

JUDGMENT

M.Y. Eqbal, J.

1. In this writ application, the petitioner, M/s. Bharat Coking Coal Ltd., has prayed for issuance of appropriate writ in the nature of certiorari or any other appropriate, writ for quashing the direction of respondent No. 2, Deputy Commissioner, Dhanbad as communicated to the petitioner vide memo No. 1872 dated 1-4-92 whereby the said authority has granted permission under Section 49 of the Chotanagpur Tenancy Act laying down four preconditions which are required to be complied with by the petitioner prior to registration of sale-deed.

2. The petitioner, M/s. Bharat Coking Coal Ltd. (shortly B.C.C.L.) is a Government company primarily engaged in the activities of raising cooking coal which is used in Steel Plants, Thermal. Power Stations and other industries. For the purpose of its activities, the petitioner-Company purchased raiyati lands through registered, documents irons time to time from the raiyats who are not members of Scheduled Tribe, Scheduled Caste or Backward Class on payment of valuable consideration. It is stated that respondent No. 2, Deputy Commissioner sought to impose a blanket restriction regarding purchase of raiyati lands on the petitioner irrespective of the fact that the vendors are not the members of Scheduled Caste, Scheduled Tribe or Backward Class and the same has been conveyed under the signature of respondent No. 3, the Addl. Collector, Dhanbad vide his memo No. 4116 dated 7-12-89. A copy of the said memo has been annexed as Annexure-1 to the writ application. It is stated, that on receipt of Annexure-1 the petitioner gave a detailed reply queuing the relevant provisions and stating that no permission is required to be taken for sale and purchase of raiyati land of raiyats who are not the members of Scheduled Tribe, In reply to that, respondent No. 3 again reiterated that permission under Section 49(c) of the C.N.T. Act, is required to be taken in each and every case. Petitioner's further case is that by reason of the aforesaid letter dated 14-3-91 respondent No. 2, the Deputy Commissioner illegally and without any authority of law has issued a circular to the effect that for sale of land the price of land shall not be less than the price fixed in the circular Respondent No. 3 also, by letter dated 11-7-91. prescribed a form for filing an application seeking permission to purchase the land. It is stated by the petitioner that when the lands are required by the petitioner for mining purposes or any other purposes incidental thereto the petitioner approaches the raiyat for purchase of such land through its officers/agents who after negotiations fix the price of the land and thereafter the vendor in compliance of the directions issued by respondent No. 2 applies in the prescribed form for according permission. The petitioner approached one Adhir Kumar Choube S/o Hari Prasad Choube of village Basuria for purchasing his land situated in Mouza Chhotki Boa and Par Boa appertaining to khata No. 11, plot No. 59 having an area of 12 decimals. The said prospective vendor is neither a member of Scheduled Caste, Scheduled Tribe or Backward Class. Petitioner's further case is that after completion of negotiation for purchase of the said land the vendor applied in the prescribed form duly forwarded by G.M. (Estate) to respondent No. 2 for according permission for sale of his raiyati land. Respondent No. 2 said to have granted conditional permission under Section 49 of the C.N.T. Act, by putting various conditions. The petitioner, therefore, has challenged the imposition of such conditions and also the authority of the Deputy Commissioner to put restriction on the transfer of land under Section 49 of the C.N.T. Act. A copy of the impugned memo No. 1872 dated 1-4-92 by which conditional permission was accorded by the Deputy Commissioner has been filed and annexed as Annexure-6 to the writ application.

3. On 4-11-92, this writ, application was heard at the admission stage and the State Counsel was directed to seek instruction and file counter-affidavit. Again the matter was listed on 2-3-93, but no counter-affidavit was filed and

the writ petition was ultimately admitted for hearing. It: appears that till date no counter-affidavit has been filed on behalf of the State, rather an intervention petition has been filed by Intervenor, Tata Iron and Steel Co. Ltd. joining with the petitioner for the same and similar relief that respondent No. 2, the Deputy Commissioner has no authority under law to impose conditions for the, transfer of lands by a raiyat not. belonging to the members of the Scheduled Caste or Scheduled Tribe.

4. I have heard Mr. A.K. Mehta, learned Counsel for the petitioner, Mr. B.P. Verma, learned Counsel appearing for the Intervenor-respondent and Mr. M.S. Anwar learned G.P. 1 appealing on behalf of the State.

5. Before coming to the main question raised by the petitioner, I will first mention the restrictions imposed by the Deputy Commissioner while according permission under Section 49 of the C.N.T. Act. vide memo No. 1872 dated 1-4-92 which is Annexure-6 to the writ application. From perusal of Annexure-6., it appears that the Deputy Commissioner granted conditional permission for the transfer of the land under Section 49 of the C.N.T. Act. The conditions imposed are:

(i) That BCCL will have, to pay commercial rent to the Respondent No. 1.

