The Managing Committee and ors. Vs. State of Bihar and ors.

The Managing Committee and ors. Vs. State of Bihar and ors.

SooperKanoon Citation : sooperkanoon.com/129700

Court : Patna

Decided On : Apr-02-2003

Judge : R.S. Garg, J.

Acts : Indian Registration Act, 1908 - Sections 68(2)

Appeal No. : C.W.J.C. No. 7398 of 2002

Appellant : The Managing Committee and ors.

Respondent : State of Bihar and ors.

Advocate for Def. : S.S. Nayyar Hussain, GP-2

Advocate for Pet/Ap. : Rajiv Shankar Dwivedi, Adv.

Disposition : Appeal allowed

Judgement :

R.S. Garg, J.

1. By this petition under Article 226 of the Constitution of India the petitioners seek to challenge the correctness, Validity and propriety of Memo No. 537 dated 8-4-2002, issued by the District Collector, Katihar whereunder he has cancelled the registration of gift deed No. 14743 dated 21-9-2001 in exercise of the powers vested upon him under Section 68(2) of the Indian Registration Act, 1908.

2. The facts in brief are that certain land was gifted by late Mannalal Sah to the Government of Bihar for establishing a school. The land came in possession of the school & Managing Committee and school was ultimately established. The petitioners claim to be the existing Managing Committee of the said Mannalal San Harijan Uchcha Vidyalay, Sakraili. The said Managing Committee executed the gift deed of the some land on 21-9-2001 in favour of the petitioner No. 2, namely Foundation life for All, which is registered public charitable trust. The State Government took an exception to this act of the Managing Committee and the Collector under the impugned order (Annexure-1) issued the direction for cancellation of registration of the said gift deed. The Collector also observed that the said Mannalal Sah had executed a deed of gift No. 3640 on 25-2-1982 for the land in dispute in favour of the Government of Bihar. It appears from the return that the State Government is of the opinion that the land belongs to the State Government, therefore, the Managing Committee of the school has no authority or right title and interest in property to execute the gift deed in favour of petitioner No. 2.

3. Learned'Counsel for the petitioners contended that the order as contained in Annexure-1 is patently illegal because the Collector assuming that he is also the Registrar, has no power to cancel the registration of document. On the other hand, learned Counsel for the State submitted that neither the petitioners hold the office of the Managing Committee nor the Managing Committee of the school would have any right to execute the gift deed because they are not the owners of the property and have no authority to alienate the property. It is submitted by the learned Counsel for the State that the Collector was absolutely justified in exercising its power under Section 68(2) of the Act.

4. Section 68 of the Indian Registration Act reads as under:

'Power of Registrar to superintendence and control sub-Registrar.--(1) Every sub-Registrar shall perform the duties of his office under the superintendence and control of the Registrar in whose a affect the office of such Sub-Registrar is situate.

(2) Every Registrar shall have authority to issue (whether on complaint or otherwise) any order consistent with this Act which he considers necessary in respect of any act or omission of any Sub-Registrar sub-ordination to him or in respect of the rectification of any error regarding the book or the office in which any document has been registered.'

5. In fact Section 68 of the Act confers power upon the Registrar to superintendence and control the acts of Sub-Registrar, Sub-section 2 in unambiguous terms provides that the Registrar shall have authority to issue any order consistent with the Act which he considers necessary in respect of any act or omission of any sub-Registrar subordinate to him. The Registrar shall also have power in respect of the rectification of any error regarding the book or the office in which any document has been registered. In fact the power is a power of superintendence and supervision and is not a power to cancel the registration of the document. An act of omission of the subordinate of the Registrar is an act of omission in relation to discharge of the duties which the Sub-Registrar as a subordinate of the Collector/Registrar has to discharge. The registration of document is completed by the Sub-Registrar in his independent capacity as a Registrar/Sub-Registrar of conveyance. The Collector in the opinion of this Court has no jurisdiction to cancel the registration of the document under Section 68(2) of the Act. Annexure 'A' is accordingly quashed.

6. So far as the question of title or the authority of the petitioners to execute the deed of gift is concern it is not necessary for this Court to express any opinion on the said subject, suffice it to say that a deed executed by the vendor shall confer rights upon the vendee if the vendor himself has the rights. A vendor cannot confer any right upon the render which the vending himself does not have. It the State feels that the Managing Committee especially the petitioners have no right to execute the deed of gift then they may avoid the documents or may take an Act in in accordance with taw to avoid the document. The petition is allowed with cost of Rs. 2000.