

(2013) 03 JH CK 0036

Jharkhand High Court

Case No: W.P. (C) No. 773 of 2013

Mahendra Narayan Mishra

APPELLANT

Vs

State of Jharkhand and Others

RESPONDENT

Date of Decision: March 12, 2013

Hon'ble Judges: P.P. Bhatt, J

Bench: Single Bench

Judgement

@JUDGMENTTAG-ORDER

P.P. Bhatt, J.

The present petitioner by way of filing this petition under Article 226 of the Constitution of India has prayed for issuance of an appropriate writ/order/direction upon the respondents to accept the execution of registration of sale deed presented by the petitioner in favour of bonafide purchaser with regard to the land situated at village Rampur No. 581, P.S. Mohanpur, District-Deoghar J.B. No. 64 part plot No. 297 area 1112 Square feet duly purchased by the petitioner on 30.9.2003 without no objection certificate or the respondent authorities immediately grant no objection certificate to the petitioner with regard to the aforesaid land in question so that it may be transferred to bonafide purchaser. According to the learned counsel for the petitioner, respondents authorities are not accepting the sale deed without no objection certificate with regard to Kamat land. According to the petitioner, the petitioner had purchased a piece of land within Mouza Rampur, District Deoghar, J.B. No. 64 Part of plot No. 297, area 1112 square feet by registered sale deed dated 30.9.2003. After purchased of the aforesaid land the petitioner got the same mutated in his favour by Mutation Case No. 124 of 2006-07 vide order dated 5.8.12006 and thereafter he is paying the rent. It is the case of the petitioner that the aforesaid land is recorded as Kamta land which is transferable in nature in view of the decision rendered in case of [Sri Boddhinath Mishra and 7 Others Vs. The State of Bihar and 7 Others](#), . The learned counsel for the petitioner by referring paragraph 25 of the said judgment submitted that ratio laid down in the said

judgment is applicable to the facts of the present case. It is further submitted that the petitioner is an old man aged more than 80 years and his wife is suffering from cardiac and therefore, respondents authorities may be directed to accept the said document for registration expeditiously.

2. As against that, the learned counsel appearing for the Respondent-State Government submitted that he has got no objection if the matter is disposed of at this stage by issuance of necessary direction to the respondent authorities for consideration of the petitioner's case with regard to acceptance of the sale deed in accordance with law as also by keeping in mind the ratio laid in the Judgment reported in [Sri Boddhinath Mishra and 7 Others Vs. The State of Bihar and 7 Others](#),

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3. Considering aforesaid rival submission it appears that sale deed executed in the year 2003 is awaiting registration by the respondent authority. The present case is squarely covered by the ratio laid down in case of [Sri Boddhinath Mishra and 7 Others Vs. The State of Bihar and 7 Others](#), . Para 25 of the said judgment is relevant for the present case and therefore the same is reproduced herein below:-

The petitioners were the landlords of village Gorhimal and Routara. Therefore, before the vesting of the estates, they could not be raiyats in respect of the disputed lands. After the vesting of the estates of the intermediaries, the petitioners have become statutory raiyats u/s 6 of the Land Reforms Act. Section 6 of the Land Reforms Act provides that on and from the day of vesting all lands used for agricultural or horticultural purposes, which were in Khas possession of an intermediary on the date of such vesting shall be deemed to be settled by the State with such intermediary and he shall be entitled to retain possession thereof and hold them as a raiyat under the State having occupancy rights in respect of such lands subject to the payment of such fair and equitable rent as may be determined by the Collector in the prescribed manner. Raiyat has not been defined in the Land Reforms Act. Section 2(t) of the Bihar Land Reforms Act lays down as follows:-

2(t)-All words and expressions used in this Act but not defined in this Act and defined in the Bihar Tenancy Act, 1885 (8 of 1885) or the Chota Nagpur Tenancy Act, 1908 (Bengal Act 6 of 1908) shall.

(i) in their application to the area to which the Chota Nagpur Tenancy Act, 1908 (Bengal Act 6 of 1908) applies, have the same meanings as in that Act,

(ii) in their application to the area to which the Bihar Tenancy Act, 1885 (8 of 1885) applies, have the same meanings as in that Act; and,

(iii) in their application to any area in the Santhal Parganas have the same meaning as in the Bihar Tenancy Act, 1885 (8 of 1885)

Therefore, even if the lands are situated in Santhal Parganas, the petitioners are raiyats of the lands which were in their khas cultivating possession within the meaning of the Bihar Tenancy Act. They will be entitled to hold the lands as raiyats with occupancy rights under the State of Bihar. It follows from this that the petitioners will have all the rights and liabilities which an occupancy raiyat under the Bihar Tenancy Act will have in respect of his lands. Chapter V of the Bihar Tenancy Act deals with the rights and liabilities of an occupancy raiyat. Section 23 of the Act lays down the rights of an occupancy raiyat in respect of the use of land according to which he may use the land in any manner which does not materially impair the value of the land or render it unfit for the purposes of the tenancy. Section 23A of the Act gives the occupancy raiyat a right to plant trees and bamboos on such land and cut, cut down and appropriate the trees and bamboos, appropriate the flowers, fruits and other products of any trees or bamboos standing on such land etc. Section 25 protects him from being evicted from his land except under certain circumstances. Section 26 gives an occupancy raiyat the right of inheritance. Section 26A empowers him to transfer and bequest his holdings or a portion thereof together with a right of occupancy by sale, exchange or gift and all bequests made by an occupancy raiyat, if it is made by a registered document and the landlords' Registration fee is paid. Other provisions of Chapter V deals with the liabilities of an occupancy raiyat. It is not necessary to enumerate them here. If the petitioners would have been raiyats within the meaning of the Act, i.e. the Santhal Parganas Tenancy Act, 1949, they will have no power to make a transfer u/s 20 of the Act. Therefore, the Legislature has taken special care in laying down that after vesting of the estates, the outgoing intermediaries will acquire the status of a raiyat with occupancy rights within the meaning of the Bihar Tenancy Act and not of an occupancy raiyat within the meaning of the Santhal Parganas Settlement Regulation 3 of 1872 in respect of the land in his khas cultivation even though the land be situated in the district of Santhal Parganas. Section 53 contemplates the acquisition of the holding or a portion of the holding of a raiyat within the meaning of the Act. The petitioners not being raiyats under the Santhal Parganas Tenancy Act, 1949, their lands cannot be acquired under the provisions of section 53 of the Act. In that view of the matter also the acquisition proceeding(Annexure-E) so far the lands of the petitioners are concerned, is invalid, and illegal, and, as such, it must be quashed.

4. In the light of above facts and circumstances of the case, the concerned respondent authority is directed to consider for acceptance and registration of the sale deed dated 30.9.2003 in accordance with law, if no other legal impediment exist in the registration of the said document. With the aforesaid observation this writ petition stands disposed of.