

(1976) 11 PAT CK 0005

In the Patna High Court

Case No : C.W.J.C. No's. 1519 to 1530, 1399 and 1497 of 1975

Purtabpore Company Ltd., etc.

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 30-11-1976

Acts Referred:

Bihar Land Reforms (Fixation of Ceiling Area and Acquisition of Surplus Land) Act, 1961 — Section 16, 5(1)
Constitution of India, 1950 — Article 14, 19, 31, 31B
Registration Act, 1908 — Section 47, 52
Transfer of Property Act, 1882 — Section 5, 54, 7, 8

Citation : AIR 1977 Patna 283

Hon'ble Judges : K.B.N. Singh, C.J.;B.S. Sinha, J

Bench : Division Bench

Advocate : S.B. Sanyal Choudhary, S.N. Mishra, N.C. Ganguli and S.K. Mishra, in C.W.J.C. Nos. 1519 to 1530 and 1399 of 1976, Choudhary S.N. Mishra and S.K. Mishra, in C.W.J.C. No. 1497 of 1975, for the Appellant; Lalnarayan Sinha, Solicitor General, Tarakant Jha Govt. Advocate, S.N. Jha, SC No. 2, Jagannath Jha and B.P. Pandey, (for Nos. 1 and 2) and G.C. Bharuka, Krishna Mohan, Birendra Kumar Sinha, R.P. Sinha, Rajesh, A.K. Dutta, Rajendra Prasad and Shashi Shaikhar Dwivedi, (for No. 3) in C.W.J.C. Nos. 1519 to 1530 and 1399 of 1976 and K.N. Singh, S.C. No. 4 in C.W.J.C. No. 1497 of 1975, for the Respondent

Final Decision : Allowed

Judgement

K.B.N. Singh, C.J.—In these 14 applications under Articles 226 and 227 of the Constitution, common question of law and facts are involved and with the consent of the parties, they have been heard together and are being disposed of by one judgment,

2. The petitioners in these writ applications have prayed for quashing a notice dated the 20th March, 1974, issued u/s 5 (1) (iii) of the Bihar Land Reforms (Fixation of Ceiling Area and Acquisition of Surplus Land) Act, 1961, for cancelling the transfer of the lands in question, as also the order of the Additional

Collector of Siwan, dated the 18th June, 1975, cancelling the transfers made by registered sale-deeds, by Messrs. Purtab-pore Company Limited, petitioners in thirteen of these applications. Copies of the impugned notice and the order have been filed as Annexures "1" and "2" respectively in each of the writ applications.

3. The short facts necessary for the disposal of these writ applications need to be stated. Messrs Pratabpore Company Limited is a public limited company and owned a sugar mill. Besides the sugar mill it also owned agricultural lands in the District of Siwan which were used to be put in various use. The petitioner, however, sold its sugar mill to another Joint Stock Company, Messrs Purtabpur Sugar Mills Limited, in October, 1972. The present management of the Purtabpore Company Limited (hereinafter referred to as the Company.), which took over in October, 1958, found the lands to be unyielding and scattered as well as uneconomical, and soon thereafter, the Company started negotiations with buyers for disposing of such lands. In pursuance of negotiations, the Company started selling the lands to different buyers within a year of its taking over of the management of the Company. In furtherance of the negotiations and sales, moneys were deposited with the Company by the intending purchasers, near about April. 1959, and. thereafter, stamps were" purchased for execution of sale-deeds. Sale-deeds were executed, presented for registration and execution admitted before the Registrar on the 8th August 1959, 10th August, 1959, and the 6th October, 1959, in different cases. It is also the case of the petitioners that payments of balance of the consideration money were made by bank drafts and cheques, numbers of which were noted in the sale-deeds concerned by the Registrar. These sale deeds were copied out in Book I, maintained by the Registration Department (under Section 51 of the Registration Act) between the 1st of December, 1959, and the 9th of December, 1959, and, after the completion of the registration u/s 61, the documents were handed over to the vendees.

4. After their purchase, the purchasers came in possession of the lands as owners thereof. Some of them were in possession even from before as lessees from the Company. The purchasers were also mutated in the appropriate revenue records and paid rent to the State of Bihar.

