

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.17001 of 2021

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Rakesh Gupta S/o Late Ramagya Prasad Gupta Resident of Mohalla-Salempur, Pargana- Manjhi, PO Chapra, PS Chapra Town, Dist Saran at Chapra.

... .. Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Department of Revenue and Land Reforms, Government of Bihar.
2. The Inspector General of Registration, Department of Registration, Government of Bihar.
3. The Deputy Inspector General, Department of Registration, Government of Bihar.
4. The Collector, Saran at Chapra
5. The Sub- Registrar, Saran at Chapra
6. The Circle Officer, Sadar Circle, Chapra, Saran at Chapra.

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Sanjay Singh, Sr. Advocate. Mr. Nikhil Kumar Agrawal, Advocate. Ms. Aditi Hansaria, Adv.
For the Respondent/s	:	Mr. Manish Kumar, AC to AAG-6

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CORAM: HONOURABLE MR. JUSTICE MOHIT KUMAR SHAH
ORAL JUDGMENT

Date : 28-07-2022

The present writ petition has been filed for quashing the letter dated 24.05.2019 issued by the District Sub-Registrar, Saran at Chapra whereby and where-under he has refused to register the sale deed presented by the petitioner on the pretext that the same is not covered by the order dated 19.04.2019 passed in CWJC No. 2524 of 2018. The petitioner has further put a challenge to the proceedings of the



workshop held on 03.06.2017, as contained in Memo dated 7.6.2017, which has been circulated by the Deputy Inspector General of Registration, Bihar, Patna vide his letter dated 20.07.2017, amongst all the Collector-cum- District Magistrate/ All District Sub-Registrar/ All Sub- Registrar, with a direction to comply with the directions contained in Paragraph Nos. 2(Gha) and 3(Kha), which pertain to ban on sale/ purchase of Topo land and non-registration of such land, apart from ensuring compliance of other directions mentioned therein. Lastly, it has been prayed to direct the respondent authorities, more particularly the Respondent no. 5 i.e. the Sub-Registrar, Saran at Chapra to register the sale deed presented for registration on 22.5.2019.

2. The brief facts of the case are that the petitioner is the owner of land situated in Ward No. 26, Circle No. 13, Holding No. 580, Thana No. 285, Tauji No. 3567, Jamabandi No. 497 ad-measuring approx. 11 katha and situated within the urban area of the District of Saran which forms part of the Survey of 1898-99 and there is no dispute with regard to the petitioner's right, title and possession over the same. Since the petitioner was in need of money, he had entered into



an agreement to sell with the prospective buyer on 10.05.2019 and had presented the same for registration before the Respondent No. 5, however, registration of the same was refused resulting in the petitioner approaching this Court by filing a writ petition bearing CWJC No. 2524 of 2018, which was disposed of by an order dated 19.04.2019, passed by a co-ordinate Bench of this Court with a direction to the Registrar, Saran at Chapra to register the said agreement to sell presented by the petitioner within a period of 15 days of receipt/ production of a copy of the said order. Incidentally, the said order dated 19.04.2019 was challenged by the Respondents by filing an appeal bearing L.P.A. No. 226 of 2021, however, the same has also stood dismissed by an order dated 30.06.2022 passed by the learned Division Bench of this Court, hence it is the submission of the learned Senior counsel for the petitioner that the objection raised by the Respondent State to the effect that since the land in question is a topo land i.e. un-surveyed land, registration is not permissible, has been overruled by the Hon'ble High Court.

3. The learned Senior counsel for the petitioner has further submitted that thereafter, the



aforesaid agreement to sell was registered by the Respondent no. 5, however, when the petitioner approached for registration of the Conveyance deed/ sale deed with regard to the same land, agreement to sell whereof had already stood registered by the respondent no.5, the respondent no.5 refused to register the same on the pretext that the issue of registration of the conveyance deed in question was not covered by the decision rendered by the Hon'ble Patna High Court in CWJC No. 2545 of 2018, as upheld in LPA No. 226 of 2021. This is how the petitioner is before this Court.

