

(1979) 03 PAT CK 0003

In the Patna High Court

Case No : C.W.J.C. No's. 1064, 1065, 1066 and 1070 of 1977

Deosagar Singh and Others

APPELLANT

Vs

State of Bihar and Others

RESPONDENT

Date of Decision : 26-03-1979

Acts Referred:

Bihar Land Reforms (Fixation of Ceiling Area and Acquisition of Surplus Land) Act, 1961 — Section 5(1)

Citation : AIR 1979 Patna 229 : (1979) PLJR 551

Hon'ble Judges : Vishwanath Mishra, J;B.P. Jha, J

Bench : Division Bench

Advocate : Sankat Haran Singh, for the Appellant; B.P. Gupta, Subodh Kumar Singh, Hazari Lal, T. Dayal, S.N. Sahay, Dayanand Singh, Ashok Kumar, J.K. Prasad and K.K. Tiwary, for the Respondent

Judgement

Vishwanath Mishra, J.—All these four writ petitions are being disposed of by one order as the points involved in all the cases are the same.

2. All the writ petitions arise out of land ceiling cases under the Bihar Land Reforms (Fixation of Ceiling Area & Acquisition of Surplus Land) Act, 1961 (hereinafter referred to as "the Act"). Ramjas Singh and Laxmi Singh are two brothers. Ramjas Singh had sold some lands to Deosagar Singh, Ramsagar Singh and Mahendra Singh, who are petitioners in C.W.J.C. No. 1064 of 1977, through a registered sale-deed dated 29th July, 1972. He also sold some lands to Bijay Kumar Singh the petitioner in C.W.J.C. No. 1065 of 1977 through a registered sale-deed dated 18th Jan. 1973. A ceiling case was started against Ramjas Singh; its number being Ceiling Case No. 155 of 1973-74. In the draft statement that was prepared, and published u/s 10 (2) of the Act, the lands covered by the above two sale-deeds were included in the lands of Ramjas Singh. Objections u/s 10 (3) of the Act were filed by the vendees, which were dismissed by the Additional Sub-Divisional Officer, Garhwa by his order dated 20th July. 1976 contained in Annexure 1 to C.W.J.C. Nos. 1064 and 1065 of 1977. An appeal was preferred being appeal case No. XV/122 of 1977 by Deosagar Singh and his co-

vendees (petitioners in C.W.J.C. No. 1064 of 1977) and another appeal being appeal case No. XV/120 of 1977 was also preferred by Bijay Kumar Singh (petitioner in C.W.J.C. No. 1065 of 1977), Annexure 2 is the order dated 23-8-1976 dismissing the appeals at the time of admission itself. This order was passed in one case and the same was made applicable in the other cases also. A revision before the Board of Revenue was filed by Bijay Kumar Singh; being Board Case No. 1617 of 1976 and another by Deosagar Singh being Board Case No. 1619 of 1976 and both the revisions were dismissed on 29-1-1977 by a common order (Annexure 3 to writ petitions Nos. 1764 and 1766 of 1977).

3. Like Ramjas Singh, his brother Laxmi Singh also transferred some lands to Bigan Singh (petitioner in C.W.J.C. No. 1070 of 1977) through a registered sale-deed on 21-11-1972) and to Ashok Kumar Singh (petitioner in C.W.J.C. No. 1066 of 1977) through another registered sale deed on 7-9-1973. A ceiling case No. 152 of 1973-74 was, however, started against Laxmi Singh alone in which all the lands transferred in favour of Ashok Kumar Singh and Bigan Singh were also included. After the draft publication, objections were filed by the vendees. Both the objections were rejected by the Additional Sub-Divisional Officer, Garhwa (vide Annexure 1). Ashok Kumar Singh then filed land ceiling appeal No. 121 of 1976-77 whereas Bigan Singh preferred land ceiling appeal No. 119 of 1976-77. Both the appeals were heard together and dismissed at the time of admission itself by the order contained in Annexure 2. Ashok Kumar Singh preferred Board Case No. 1618 of 1976 and Bigan Singh preferred Board Case No. 1616 of 1976, before the Board of Revenue. Both these revisions were also dismissed by the order as contained in Annexure 3.

3-A. It may be repeated that Annexure 2 which is the order of the Additional Collector and Annexure 3 which is the order of the Additional Member, Board of Revenue, cover all the four cases. Being aggrieved by the order of the Additional Member, Board of Revenue these writ petitions have been filed.

4. Annexure 1 which is the order of the learned Additional Sub-Divisional Officer, Garhwa in all the cases shows that the only ground on which the cases were dismissed was that the transactions related to the period after 9-9-1970, and as such u/s 5 (1) (iii) of the Act no importance could be attached to it. The order of the Additional Collector contained in Annexure 2 also confirmed the same after taking the same view of the law as taken by the Additional S.D.O., and the appeals were not admitted by him. The learned Additional Member, Board of Revenue in paragraph 5 of his resolution (Annexure 3 in all the writ petitions) also relied upon the same provision and held that "the four sale-deeds have rightly been ignored by the learned lower courts."