5. After the enforcement of the Bihar Land Reforms (Fixation of Ceiling Area and Acquisition of Surplus Land) Act, 1961 (hereinafter referred to as the Act) as required by Section 6, the Company filed returns in respect of the lands possessed by it. But, surprisingly, in March, 1975, after the incorporation of Sub-section (1) (iii) of Section 5 in the Act by the Bihar Land Reforms (Fixation of Ceiling Area and Acquisition of Surplus Land) Amendment Act. 1973 (Bihar Act 1 of 1973), the petitioners got a notice to show cause as to why the aforesaid transfers, which were effected after the 22nd October, 1959, be not annulled and the transferred lands be not treated as the lands belonging to the Company for the purpose of fixation of the ceiling area under the Act. Notices for annulment were also issued to the purchasers, who are Respondent No. 3 in all the first

thirteen applications and petitioner in Civil Writ Jurisdiction Case No. 1497 of 1975. Copies of these notices have been marked as Annexure "1" to each of the writ applications.

6. The petitioners Company as well as the purchasers filed objections challenging the jurisdiction of the Collector to question the transfers in question, as they were all made prior to the 22nd October, 1959. Copies of the sale deeds and rent receipts issued in favour of the purchasers were also filed in the respective cases. But, according to the petitioner, the Collector illegally assumed jurisdiction by holding that as the registration was completed after the 22nd October, 1959, he had the jurisdiction to annul the transfers on the basis of analogy of Section 16 (3) of the Act, and arbitrarily annulled the transfers. Copies of the order of the Collector have been marked as Annexure "2". The petitioners have also challenged the vires of the amendment brought by Section 5 (1) (iii), as violative of the provisions of Articles 19 and 31 to 31(1)(c) of the Constitution of India.

7. A counter affidavit has been filed on behalf of the State asserting that as the documents were copied out u/s 61 of the Registration Act subsequent to the statutory period fixed u/s 5 (1) (iii) of the Act, that is to say, the 22nd October, 1959, the Collector had jurisdiction to annul the transfers, although it is conceded therein that u/s 47 of the Registration Act, the sale-deeds would be operative from the dates of the execution, which, in all cases, are prior to the 22nd October, 1959. In the counter-affidavit, the State has also tried to justify the validity of their action. It is also stated therein that the necessity of the vendors for selling the lands, which lie near their factory, was not indicated. It is also asserted in the counter-affidavit that the Kanodia Brothers are the owners of the Purtabpur Concern and they brought in a Power of Attorney dated the 28th May, 1959, in the name of their Manager, Shree V.D. Sharma. who executed the sale-deeds in question in all the cases, many of which are in favour of the members of the family of Kanodia Brothers or the firms owned by them.

8. The Bihar Land Reforms (Fixation of Ceiling Area and Acquisition of Surplus Land) Act, 1961, was enacted by the Bihar Legislature in 1961, and was assented to by the President of India on the 8th March, 1962 (Act XII of 1962) when it became enforceable. The Act provided for fixation of ceiling restrictions on subletting and resumption by certain Raiyats for personal cultivation of land, acquisition of status of Raiyat by certain under-Raiyats and acquisition of surplus land by the State and matters connected therewith, as the Preamble will show. u/s 2 (a) it defines "ceiling area" to mean the area of land fixed u/s 4 as the ceiling area. Some of the important definitions are with regard to "family", "land", "homestead" and "land holder", the details of which are not necessary to be mentioned except of "family". Under Sub-section (2) (ee) the expression "family" is defined to mean and include "a person, his or her spouse and minor children." The expression "person", under the explanation to this sub-section, includes "any Company, Institution, Trust, Association, or Body of individuals, whether incorporated or not." Chapter II deals with ceiling area of land and consists of

Sections 4 to 11. u/s 4, as amended by Bihar Land Reforms (Fixation of Ceiling Area and Acquisition of Surplus Land) Amendment Act, 1973 (Bihar Act IX of 1973), for fixation of ceiling area, lands have been divided into six categories. Shortly put, the ceiling area of Class I land is 15 acres, for Class II lands 18 acres, for Class III lands 25 acres, for Class IV lands 30 acres, for Class V lands 37 1/2 acres, and for Class VI lands 45 acres, for a family consisting of not more than 5 members, which expression includes a person also, as already mentioned. Sub-section (1) of Section 5 has four sub-clauses, namely, (i), (ii), (iii) and (iv). This Section was amended by Bihar Act 1 of 1973, and the provisions of this Amending Act were made effective from the 9th September, 1970. Clause (i) of Section 5 (1), as it stands after the amendment, lays down that no "family", which expression includes a "person", as already mentioned, shall hold any land in excess of the ceiling area, except as otherwise provided and reads as follows:--

"(i) It shall not be lawful for any family to hold, except as otherwise provided under this Act, land in excess of the ceiling area."

