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Date:- 16/12/22

LEGAL OPINION

On Request :- JNAC (Jamshedpur Notified Area
Committee)

SUBJECT:- In Reference To Your letter No. 3655
dated 7.12.22

JNAC-BP-0147-W2-2021-

**Smt. Reena Adhikari & others legal
heirs of Dharendra Nath Adhikari.**

Documents provided for opinion

1. Photocopy of the sale deed bearing deed No. 10971 dated 21.09.1973 executed by Hiramay Mahto, Jyotindra Nath Mahto, Upendra Nath Mahto all sons of Manohar Mahto in favour of Sri Dharendra Nath Adhikari son of Late Jyotish Chandra Adhikari.
2. Photocopy of correction slip issued in mutation case No. 177R27/1990-91 in favour of Dharendra Nath Adhikari.
3. Photocopy of the rent receipt for the year 2021-22 issued in the name of Dharendra Nath Adhikari.

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4. Photocopy of report of the Circle Office,
Singhbhum, Letter No. 2223 dt. 21.11.2022

That I carefully examined the documents and found that as per the report of the Circle Officer, Jamshedpur R.S Khata No. 33, survey plot No. 1299 area 4 katha 1/2 Dhur was purchased by Dharendra Nath Adhikari son of Late Jyoti Chandra Adhikari through registered deed of sale bearing deed No. 10971 on 21.9.1973 and after purchase the said purchaser come in possession over the land with his perfect right title and interest. After the death of Dharendra Nath Adhikari, Reena Adhikari, Atun Adhikari and Amit Adhikari are the heir-ship certificate is issued by the Circle Officer Jamshedpur on 12.11.2021. As per the new khatiyā finally published on 5.1.1996 the name of Dharendra Adhikari mentioned but as per the old khatiyā the name of Manohar Mahto is recorded.

The land in question as per the old khatiyā it is connected to the Kurmi Community but as per the new khatiyā it is recorded in the name of Dharendra Nath Adhikari who does not belongs to the backward class or schedule caste. The new record of right finally published on 5.1.1996 is an evidence for the purpose of establishing the entry made therein. Even if it is presumed that in old R.S record of right the recorded raiyat was belongs to the Backward 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.

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 in year 1973 and thereafter the record of right has also being prepared and published on 5.1.1996 in the name of Dhirendra Nath Adhikari U/s 83(2) of the CNT Act, it will be presumed to be correct until or unless it is not rebutted, 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 coming of the full bench judgment in year 1996 and the name of the purchaser has been mutated. The name of the present applicant is also mutated vide mutation case No. 177R27/1990-91 and accordingly the rent receipt is also issued and state government is also recognizing the present applicant as raiyat and issued rent receipt, this fact is admitted by the Circle Officer, Jamshedpur in his report, 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.

Rajendra K. Ray
16/12/22
Advocate