

Pandey Ravindra Nath Ray
Advocate,
Purani Ranchi,
West Lake Road,
Ranchi
Ph- 09304470238

Date:- 24-12-2021

LEGAL OPINION

On Request :- AMC (Adityapur Municipal Corporation)

SUBJECT:- In Reference To Your letter No. 4443
dated 8-12-21

AMC-BP-0074-W13-2021

Documents provided for opinion

1. Photocopy of the khatian of khata No. 85 plot No. 1222,1223 and 1007 recorded in the name of Din Bandhu Mahto, Atul Mahto Son of Jaganath Mahto and Banmali Mahto son of Baijnath Mahto.
2. Photocopy of the sale deed executed by Sharwan Kumar Mahto and Milan Kumar Mahto Son of Banmali Mahto bearing deed No. 918 dated 26-2-2010 in favour of Chandra Chur Singh.
3. Photocopy of the sale deed executed by Sharwan Kumar Mahto and Milan Kumar Mahto Son of Banmali Mahto bearing deed No. 1528 dated 28-3-2010 in favour of Chandra Chur Singh.
4. Photocopy of the sale deed executed by Sharwan Kumar Mahto and Milan Kumar Mahto Son of

Banmali Mahto bearing deed No. 1527 dated 28-3-2010 in favour of Baby Kumari D/o Ram Sagar Chaudhary.

5. Photocopy of the sale deed executed by Sharwan Kumar Mahto and Milan Kumar Mahto Son of Banmali Mahto bearing deed No. 407 dated 28-7-2010 in favour of Bharti Kumar Daughter of Chandra Chur Singh.
6. Photocopy of the sale deed executed by Sharwan Kumar Mahto and Milan Kumar Mahto Son of Banmali Mahto bearing deed No. 4070 dated 28-7-2010 in favour of Bhawna Kumari Daughter of Chandra Chur Singh.
7. Photocopy of the sale deed executed by Sharwan Kumar Mahto and Milan Kumar Mahto Son of Banmali Mahto bearing deed No. 4069 dated 28-7-2010 in favour of Chandra Chur Singh.
8. Photocopy of the sale deed executed by Sharwan Kumar Mahto and Milan Kumar Mahto Son of Banmali Mahto bearing deed No. 1529 dated 28-3-2010 in favour of Bharti Kumari Daughter of Chandra Chur Singh.
9. Photocopy of the correction slip issued in mutation case No. 1356R27/2009-2010 in the name of Chandra Chur Singh of village Dindali.
10. Photocopy of the correction slip issued in mutation case No. 267/2010-2011 in the name of Bhawna Kumari D/o of Chandra Chur Singh of village Dindali.

11. Photocopy of the correction slip issued in mutation case No. 269/2010-2011 in the name of Baby Kumari D/o of Ram Sagar Chaudhary of village Dindali.
12. Photocopy of the correction slip issued in mutation case No. 636/2010-2011 in the name of Bharti Kumari D/o of Chandra Chur Singh of village Dindali.
13. Photocopy of the correction slip issued in mutation case No. 635/2010-2011 in the name of Bhawna Kumari D/o of Chandra Chur Singh of village Dindali.
14. Photocopy of the correction slip issued in mutation case No. 634/2010-2011 in the name of Chandra Chur Singh of village Dindali.
15. Photocopy of the correction slip issued in mutation case No. 270/2010-2011 in the name of Bharti Kumari D/o of Chandra Chur Singh of village Dindali.
16. Photocopy of the online rent receipt issued in the name of Chandra Chur Singh for the area 5.05 decimal for the year 2017-18
17. Photocopy of the online rent receipt issued in the name of Bharti Kumari for the area 3.14 decimal for the year 2017-18
18. Photocopy of the online rent receipt issued in the name of Bhawna Kumari for the area 3.14 decimal for the year 2017-18

19. Photocopy of the online rent receipt issued in the name of Baby Kumari for the area 3.14 decimal for the year 2017-18
20. Photocopy of the online rent receipt issued in the name of Chandra Chur Singh for the area 5.05 decimal for the year 2017-18
21. Photocopy of the online rent receipt issued in the name of Bhawna Kumari for the area 3.14 decimal for the year 2017-18
22. Photocopy of the online rent receipt issued in the name of Bharti Kumari for the area 3.14 decimal for the year 2017-18

That I carefully examined the documents and found that khata No. 85 of village Dindali , P.S Gamharia is recorded in the name of Din Bandhu Mahto, Atul Mahto son of Jaganath Mahto and Banmali Mahto Son of Baijnath Mahto as raiyati khata. The heirs of the recorded raiyati Banmali Mahto sold and transferred the land in as mentioned above through registered deed of sale in valuable consideration of money in year 2010 in favour of Bharti Kumari, Bhawana Kumari, Baby Kumari and Chandra Chur Singh and thereafter purchased name of purchaser is mutated vide mutation case No. 1. 1356R27/2009-2010, 2. 267/2010-2011, 3. 269/2010-2011, 4. 636/2010-2011, 5. 635/2010-2011, 6. 634/2010-2011, 7. 270/2010-2011, and accordingly correction slip was issued. Rent receipt is also being

issued upto the year 2017-18 in the name of Bharti Kumari, Bhawana Kumari, Baby Kumari and Chandra Chur Singh.