(ii) That BCCL shall give an. employment to the vendor.

(iii) That BCCL will have to purchase stamp on the basis of valuation so fixed by Respondent No. 2 and the said instruments will have to be registered at Dhanbad.

(iv) That BCCL will have to pay the price of land on the basis of the price fixed by the Respondent No. 2.

6. The question therefore falls for consideration is how far these conditions/restrictions can be imposed by the Deputy Commissioner while according permission for transfer of the land under Section 49 of the C.N.T. Act. Section 49 of the C.N.C. Act, read as under:

Transfer of occupancy-holding or Bhumihari-tenure for certain purposes.-{!) Notwithstanding anything contained in Sections 46, 47 and 48, any occupancy-raiyat, or any member of a Bhumihari family who is referred to in Section 48, may (***) transfer his holding or tenure or any part thereof for any reasonable and sufficient purpose.

(2) (***) .

(2) The expression "reasonable and sufficient purposes" as used in Sub-section (1) includes-

(a) in. the case of member of a Bhumihari family, but not in the case of an occupancy-raiyat, building purposes generally ,

(b) in any case the use of the land for any charitable, religious or educational purpose, 3 (or for any other purpose which the 4 (State) Government may, by general or special order, declare to be a public purpose) or for the purpose of manufacture or irrigation or as building ground for any such purpose, or for access to land used or required for any such purpose,

(c) in any case, the use of the land for the purpose of mining or for any other purpose which the (State) Government may by notification declare to be subsidiary hereto or for access to land used or required for any such purposes).

(3) Every such transfer must be made by registered deed, and before the deed is registered and the land transferred, the written con-sent of the Deputy

Commissioner must, be obtained to the terms of the deed and to the transfer.

(4) Before consenting to any such transfer, the Deputy Commissioner shall satisfy himself that (adequate compensation is tendered to the landlord for the loss (if any) caused to him by the transfer) and where only part of a holding or tenure as transferred, may, if he thinks fit, apportion ; between the transferee and the original tenant the rent payable for the holding or tenure.

(5) The State Government may, at any time within a period of twelve years from the date on which, written consent is given by the Deputy Commissioner in regard to the transfer of any holding or part thereof belonging to an occupancy raiyat who is a member of the Scheduled Tribe either on its own motion or on an application made to it in this behalf set aside such written consent and annul. The transfer, if alter holding in inquiry in the prescribed manner and after giving a reasonable opportunity to the parties concerned to be heard it finds that the consent had been obtained in contravention of the provisions of Sub-sections (1) and (2) by misrepresentation or fraud and in case any holding or part thereof has been transferred on the basis of such written consent direct the Deputy Commissioner to take further necessary action under Clause (c) of Sub-section (4A) of Section 46.

7. From bare reading of the aforesaid provision, it is manifest that Sub-section (1) of Section 49 provides that an occupancy raiyat or any member of Bhumi-hari family referred to in Section 48 may transfer his holding or tenure for any reasonable and sufficient purposes. Sub-section (2) provides inclusive definition of the words "reasonable and sufficient purposes". According to this definition if a transfer is made by a Bhumi-hari family, the aforesaid terms mean building purposes generally. But, in case of transfer by occupancy raiyat the terms "reasonable and sufficient purposes" includes charitable, religious or educational purposes. It also includes transfer of land for mining purpose or for any other purpose as the State Government may, by notification, declare to be a subsidiary thereto. Sub-section (3) puts a restriction that such transfer mentioned in Sub-sections (1) and (2) cannot be made without a written consent of the Deputy Commissioner. Sub-section (4) provides that the Deputy Commissioner before according sanction, shall satisfy himself that adequate compensation is offered to the landlord for the loss, if caused to him by such transfer. Sub-section (5) of Section 49 confers power to the State Government to proceed suo motu or on an application within 12 years from the date of such transfer and set aside the written consent and annul the transfer made by a raiyat who is a member of Scheduled Tribe if after inquiry, it is found that the consent of the Deputy Commissioner was obtained in contravention of Sub-sections (1) and (2) or by misrepresentation or fraud and further direct the Deputy Commissioner to proceed for eviction of such transferee from the holding in question.

