

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.4146 of 2020

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Arun Kumar Chourasia, Son of Sri Kanhaiya Lal Chourasia Resident of Ahilyabai Road near Kamakhya Temple Bishnupad, P.S. Civil Line, District-Gaya.

... .. Petitioner

Versus

1. The State of Bihar through Principal Secretary, Registration Excise and Prohibition Department, Government of Bihar, Patna.
2. The District Magistrate, Gaya.
3. District Sub- registrar, Gaya.
4. Additional Collector, Gaya.
5. District Land Acquisition Officer, Gaya.
6. Circle Officer Bodhgaya, District- Gaya.

... .. Respondents

Appearance :

For the Petitioner : Mr. Ashok Kumar
Mr. Bibhuti Narayan, Advocates
For the Respondents : Mr. Kumar Pankaj, AC to SC-5

CORAM: HONOURABLE MR. JUSTICE VIKASH JAIN

ORAL JUDGMENT

Date : 24-08-2021

Heard learned counsel for the petitioner and learned counsel for the respondents through video conference.

2. The following reliefs as formulated by the petitioner have been claimed in the writ petition -

“(i) For issuance of writ in the nature of mandamus for giving a direction to respondent no.2 & 3 to make registration of sale deed for sale of the flat of the petitioner constructed over the land situated in Mouza



Bodhgaya Thana No.359, Khata No. 701, Khesara No.138 Area 1.78 Acre, which has been constructed on the basis of development agreement made between petitioner and one Smt. Chanda Devi, who is owner of the land abovementioned.

(ii) For giving a direction to grant compensation to the petitioner for the loss incurred to him, due to illegal and arbitrary decision withholding the registration of flat of the petitioner by the respondent authorities without any basis.

(iii) Any other relief/reliefs which this Hon'ble Court may deem fit and proper."

3. The short facts of the case according to the petitioner are that he entered into a development agreement on 16.07.2013 with (1) Smt. Chanda Devi, wife of Late Rajendra Prasad (2) Sri Vikram Kumar, son of Late Rejendra Prasad (3) Smt. Priti Kumari, daughter of Late Rajendra Prasad, wife of Sri Mahendra Kumar (4) Sri Bindi Kumar @ Priti Kumari and (5) Sri Gyani Kumari daughter of Late Rajendra Prasad with respect to the land situated at Mouza Bodhgaya, P.S. Bodhgaya, District- Gaya , Thana No. 359, Khata No. 701 (new), Plot No. 138 (new) Area 14 Katha (19040 Sq. feet) for making construction of apartments. The land is raiyati land of Smt. Chanda Devi and her family Jamabandi stood in the name of her grand father-in-law, after whose demise the portion of land was given to Smt. Chanda Devi in whose favour, after family partition, jamabandi was created. The petitioner, a builder, has constructed a



multi-storeyed building on the said land and started selling the flats falling to his share, through registered sale deeds. The petitioner submitted documents for registration along with challan dated 28.03.2018 in respect of one such flat in favour of Smt. Niti Sinha, wife of Sri Vinod Kumar Sinha. The District Sub-Registrar, Gaya (respondent no. 3) by his letter dated 17.04.2018 (Annexure-5) required a detailed enquiry and report from the Circle Officer, Bodh Gaya (respondent no. 6). Accordingly, verification was made and enquiry conducted through Anchal Amin and Karamchari, on the basis of which the Circle Officer, Bodh Gaya submitted a report in his letter no. 1220 dated 05.12.2018 specifically stating therein that the land in question is raiyati land of Smt. Chanda Devi. Again, the District Sub-Registrar, Gaya wrote to the Circle Officer seeking clarification with regard to restriction on registration by the District Magistrate, Gaya (respondent no. 2) on the ground that the computer chart indicated the said land stood in the name of Harendra Giri vide order reference 166/29.08.2012. In reply, the Circle Officer in his letter dated 25.01.2020 (Annexure-8) denied issuance of the said order 166 dated 29/08/2012 from that office.

4. Learned counsel for the petitioner submits that despite the enquiry and verification and the consequent report of the Circle Officer as above with the categorical finding that the land in question was the raiyati land of Smt. Chanda Devi, there is no justification for the District Sub-Registrar, Gaya (respondent no. 3)



to not register the sale deed presented for registration duly accompanied by the challan dated 28.03.2018. A representation to the Principal Secretary (Annexure-9) is claimed to have been filed by the petitioner but to no avail.

5. Learned counsel for the respondent-State appears and opposes the writ petition, submitting on the basis of the counter affidavit that the old C.S. Plot No. 96 under old C.S. Khata No.151, measuring an area of 1.62 acres was recorded in the name of one Buddhan Gope. Thereafter, pursuant to Revisional Survey Khatiyar carried out in the year 1980-81, the said plot was renumbered as new Plot No. 138 under new R.S. Khata No. 701, measuring an area of 1.78 acres, shown as standing in the name of Raghuveer and Shivrindan Prasad, sons of Sonu Ram. It is stated that Sonu Ram is grand father-in-law of Smt. Chanda Devi and he had purchased the land from aforesaid Buddhan Gope in the year 1943. However, as a matter of fact, the plot that had been purchased by Sonu Ram was not old Plot No. 96 rather it was old Plot No. 98.

6. A specific stand in this regard has been taken in paragraph 5 (G) of the counter affidavit, adding that the old Plot No. 96 had earlier vested in the State of Bihar since 01.01.1946 under Bihar Land Reforms Act, 1950 and as such the said land belongs to the State of Bihar. It is further stated that in any event, a Title Suit has been filed by the State of Bihar vide Title Suit No. 402 of 2021 (Annexure-R/6) claiming title over the said land and in which Smt.