The land in question is connected to the Kurmi Community who belongs to the backward class categories under section 46(1)(b). Section 46 (1)(b) of the Chotanagpur Tenancy Act imposes restriction on the transfer of the land of schedule caste and backward classes and he may not transfer his holding to other caste who is not a member of schedule caste or backward class, further it is necessary to obtained permission of the Deputy Commissioner. This amending Act came into the force in the year 1955. The controversy started when the government of Bihar Revenue Department circulated a letter No. 5LR-LA-108/70-2382/LR Patna on 20.3.1970, this letter was sent to the IG Registrar and all collectors and Deputy Commissioner. The revenue Department of Bihar relying upon the case of Bhageran Tahkur Vs Kelwan Singh & Ors reported in 1969 BLJR Page 134 – directed in his letter that “there is no question of registering the document in registration office without the permission from the collector and other officer exercising power of collector”. After the circulation of this letter to all collectors of the Bihar allowed the registration of Backward Class and Schedule Caste land without the sanction of the Deputy Commissioner. Thereafter issue of this letter the sanction was officially withdrawn and no officer was giving any sanction and the registry office also not demanding any permission of the collector/ Deputy

Commissioner. In the light of the letter issued by the State Government the member of the Schedule Caste and Backward Caste transferring their land after 20.3.1970 without permission and without restriction.

The similar Controversy also started in the year 1984 before Hon'ble High Court in the case of Smt. Bhudni Mahtwain and Ors Vs Govardhan Bhokta And Ors. The hon'ble High Court relying upon the judgment 1969 BLJR page 134 observed that the restriction impose under section 46 (1)(b) is violative to the article 19(1) (f) of the constitution so the controversy ended in year 1984.

Further another controversy started in the case of Mathura Singh Vs. Tetali Dom and Ors and the matter was heard before the full bench Patna. The hon'ble High Court Patna observed that section 46 completely immune from attack the violation of article 19(1)(f) and further it is observed that each and every part of section 46 is not violating to the article 19(1) (f) of the constitution. Here it is relevant to mention prior to the coming of the judgment in the case of Mathura Singh Vs Tetali Dom and Ors, thousand and thousands of document have already been registered in the compliance of the letter issued by the government of Bihar Vide letter No. 5LR-LA-108/70-2382/LR dated 20.3.1970. Here it is also relevant to mention after the judgment of hon'ble High Court in the case of Mathura Singh Vs Tetali Dom, no letter was issued by the State Government either by the Bihar Government or by the Jharkhand Government and as usual the members of the schedule caste and backward classes

fact

were transferring the land without the sanction of the collector and also registry office was registering the document. For the first time this matter was raised before the hon'ble high court in WP (PIL No. 758/2011) by Salkhan Murmu in a PIL wherein the hon'ble High Court directed the officers who were in power under section 46 to comply with the provision vide order dated 25.1.2012. The Jharkhand Government for the first time issued a letter No. 591 dated 1.3.2012 to all collectors of the Chotanagpur Division to comply with the provision of section 46(1) (b) and thereafter the scheduled caste and backward classes began to obtain permission under section 46(1)(b).

Here it is relevant to mention the purchasers have not purchased the land in violation of section 46 or any provision of the Chotanagpur tenancy Act rather the government has issued a letter to the collectors i.e. 5LR-LA-108/70-2382/LR it is clearly mentioned in a letter – *Restriction impose on the transfer of the backward caste and scheduled caste in the matter of transfer by sale, lease etc, of their land should be considered to have in effect been repealed as a result. Such being the circumstances no officer at that time, entertaining any application for permission and the land was being transferred without the previous sanction of the competent authority.*

In my view all the land in question was transferred in 14.11.1984 the purchasers who have purchased the land prior to the 1996 have purchased the land in the light of the letter issued by the State Government on

20.3.1970 letter 5LR-LA-108/70-2382/LR. Technically as per the judgment of the hon'ble High Court passed in the case of Mathura Singh Vs Tetali Dom in year 1996, it is violation to the section 46(3) of the CNT Act but on the same time as per the provision of sub Section (2) of Section 46 of the CNT Act says that *it transfer by a raiyat of his right in the holding or any portion thereof under sub section (1) shall be binding on the landlord*, in the light of the said provision the state government has issued letter on 1.3.2012. The tenancy of the purchaser is recognized by the state Government vide mutation case No. 1. 1356R27/2009-2010, 2. 267/2010-2011, 3. 269/2010-2011, 4. 636/2010-2011, 5. 635/2010-2011, 6. 634/2010-2011, 7. 270/2010-2011, and accordingly the rent receipt is also being issued. In such cases the purchaser has acquired a right by virtue of prescription of time. In my view in such cases the sanction of map over the land may be considered.

Jamp R. R. R.
AM
Advocate 24/12/21