8. Before analysing the provisions of Section 49 of the Act, it would be useful to discuss the preceding Sections 46, 47 and 48 of the Act, Section 48, in fact, has been enacted to put a restriction on the sale of the holdings of a raiyat and to restrict all forms of mortgage and to save the tribal population, from becoming sufferers of the Money Lenders and other such persons. The first proviso of Section 46, however, provides that an occupancy raiyat who is the member of Scheduled Tribe may transfer his holding with the previous sanction of the Deputy Commissioner in favour of another person who is a member of Scheduled Tribe and who is the resident within the local limit of the area of the police station within which the holding is situate. In proviso (b), similar latitude has been given to an occupancy raiyat who is a member of Scheduled Caste or Backward Class to transfers his holding with the previous sanction of the Deputy Commissioner to another person who is a member of the same class and who is the resident within the local limits of the district within which the holding is situate. However, Clauses (c) and (d) of the first proviso deal with the transfer by an occupancy raiyat who is not a member of Scheduled Caste, Scheduled Tribe or Backward Class. For-better appreciation Clauses (c) and (d)

of Section 46 are reproduced herein below:

(c) any occupancy raiyat may, transfer his right in his holding or any portion thereof to a society or bank registered or deemed to be registered under the Bihar and Orissa Co-operative Societies Act, 1935 (Bihar & Orissa Act VI of 1935), or to the State Bank of India or a bank specified in column 2 of the First Schedule to the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1970 (5 of 1970) or to a company or a corporation owned by, or in which less than fifty one per cent of the share capital is held by the State Government or the Central Government or partly by the State Government, and partly by the Central Government, and which has been set up with a view to provide agricultural credit to cultivators ; and

(d) any occupancy raiyat who is not a member of the Scheduled Tribes, Scheduled Castes or Backward Classes, may, transfer his right in his holding or any portion thereof by sale, exchange, gift, will, mortgage or otherwise to any other person.

9. Section 47 of the Act puts a restriction on the sale of raiyat's right in the holding under the order of the Court and provides that no decree or order shall be passed by any Court for the sale of the right of a raiyati in the holding. However, the proviso says that such raiyat's holding can be sold in execution of a decree of a competent Court to recover the arrears of rent which has accrued in respect of the holding.

10. Section 48 of the Act deals with the restriction on the transfer of Bhumihari tenure and provides that a member of the Bhumihari family may transfer his holding in the same manner and to the same extent as an aboriginal raiyat may transfer his right in his holding under Clauses (a) and (b) of Sub-section (2) of Section 46 of the Act.

11. On the analysis of the aforesaid provisions of Sections 46, 47, 48 and 49 of the Act, it is evident, that in all cases of transfer of land by an occupancy raiyat whether belonging to the member of Scheduled Castes, Scheduled Tribes and Backward Class or not, or any member of the Bhumihari family, can be effected only after obtaining written consent of the Deputy Commissioner. Even in a case of transfer under proviso (c) of Sections 46 and 47 of the Act, as originally stood, there was a restriction in the transfer by a raiyat not being the member of Scheduled Caste, Scheduled Tribe or Backward Class without the written consent of the Deputy commissioner and to a person who must be the resident of the same area where the holding situate. Proviso (c) of Section 46 and Section 47 putting such restriction on the sale of the lands by an occupancy raiyat was challenged as being unconstitutional and invalid and the matter was ultimately referred to a Full Bench. The Full Bench struck down such restriction in the case of *R. Sahu v. H.S.L. Sahu* 1967 BLJR 78, where their Lordships held that the restrictive provision in Clause (c) of the proviso to Section 46(1) to the effect that transfer of the occupancy holding by a raiyat of the class other than Scheduled Tribe, Scheduled Caste or Backward Class, can be made only to a resident within the local limit of the district in which the holding is situate, is invalid under Article 19(1)(f) of the Constitution. Similarly, it was held that Section 47 in so far it puts restriction upon the power of Court to put to auction sale in execution of a decree even the agricultural land of the persons belonging to the classes other than Scheduled Tribe, Scheduled Castes and Backward Class is invalid and ultravires. Similar provision under the Bihar Tenancy Act has been struck down by the Full Bench of this Court in the case of *5. Thakur v. K. Singh* 1969 PLJR 134.

12. Coming back to the provision of Section 49 of the Act, as noticed above, it transpires that although some relaxation has been given to the occupancy raiyats or the members of the Bhumihari family to transfer their holdings or any part thereof for any reasonable and sufficient purposes but for such transfer also written consent of the Deputy Commissioner has to be obtained. Sub-section

(4) of Section 49 confers additional power to the Deputy Commissioner to see that adequate compensation is tendered to the landlord for the loss, any, caused to him by the said transfer. In exercise of that power, the Deputy Commissioner, in the instant case, has passed the impugned order which was communicated to the petitioner vide memo dated 1-4-92 (Annexure-6) whereby the Deputy Commissioner granted permission for transfer of the land of a raiyat to the petitioner but, imposed four conditions quoted hereinabove.

