

(1999) 04 PAT CK 0063
In the Patna High Court
Case No : C.W.J.C. No. 7817 of 1996

Durgawati Devi

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 12-04-1999

Acts Referred:

Bihar Consolidation of Holdings and Prevention of Fragmentation Act, 1956 — Section 3, 32, 5, 6

Citation : (1999) 2 PLJR 831

Hon'ble Judges : N. Pandey, J

Bench : Single Bench

Final Decision : Allowed

Judgement

N. Pandey, J.—Heard learned Counsel for the Petitioner and learned Counsel for the State. No body appears on behalf of the contesting Respondents.

2. This writ petition has been filed for quashing the order of the Collector, Bhojpur dated 21.8.95/9.10.95 as contained in Annexure-6 whereby in exercise of the power conferred u/s 32 of the Bihar Consolidation of Holdings and Prevention of Fragmentation Act, he has declared the deed of gift dated 18.12.92 void and also imposed penalty of Rs. 50/ - each.

3. It appears on 18.12.92 the mother of the Petitioner through a registered deed of gift transferred certain lands. An application was filed by Rajendra Rai, Respondent No. 3 alleging that such "a deed of gift was void since no permission of the Consolidation Officer as required under Sections 5 and 6 of the Act, were obtained. The learned Collector being satisfied with the objection of Respondent No. 3 declared the deed of gift void.

4. Learned Counsel appearing for the Petitioner contended that by virtue of letter issued by the State Government on 16.7.1992 as contained in Annexure-5, the effect of the notification u/s 3 of the Act was suspended. It was not necessary for the mother of the Petitioner to obtain permission for execution of the deed of gift

on 18.12.92.

5. It appears such a submission was also made before the learned Collector but he refused to entertain on the ground that by a judgment of this Court in the case of Bihar Rajya Adhivakta Sangh and Ors. v. State of Bihar and Ors. reported in 1993 BBCJ 444 the said notification of the government was declared void ab initio. Therefore, the Petitioner was required to obtain the permission for execution of deed of gift on 18.12.92.

6. Admittedly the judgment of this Court was delivered on 21.5.93. The deed in question was executed on 18.12.92. Undisputedly on that day in view of the government's letter dated 16.7.1992 it was not necessary to obtain permission under Sections 5 and 6 of the Act.

7. Therefore, for the reasons stated above, the writ application is allowed and the impugned order (Annexure-6) of the Collector is quashed.