

HIGH COURT OF CHHATTISGARH, BILASPUR

WPC No. 1431 of 2021

Navin Das Vaishnav Aged About 41 Years S/o Shri Ishwar Das Vaishnav
R/o Village Karamsen (Nayapara), Post Nanghat, Tehsil Navagarh District
Bemetara Chhattisgarh

---- Petitioner

Versus

1. State Of Chhattisgarh Through The Secretary, Department Of Revenue And Disaster Management And Ex-Officio, D. K. S. Bhawan, Mantralaya Raipur Chhattisgarh.
2. Collector, District Bemetara Chhattisgarh
3. Tehsildar, Tehsil Navagarh, District Bemetara Chhattisgarh
4. Dilip Kumar Sharma S/o Late Late Kanhaiya Prasad Sharma R/o Kapri, Post Nandghat, Tehsil Navagarh, District Bemetara Chhattisgarh

---- Respondents

For petitioner – Shri Anadi Sharma, Advocate.

For State – Shri Gagan Tiwari, Dy.G.A.

Hon'ble Shri Justice Goutam Bhaduri

Order

05/03/2021

Heard.

1. Challenge in this petition is to the notice dated 01/03/2021 (Annexure P-1) wherein the petitioner has been served with a notice pursuant to a complaint made on the back ground that one Shankuntala Sharma was granted a abadi lease but the petitioner has forcefully taken over the possession and has raised the superstructure and certain document were got executed under coercion, therefore he was directed to remove the construction by 6/03/2021 and get the premises vacated. Learned counsel for the petitioner would submit that the subject property in question which is a abadi land was granted to Shakuntala Sharma W/o Kanhaiya and grant was made by document Annexure P-3. Thereafter the petitioner has purchased the said property by Annexure P-2 for a consideration of Rs.2 lakhs and since certain complaint was made by son of the grantee because of their internal family dispute, therefore the notice has been issued which has no

entity and is nonest in eye of law. He would submit that on the earlier occasion too certain complaints were made which was settled by Annexure P-4 agreement, therefore on the basis of a complaint when the premises of the petitioner is sought to be vacated on any false ground, when the petitioner has already purchased the same for Rs.2 lakhs the notice of like nature for enquiry would be completely illegal. He would further submit that in the said premises the petitioner is carrying on the shop and electricity connection were also granted, therefore the Annexure P-1 notice be quashed at threshold.

2. Per contra, learned State counsel would submit that the basis on which the petitioner lays down his claim is an unregistered document, therefore the document itself cannot be acted upon and to evict the petitioner by due process of law the notice has been issued.

3. Perused the documents. The document annexed with the petition would show that in the year 2016-2017 a land bearing khasra No.720/1, 434 square meter was granted to Smt. Shankuntala, w/o Kanhaiya. The said land is a abadi land and terms of grant shows that it was heritable. The petitioner claim his right on the basis of Annexure P-2 which is a agreement of sale and submission is made that it is a sale deed. Reading of the said purported sale i.e. Annexure P-2 shows the sale consideration of Rs.2 lakhs was paid and the petitioner claims that by virtue of it he has become the owner. The document Annexure P-2 on which the petitioner claims his ownership admittedly is not registered one though the value of the property and sale consideration is been shown to be Rs.2 lakhs. The said document is dated 18th August, 2019.

4. Section 17(1)(b) of the Registration Act, 1908 reads as under:-

“17(1)(b)- other non-testamentary instruments which purport or operate to create, declare, assign, limit or extinguish, whether in present or in future, any right, title or interest, whether vested or contingent, of the value of one hundred rupees and upwards, to or in immovable property;”

5. Even if the document Annexure P-2 if is considered to be a part performance of agreement but since the value of the property is more than

Rs.100/- then in such case it would be governed by definition 17 (1A) of the Act which reads as under:-

“17 (1A)The documents containing contracts to transfer for consideration, any immovable property for the purpose of section 53A of the Transfer of Property Act, 1882 (4 of 1882) shall be registered if they have been executed on or after the commencement of the Registration and Other Related laws (Amendment) Act, 2001 and if such documents are not registered on or after such commencement, then, they shall have no effect for the purposes of the said section 53A”

Therefore the very basis of document on which petitioner claims his ownership and project is a sale deed, would be inadmissible in law, the value of property being more than Rs.100/-. In such eventuality to bestow the ownership on petitioner it would be hit by section 17(1) & 17-(1A) of the Registration Act, 1908. If the document Annexure P-2 cannot be accepted as a sale deed then subsequent claim on the basis of it requires to be adjudicated by the authority who has issued the notice Annexure P-1. This court cannot legalize the document Annexure P-2 by judicial order in the teeth of section 17(1) & 17-(1A) of the Indian Registration Act, 1908. As such the notice Annexure P-1 which reflects that serious allegation of fraud has been made and clarification from the petitioner is called for to answer the same before the authority cannot be quashed at the threshold to nip it in bud.

6. In the result, the petition is devoid of all merits and it is dismissed accordingly.

Sd/-

(Goutam Bhaduri)

JUDGE