13. Now, I will deal the validity of such conditions separately:

Condition No. 1: The first condition imposed by the Deputy Commissioner while according sanction for the transfer of the land in favour of the petitioner is that the petitioner has to pay commercial rent to the State of Bihar. At the very outset, I must indicate that Sub-section (4) of Section 49 does not confer power to the Deputy Commissioner to impose such condition. As a matter of fact, the condition imposed by the Deputy Commissioner is redundant inasmuch as the Bihar Lands Reforms Act and the Mineral Concession Rules have made sufficient provision for the assessment and realisation of rent. If the purchased land is used by the petitioner for mining activities then sufficient provisions have been made under the Mineral Concession Rules, 1960, Similar question arose in the case of B.C.L. v. State of Bihar , as to

whether the Revenue authorities i.e. the Circle Officer has jurisdiction to make assessment of rent in respect of the use of land for mining purposes and any other activities. In that case, a proceeding for fixation of fair rent was initiated and finally culminated in the order passed by the Additional Collector fixing rent in respect of the lands belong to the petitioner. In that case, the State of the State of Bihar was that the original mining lease granted to the plaintiff was not only the mining lease but it was also a lease for using surface land for the purposes of residence, trade, commerce and factory, etc. and, therefore, the Revenue authorities of the. State of Bihar have jurisdiction to revise the rent payable by the plaintiff. Their Lordships considering the different provisions of the Bihar Lands Reforms Act, Coking Coal Mines Nationalization Act, 1972, Mines and Minerals (Regulation and Development) Act, 1957 and the Mineral Concession Rules, 1960 held that a mining lessee has to pay surface rent in terms of the provisions of Rule 27(1) (d) of the Mineral Concession Rules, 1960 or in accordance with the terms and conditions of the mining lease. In either events, such surface rent being payable in respect of a mining lease, the same cannot come within the purview of Sections 5, 6 and 7 of the Bihar Lands Reforms Act. His Lordship further observed:

In this view of the matter, in my opinion, it must be held that defendant No. 3 had no jurisdiction to make any order of assessment of rent as the matter in relation to termination and/or payment of surface rent are matters governed by the provisions of Mineral Concession Rules, 1960.

Besides the above, the condition imposed by the Deputy Commissioner for payment of commercial rent also appears to be illegal and arbitrary inasmuch as after the purchase of the land by the petitioner, it is for the company to use the land for mining activities or for any other-purposes. It is only after the petitioner starts using the land for any purposes then the question of payment of rent arises. In that view of the matter at the time of according sanction the Deputy Commissioner has no jurisdiction to impose a condition that the purchaser will have to pay commercial rent to the State of Bihar. Such condition is absolutely illegal, arbitrary and ultra vires and against the provision of Section 49 of the C.N.T. Act.

14. Condition No. 2: Second condition imposed by the Deputy Commissioner is that the petitioner has to give employment to the vendor who is selling the land. Mr. M.S. Anwar, learned G.P. 1 has very fairly conceded that such condition cannot be imposed by the Deputy Commissioner. Apart from the concession made by the State Counsel, I am of the opinion that such condition

imposed by the Deputy Commissioner is illegal, arbitrary and without any authority of law. Section 49 of the Act does not confer power to the Deputy Commissioner to accord sanction with such condition. As a matter of fact, it is not a case of compulsory acquisition of land by the Government or the Government companies nor it is a case of transfer of land against the will and consent of the owner of the land. If a raiyat voluntarily offers to sell his land and the purchaser agrees to purchase the same, in such circumstance merely because such transfer has to be effected with the consent of the Deputy Commissioner under the aforesaid provision, the purchaser cannot be compelled to give employment to the vendor besides payment of market value of the land.

15. Similar question arose before the Supreme Court in the case of Butu Prasad Kumhar and Ors. v. Steel Authority of India Ltd. and Anr. 1995 Supp (2) S.C.C. 225. In that case, the land belonging to the petitioner was acquired under the Land Acquisition Act for the purposes of setting up a large steel plant and compensation was paid to the owner of the land. The Central Government and the State Government took steps to ensure that at least one member of each family displaced as a result of the acquisition of land, was given employment in the steel plant. However, not satisfied with the Government decision the petitioner of that case moved the Supreme Court of India and contended that omission to provide employment to each member of the displaced families was violative of Article 21 of the Constitution. Rejecting the contention of the petitioner, the Supreme Court observed:

