

ALIENS: The right of a Hindu to own real estate in Missouri.

September 27, 1933

FILED NO. 75

Mr. R. L. P. Ram Chandra
c/o 233 Club
648 Hollywood Blvd.
Hollywood, California



Dear Sir:

We are in receipt of your request for an opinion dated September 20, 1933. Your request was as follows:

"I am personally interested in knowing whether or not it is possible for a Hindu to own and develop real estate in your state. There undoubtedly may be several types of classifications applicable to agricultural land, industrial land, and land used for residential purposes."

In Missouri aliens are not classified by our Statutes according to nationality and hence a Hindu is recognized only as an alien, and the laws relating to aliens generally apply when determining a Hindu's right to own and develop real estate in Missouri, and we find no distinction made as to the purpose for which his real estate be used.

Chapter 121 R. S. Mo. 1929 deals with the Missouri law as it relates to the right of aliens to own real estate in Missouri, and Sections 14013 to 14015 inclusive were passed in 1895 and took away the right of an alien to purchase land in Missouri, which right existed prior to the passage of these sections. Section 14013 provides as follows:

"It shall be unlawful for any person or persons not citizens of the United States, or who have not lawfully declared their intention to become such citizens, or for any corporation not created by or under the laws of the United States or of some state or territory of the United States, to hereafter acquire, hold or own real estate so hereafter acquired, or any interest therein, in this state, except such

as may be acquired by inheritance or in good faith in the ordinary course of justice in the collection of debts: Provided, that the prohibition of this section shall not apply to cases in which the right to hold or dispose of lands in the United States is secured by existing treaties to the citizens or subjects of foreign countries; which rights, so far as they may exist by force of any such treaty, shall continue to exist so long as such treaties are in force, and no longer."

Section 14014 provides as follows:

"No corporation or association, more than twenty per centum of the stock of which is or may be owned by any person or persons, corporation or corporations, association or associations, not citizens of the United States, shall hereafter acquire or hold or own any real estate hereafter acquired in this state: Provided, that nothing contained in this chapter shall be construed to forbid any person or corporation from acquiring an interest in any real estate in this state as cestui que trust or mortgage in any deed of trust or mortgage taken in good faith to secure the repayment of any money lent upon such real estate and interest thereon, nor as assignee of such cestui que trust or mortgagee, nor to forbid the person or corporation lending such money or becoming such assignee from purchasing such real estate as its sale upon foreclosure of said deed of trust or mortgage, when the amount for which such property is sold at said sale does not exceed the amount due under said deed of trust or mortgage at the time of such sale and the costs of such foreclosure; Provided, however, that all right, title or interest acquired by such person or corporation at such sale or foreclosure shall be forfeited to the state of Missouri unless such person or corporation shall in good

faith sell all of such right, title and interest to a citizen of the United States, within six years after the person or corporation so purchasing at such sale or foreclosure shall have held the possession of such real estate according to the interest purchased or acquired by him or it at such sale or foreclosure."

Section 14015 provides as follows:

"All property acquired, held or owned in violation of the provisions of this chapter shall be forfeited to the state of Missouri, and it shall be the duty of the attorney-general, or circuit or prosecuting attorney of the proper city or county, to enforce every such forfeiture by bill in equity or other proper process. And in any suit or proceeding that may be commenced to enforce the provisions of this chapter, it shall be the duty of the court to determine the very right of the matter, without regard to matters of form, joinder of parties, multifariousness, or other matters not affecting the substantial rights, either of the state or of the parties concerned, in any such proceeding arising out of the matters in this chapter mentioned."

