

(2004) 05 JH CK 0015

Jharkhand High Court

Case No: Writ Petition (C) No. 1325 of 2004

Shyam Sunder Barnwal

APPELLANT

Vs

State of Jharkhand and Others

RESPONDENT

Date of Decision: May 14, 2004

Acts Referred:

- Registration Act, 1908 - Section 34
- Santhal Pragana Tenancy (Supplementary Provisions) Act, 1949 - Section 20

Citation: (2004) 3 JCR 371

Hon'ble Judges: M.Y. Eqbal, J

Bench: Single Bench

Advocate: N.N. Tiwari and R.R. Tiwari, for the Appellant; K.K. Jhunhunwala, GP-III, for the Respondent

Final Decision: Dismissed

Judgement

M.Y. Eqbal, J.

The petitioner has challenged the order issued by the Deputy Commissioner-cum-District Registrar, Deoghar vide Memo No. 10, dated 14.1.2004 whereby he has imposed a mandatory condition of production verification report of the Circle Officer in a prescribed format before the Registrar for registration of deeds in the district of Deoghar.

2. Petitioner's case is that suddenly he needed money for medical treatment and for other exigencies and having no other source for getting money, offered to sell one katha of land of Jamabandi No. 50/60 out of plot Nos. 635 and 636 of P.S. Jasidish, district, Deoghar or his own relative, Smt. Mamta Devi for a consideration of Rs. 66,000/-. Accordingly a sale deed was drafted and presented after affixing proper stamps before the District Sub-Registrar, Jasidih for registration the District Sub-Registrar asked the petitioner to bring the inquiry report of the Circle Officer and present it along with the sale deed as directed by the Deputy Commissioner by

his impugned letter dated 14.1.2004, Petitioner's further case is that although not necessary, he submitted the required format before the Circle Officer on 31.1.2004 and repeatedly approached the Circle Officer to send the report but the report was not submitted by the Circle Officer.

3. Mr. N.N. Tiwari, learned counsel appearing on behalf of the petitioner assailed the impugned office order as being illegal and wholly without jurisdiction on. Learned counsel submitted that the District Registrar has no jurisdiction to impose any condition contrary to the provisions of the Registration Act and the Rules made thereunder. Learned counsel submitted that there is no provision of putting a condition or making any inquiry except the inquiry as envisaged u/s 34 of the Registration Act. In this circumstance learned counsel relied upon a decision of this Court in the case of [Ram Kumar Prasad Vs. State of Jharkhand and Others](#), .

4. Mr. Jhunjhunwala, learned Government Pleader No. III, on the other hand, on the basis of the stand taken in the counter-affidavit, submitted that u/s 20 of the Santhal Pargana Tenancy Act, 1949 (shortly SPT Act), there is a bar of transfer of right in a holding by a raiyat and such transfer shall be invalid unless right to transfer is recorded in the records of right. It is contended that there are certain parts of the Municipal Area, Deoghar and Madhupur where no records of right have been prepared. For the registration of the lands of such areas the Sub-Divisional Officer has to be consulted as to whether the land is transferable or not. Learned counsel submitted that even under the Bihar Stamp (Prevention of Undervaluation of Instrument) Rules, 1995 the Registering Officer is empowered to make such enquiries as he deems fit for the purpose of finding out whether the market value has been correctly furnished in the document.

5. The respondents, in their counter-affidavit, have further stated that number of complaints regarding registration of lands were received and several F.I.Rs. relating to land disputes were being lodged which has created serious law and order problem in the district. It was, therefore, necessary for the Deputy Commissioner to issue direction for the proper Implementation of the provisions of the S.P.T. Act and the Stamps Rules. For the safeguard of the interests of the registering party and to save them from inconvenience all the Circle Officers were directed to send verification report to the Registrars' office within ten days. It was further stipulated in the said order that if the Circle Officers fail to send the report within the stipulated period, the party will be free to proceed for registration of the documents.

6. For better appreciation of the contentions of the learned counsels it would be useful to look into the provisions of Section 20 of the SPT Act, 1949 which reads as under :

"20. Transfer of raiyat's rights.--(1) No transfer by a raiyat of his right in his holding or any portion thereof, by sale, gift, mortgage, will, lease or any other contract or

agreement, express or implied, shall be valid unless the right to transfer has been recorded in the record-of-rights, and then only to the extent to which such right is so recorded :

Provided that a lease of raiyati land in any sub-division for the purpose of the establishment or continuance of an excise shop thereon may be validly-granted or renewed by a raiyat for a period not exceeding one year, with the previous written permission of the Deputy Commissioner :

Provided further that where gifts by a recorded Santhal raiyat to a sister and daughter are permissible under the Santhal Law, such a raiyat may with the previous written permission of the Deputy Commissioner validly making such a gift :

Provided also that an aboriginal raiyat may, with the previous written permission of the Deputy Commissioner, make a grant in respect of his land not exceeding one half of the area of his holding to his widowed mother or to his wife for her maintenance after his death.

(2) Notwithstanding anything to the contrary contained in the record-of-rights, nor right of an aboriginal raiyat in his holding or any portion thereof which is transferable shall be transferred in any manner to any one but a bona fide cultivating aboriginal raiyat of the pargana or taluk or tappa in which the holding is situated :

Provided that nothing in this subsection shall apply to a transfer made by an aboriginal raiyat of his right in his holding or portion thereof in favour of his gardi jamai or ghar jamai :

Provided further that a raiyat who is a member of aboriginal tribes or aboriginal castes may with the previous sanction of the Deputy Commissioner and a raiyat who is not a member of the aboriginal tribes or aboriginal castes may without such previous sanction enter into a simple mortgage in respect of his holding or a portion thereof with any Scheduled Bank within the meaning of the Reserve Bank of India Act, 1934 or a society or bank registered or deemed to be registered under the Bihar and Orissa Co-operative Societies Act."

7. From perusal of the aforesaid provision it is manifest that there is statutory bar in transferring the holding by sale, gift, mortgage, will, lease or any other contract unless right to transfer has been recorded in the records of rights. Under the aforesaid provision certain instructions have also been issued which, inter alia, provide that when the land falls within the municipal area where no record-of-rights have been prepared, an inquiry to that effect has to be made as to whether the land is transferable or not.

8. In such circumstance the decision relied upon by the learned counsel for petitioner in Ram Kumar Prasad's case (supra) will not apply in the facts of the present case for the reason that the impugned letter is not only by way of executive

instruction, rather, it has been issued for the purpose of giving effect to the statutory bar created u/s 20 of the SPT Act, 1949. In order to avoid any inconvenience to the parties to the transaction it has been provided in the impugned instruction that if the Circle Officer fails to submit the report within ten days then the contents of the documents of transfer shall be presumed to be correct and the Registering Authority shall not refuse to register the document.

9. Having regard to the facts of the case and the law discussed hereinabove, I do not find any strong reason to interfere with the impugned letter issued by the Deputy Commissioner, Deoghar. No relief can be granted to the petitioner. This writ application is dismissed. Appeal dismissed.