

(1984) 07 PAT CK 0033

In the Patna High Court

Case No : Civil Writ Jurn. Case No. 3400 of 1978

Prabhu Narain Singh

APPELLANT

Vs

State of Bihar and Others

RESPONDENT

Date of Decision : 10-07-1984

Acts Referred:

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

Citation : AIR 1985 Patna 218 : (1984) PLJR 842

Hon'ble Judges : Nagendra Prasad Singh, J; M.P. Varma, J

Bench : Division Bench

Advocate : S.C. Ghose, Markandeya Singh and Surendra Prasad Singh, for the Appellant; Sheo Kumar Singh, A.K. Singh, Rameshwar Prasad, Govt. Pleader and O.P. Agrawal, Jr. Counsel, for the Respondent

Final Decision : Allowed

Judgement

1. This writ application has been filed on behalf of the petitioner for quashing an order dt. 26th Feb, 1976, passed by the learned Additional Collector, West Champaran, in the purported exercise of the powers conferred on him by Section 5(iii) of the Bihar Land Reforms (Fixation of Ceiling Area and Acquisition of Surplus Land) Act (hereinafter referred to as "the Act"), By the aforesaid order the learned Additional Collector has annulled the four transfers made in favour of the petitioner; a copy of that order is Annexure "1" to the writ application. The appeal filed against that order was dismissed in limine by the Commissioner. The Member, Board of Revenue, also dismissed the revisional application filed on behalf of the petitioner.

2. It is an admitted position that the petitioner purchased under four sale deeds, about 13 bighas of land which is the subject matter of controversy in the present writ application. By the sale deed dt. 11 th Sep. 1959 which was registered on 26th Dec. 1959, the petitioner purchased 3 bighas 1 katha 16 dhurs of land of

plot No. 413 and 1 katha 10 dhurs of plot No. 414. By another sale deed executed on 5th Oct, 1959 and registered on 8th Jan, 1960, the petitioner purchased 5 bighas 13 kathas 13 dhurs of plot No. 415 and 4 kathas 11 dhurs of plot No. 421. The third sale deed was executed on 30th Jan, 1960 and registered on 18th Feb. 1960 under which the petitioner purchased 11 kathas 15 dhurs of plot No. 443 and 9 kathas 17 dhurs of plot No. 444. The fourth sale deed was also executed on 30th Jan, 1960, and registered on 18th Feb, 1960 by which the petitioner purchased 1 bigha 16 kathas 7 dhurs of plot No. 444. The aforesaid details appear from the order of the Additional Collector which is under challenge in the present writ application. According to the learned Additional Collector, as the transfers had been made after 22nd Oct. 1959, the date fixed in Section 5(iii) of the Act, the transfers were invalid and, as such, liable to be annulled. While coming to the aforesaid conclusion the learned Additional Collector has placed reliance on the verification report in respect of those transfers.

3. On behalf of the petitioner it was submitted that so far the two sale deeds which were executed on 11th Sep, 1959 and 5th Oct, 1959 and registered on 26th Dec, 1959 and 8th Jan, 1960, respectively, there was no question of those sale deeds being annulled u/s 5(iii) of the Act because such transfers had been made prior to 22nd Oct, 1959, the date fixed in Section 5(iii) itself. Section 5(iii) of the Act is as follows : --

"Notwithstanding anything to the contrary contained in any judgment, decree or order of any Court or authority, the Collector shall have power to make enquiries in respect of any transfer of land by a land-holder whether by a registered instrument or otherwise made after the 22nd day of Oct, 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."

On a plain reading of the section itself, the Collector has power to enquire in respect of any transfer of land made by a land-holder after the 22nd day of Oct, 1959, and to annul the same if conditions mentioned therein are fulfilled. There is no dispute that the two sale deeds referred to above had been executed prior to 22nd Oct, 1959, but the Additional Collector has purported to annul such transfers because they had been registered after 22nd Oct, 1959.

4. It is well known that in view of Section 47 of the Registration Act, title passes with effect from the date of the execution of the sale deed. Reference in this connection may be made to *Faiyazuddin Khan Vs. Mt. Zahur Bibi*, *Chander Singh and Others Vs. Jamuna Prasad Singh and Others*, *Smt. Sudama Devi and Others Vs. Rajendra Singh and Others*, and, *Purtabpore Company Ltd., etc. Vs. The State of Bihar and Others*, . A Bench of this Court has considered this aspect of the matter in the case of *Nanhak Singh v. Addl. Collector, Bettiah* 1978

B.R.C.J. (HC) 398 in connection with Section 5(iii) of the Act. It was observed as follows : --

"If it is accepted that the execution was before the 9th of Sept, 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 that the transfers had taken place after the relevant date, namely, the 9th of Sep, 1970."

