

(2006) 10 PAT CK 0006

In the Patna High Court

Case No : LPA No's. 425 of 1997 with 431 of 1997

Kashi Nath Singh and Others

APPELLANT

Vs

Shiv Narain Rai and Others

RESPONDENT

Date of Decision : 17-10-2006

Acts Referred:

Bihar Consolidation of Holdings and Prevention of Fragmentation Act, 1956 — Section 12, 12A, 21, 3
Transfer of Property Act, 1882 — Section 54

Citation : (2006) 4 PLJR 531

Hon'ble Judges : Barin Ghosh, J;Ajay Kr. Tripathi, J

Bench : Division Bench

Advocate : Shashi Shekhar Dwivedi, R.S. Dwivedi and R.K. Dubey, for the Appellant; Himanshu Kr. Akela for Respondent Nos. 4, 5 and 6, M/s Mahesh Prasad No. 2, Rewti Kant Raman and Gopal Sharan, for the Respondent

Final Decision : Allowed

Judgement

Barin Ghosh and Ajay Kr. Tripathi, JJ.—Under the scheme of Bihar Consolidation of Holdings & Prevention of Fragmentation Act, 1956, upon a notification u/s 3 of the Act, an up-to-date record of right in respect of the lands comprised in the notified area is required to be prepared. While preparing such record of right, the map and record of right prepared 20 years preceding the date of publication of the notification u/s 3 of the Act is to be reckoned. When the record of right and the map have been brought up-to-date, the valuation of each plot after taking into consideration the opinion of the Village Advisory Committee and other particulars have to be entered in the register of lands. The same is thereafter required to be published in the manner prescribed. Any person aggrieved then may lodge an objection in writing in respect of such register of lands. Such objection is required to be decided by the Assistant Consolidation Officer. A person aggrieved by reason of such decision is authorized to approach the Assistant Director of Consolidation with an appeal against such decision. Thereupon a draft scheme is required to be notified. Anyone entitled to object to

the draft scheme may file such objection with the Assistant Consolidation Officer, who is required to handover the same to the Consolidation Officer, and the Consolidation Officer is required to dispose of such objection. The draft scheme encompasses obligation to allot compact area of the plots to every raiyat where he holds the largest part of his holdings. At the time of preparation of the draft scheme, therefore, chak register is prepared. From the documents, upon which reliance has been placed by the parties, which have been brought on record, it appears that only after preparation of the draft scheme i.e. chak register, the subject exchange was recorded. There is no dispute that the appellants held 7.06 acres of land, as described in paragraph 2A of the Memorandum of Appeal; whereas the private respondents held 7.06 acres of land, as described in paragraph 2B of the Memorandum of Appeal, it appears from the records that after the draft scheme was prepared, two objections were filed; one by the appellants and the other by the private respondents. The appellants filed the objection in respect of the draft scheme pertaining to the lands mentioned in paragraph 2B of the Memorandum of Appeal stating that by virtue of the exchange effected they have now become the raiyats of the land so mentioned in paragraph 2B of the Memorandum of Appeal. The private respondents filed their objection in respect of the draft scheme pertaining to lands mentioned in paragraph 2A of the Memorandum of Appeal and stated that by reason of exchange effected, they have become the raiyats of the lands as mentioned in paragraph 2A of the Memorandum of Appeal. It appears that these objections were not made over to the Consolidation Officer, instead the Assistant Consolidation Officer himself dealt with those two objections and acknowledged private respondents as the raiyats of the lands mentioned in paragraph 2A of the Memorandum of Appeal, and the appellants, as the raiyats of the lands, as mentioned in paragraph 2B of the Memorandum of Appeal. Almost six years thereafter, the appellants approached the revisional authority and contended that recording of lands mentioning private respondents as raiyats of the lands mentioned in paragraph 2A of the Memorandum of Appeal and recording of the appellants as the raiyats of lands mentioned in paragraph 2B thereof was erroneous inasmuch as no exchange took place, there is no document to show that such exchange took place and, in fact, no objection was filed by the appellants in respect of the draft scheme pertaining to the land mentioned in paragraph 2B of the Memorandum of Appeal, and that before deciding the objection filed by the respondents in respect of the draft scheme pertaining to the lands mentioned in paragraph 2A of the Memorandum of Appeal, no notice of hearing was given to the appellants, as is the requirement of law.

