

Priti Devi vs The State Of Jharkhand on 20 February, 2018

Author: Anubha Rawat Choudhary

Bench: Anubha Rawat Choudhary

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IN THE HIGH COURT OF JHARKHAND AT RANCHI

W.P. (C) No. 1605 of 2010

Priti Devi, wife of Shri Rajiv Ranjan Bhagat, resident of Village Mahuara,
P.O. Mahagama, P.S. Mahagama, District Godda

... .. Petitioner

Versus

1.The State of Jharkhand
2.Deputy Commissioner cum Registrar of the District of Godda
3. Deputy Collector, Incharge, District Legal Section, Godda, P.O. and P.S.
Godda (Town) District Godda
4. Circle Officer, Mahagama, P.O. Mahagama, P.S. Mahagama, District
Godda... .. Respondents

CORAM : HON'BLE MRS. JUSTICE ANUBHA RAWAT CHOUDHARY

For the Petitioner	: Mr. Rahul Gupta, Advocate
For the Respondents	: Mr. Sahil, J.C.to S.C. (L&C)

7/20.02.2018

1. This writ petition has been filed by the petitioners for the following reliefs:

(a) For issuance of direction upon the respondents for quashing the notice of R.M.P. case No. 29/2009-10 (Annexure-3) issued under the signature of respondent no. 3 and the entire proceeding of R.M.P. Case No. 29/2009-10 pending in the court of Registrar cum Deputy Commissioner of the District of Godda.

2. The counsel for the petitioner submits as under:-

a. During the last settlement (ganger's settlement) done in the year 1934, the land besides other being Plot No. 173 was recorded in the name of Zamindar Kamat Babu Dwarika Prasad Dhandhaniya and others and put in their khas possession over plot No. 173, tauzi number 463, jamabandi number 52 mouza Mauhara in the district of

Godda It is the specific case of the petitioner that the boundaries with lands and building over plot no. 173 did not vest in the State of Jharkhand under Bihar Land Reforms Act, 1950. He submits that the land was recorded in the name of ex-intermediary, as he was in khas possession and was assigned a settlement Jamabandi No. 52 in the parcha prepared in 1934. It is submitted that as per the Ganger's settlement, the Zamindar had the right to possess and transfer such land by sale and they have right to make raiyati settlement of such land after enactment of Bihar Land Reforms Act, 1950. All such kamat and bakast which was found on possession of the Zamindar on the date of vesting have been settled with Zamindar as per Section 6 of the Bihar Land Reforms Act, 1950. It is submitted that as per the provision of the Section 2(t) read with Section 6 of the Bihar Land Reforms Act such land which on the date of vesting were in khas possession became a transferable (basauri) land.

b. Learned counsel for the petitioner submits that a portion of the aforesaid land was transferred by way of registered deed no 28 dated 11.02.2010 in favour of the petitioner making transfer of area of 6 Bighas of Jamabandi No. 52 of Mahuara Mouza. c. The petitioner was served with notice of R.M.P. Case No. 29/2009-10 on 07.03.2010 under the signature of respondent no. 3 whereby the petitioner has been asked to appear before the Court of respondent no. 2 i.e. Deputy Commissioner cum Registrar of District of Godda on an application and complaint filed by the Circle Officer purporting to be under Section 68(2) of the Indian Registration Act, wherein an objection was filed in connection with registered deed no 28 dated 11.02.2010 claiming it to be government land which stood vested in the State of Bihar under the Land Reforms Act, 1950. The notice has been annexed in Annexure-3 to the writ petition. d. Counsel for the petitioner submits that the Deputy Commissioner cum Registrar has no jurisdiction in the purported exercise of power under Section 68(2) of the Indian Registration Act to decide the title and possession of the vendor of the petitioner and to decide the right, title and possession of any of the party including the State. e. Counsel for the petitioner submits that once the property has been transferred by way of registered document, and if any person is aggrieved by the registration of the sale deed, the only remedy which is available is to move before the competent court of civil jurisdiction under Sections 31 and 34 of the Specific Relief Act for declaration of the title and cancellation of the sale deed.

f. Counsel for the petitioner has also stated that in paragraph no.