4. The learned Senior counsel for the petitioner has contended that merely on account of certain illogical, illegal and perverse discussion having taken place in a workshop held on 3.6.2017, under the Chairmanship of the Principal Secretary, Revenue and Land Reforms Department, the Registrars/ Sub-Registrars of various districts are illegally refraining from registering the deeds/ instruments being presented before them for the purposes of registration, despite the fact that the said minutes of meeting dated 3.6.2017, as contained in memo dated 7.6.2017, have neither got any statutory force nor any legal value nor



are valid in the eyes of law. The learned Senior counsel for the petitioner has submitted that it appears that the respondent authorities do not understand the meaning of topo land, hence to make them aware about the concept of topo land, he has referred to a judgment dated 2.7.1917 rendered by the Privy Council, reported in AIR 1917 PC 86, in the case of **Haradas Acharjya Choudhuri and others v. Secretary of State for India & Ors.**, relevant paragraphs whereof are reproduced herein below:-

“Frequently the river leaves its course, flows over large tracts of land, leaving other areas bare, and then again its waters recede, giving back the lands submerged in whole or in part to use and cultivation. It is obvious that difficulties as to ownership must arise in these circumstances, and of the extent and complication of these difficulties, the present case affords an excellent illustration. The general law that is applicable is free from doubt. The bed of a public navigable river is the property of the Government, though the banks may be the subject of private ownership. If there be slow accretion to the land on either side, due, for instance, to the gradual accumulation of silt, this forms part of the estate of the riparian owner to whose bank the accretion has been made. (See Regulation XI of 1825). If private property be submerged and subsequently again left bare by the water, it belongs to the original owner. Lopez vs. Muddun Mohun Thakoor (1). It is the latter circumstance that the



appellants allege has happened in the present case, but the burden of proving the facts necessary to establish the original ownership rests upon them and it is the difficulty of this proof, rather than the difficulty of applying the law, that has caused the differences of opinion between the Subordinate Judge and the High Court, from whom this appeal is brought."

5. The learned Senior counsel for the petitioner has also referred to yet another judgment rendered by the privy council, reported in AIR 1935 P.C. 125, in the case of **Tarakdas Acharjee Choudhury and others vs. Secy. of State and others** to submit that without appreciating the concept of topo land, certain paragraphs of this judgment have been pulled out and quoted out of context in the minutes of meeting of the workshop in question, dated 3.6.2017, so as to give an impression that the bed/ banks of all the rivers, either submerged or un-submerged, would be regardless of the said fact or for that matter unmindful of the same being subject of private ownership, presumed to be the property of the Govt.

At this juncture, the learned Senior counsel for the petitioner has referred to a judgment rendered by the learned Division Bench of this Court in the case of **Bihar Deed Writers Association & Ors. vs. The**



State of Bihar & Ors. Reported in AIR 1989 Patna 144, paragraphs no. 3,5 and 6 whereof are reproduced herein below:-

“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 T.P. Act, 1888, 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 be will get an imperfect title. This will be to the prejudice of the transferee and is not of any concern to the registering authority.

5. Learned Advocate for the respondents also referred to S.68 of the Registration Act, which empowers the Registrar to superintend and control Sub-Registrars. This power, in our view, is an administrative power conferred on the Registrar to exercise superintendence and control over the Sub-Registrars. The Registrar, in our view, cannot, in exercise of the power under the section, direct the Sub Registrars not to register a document presented for registration if the document complies with the statutory requirements and formalities.

6. For the reasons aforesaid, this application is allowed. Let appropriate writs issue quashing the impugned orders by which registration of the sale deed involved has been refused and directing the respondents to register the same. We make it clear that in the



event provisions of any statute including those of the Ceiling Act have been violated by the parties, it will be open to the respondents to take steps in accordance with law, and it is also made clear that this order will not stand in the way of such proceedings. There will be no order as to cost."

