

(1978) 04 PAT CK 0005

In the Patna High Court

Case No : C.W.J.C. No's. 2310, 2338, 2339 and 2348 of 1977

NanhaK Singh

APPELLANT

Vs

The Additional Collector of Bettiah and Others

RESPONDENT

Date of Decision : 24-04-1978

Acts Referred:

Bihar Land Reforms (Fixation of Ceiling Area and Acquisition of Surplus Land) Act,
1961 — Section 5(i)(iii)
Registration Act, 1908 — Section 47

Citation : (1978) 26 BLJR 375

Hon'ble Judges : Sarwar Ali, J;S.K. Chaudhary, J

Bench : Division Bench

Final Decision : Allowed

Judgement

Sarwar Ali and S.K. Chaudhary, JJ.—A proceeding under the provisions of the Bihar Land Reforms (Fixation of Ceiling Area and Acquisition of Surplus Land) Act was started against Narayan Bikram Shah who is now dead. In that proceeding notices were issued to number of transferees from him and other members of his family. These for petitioners are on behalf of the transferees whose transfers have been annulled under the provisions of Section 5(i)(iii) of the Act.

2. Learned counsel for the petitioners pointed out that in all the four cases the sale deeds in favour of the petitioners have been executed before the 9th September, 1970, although they have been registered on the 27th November, 1970. On registration, it was contended that the title passed from the date of execution, which in all the cases is prior to the 9th of September 1970. Learned counsel further pointed out that the only reason given by the learned Additional Member Board of Revenue for ignoring these transfers is that the transfer have been registered after the 9th of September, 1970 without obtaining the prior permission of the Collector. Learned counsel contended that although the registration taken place after the 9th September, 1970 but since the execution was before that date, in view of the provisions of Section 47 of the Indian

Registration Act the title passes from the date of the execution. Reference in this connection was made to the decisions in the cases of Badrinath Upadhyay and Others Vs. Baijnath Mandal and Others, , Chanier Singh v. Jamuna Prasad Singh AIR 1958 Pat. 195, Smt. Sudama Devi and Others Vs. Rajendra Singh and Others, , and Purtabpore Company Ltd., etc. Vs. The State of Bihar and Others, . In our view of the learned Counsel is correct in so far as this part of argument is concerned. If it is accepted that the execution was before the 9th of September 1970 as is the petitioners' case, then since the title passes from the date of execution, as held in all these cases, the authorities under the said Act are not entitled to ignore these transfers or annul them on the ground the transferee had taken place after the relevant date, namely, the 9th of September, 1970.

3. Learned counsel for the petitioner in all the four cases also pointed out that the learned Additional Collector while disposing of the proceeding, had observed that the transfer in favour of the, petitioner was genuine and valid. Reference in this connection was made to the observation of the learned Additional Collector which is to the following effect:

...There is much force in their argument and no genuine and valid transaction can have a better case...

But it is to be observed that certain circumstances have been taken into consideration for coming to the conclusion that the transfers in favour of the petitioners were Farzi or Benami. Those circumstances, it appears to us, are all explainable and do not lead to a clear conclusion regarding the transactions being colourable transactions. It has been observed that the consideration was not paid in presence of the Sub-Registrar, but this fact in our view does not necessarily lead to the conclusion that the transfers were not genuine transactions as the law does not require that payments have to be made before the Registrar. He also found that some adverse inference had been drawn on account of the fact that the petitioners were members of the Joint Co-operative Farming Society, In our view no such inference could be drawn on account of the petitioners being members of such a Society. Indeed the policy of the State is to encourage Co-operative movement. The crucial question, therefore, that had to be determined was the question of possession. We, however, do not find any finding of the Additional Collector on this aspect based on evidence. It has been held by this court in several cases that mere report of the officer of the State is no evidence. In the circumstances, we think that the proper order in this case would be to remand these cases and to direct re-investigation of all the relevant matters and the question of possession. If the transferees are in possession and the transactions are bona fide, there does not appear to be any reason why such transfers should be annulled.

4. We, accordingly, allow these writ applications, quash the orders contained in Annexures 2, 3 and 4 and direct re-disposal of the proceeding against the petitioners in accordance with law.

5. We direct the petitioners to appear before the Additional Collector on the 29th of May 1978. On that date another date should be fixed for hearing and notices should be given to the transferer or, if the transferer is dead, to his heirs. The parties including the State will be at liberty to adduce evidence in support of their respective cases. In the circumstances of the case, there will be no order as to costs.