

Pandey Ravindra Nath Ray

Advocate,

Purani Ranchi,

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Date:- 18/8/22

LEGAL OPINION

On Request :- AMC (Adityapur Municipal Corporation)

SUBJECT:- In Reference To Your letter No. 2040 dated 26.7.22

AMC-BP-0007-W23-2022-

Madan Kumar Rai, Kamlesh kumar Rai and Amar Chandra Rai

Documents provided for opinion

1. Photocopy of the sale deed dated 25.9.1989 executed by Roop Singh and Surendra Prasad Bhagat in favour of Rajendra Prasad Rai.
2. Photocopy of the online khatian of khata No. 257 of village Dindali, P.S Gamharia, Dist. Saraikela, Kharsawa.
3. Photocopy of the rent receipt issued in the name of Madan Kumar Rai, Kamlesh Kumar Rai and Amar

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Chandra Rai for the year 2021-22, plot No. 921, khata No. 257.

4. Photocopy of the Municipal Rent receipt for the holding No. 0230000451000MO ward No. 23 of Adityapur.
5. Photocopy of the letter bearing letter No. 489 dt. 28.6.2022 issued by Circle Officer Gamharia to AMC (Adityapur Municipal Corporation).
6. Photocopy of the online Register II of vol. No.13 page No. 62 of village Dindali, Khata No. 257, plot No. 921.

That I carefully examined the documents and found that R.S Khata No. 257, plot No. 921 area 73 decimal of village Dindali, P.S Gamharia Dist. Saraikela was recorded in the name of Hare Mahto, Ghuna Mahto and Others by caste Kurmi. The legal heirs of the recorded raiyat through registered deed of sale bearing deed No. 1407, 1408 dated 22.4.1988 sold and transferred the plot No. 921 to one Ram Roop Singh and Surendra Prasad Bhagat. Thereafter the said purchaser through registered deed of sale sold and transferred the said land to Rajendra Prasad Rai on 25.9.1989. From perusal of the report of the Circle Officer Gamharia it appears that 0.10 acre land of village Dindali under khata No. 257 was mutated in the name of Madan Kumar Rai, Kamlesh Kumar Rai and Amar Chnadra Rai son of Rajendra Prasad Rai by mutation case No. 1561/2021-22 and accordingly the

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jamabandi is created in register II and rent receipt is issued.

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. 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 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.

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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).

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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 22.4.1988 and further it was transferred on 25.9.1989, 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 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. 1561/2021-22 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.

Tammy R.H. Roy
18/8/22

Advocate