

## In The Court of Deputy Commissioner, Ramgarh

Restoration Appeal No. 147/2008

Kamalnath Karmali Versus Jagarnath Mahto others.

### Order

23.8.13

The present appeal originated out of the order of the DCLR passed in Restoration Case No. 23/07-08 on 20-08-2008 whereby the petition was dismissed by the lower court on grounds of Res Judicata and elapse of the period of twelve years.

The Appeal petition briefly states that Khata 164 Plot No. 1063 Area 1.23 Acre is recorded in the name of Hardayal Karmali. It is pleaded that earlier a Restoration Case No. 284/82 was filed in the court of LRDC, Hazaribagh who allowed the petition. Later Jagarnath Mahto preferred an Appeal (No. 3/83) but in the meanwhile Delivery of Possession was given leaving the Appeal infructuous. It is also stated that the said Jagarnath Mahto collaborated with Chaman Karmali and filed another Case No. 23/07-08 in the court of the DCLR, Ramgarh wherein the case of Chaman Karmali was dismissed. Chaman was a cosharer of the present petitioner. This case was rejected. In another Restoration Case No. 51/83, the learned LRDC had ordered Restoration for Kamalnath Karmali on same Khata No. 164 Plot No. 1063. Another decision for the same land came in Case No. 1/93 wherein the DCLR, Ramgarh concluded in 26-05-1993 that case filed by Narayan Karmali became infructuous as a result of Delivery of Possession given to him in compliance of the order passed in 51/1983.

In the reply submitted by the Respondent No.1, it has been admitted that orders in favour of the present Appellant were given in Restoration Case No. 51/83 and subsequent Appeal Petition No. 10/90 in the court of the Additional Collector, Hazaribagh. But it is further added that Title Suit No. 103/92 related to the same Plot No. 1023 area 24 $\frac{3}{4}$  dec. went in favour of one Kishun Pal Rai and against Kamalnath Karmali. The latter filed a Title Appeal No. 16/2008 in the court of the District Judge which allowed the

Appeal in favour of Kamalnath Karmali. Now the matter is said to be pending in Hon'ble Jharkhand High Court.

Admittedly Plot No. 1063 is recorded tribal land. The respondent has claimed to have purchased land through Registered Sale Deed No. 8051 dated 19-10-1970 from Mos. Uliya Devi. The latter's husband came in possession by means of hukumnama in 1939. It cannot be disputed that the original transfer through unregistered deed without permission of the Deputy Commissioner was in contravention of the C.N.T. Act and the Transfer of Property Act. The subsequent transfer in 1970 cannot of cure an illegality committed earlier.

The penultimate paragraph of the DCLR order dated 20-08-2008 mentions that. Restoration case filed by Chaman karmali is not maintainable in the light of earlier orders passed in Restoration Case Nos. 1/93 and 51/83. It is noteworthy that present Appellant Kamalnath Karmali was not included as a party in the lower court case 23/07-08. The petitioner were Chaman Karmali, Vishwnath Karmali, Shrawan karmali and Kalicharan Karmali.

The only question involved in the present Appeal is whether the transfer by Sada Hukumnama made in 1939 in contravention of the C.N.T. Act could be deemed to have been cured by subsequent Registered Deed of 1970. The proposition of the law goes to the root of the matter and the authorities earlier rightly passed orders in case Nos. 51/83 and 1/93.

In view of aforesaid findings, the Appeal is allowed and order of the LRDC, Ramgarh dated 20-08-2008 is set aside. The LRDC is directed to ensure that the Appellant Kamalnath karmali is not dispossessed.

Written and Corrected by

Deputy Commissioner,  
Ramgarh.

Deputy Commissioner,  
Ramgarh.