As the two sale deeds dated 11th Sept, 1959. and 5th Oct, 1959, had been executed prior to 22nd Oct. 1959, the date fixed in Section 5(iii) of the Act, we have no option but to hold that the learned Additional Collector had no jurisdiction to enquire about the validity of the transfers made by the aforesaid two sale deeds.

5. Coming to the remaining two sale deeds, admittedly they have been executed and registered after 22nd Oct, 1959, as such, Section 5(iii) is attracted and an enquiry could have been held by the Additional Collector as to whether the transfers aforesaid had been made in contravention with the provisions of the Act or for retaining benami or farzi land in excess of the ceiling area or with an object of defeating the provisions of the Act.

6. In the impugned order dt. 26th Feb, 1976 more emphasis has been laid on the point that transfers had been made after 22nd Oct. 1959. But for annulling a transfer u/s 5(iii) of the Act, even if made after 22nd Oct, 1959, the Collector has to be satisfied, as already mentioned above, that such transfer has been made with the object of defeating or in contravention of the provisions of the Act or for retaining benami or farzi land in excess of the ceiling area, unless findings are recorded on this question a transfer cannot be annulled merely because it has been made after 22nd Oct. 1959.

7. It has been held by a Bench of this Court in the case of Mahabir Prasad and Others Vs. The State of Bihar and Others, that Section 5(iii) of the Act does not apply to bona fide transfers although made after 22nd Oct, 1959. It was pointed out as follows: --

"A mere reading of the section which is clear and unambiguous leads to the following conclusions :

(a) That transfers made prior to 22nd day of Oct, 1959 cannot be annulled under this provision. It is only transfers made after that date that are capable of annulment under the aforesaid provision.

(b) Annulment is possible only on existence of certain specified circumstances : They are :

(i) Where the transfer is benami or farzi; (ii) Where the transfer has been made with the intention of defeating the provision of the Act Such intention must be present on the date of transfer; (iii) Where the transfer is such as defeats the

purposes of the Act.

It is only on existence of the conditions aforesaid that annulment is permissible under the Act."

8. It was also submitted on behalf of the petitioner that while annulling the transfers aforesaid the learned Additional Collector has placed reliance on the verification report which was not permissible. Reference in this connection was made to the case of Shiv Narain Khawaray v. State of Bihar 1977 B.B.C.J. 452 where it was observed as follows : --

"We find that the authorities below have determined the question of possession only on the basis of the report of the Circle Officer, Barari and not on the basis of any evidence that was led on behalf of the State. Such reports cannot take the place of the evidence that has to be adduced in the proceedings itself. The report is not even a statutory report. It amounts only to an assertion on behalf of the State. What is stated in the report, however, has to be proved, if the same is not accepted by the other side, by adducing evidence which may be acceptable to the authorities concerned. Indeed in most of the cases question of possession will have special importance. In these writ applications we do not propose to decide the question of possession as evidence has not been led by either side and the report as already indicated, cannot be the basis of decision. Indeed there was some material in favour of the petitioners in the rent receipts granted by the State. But when the question of possession was in issue, the said question, in the circumstances of these cases, could not be decided on the said material alone. The proper procedure should have been to permit the State as also the petitioners to lead such evidence, either by way of affidavit or oral evidence as they might have chosen to lead in support of their case on the question of possession and other relevant matters. This not having been done, we do not think, the finding on possession is sustainable in law, the question of possession is so vital and important, and the finding in relation thereto being erroneous in law, that, the impugned orders holding the transfers to be covered by Section 5(1)(iii) of the Act have to be set aside."

The same view was expressed in the case of Nanhak Singh v. Addl. Collector, Bettiah 1978 B.B.C.J. 398 in para 3 of the judgment.

9. In the circumstances mentioned above, we are left with no option but to hold that the order annulling the two transfers made in favour of the petitioner on 30th Jan, 1960, have been annulled without following the procedure prescribed by law.

10. Accordingly, this writ application is allowed. The proceeding u/s 5(iii) of the Act is quashed so far the two transfers dt 11th Sept, 1959 and 5th Oct, 1959, aforesaid are concerned, as they had been made prior to 22nd Oct, 1959. So far the remaining two transfers which were made on 30th Jan, 1960, are concerned, the order annulling them is also quashed. We, however, direct the learned Additional Collector to apply his judicial mind on the question whether the two

transfers aforesaid, made on 30th Jan, 1960, have been made with an object to defeat the provisions of the Act or with a purpose to retain lands in benami or farzi names, in the light of the observations made above. The petitioner shall appear before the learned Additional Collector on or before the 20th of Aug, 1984, and thereafter a date shall be fixed for enquiry. The petitioner shall be at liberty to adduce all evidence in support of his case. The state should be directed also to produce evidence and material in support of its stand that transfers under challenge had been made with an object to defeat the provisions of the Act or to retain the lands covered by those transfers in benami or farzi names. There shall be no order as to costs.