

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

Date:- 23/9/2021

LEGAL OPINION

On Request :- AMC (Adityapur Municipal Corporation)

SUBJECT:- In Reference To Your letter No. 2965
dated 4.9.2021-

AMC-BP-0048-W13-2021

Documents provided for opinion

1. Photocopy of the sale deed bearing deed No. 2878 dated 1.11.1990 executed by Sri Sameer Ghosh in favour of Shiv Kumar Sharma village Dindali, ward No. 5, under khata No. 80, plot No. 440 measuring an area 2 katha.
2. Photocopy of correction slip issued by the Circle Office Gamharia in mutation case No. 71R27/1991-92 in the name of Shiv Kumar Sharma upto the year 2021-22.
3. Photocopy of the sale deed bearing deed No. 642 dated 27.2.1989 executed by Atul Mahto in favour of Shiv Kumar Sharma of village Dindali, khata No. 80, Plot No. 440 measuring an area 3 katha.
4. Photocopy of the correction slip in mutation case No. 253/90-91.
5. Photocopy of the rent receipt issued upto the year 2021-22.

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6. Photocopy of Municipal Holding Tax Receipt dated 29.8.2017.

That I carefully examined the documents and found that khata No. 80 of village Dindali under ward No.5, was recorded in the name of Atul Mahto in the survey record of right who sold and transferred the land of one part to Sameer Ghosh through registered deed of sale bearing deed No. 3021 dt. 9.12.1988 and the said purchaser sold the land to Shiv Kumar Sharma on 1.11.1990 through registered deed of sale and further the name of the purchaser was mutated in the sirista of state vide mutation case No. 71R27/1991-92 and thereafter regularly paying rent to the state upto the year 2021-22 and raiyati status is recognized. Further the Atul Mahto again sold and transfer 3 katha land of plot No. 440 of khata No. 80 to Shiv Kumar Sharma through registered deed No. 642 on 27.2.1989 and the name of the purchase is mutated vide mutation case No. 253R27/1990-91 and regularly paying rent thereof upto the year 2021-22 and raiyati strategy is recognized by the state.

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 ht 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 on 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 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 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 the provision of section 46(1) (b) and thereafter the schedule caste and backward

classes began to obtained 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 ember of the backward caste and schedule caste in the matte 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. As such in my view any registration made prior to 1996 is binding upon the state as being the

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landlord. The purchaser had acquired right, title and interest by the prescription of time. In my view in such cases there is no impediment in sanction of the map.

Ranjit R.N. Roy
Advocate 23/9/21

Copy of Letter No. 5LR-LA -108/70-2382/L.R., Patna
The 20th March, 1970 from Government of Bihar, Revenue Department to
All Collectors.

Sub :- Restrictions on transfer of lands belonging to members of the Scheduled Castes and Backward Classes— Effect of High Court's Judgment in S.A. No. 720 of 1963.

I am directed to address you on the above subject and to say that, as you may be aware, the Patna High Court in S.A. No. 720 of 1968 (Bhageran Thakur Vrs. Kewal Singh and Others, BLJR 1969, Page 134, have held that section 49 C of the Bihar Tenancy Act, in so far as it imposes restrictions on the rights of transfer of lands by the members of backward classes, is not in consonance with article 19 (1) (f) of the Constitution, and, therefore, it must be struck down as invalid, as it is not protected by article 19 (5) of the Constitution. They have also struck down the restrictive provisions in section 49 M of the Act.

2. These findings of the High Court will have the force of law. Unless they are reserved or set aside subsequently, give effect to them.

3. The High Court have not specifically given findings in regard to the members of Scheduled caste but by the observations made by them in the judgment the restrictions could be placed only on the members of scheduled tribes, they have virtually struck down these restrictive provisions in regard to the members of scheduled castes also.

4. For the reasons set out by the High Court in the aforesaid judgment restrictions imposed on the members of the Schedule Castes and

backward classes in section 46 of the Chotanagpur Tenancy Act, 1908 are also ultra virus of the Constitution and thus invalid.

5. In the circumstances stated above the restrictions in the Bihar Tenancy Act and Chotanagpur Tenancy Act imposed on the members of backward classes and scheduled castes in the matter of transfer by sale, lease etc. of their land should be considered to have in effect been repealed as a result of the above judgment of the Patna High Court and therefore, now there is no question of not registering documents in Registration Offices without the permission from the Collector and other officers exercising powers of Collector.

6. I am, therefore, to request that this matter may be explained to all Revenue Officers as also the Registration Officers of your District who should now act in the light of the aforesaid judgment of the Patna High Court, a copy of which will be sent to you separately.

7. Receipt of this letter may kindly be acknowledged.

Office of the I.G. of Registration, Bihar

Memo No. II/R3-104/69—1236, Patna, the 1st April, 70

Copy forwarded to all District Registrars / Sub- Registrars/ I.R.OS/
S.O.I and II (Guard File) for information and necessary action.
Please acknowledge receipts.

Sd/- Md. Ismail
1/4/70
Secy. To I.G. Regn.

झारखण्ड सरकार,
राजस्व एवं भूमि सुधार विभाग।

134

पत्रांक-7/होलिडिंग हस्तां. नीति-20/2009- 591 /रा०

प्रेषक,

ए० के० रस्तोगी,
सरकार के विशेष सचिव।

सेवा में,

उपायुक्त, राँची।
उपायुक्त, धनबाद।

राँची, दिनांक- 1/3/12

विषय:-छोटानागपुर काश्तकारी अधिनियम, 1908 की धारा-46(i)(b) के अनुपालन के संबंध में।

महाशय,

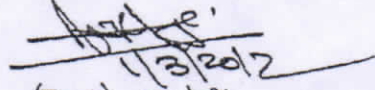
निदेशानुसार उपरोक्त विषय के संदर्भ में विधि (न्याय) विभाग से प्राप्त मन्तव्य निम्नवत् है:-

“बिहार शिड्यूलड एरियाज रेगुलेशन” में लिस्ट ऑफ बैकवार्ड क्लासेज के संदर्भ में निर्गत अधिसूचना सं०-ए./टि.-3043/61-5423-आर., दिनांक-23 जून, 1962 में अंकित जातियाँ ही धारा-46(i)(b) के प्रावधानों के अन्तर्गत प्रवर्तनीय हैं (सूची संलग्न)। उक्त सूची के अतिरिक्त अन्य जातियों पर धारा-46(i)(b) लागू नहीं होता है।

कृपया तदनुसार कार्रवाई सुनिश्चित की जाय।

अनु:- यथोक्त।

विश्वासभाजन,



(ए० के० रस्तोगी)

सरकार के विशेष सचिव।