

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.9937 of 2020

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Satyendra Kumar Singh, S/o Late Nand Lal Singh, Resident of Village-Barawa, P.S.-Daudpur, District-Saran.

... .. Petitioner/s

Versus

1. The State of Bihar through Principal Secretary Department of Prohibition, Excise and Registration
2. District Magistrate Cum Registrar, Chapra, Saran
3. Sub-Registrar, Chapra, Saran.

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr.Awadhesh Kumar Singh, Advocate
For the Respondent/s : Mr.Ajay, GA-5

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CORAM: HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN SINGH

and

HONOURABLE MR. JUSTICE MADHURESH PRASAD

ORAL ORDER

(Per: HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN SINGH)

10 11-02-2022 The matter has been taken up for online hearing through video conference because of COVID-19 pandemic restrictions.

2. This writ application has been filed seeking a direction to the District Magistrate-cum-Registrar and Sub-Registrar, Saran at Chapra to register a mortgaged document executed by the petitioner in favour of State Bank of India. It is stated in paragraph-10 of the writ application that the petitioner had approached the office of the Sub-Registrar on 29.01.2020 for getting the mortgaged deed registered but he has flatly refused to register without assigning any reason. It is the petitioner's case that the Sub-Registrar is duty bound to register



the deed required to be compulsorily registered under Section 17 of the Registration Act, 1908 ('Registration Act' for short).

3. A counter affidavit has been filed on behalf of the State of Bihar, wherein it has been stated that the land, which is sought to be mortgaged through mortgage deed, is a piece of unsurveyed land. It is the case of the State of Bihar that in a meeting held on 03.06.2017 under the chairmanship of the Principal Secretary, Revenue and Land Reforms Department, Government of Bihar, a decision has been taken to prevent registration of 'Topo'/ unsurveyed lands which are deemed government lands. 'Topo' lands are such lands which were not surveyed earlier for topographical reasons.

4. In the background of the aforesaid decision of the Department, the Collector-cum-District Registrar, Saran at Chapra has issued a letter on 25.07.2017 restraining the registering authorities from registering documents in relation to the unsurveyed land falling within its local jurisdiction.

5. Leaned counsel for the petitioner has placed reliance on a Division Bench decision of this Court in case of ***Bihar Deed Writers Association and others vs. State of Bihar & Ors. (AIR 1989 Patna 144)*** to submit that the Registrar is under obligation to register the document presented before him



and he does not have any jurisdiction to enter into the issue of title at the stage of registration. He has relied on an order dated 19.04.2019 also, passed by this Court in CWJC No. 2524 of 2018 (*Rakesh Gupta vs. The State of Bihar & Ors.*) (SB) whereby and whereunder, relying on the said Division Bench decision of this Court in case of *Bihar Deed Writers Association* (supra) this Court had directed the Registrar to register the document presented by the petitioner.

6. Learned counsel representing the State of Bihar opposing the prayer made by the petitioner in the writ petition and submissions made on behalf of the petitioner contends that when registration of a document is against public policy, the registering authority is well within its jurisdiction to refuse to register a document in the light of the provision under Section 22A of the Registration Act.

7. Having considered rival submission advanced on behalf of the parties as noted above, in the background of the aforesaid facts, we find substance in the submission made on behalf of the petitioner that if a document otherwise complying with the statutory requirement and formalities is presented for registration, the registering authority is duty bound to register it. We may usefully notice the Supreme Court's decision in case of



State of Rajasthan Vs. Basant Nahata reported in **(2005) 12 SCC 77** wherein it has been laid down that the aim of the Registration Act is to govern the documents and not the transactions embodied therein. The Supreme Court has noted that by registration of a document, only notice of the public is drawn.

8. The Division Bench of this Court in case of ***Bihar Deed Writers Association*** (supra) has laid down in paragraph 3 as under :-

“3.....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 T.P. Act, 1888, if the transferor does not have any title or has 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.”

9. The submission advanced on behalf of the State of Bihar that registration of the document in the present case will defeat public policy in the light of the decision taken by the Revenue and Land Reforms Department, Government of Bihar, is not acceptable to this Court as the said decision, in the nature of executive instruction cannot be said to be laying down any



public policy. Subsection (1) of Section 22 A of the Registration Act confers upon the State Government of power to declare that registration of any document or class of document is oppose to public policy. Subsection (2) of Section 22 A is a *non-obstante* clause which mandates the registering officer to refuse to register any document to which a notification issued under Subsection (1) is applicable. In case of ***Basant Nahata*** (supra) a notification issued under Subsection (1) of Section 22 A of the Act, whereby registration of power of attorney authorising the attorney to transfer any immovable property for a term or irrevocable or without prescribing any term, had fallen for consideration. Rejecting the plea, dealing extensively with the phraseology “opposed of public policy” the Supreme Court in case of ***Basant Nahata*** (supra) held in paragraph 61 and 64 as under :-

“61. Hence, it becomes amply clear that it is not possible to define public policy with precision at any point of time. It is not for the executive to fill these grey areas as the said power rests with judiciary. Whenever interpretation of the concept “public policy” is required to be considered it is for the judiciary to do so and in doing so even the power of the judiciary is very limited.

64. A thing which itself is so uncertain cannot be a guideline for any thing or cannot be said to be providing sufficient framework for the executive to work under



it. Essential functions of the legislature cannot be delegated and it must be judged on the touchstone of Article 14 and Article 246 of the Constitution. It is, thus, only the ancillary and procedural powers which can be delegated and not the essential legislative point.”

10. In view of the above, the plea taken on behalf of the State of Bihar that the denial by the respondents to register the document is in terms of a public policy is hereby rejected. In view of the Division Bench decision in case of ***Bihar Deed Writers Association*** (supra) and the Supreme Court’s decision as noted above, we have no hesitation in recording our conclusion that once a document, which is required to be registered, is presented for registration in compliance with the Registration Act, the registering authority is under obligation to register a document presented before it.

11. Accordingly, this writ application is allowed. The Sub-Registrar, Saran at Chapra is directed to register the deed of mortgage in question, if presented by the petitioner, within 15 days of its presentation.

(Chakradhari Sharan Singh, J)

(Madhuresh Prasad, J)

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