17 of the writ petition that the Circle Officer/State of Jharkhand has no jurisdiction to decide unilaterally the right, title of the state without initiating any proceeding under the Bihar Land Reforms Act, 1950.

g. Upon query by the court, counsel for the petitioner submits that the provision for cancellation of transfer of land is provided under Section 4(h) of the Bihar Land Reforms Act 1950 and the only remedy is to file a civil suit or initiation of proceeding under Section 4 (h) of Bihar Land Reforms

Act, 1950.

h. It is submitted that the impugned action which has been taken by the respondent no. 2 is wholly without jurisdiction. Accordingly the same is fit to be quashed and set aside. i. Counsel for the petitioner has relied upon the judgment reported in (2016) 10 SCC 767.

3. Mr. Sahil, J.C. to learned S.C. (L&C) submits that the sale deed in connection with the property in question could not have been registered and accordingly the registration has been wrongly done. Therefore the authority under whose jurisdiction registration has been done is competent to issue notice for the purpose of cancellation of registration. He submits that the records of the case suggests that this property is a government land and it has been wrongly registered in favour of the petitioner.

4. After hearing counsel for the parties and going through the records of the case this court is inclined to entertain this writ petition and quash the impugned notice initiating R.M.P. Case No. 29/2009-10 as contained in Annexure-3 to the writ petition on account of following facts and reasons:-

a) Although it has not been mentioned in the impugned notice as to the purpose for which the same has been issued but the petitioner has made specific statement in para 15 of the writ petition that notice of R.M.P. Case No. 29/2009-10 on 07.03.2010 was issued whereby the petitioner has been asked to appear before the Court of respondent no. 2 on an application and complaint filed by the Circle Officer purporting to be under Section 68(2) of the Indian Registration Act,1908 wherein an objection was filed in connection with registered deed no 28 dated 11.02.2010 claiming it to be government land which stood vested in the State of Bihar under the Land Reforms Act,1950.

This statement made in para 15 of the writ petition has not been denied by the respondent in the counter affidavit. It is further submitted that the counter affidavit has been filed justifying the action of the respondent authority in exercise of power under section 68(2) of Indian Registration Act,1908.

b) It has been held by Hon'ble Supreme Court in the Judgment reported in (2016) 10 SCC 767 that the registered deed cannot be cancelled by the authority who has registered the document and that the power conferred on the Registrar by virtue of Section 68 cannot be invoked to cancel the registration of documents already registered. Some of the paragraphs of the said judgment are as follows:-

23. Having considered the rival submissions, including keeping in mind the view taken by the two learned Judges of this Court on the matters in issue, in our opinion, the questions to be answered by us in the fact situation of the present case, can be formulated as under:

23.1.

23.2.

23.3.

23.4. (d) Whether the Sub-Registrar (Registration) has authority to cancel the registration of any document including an extinguishment deed after it is registered? Similarly, whether the Inspector General (Registration) can cancel the registration of extinguishment deed in exercise of powers under Section 69 of the 1908 Act?

33. It is common ground that the deed regarding allotment of plot to a member of the Society required registration. The allotment of the subject plot in favour of the appellant's mother was accordingly, registered in the Office of the Sub-Registrar (Registration). The subject plot was allotted to the appellant's mother consequent to her admission as a member of the Society. As the allotment of the plot by the Society creates and transfers rights in an immovable property, the deed of allotment was required to be registered. But if the member failed to comply with the stipulation of allotment, it would be open to the Society to cancel such allotment and including the membership of that member.

In that event, it may become necessary for the Society to execute an extinguishment deed qua such allotment deed operating in favour of the member concerned. For, mere cancellation of membership may not be enough. The Society could extinguish the right, title or interest in the immovable property belonging to the Housing Society, by executing an extinguishment deed for that purpose.