2. It was urged before the revisional authority that in view of Section 54 of the Transfer of Property Act, transfer of immovable property worth more than Rs. 100/- is required to be effected not only through an instrument, but such instrument is also required to be registered, and in the instant case, there is no registered instrument suggesting exchange of two big holdings, each comprising 7.6 acres. The revisional authority noted the contention of the parties and

allowed the revisional application principally on the ground that the exchange is not borne out by a document as is required to be brought into existence in terms of the provisions of Section 54 of the Transfer of Property Act. There is no finding by the revisional authority that, in fact, the appellants did not file the objection in respect of lands described in paragraph 2B of the Memorandum of Appeal.

3. Against the order of the revisional authority, the private respondents approached this Court by filing a writ petition. The Writ Court allowed the writ petition principally on the ground that there was uncalled for delay on the part of the appellants in approaching the revisional authority.

4. Before us the learned counsel for the appellants submitted that there cannot be any estoppel against statute and accordingly when a thing is barred by statute, the same is a nullity and a nullity can be questioned at any point of time. It was urged that in the absence of a registered conveyance, there is no evidence of exchange and accordingly no one could act on the basis of the alleged exchange. It was next contended that in view of the provisions contained in Sections 12 & 12A of the Act, the Assistant Consolidation Officer could not deal with the alleged objections. The matter ought to have been dealt with by the Consolidation Officer, and that having not been done, the decision to record exchange was per se not sustainable. It was lastly contended that in any event having regard to the fact that there is neither any pleading nor any case made out at any stage as to when the alleged exchange took place, no one could rely upon the alleged exchange and on the basis thereof sought to alter a matter which otherwise stands concluded.

5. The learned counsel appearing on behalf of the private respondents drew our attention to Section 21 of the Act and submitted that in relation to recording of the chaks on the basis of the subject exchange, no instrument in writing was necessary, and when there was no requirement of an instrument in writing, there was also no requirement of registration. The learned counsel further submitted that a look at the Act and its scheme would show that it is permissible not only to arrange plots in a compact area requiring exchange, the scheme of the Act ensures that in order to reduce fragmentation of lands, the raiyats are allotted lands in such a way that not only the lands are used to the extent the same is usable but the same also reduces the hardship of the raiyats and at the same time makes provisions for development of public amenities. He submitted that in a situation of this nature, if the parties have agreed to exchange their lands and they have approached the authorities for recording such exchange, there was nothing wrong in recording the same, and for such recording, the consent of the parties in the form of objections were more than sufficient and no instrument in writing was required to establish that the transfer by exchange has been effected in between the parties.

6. The private respondents have brought on record of these appeals two documents and a report. The first document shows that the husband of one of the appellants had gifted a part of the land mentioned in paragraph 2B of the

Memorandum of Appeal to his wife. This gift was effected before the revision application was heard and decided. The gift had been made by way of a registered instrument of gift and it suggests that a part of the land obtained by the appellants through exchange had been gifted by that instrument. The second document is the sale deed executed by one of the appellants in favour of a stranger to the present proceedings whereby and under a part of the land obtained by way of gift was transferred. It appears that the land so transferred forms part of the lands obtained by way of exchange. The report suggests that in view of the exchange as recorded and the subsequent deed of gift and the sale deed, the stranger purchaser was accepted to be entitled to mutate his name as the owner of the land transferred.

7. The learned counsel for the private respondents, therefore, submitted that in the instant case the appellants not only accepted the exchange but acted upon the same and even dealt with a part of the property obtained by them through exchange and thereupon by way of afterthought approached the revisional authority but suppressed the fact that they have acted in the manner as depicted in the said documents. It was contended by the learned counsel that having regard to such disclosure while dismissing the appeal, this Court should be pleased to award appropriate punishment to the appellants for suppression of material facts.