Chanda Devi, the petitioner and other persons have been impleaded as defendants. It is submitted that as long as title is disputed, the land cannot be registered at the instance of the petitioner.

7. In reply, learned counsel for the petitioner invites reference to Annexure-A to his rejoinder enclosing a copy of the sale deed dated 12.06.1943 which clearly mentions the particulars of the land in question as Khata No. 151, Plot No. 96, Area 1.62 acres which puts it beyond doubt that the land corresponds to the new Plot No. 138 on which the petitioner has made the construction.

8. Having heard the parties and on a consideration of the materials on record, this Court finds merit in the writ petition. There appears to be some dispute on fact with regard to the old C.S. Plot No. 96 on which the petitioner as well as the State both stake claim and in respect of which a Title Suit No. 402 of 2021 is already pending. It may however be noted that the respondent State has not shown any document in support of its stand that the plot purchased by Sonu Ram was not old Plot No. 96 rather it was old Plot No. 98. The photocopy of the sale deed dated 12.06.1943 brought on record by the petitioner which describes the particulars of the land as Khata No. 151, Plot No. 96 has also not been controverted.

9. A Division Bench of this Court in the case of *Bihar Deed Writers Association and others Vs. The State of Bihar and others* reported in 1988 PLJR 671 has categorically held in paragraph-3 as under -



“3. It appears to us that this application can be disposed of at the stage of admission inasmuch as the point in issue is limited. In our view, if a document otherwise complying with the statutory requirements and formalities is presented for registration, the registering authority is bound to register it. It is not for the registering authority to enquire and ascertain the title to its own satisfaction. Under the provisions of the Transfer of Property Act, 1982, if the transferor does not have any title or has an imperfect title to the property, the transferee on transfer will either get no title or he will get an imperfect title. This will be to the prejudice of the transferee and is not of any concern to the registering authority.”

10. The Hon’ble High Court of Jharkhand in paragraphs 12 and 13 of its judgment dated 19.05.2015 in the case of *Rajrajeshwar Prasad Singh Chandel and Ors. Vs. The State of Jharkhand and Ors. reported in 2015 (4) JLJR 172* has succinctly summarized the scope of enquiry which the registering authority is authorized to conduct and the course of action open to it, as follows-

“12. In view of the discussions hereinabove, to summarise, the registering authority is authorised to make enquiries;
(i) for identification of the person/persons presenting the document for registration,
(ii) for identification of the property which is the subject-matter of registration,
(iii) for ascertaining whether the person executing the document has executed the same voluntarily,



(iv) for ascertaining the authority of the representative, assign etc. who has presented the document for registration,

(v) if the person who has executed the document is dead and his/her representative/assign denies the execution,

(vi) for ascertaining whether the person executing the document is a minor or lunatic or idiot,

(vii) for ascertaining whether the document presented for registration has been presented within the time prescribed,

(viii) whether the property which is the subject-matter for registration is situated within the local limits of the registering authority,

(ix) whether the document presented for registration is accompanied with recent government survey/map and

(x) whether the document is properly stamped and complete in all respects or not.

13. The registering authority can refuse registration, if he is satisfied that requirements under the Registration Act are not satisfied. The registering officer can also refuse registration if the document presented for registration is not accompanied with "khata pustika" as provided under Section 23 of the Bihar Tenants Holdings (Maintenance of Records) Act, 1973. In certain cases registering officer can make appropriate endorsement on the document, if the registering officer has refused to register a document. In cases where it has been specifically brought to the notice of the registering officer that the land which is comprised in the document presented for registration is government land, forest land, Gair Mazurwa land etc., registering



officer can refuse registration of such document of transfer. However, a blanket order/direction containing no specific description of the property, would not be a ground for not registering the document presented for registration. Further, when it has been brought to the notice of the registering officer that litigation with the State or its instrumentality with respect to title of the vendor is pending, a communication shall be made by the registering office to the State/its instrumentality in this regard however, registration of a document cannot be refused on the ground of pending litigation. Besides the above, if it appears to the registering authority that registration of a document would be against public policy, he would certainly refuse to register the same. In all cases where the registering officer refuses to register a document, appropriate endorsement would be made on the sale-deed and it would be open to the aggrieved person to file appeal under section 72 of the Act."

11. On a cumulative reading of the two decisions, there is no manner of doubt that mere dispute of title would not ordinarily constitute a reason for refusal to register the sale deed, but however, the document may be refused to be registered in certain circumstances such as if the same is against public policy. In case of refusal to register a document, an appropriate endorsement is required to be made on the sale deed. I am in respectful agreement with the view expressed by the Hon'ble Jharkhand High Court. The respondent State has not brought any contrary decision to notice.



12. In the above circumstances, this Court directs the District Sub-Registrar, Gaya (respondent no. 3) to take a final decision with regard to the registration of the sale deed in favour of Smt. Niti Sinha, wife of Sri Binod Kumar Sinha presented by the petitioner, in accordance with law and keeping in mind the principles laid down in the aforesaid decisions, after grant of an opportunity of hearing to the petitioner, within a period of two months from the date of receipt/production of a copy of this judgment.

13. It is made clear that in view of the ongoing Covid-19 pandemic, any correspondence between the parties may be made through e-mail and the petitioner shall be at liberty to request for hearing through video conference. To facilitate disposal, the petitioner shall furnish his mobile number and e-mail ID to the concerned respondent within a week from today.

14. The writ petition stands disposed of with the aforesaid observations and directions.

(Vikash Jain, J)

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AFR/NAFR	AFR
CAV DATE	N.A.
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