34. The role of the Sub-Registrar (Registration) stands discharged, once the document is registered (see Raja Mohammad Amir Ahmad Khan⁷). Section 17 of the 1908 Act deals with documents which require compulsory registration. Extinguishment deed is one such document referred to in Section 17(1)(b). Section 18 of the same Act deals with documents, registration whereof is optional. Section 20 of the Act deals with documents containing interlineations, blanks, erasures or alterations. Section 21 provides for description of property and maps or plans and Section 22 deals with the description of houses and land by reference to government maps and surveys. There is no express provision in the 1908 Act which empowers the Registrar to recall such registration. The fact whether the document was properly presented for registration cannot be reopened by the Registrar after its registration. The power to cancel the registration is a substantive matter. In absence of any express provision in that behalf, it is not open to assume that the Sub-Registrar (Registration) would be competent to cancel the registration of the documents in question. Similarly, the power of the Inspector General is limited to do superintendence of Registration Offices and make rules in that behalf. Even the Inspector General has no power to cancel the registration of any document which has already been registered.

41. Section 35 of the Act does not confer a quasi-judicial power on the Registering Authority. The Registering Officer is expected to reassure that the document to be registered is accompanied by

supporting documents. He is not expected to evaluate the title or irregularity in the document as such. The examination to be done by him is incidental, to ascertain that there is no violation of provisions of the 1908 Act. In Park View Enterprises⁸ it has been observed that the function of the Registering Officer is purely administrative and not quasi-judicial. He cannot decide as to whether a document presented for registration is executed by person having title, as mentioned in the instrument. We agree with that exposition.

43. No provision in the State of Madhya Pradesh enactment or the Rules framed under Section 69 of the 1908 Act has been brought to our notice which is similar to the provision in Rule 26(k)(i) of the Andhra Pradesh Registration Rules framed in exercise of power under Section 69 of the 1908 Act. That being a procedural matter must be expressly provided in the Act or the Rules applicable to the State concerned. In absence of such an express provision, the registration of extinguishment deed in question cannot be labelled as fraudulent or nullity in law. As aforesaid, there is nothing in Section 34 of the 1908 Act which obligates appearance of the other party at the time of presentation of extinguishment deed for registration, so as to declare that such registration of document to be null and void. The error of the Registering Officer, if any, must be regarded as error of procedure. Section 87 of the 1908 Act postulates that nothing done in good faith by the Registering Officer pursuant to the Act, shall be deemed invalid merely by reason of any defect in the procedure. In the present case, the subject extinguishment deed was presented by the person duly authorised by the Society and was registered by the Registering Officer. Once the document is registered, it is not open to any Authority, under the 1908 Act to cancel the registration. The remedy of appeal provided under the 1908 Act, in Part XII, in particular Section 72, is limited to the inaction or refusal by the Registering Officer to register a document. The power conferred on the Registrar by virtue of Section 68 cannot be invoked to cancel the registration of documents already registered.

c) Considering the ratio of the aforesaid judgment and in view of the specific undisputed plea taken by the writ petitioner in para 15 of the writ petition and the counter affidavit has been filed justifying the action of the respondent authority in exercise of power under section 68(2) of Indian Registration Act, 1908, the notice of R.M.P. case No. 29/2009-10 cannot be sustained in the eyes of law and is accordingly set-aside as the power conferred on the Registrar by virtue of Section 68 cannot be invoked to cancel the registration of documents already registered.

d) However from the perusal of Section 4(h) of Bihar Land Reforms Act 1950 which has also been referred to in paragraph no. 17 of the writ petition, this court finds that the Collector has the power to make queries in respect of any transfer if he is satisfied that such transfer was made at any time after the first day of January, 1946, with the object of defeating any provisions of Bihar Land Reforms Act, 1950.

e) In view of the specific provision of Bihar Land Reforms Act, 1950 the respondents are at liberty to take steps as per the provisions of Bihar Land Reforms Act 1950 or to move before the competent court of civil jurisdiction in accordance with law in connection with the property involved in sale deed no. 28 dated 11.02.2010 .

5. This writ petition is disposed of with aforesaid observations.

(Anubha Rawat Choudhary, J.) Binit/A.F.R.