

(2011) 08 JH CK 0046

Jharkhand High Court

Case No: Writ Petition (C) No. 6667 of 2010

Pritindra Narayan Roy,
Samrendra Narayan Roy,
Rathindra Narayan Roy and Smt.
Jayabati Roy

APPELLANT

Vs

State of Jharkhand, Deputy
Commissioner cum District
Registrar and District Sub
Registrar

RESPONDENT

Date of Decision: Aug. 10, 2011

Acts Referred:

- Santhal Pargana Tenancy (Supplementary Provisions) Act, 1949 - Section 20

Citation: (2011) 4 JCR 303

Hon'ble Judges: Poonam Srivastava, J

Bench: Single Bench

Final Decision: Allowed

Judgement

Poonam Srivastav, J.

Heard learned Counsel on behalf of the Petitioners and also the State counsel.

2. Pleadings are exchanged and as agreed between the parties, the writ petition is decided finally at the stage of admission.

3. Instant writ petition is preferred for a direction in the nature of mandamus to Respondent No. 3 for registering the sale deed in respect to lands appertaining to a portion of Plot No. Town (Ka) Town Plot No. 243 under Thoka No. 15 at Madhupur, Mouza Lakhna which is a Basauri land under Sub Registry Deoghar.

4. It is asserted on behalf of the Petitioner that building is constructed on the aforesaid land and, therefore, it is a Basauri land. Sale deed was presented for registration, having been executed on 26th October 2010 which was returned on a

direction given by the Deputy Commissioner - Respondent No. 2, vide Memo No. 133 dated 31st January, 2008. The objection was that the prerequisite of registration of the sale deed is a No Objection Certificate granted by the Circle Officer of the area and in absence of such No Objection Certificate, no sale deed can be registered.

5. Learned Counsel has brought to my notice that the bar on registration of the sale deed only after obtaining a No Objection Certificate, is provided u/s 20 of the Santhal Pargana Tenancy Act 1949 but this bar is applicable only in case the land to be registered is a raiyati land.

6. The question of alternative remedy is also not available to the State counsel as appellate authority is Respondent No. 2 on whose direction the Respondent No. 3 refused to register the sale deed. Therefore, the appeal is not available though it may provide for an alternative remedy.

7. Admittedly, the land in question sought to be registered and executed on 26th October, 2010 is a Basauri land. This fact also stands admitted in the counter affidavit on behalf of the Respondents.

8. Under these circumstances, the requirement of No Objection Certificate by the Respondent is an uncalled for exercise and therefore, the instant writ petition is preferred.

9. I have also looked into the decision of Doman Prasad Yadav v. State of Jharkhand and Ors. 2008 (1) JLR 506 in which this Court had allowed the writ petition and issued direction for registration of the sale deed in respect of a Basauri land without No Objection Certificate. The judgment, delivered in the case of Shyam Sundar Barnwal v. State of Jharkhand and Ors. decided on 14.05.2004 in W.P. (C) No. 1325 of 2004 is annexed as Annexure-A with the counter affidavit, was squarely distinguished.

10. I have gone through both the judgments and I am in agreement with the one passed in the case of Doman Prasad Yadav (Supra).

11. In view of what has been stated above, I allow this writ petition and issue a direction to the Respondent Nos. 2 and 3 not to raise any objection in registration of the sale deed and the Respondent No. 3 shall go ahead and register the sale deed forthwith after it is presented by the parties in accordance with law.