edition by HWR Wade & C.F. Forsyth, at page 309, it is stated :

Effect on third parties :

If an act or order is held to be ultra vires and void it is natural to assume that, being a nullity, it is to be treated as non-existent by all who would

otherwise be concerned. But the judgment of a court binds only the parties to it, so that here also there are problems of relativity. Once again Lord

Diplock has supplied the answer.

Although such a decision is directly binding only as between the parties to the proceedings in which it was made, the application of the doctrine of

precedent has the consequence of enabling the benefit of it to accrue to all other persons whose legal rights have been interfered with in reliance on

the law which the statutory instrument purported to declare.

In effect, therefore, the court's judgment of nullity operates erga omnes, i.e. for

and against everyone concerned.

Patent and latent invalidity.

In a well-known passage Lord Radcliffe said :

An order, even if not made in good faith, is still an act capable of legal consequences. It bears no brand of invalidity upon its forehead. Unless the necessary proceedings are taken at law to establish the cause of invalidity and to get it quashed or otherwise upset, it will remain as effective for its ostensible purpose as the most impeccable of orders.

This must be equally true even where the 'brand of invalidity' is plainly visible : for there also the order can effectively be resisted in law only by obtaining the decision of the court. The necessity of recourse to the court has been pointed out repeatedly in the House of Lords and Privy Council, without distinction between patent and latent defects. Lord Diplock spoke still more clearly, saying that it leads to confusion to use such terms as 'voidable' 'voidable ab initio', 'void' or 'a nullity' as descriptive of the status of subordinate legislation alleged to be ultra vires for patent or for latent defects, before its validity has been pronounced on by a court of competent jurisdiction.

13. The next contention of Mr. Arora, learned senior counsel for the petitioner is that after the declaration of the competent civil court in Title Suit and the Title Appeal the action of the respondents in including plot No. 266 in the category of "prohibited land for registration" is totally without jurisdiction. His submission is two-fold, firstly, that the Revenue Authority cannot nullify the effect of the judgment of the Competent Civil Court and secondly, he submitted that the decision to include the land of the petitioners in the category of "prohibited land for registration" was made without compliance of principles of natural justice and fair play. The decision of the Revenue Authority in the purported exercise of power in terms of the letter dated 25.8.1990 is totally without jurisdiction as the letter dated 25.8.1990 does not permit the authority to sit in appeal over the decision of the competent Civil Court.

14. The next contention of Mr. Arora that the respondent- Additional Collector has no jurisdiction to direct enquiry when the revenue authority after due enquiry in rent fixation case has held out that petitioners are entitled to rent fixation and once the revenue authority decided the case in favour of

the petitioners after thorough enquiry they have no jurisdiction to reopen the matter after the rent fixation and realization of rent after mutation.

15. The last contention of Mr. Arora is that the registering authority have absolutely no jurisdiction to refuse registration after the deed was presented

for registration was in order. Mr. Arora in this connection placed reliance on the judgment of the Division Bench in the case of Bihar Deed Writers

Association and others Vs. State of Bihar & Ors: AIR 1989 Patna 144, wherein the Division Bench in most unambiguous terms held out that the

registering authority on presentation of the document for registration is bound to register it and the registering authority is not authorised to ascertain

the title of the transferor for his satisfaction in order to permit registration.

16. Mr. Arora has also placed reliance on the judgment in the case of Satyapal Anand Vs. State of Madhya Pradesh & Ors: (2016) 10 SCC 767. Para

41 of the aforesaid judgment is quoted below:-

“41. Section 35 of the Act does not confer a quasi-judicial power on the Registering Authority. The Registering Officer is expected to reassure that

the document to be registered is accompanied by supporting documents. He is not expected to evaluate the title or irregularity in the document as

such. The examination to be done by him is incidental, to ascertain that there is no violation of provisions of the 1908 Act. In Park View Enterprises

Vs. State of T.N.: AIR 1990 Mad 251: 1989 SCC OnLine Mad 273 it has been observed that the function of the Registering Officer is purely

administrative and not quasi-judicial. He cannot decide as to whether a document presented for registration is executed by person having title, as

mentioned in the instrument. We agree with that exposition.”

The principle discussed in (2016) 10 SCC 767 also supports the petitioners.

17. So far as the reliance placed on the judgment in the case of Vijay Kumar Prasad Vs. The State of Bihar & Ors.: 2017(1) PLJR 818 is concerned,

the judgment of the single Judge stands on different footing and it is of no help to the petitioners. In that case Jamabandi was standing for several

decades and in that situation the principle discussed by the learned Single Judge cannot be applicable in this case.

18. So far as the judgment of another single Judge in the case of Maya Devi & Ors. Vs. The State of Bihar & Ors.: 2014 (3) PLJR 584 is concerned,

that decision was on the issue of cancellation of Jamabandi which is not attracted

the instant case as the respondents have adopted new course in purported exercise of power in terms of the letter dated 25.8.1990 and they have included the land of the petitioners in the list of "prohibited land for registration" which was held to be the land of the petitioners in contested title suit and affirmed in the Title Appeal. Such action of including the land of the petitioner in the category of "non-registerable land" is totally unauthorised and without jurisdiction. Law does not permit the revenue authority to put complete ban on transfer if the land is otherwise transferable. The Revenue Authority cannot put indirectly ban on transfer of land and the Registrar cannot refuse registration of the land on the ground that the revenue authority have included the land of the petitioners in the category of "prohibited land for registration".

19. In view of the discussions made hereinabove, the Court finds substance in the submission of Mr. Arora that the declaration of the competent court in title suit and its affirmation in Title Appeal cannot be nullified by the action of the revenue authority as they have absolutely no jurisdiction. The Court also finds substance in the submission of Mr. Arora that no action visiting civil or legal consequences can be taken without compliance of principles of natural justice and fair play. There is absolutely no material placed on record on behalf of the respondents to contend that before entry of the plot of the petitioners in Annexure-3 any opportunity of hearing was provided to the petitioners. This basic principles of natural justice and fair play is attracted in the instant case, as such the action of the respondents in including the land mutated in the name of the petitioners prohibited for registration is violative of principles of natural justice. In addition thereto the Court also finds substance in the submission of Mr. Arora that registering authority is not the competent authority to examine the title of the transferor at the time of registration. The recourse available to such person is to approach the competent civil court for declaration that the transferor has no right, title or interest and get appropriate declaration with regard to the instrument registered.

20. As discussed hereinabove, the Court does not find justification behind inclusion of the land of the petitioners in Annexure-3. The same is, accordingly, quashed. Refusal to register the document by the registering authority is also illegal as the Registering authority cannot refuse transfer if

the deed presented for registration is otherwise in order. In the facts of the case, the Court does not approve the action of the respondents in directing

enquiry vide Annexure-7 and the enquiry report which has come on record by way of Annexure-B to the counter affidavit, which has been challenged

by filing I.A. No. 1/2019. Annexure-7 as well as Annexure-B cannot sustain.

21. For the reasons stated above, the writ petition is allowed. The Annexure-3, Annexure-B dated 28.11.2018 and the Annexure-7 dated 27th

October, 2018 are quashed. As a consequence of quashing of Annexures 3, 7 to the writ petition and Annexure-B to the counter affidavit, there would

be no legal impediment in registration of the document presented by the petitioners.