In interpreting this law of 1895 our Supreme Court said in the case of *Pembroke v. Huston*, 79 S. W. 470-180 Mo. 627:

"An alien's right to hold land cannot be questioned by an individual in any collateral action. * * * *

The right of an alien to acquire and hold real estate has been the subject of legislation in this state, from time to time, from an early date; the earlier statutes conferring qualified rights in that respect upon him. In 1872 our General Assembly enacted that 'aliens shall be capable of acquiring, by purchase, devise or

descent, real estate in this state, and of holding, devising or alienating the same, and shall incur the like duties and liabilities in relation thereto as if they were citizens of the United States and residents of this state.' Laws 1871-72, p. 79. That statute passed into the revision of 1879 as section 325, and into that of 1889 as section 342, and was the law when the plaintiff acquired title to the Nodaway county land, and was the law until 1895, when the act which is now sections 4765 - 4766, above quoted, was enacted, and which was the law when the transactions in question occurred. The act of 1872 repealed those features of the common law which imposed disabilities on an alien in respect of his capacity to acquire and hold real estate. While that statute was in force an alien had as much capacity to acquire and hold real estate as a citizen had. But after an experience of more than 20 years under the operation of that statute, our General Assembly concluded to change the policy of the state in that particular. As the act of 1872 had repealed the common law on the point, it was at least doubtful, under section 4177, Rev. St. 1899, if a mere repeal of that act would restore the common law, even if the Legislature had intended to restore it in its original form and effect. It was therefore doubtless deemed necessary, in order to accomplish its purpose, that the Legislature should by affirmative act withdraw from the alien the right that had been conferred on him by the act of 1872. When the Legislature in the act of 1895 said it shall be unlawful for an alien to acquire land by purchase, it did not mean that an alien, in taking a deed to land was to be regarded as a lawbreaker, or one guilty of an offense; but it only meant that the right that had been conferred on him by the act of 1872 was withdrawn, and

that the disabilities that the common law had formerly imposed were now to be imposed by statute, except as in the statute itself otherwise provided. Some of the words of the statute give plausibility to the contention that title cannot pass to the alien at all, the words being that it shall be unlawful for the alien 'to hereafter acquire,' etc.; but, when those words are taken with the immediate context, that idea disappears. The language is that it shall be unlawful for the alien 'to hereafter acquire, hold or own real estate so hereafter acquired.' The sense is awkwardly expressed. There could be 'no real estate so hereafter acquired,' if we give literal meaning to that part of the sentence which says that it shall be unlawful 'to hereafter acquire' such property. This meaning is further shown by the language in the beginning of section 4766: 'All property acquired, held or owned in violation of the provisions of this chapter shall be forfeited to the state of Missouri,' etc. That is an express recognition that real estate might be acquired by an alien after the passage of the act, but that whenever the state called for it the alien should surrender it. That is just what the common law was on that subject. The act of 1895 was intended to reinstate the common law on the subject of the acquiring by purchase of real estate by an alien. Under that statute an alien can take by purchase a defeasible title, and hold it subject to the same conditions that the common law imposed."

The conditions under which an alien might take title to real estate by purchase and hold the same at common law are very concisely set out in *Fairfax v. Hunter*, 7 Cranch, 603. 1. c. 619, 3 L. Ed. 453, when the Supreme Court of the United States through Mr. Justice Story said:

"It is clear by the common law that an alien can take lands by purchase, though not by descent, or, in other words, he

cannot take by act of the law, but he may by the act of the party. This principle has been settled in the Year Books, and has been uniformly recognized as sound law from that time. 11 Hen. IV, 26; 14 Hen. IV, 20; Co. Litt. 2b. Nor is there any distinction, whether the purchase be by grant or by devise. In either case the estate vests in the alien (Pow. Dev. 316, etc.; Park. Rep. 144; Co. Litt. 2b), not for his own benefit, but for the benefit of the state, or, in the language of the ancient law, the alien has the capacity to take, but not to hold, lands, and they may be seized into the hands of the sovereign. 11 Hen. IV, 26; 14 Hen. IV, 20. But until the lands are so seized the alien has complete dominion over the same, * * * and may convey the same to a purchaser;'"

It is the opinion of this office that an alien's right to hold land in Missouri cannot be questioned by an individual in a collateral action, but only in an action brought by the State for the purpose of so alienating and where there is a judgment of forfeiture, in such a case an alien in Missouri loses his title in real estate and the same escheats to the State, but until the lands are so seized the alien has complete dominion over the same.

Respectfully submitted

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APPROVED:

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