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Date:- 10/10/22

LEGAL OPINION

On Request :- AMC (Adityapur Municipal Corporation)

SUBJECT:- In Reference To Your letter No. 2361 dated 03.9.22

AMC-BP-0072-W04-2022-

Ashok Kumar Jha

Documents provided for opinion

1. Photocopy of the sale deed bearing deed No. 2585 dated 25.08.1989 executed by Durga Pado Mahto Son of Arun Mahto in favour of Shri Ashok Jha Son of C.S. Jha.
2. Photocopy of the sale deed bearing deed No. 816 dated 23.02.2006 executed by Mohan Mukhi, Hari Mohan Mukhi, Jagmohan Mukhi, Lal Mochan Mukhi all sons of Late Sindhu Mukhi and Shanti Devi wife of Late Nil Mohan Mukhi in favour of Vijay Kumar Roy son of Late Siya Ram Roy.
3. Photocopy of the correction slip issued in mutation case No. 732/2006-07 in the name of Vijay Kumar Roy son of Siya Ram Roy for the area 2353 Sq.ft. of old khata No. 151/259 old plot No. 235/417 and plot No. 235/418.
4. Photocopy of rent receipt issued in the name of Vijay Kumar Roy for the year 2018-19.

5. Photocopy of holding tax receipt of Adityapur Municipal Corporation.
6. Photocopy of correction slip issued in the mutation case No. 271/1991-92 in the name of Ashok Jha son of Late C.S Jha of village Asangi old khata No. 63/98 old plot No. 237/416 area 13 decimal.
7. Photocopy of report submitted by Circle Officer Gamharia letter No. 714 dt. 30.8.2022.

That I carefully examined the documents and found that R.S Khata No. 68, plot No. 237, area 13 decimal and R.S Khata No. 151 plot No. 235 area 5.40 decimal land is coming under the jamabandi of Ashok Jha and Vijay Kumar Roy. As per the record of right of khata No. 68 it is recorded in the name of Durga Charan Mahto and Others and khata No. 151 is recorded in the name of Sindhu Mukhi. Both khata belongs to Kurmi and Dom, they are backward class and schedule caste. It is reported by the Circle Officer Gamharia in reference to letter No. 2270 dt. 20.8.2020.

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The heirs of the recorded raiyat sold and transferred 5 katha land of plot No. 416 under new khata No. 98 old plot No. 237 corresponding to old khata No. 63 through registered deed of sale bearing deed No.2585 on 25.8.1989 to Ashok Jha son of C.S Jha in valuable consideration of money. The name of the purchaser is mutated vide mutation case No. 271/1991-92 and he is paying rent thereof.

Vijay Kumar Roy has purchased 5.4 decimal land of plot No. 235 under khata No. 151 of village Asangi through registered deed No. 816 from Mohan Mukhi and Others on 23.2.2006 and the purchaser also mutated his name vide mutation case No. 732/2006-07 and also paying rent thereof.

The land in question is connected to the Kurmi Community and Dom Community who belongs to the backward class and Schedule Caste 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. 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 Thakur 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

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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.

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 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 powered 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).

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 member of the backward caste and schedule 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 from the khatiyani raiyat on 25.8.1989 and 23.2.2006, the Revenue Department of Jharkhand has issued a letter Under section 46(b) of the CNT Act on 1.3.2012. It is relevant to mention that prior to 1.3.2012 no instruction was issued by the State Govt. of Jharkhand to the officer concern for obtaining the permission under section 46(b) of the CNT Act. There was no legal requirement at that relevant time for transfer of the land to obtain the permission of competent authority. As such the registration was going on without any hindrance or any legal requirement, the letter was issued on 1.3.2012 but in the present cases the land has already been sold and purchased prior to 1.3.2012 and the name of the purchaser has been mutated. The name of the present applicant is also mutated vide mutation case No. 271R27/1991-92 and 732R27/2006-07 and accordingly the rent receipt is also issued and state government is also recognizing the present applicant as raiyat as such in my opinion the applicant has acquired title over the land by prescription of time and also the raiyati status of the applicant is recognized by the state government. There is no impediment in sanction of the map in favour of the applicant.

Rampal N Ray
Advocate
Advocate 10/10/22