The constitutional challenge based on Article 21 does not appear to have any substance. In *Olga Tellis*, it was observed by this Court that the concept of right of life conferred was wide and far-reaching and the deprivation of the right to livelihood without following the procedure established by law was violative of the fundamental guarantee to a citizen. Needless to say that petitioners or their ancestors were not deprived of their land without following the procedure established in law. Their land was taken under the Land Acquisition Act. They were paid compensation for it. Therefore, the challenge raised on violation of Article 21 is devoid of any merit. Even otherwise the obligation of the state to ensure that no citizen is deprived of his livelihood does not extend to provide employment to every member of each family displaced in consequence of acquisition of land. Rourkela Plant was established for the growth of the country. It is one of the prestigious steel plants. It was established in public sector. The Government has paid market value for the land acquired. Even if the Government or the Steel Plant would not have offered any employment to any person, it would not have resulted in violation of any fundamental right. Yet, considering the poverty of the persons who were displaced, both the Central Government and the State Government took steps to ensure that each family was protected by giving employment to at least one member in the Plant. We fail to appreciate how such a step by the Government is violative of Article 21. The claim of the petitioners that, unless each adult member is given employment or the future generation is ensured of a preferential claim, it would be arbitrary or contrary with the constitutional guarantee is indeed stretching Article 21 without any regard to its scope and ambit as explained by this Court. Truly speaking, it is just the other way. Acceptance of such a demand would be against Article 14.

In the instant case, as stated above, the land was voluntarily agreed to be sold by the vendor to the petitioner for mining purposes on payment of market value of the land and it is not a case of compulsory acquisition of land and against the wish of the owner of the land. In such circumstance, therefore, as held above, the conditions imposed by the Deputy Commissioner cannot be sustained in law.

16. Condition Nos. 3 & 4.---The third and fourth conditions imposed by the Deputy Commissioner are that the petitioner-B.C.C.L. will have to purchase, stamps on the basis of the valuation so fixed by the Deputy Commissioner and the said instrument will have to be registered at Dhanbad. The fourth condition is

that the petitioner B.C.C.L. will have to pay the price of the land on the basis of the price fixed by respondent No. 2. The learned Govt. Pleader has submitted that it: is well within the authority of the Deputy Commissioner to fix the value of the land proposed to be sold and to pay stamp duty on the said valuation and further that the Deputy Commissioner may impose further conditions that the land has to be registered at Dhanbad. I do not find any force in the submission of the learned Counsel, It is well settled that the Act and the Statutory Rules cannot be overridden by executive order or executive practice. The Indian Stamp Act and the Registration Act and the rules framed there under has taken proper care in relation to stamps payable for an instrument, or document and the place where such document requires registration. The State of Bihar brought certain amendment in the Stamp Act by virtue of which Section 47-A has been inserted by Bihar Act 15 of 1988 of the Indian Stamp (Amendment) Act, 1988. This section confers power to the registering authority while registering any instrument of conveyance that if it. has reason to believe that the market value of the property has not been rightly set forth in the instrument then he may refer the matter to the Collector for determination of the market value of such property. The Collector then has been empowered to hold an enquiry after giving notice to the parties and determine the market value of the property which is the subject-matter of such instrument. In order to give effect to Section 47-A of the Act, the State of Bihar came with a rule, namely, Bihar Stamps (Prevention of Undervaluation of Instrument) Rules, 1955. Therefore, Section 47-A and the aforesaid Rules have provided complete procedure for determining the value of the property which is the subject-matter of an instrument for the purpose of payment of stamp duty. The Deputy Commissioner, under the rules, has further been empowered to determine the valuation of the lands of different localities in accordance with the procedures provided under the Rules, ignoring the Act and the Rules, the Deputy Commissioner has no jurisdiction to impose conditions before registration of the instrument and coerce the parties to the instrument to put specific valuation of the property in the instrument and to pay stamp duty on such valuation. As stated above, by executive order or executive instruction the Act and the Statutory Rules cannot be overridden by the administrative authorities. As noticed above, Section 49 does not confer power to the Deputy Commissioner to fix the valuation of the instrument and also to compel the purchaser to purchase stamps of a particular denomination. In my considered opinion therefore, condition Nos. 3 and 4 so imposed by the Deputy Commissioner in the impugned order are also wholly arbitrary and without jurisdiction.

17. Having regard to the facts and circumstances of the case and the law discussed hereinbefore, I am, therefore, of the opinion that the conditions imposed by respondent No. 2. Deputy Commissioner cannot be sustained in law.

18. In the result, this writ application is allowed and the impugned memo as contained in Annexure-6 is quashed. There shall be no order as to costs.