5. There is no dispute on the point that all the sale-deeds which are the subject-matters for decision before us were executed after 9-9-1970. A question arises as to whether the transaction would be good or bad in the eye of law, and the manner in which it can be declared as such. In this connection it will be relevant to examine Section 5 (1) (ii) & (iii) of the Act, which run as follows :--

"(ii) No land-holder holding land in excess of the ceiling area shall, from the commencement of the Bihar Land Reforms (Fixation of Ceiling Area and Acquisition of Surplus Land) (Amendment) Act, 1972, and till the publication of notification u/s 15, transfer any land held by him except with the previous permission in writing of the Collector, who may refuse to give such permission if he is satisfied for the reasons to be recorded in writing that the transfer is proposed to be made with a mala fide intention of defeating the object of this Act.

(iii) The Collector shall have power to make enquiries in respect of any transfer of land by a land-holder whether made by a registered instrument or otherwise, made after the 22nd day of October, 1959, and if he is satisfied that such transfer was made, with the object of defeating, or in contravention of the provisions of this Act or for retaining, benami or farzi, land in excess of the ceiling area, the Collector may after giving reasonable notice to the parties concerned to appear and be heard, annul such transfer and thereupon the land shall be deemed to be held by the transferor for the purposes of determining the ceiling area he may hold under this section."

A reading of Clause(ii) shows that if a person holds land in excess of the ceiling area then there is a ban on him to transfer such land without obtaining written previous permission of the Collector. The Collector under the law may, however, refuse to give such permission if he is satisfied for the reasons to be recorded in writing that the transfer proposed to be made is with a mala fide intention for the purposes of defeating the object of the Act. If, however, the transferor holds not land in excess of the ceiling area the ban imposed under Clause (ii) has no application at all. It is, therefore, always a question of fact in each case as to whether the ban operates or not, and for this an enquiry has to be made in respect of each and every transaction which has taken place after 9-9-1970. The matter comes to this that simply because" a transaction has been affected after 9-9-1970, it cannot be struck down or ignored. After all it is not possible for a vendee to know always, and that exactly, whether the vendor has any land in excess of the ceiling area or not, because it all depends upon so many factors. Hence investigation before ignoring the sale-deed or annulling the sale-deed is called for, before the revenue authority can say finally whether the transaction is good or bad in the eye of law, and unless this is done, I think, the revenue authority cannot be said to have discharged its duties.

6. At the time of argument learned counsel for respondent No. 4 stated that when a particular case comes under Clause(ii) of Section 5 (1) of the Act, an enquiry under Clause(iii) of that section is ruled out. Actually the enquiry is made under Clause(iii) only. This clause calls for an enquiry in respect of any transfer of land, whether made by a registered instrument or otherwise, after 22nd day of October 1959. In course of this enquiry, if the Collector is satisfied that the transfer was made for the purpose of defeating the provisions of the Act, he may annul that transfer and after annulling that transaction the lands will be deemed to have been held by the transferor. The wordings of Clause(iii) are wide enough

to include even the transferred land under Clause (iii). With respect to the transfers made after 9-9-1970, there will be something more to be seen as to whether previous written permission of the Collector was taken or not and whether the land-holder had land in excess of the ceiling area at the time of the transfer or not. It would not, however, be necessary in cases of transfer made after 22-10-1959, and before 9-9-1970. It is also important to note that in Clause (ii) it has not been provided as to what would be the effect if the permission has not been taken. It only says that the land-holder holding land in excess of the ceiling area shall not transfer any land without prior written permission of the Collector, but if it is done what will be the consequence thereof? The clause is silent on the point. Therefore, reading Clauses (ii) and (iii) together, there is no doubt left that even in respect of transfer coming within Clause (ii), an enquiry under Clause (iii) is necessary, and that enquiry has to be made before saying one way or the other in respect of the transfer made even after 9-9-1970.

7. In all the above cases, objections had been filed by the transferees after the draft publication was made u/s 10 (2) of the Act. All these objections were made u/s 10 (3) of the Act, but all the same the enquiry that was made was u/s 5 (1) (iii) of the Act. If the enquiry is made either u/s 10 (3) or u/s 5 (1) (iii) of the Act, the scope of the enquiry would not change.

8. As I have already said the impugned orders (Annexures 1 and 3) have not at all considered the questions that arose for decision in an enquiry u/s 5 (1) (ii) and (iii) or u/s 10 (3) of the Act. All the cases have, therefore, to be sent back to the Additional S.D.O. for proper and thorough enquiry in which the parties must be given proper opportunity for proving their own claims.

9. In the circumstances, the writ petitions are allowed, Annexures 1, 2 and 3 are quashed and the cases are remanded to the Additional S.D.O. Garhwa for disposal in accordance with law and in the light of the observations made above. Parties will bear their own costs.

B.P. Jha, J.

10. I agree. The provisions of Section 5 (1) (iii) of the Act apply to a sale made on or after 9-9-1970 where no proper permission was obtained u/s 5 (1) (iii) of the Act for the simple reason that it is a sale made after 22nd October, 1959.