6. Thus, the learned senior counsel for the petitioner has submitted that it is a well settled law that in case a document, otherwise complying with the statutory requirement and formalities, is presented for registration, the registering authority is duty bound to register the same. The learned senior counsel for the petitioner has also referred to a judgment rendered by the Hon'ble Apex Court, reported in (2005) 12 SCC 77 (**State of Rajasthan & Ors. vs. Basant Nahata**) to contend that in absence of any substantive provisions contained in any parliamentary or legislative Act, a person cannot be refrained from dealing with his property in any manner he likes inasmuch as such interdict would be opposed to one's right of property as envisaged under Article 300-A of the Constitution of India. In this regard it would be gainful to reproduce paragraphs No. **59** and **61** of the aforesaid judgment rendered in the case of Basant Nahata (supra) herein below:-



“59. The question can be considered from another angle. A person may not have any near relative or is otherwise unable to attend the office of the Sub-Registrar or Registrar within whose jurisdictions the property is situated. He may even be out of the country. In absence of any substantive provisions contained in a parliamentary or legislative act, he cannot be refrained from dealing with his property in any manner he likes. Such statutory interdict would be opposed to one’s right of property as envisaged under Article 300-A of the Constitution.

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.”

7. Per contra, the learned counsel for the Respondent State has referred to the minutes of meeting dated 3.6.2017 of the workshop organized under the Chairmanship of the Principal Secretary, Revenue and Land Reforms Department, Government of Bihar to contend that the guidelines laid down therein are required to be followed in its true letter and spirit by the registering authority in the State of Bihar, hence the Sub-Registrar, Saran i.e. the Respondent no.



5 has rightly rejected the request of the petitioner for registration of the conveyance deed presented for registration.

8. I have heard the learned counsel for the parties and perused the materials on record. At this juncture itself, this Court would hold that the guidelines framed vide the minutes of meeting dated 3.6.2017, of a workshop held under the Chairmanship of the Principal Secretary, Revenue and Land Reforms Department, cannot and are not having any legal force for the reasons that they do not have any legislative validation and have merely been jotted down by way of minutes of meeting of a workshop held in connection with issues pertaining to unsurveyed/ topo land. This Court further finds that the said guidelines contained in the minutes of meeting dated 3.6.2017/ Memo dated 7.6.2017, as circulated vide letter dated 20.07.2017, cannot interdict the right of property of any citizen, guaranteed under Article 300A of the Constitution of India and in any view of the matter, in absence of any statutory provisions, no person can be refrained from selling his/her land in question by executing appropriate conveyance/ sale deeds. Thus, this Court holds that the aforesaid minutes of meeting



dated 3.6.2017, as contained in Memo dated 7.6.2017, issued under the pen and signature of Director, Land Record and Estimation, as circulated vide letter dated 20.7.2017, issued by the Deputy Inspector General of Registration, Bihar, Patna do not have any statutory force much less any legal validity. In this regard, this Court would also rely on a judgment dated 11.02.2022, rendered by a learned Division Bench of this Court in the case of **Satyendra Kumar Singh vs. The State of Bihar**, (CWJC No. 9937 of 2020), paragraphs no. 3,5, 7 and 9 to 11 whereof are reproduced herein below:-

“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.

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.

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.

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.

9. Having considered the entire facts and circumstances, as stated herein above, at length as also in view of the law laid down by the Hon’ble Apex Court, the Privy council as also this Court in the case of



Basant Nahata(supra), Haradas Acharjee Choudhury (supra), Taraldas Acharjee (supra), Bihar Deed Writers Association & Ors. (supra) and in the case of Satyendra Kumar Singh (Supra), this Court is of the firm opinion that once a conveyance/ sale deed is presented for registration, the registering authority is duty bound to register the same, if the said document is otherwise complying with the statutory requirement and formalities. Consequently, the present writ petition is allowed and the Respondent No. 5, i.e. the sub-Registrar/ District Sub-Registrar, Saran (Chapra) is directed to register the conveyance/sale sale deed in question within a period of 48 hours of its presentation and payment of the requisite stamp duty, if not already paid, as also compliance of the statutory requirements.

(Mohit Kumar Shah, J)

Tiwary/-

AFR/NAFR	AFR
CAV DATE	N/A
Uploading Date	19-08-2022
Transmission Date	N/A