8. Although these documents were brought on record by the private respondents roughly six years back by filing a counter affidavit but no rejoinder thereto was filed. Accordingly on the last occasion a prayer was made for an adjournment for a day or two in order to file a rejoinder. Such adjournment was granted and accordingly today when the matter was taken up for hearing, a rejoinder was filed. In the rejoinder, it has been disclosed for the first time that the appellants are now divided. There is a suit inter se them and that the appellant, who dealt with a part of the land obtained through the subject exchange, in the manner indicated above, is not cooperating with the other appellant, who has affirmed the rejoinder. However, it has been mentioned in the rejoinder itself that the suit encompasses a challenge thrown to the sale deed purported to have been executed by the non-cooperative appellant. In such view of the matter it appears that one of the appellants admittedly accepted the exchange by her subsequent conduct as above.

9. It is true that the objection filed to the draft scheme could be dealt with by the Consolidation Officer and was not supposed to have been dealt with by the Assistant Consolidation Officer. However, having regard to the fact that when two persons made applications seeking what the other was seeking, the Officer, who exercised the jurisdiction-whether the Assistant Consolidation Officer or the Consolidation Officer, is of little importance. If these applications had been dealt with by the Consolidation Officer, the result would have been the same. The mere fact that the Assistant Consolidation Officer decided the objections and not the Consolidation Officer, the appellants cannot be said to have suffered any

prejudice for it was not the Assistant Consolidation Officer, but the Consolidation Officer, who could pass an order as was sought by the appellants in their objection.

10. It was urged before the revisional authority, but not decided by the revisional authority, that no objection was, in fact, filed by the appellants. It is true that negative cannot be proved, but in order to get rid of an action said to be that of one person, the person denying the action, is required to do something more than mere denial of the action. In the instant case, the appellants did nothing further except denying that the objection was filed by them. Be that as it may, the revisional authority did not hold that in fact the said objection was not filed by the appellants. The matter must rest there. It must be deemed that it has not been proved that no objection was filed by the appellants, for apart from denying, no attempt was made to substantiate the same.

11. Furthermore, if even one of the appellants had acted in furtherance of the exchange by relying upon the gift and thereupon by executing a sale deed, that itself would suggest that the appellants did ask for and obtain exchange and thereupon sought to wriggle out of the same, as and by way of afterthought, and that too, after creating a third party interest in the property.

12. We were, therefore, minded to dismiss the appeal, for the reasons as discussed above, but not on the ground as taken by the learned Single Judge, who dealt with the writ petition, but at the same time we felt that the Writ Court whose jurisdiction is being exercised by us in this appeal is not competent to go into facts and accordingly it would be appropriate to remit back the matter to the revisional authority inasmuch as while the private respondents could bring the original gift on records of the appeal, he could also bring the same on the records of the revisional authority, had he been little more diligent at that stage.

13. We are satisfied that the scheme of the Act has done away with the requirement of a registered instrument to enable a raiyat to hold lands conveniently, and for that matter, exchange is permissible and, as such, in the instant case, there was no requirement of a registered instrument.

14. In those circumstances, we allow the letters patent appeals, set aside the order under appeal but at the same time also set aside the order of the revisional authority and remit back the matter to the revisional authority only for the purpose of ascertaining whether by the deed of gift, referred to above, one of the parties to the exchange dealt with the exchanged property, and if so, whether the party receiving the property under the gift dealt with the same by a sale deed, and if so, to proceed on the basis that the consent for the exchange had been duly accepted by the parties in the objections, and on the basis of such objections, the scheme of consolidation was appropriately finalised. The remand is only limited to the above issue and be decided only on the above issue and no other issue shall be open to be adjudicated before the revisional authority. The revisional authority is directed to decide the matter within a period of three

months from the date of service of a copy of this order upon him.