There is an explanation to this clause, which, it is not necessary to quote. It may be relevant to state that the original Clause (i), before the amendment, mentioned a "person" instead of "family", and there was no explanation to it. Clause (ii), which has been substituted by the Amending Act 1 of 1973, lays down that no land-holder holding land in excess of the ceiling area, from the commencement of the Bihar Land Reforms (Fixation of Ceiling Area and Acquisition of Surplus Land) (Amendment) Act, 1973, till the publication of the Notification u/s 15, transfer any land, except with the previous permission of the Collector, who may refuse it, 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. The provision of the earlier clause, before the amendment, will be dealt with hereinafter. Clause (iii) of Sub-section (1) which is under challenge in these writ applications, reads as follows :--

"(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 de-termining the ceiling area he may hold under this section;"

The other sub-sections of this Section need not be referred to as the same are not relevant for our purpose. Section 6 provides for public notice upon certain land-holders to submit returns, in respect of the lands held by them. Section 7 authorises the Collector to obtain information about the persons holding lands in excess of the ceiling area through other agencies. Section 8 provides for penalty for non-submission of returns in compliance with notice. Section 9 gives option to

a family possessing lands in excess of the ceiling area to select its ceiling area. Section 10 deals with the preparation of Draft Statement on the basis of the information given by the land-holder under Sections 6, 8 and 9, or on the basis of the information obtained by the Collector u/s 7 of the Act, its checking in the prescribed manner and publication. It also prescribes that objections, if any, to the Draft Statement, could be filed within thirty day of the publication thereof. Section 11 deals with the final publication of the Draft Statement, after disposal of the objections, if any, filed under Sub-section (3) of Section 10, appeals and revisions, if any, relating thereto. Such publication shall become conclusive evidence of facts stated therein for the purpose of this Act and shall not be questioned in any court. Chapter III dealing with resumption of land by Raiyats from under-Raiyats, consists of three sections i.e. Sections 12, 13 and 14. Chapter IV, which contains only one Section, i.e., Section 15, deals with acquisition of surplus lands. Chapter V, which deals with restriction on future acquisition by transfer, etc., and contains S, 16, which is relevant for our purpose, will be referred to in course of discussions. It may be relevant to mention here that by Section 3, the Act has been given overriding effect notwithstanding anything to the contrary contained in any other law, custom, usage or agreement, for the time being in force, or in any decree or order of any court; but the provisions of the Bihar Bhoodan Yagna Act, 1954 have been exempted from the overriding effect of this Act. The other provisions of the Act are not relevant for the purpose of this decision.

9. The main contention urged by Mr. Sanyal, learned Counsel appearing for the petitioners, is that the transfers having been effected by registered sale-deeds which were executed and admitted for registration long before the 22nd October, 1959, the date mentioned in Section 5 (1) (iii) of the Act, the sales could not be annulled, and the impugned orders annulling the transfers, merely because the registration of the sale deeds were completed by copying them by the registration department in the relevant register after the 22nd October. 1959, is wholly without jurisdiction. The contention of Mr. Sanyal is that registration only affirms the title created by the execution of the sale deeds and makes it absolute. By execution the party divests himself of the title and the property vests in others and that is precisely the meaning of transfer. He has submitted that no aid can be taken from Section 16 of the Act as has been done by the Collector, as it relates to transfers after the Act has come into force, i.e., 1961. u/ s 47 of the Registration Act, once registration is effected, it relates back to the date of the execution.

10. Learned Solicitor General, appearing on behalf of the State, has, on the other hand, submitted that for the purposes of the Act, no transfer can be effective without registration of the document under the provisions of the Indian Registration Act and the registration becomes complete only when the document is copied out in accordance with Section 61 of the Registration Act. Learned Counsel has placed reliance on Section 16 (2) (iii) of the Act in this regard. Learned Counsel has also submitted that the matter stands concluded on the

basis of three decisions, in the cases of Tilkdhari Singh Vs. Babu Gour Narain, ; Ram Saran Lall and Others Vs. Mst. Domini Kuer and Others, and Hiralal Agrawal etc. Vs. Rampadarath Singh and Others, etc., . These rival contentions of the learned Counsel for the parties on the point need to be considered in the first instance.

11. On a reference to the provisions of Clause (iii) of Section 5 (1) of the Act, already quoted above, it is apparent that a transfer made by a land-holder, whether by a registered instrument or otherwise, before the 22nd day of October 1959, cannot be annulled. It is only the transfers made after that date, which are liable to annulment under the circumstances specified in the clause. The annulment is possible only on existence of certain specified circumstances and conditions, they being :--

- (a) Where the transfer is benami or farzi;
- (b) Where the transfer has been made with the intention of defeating the provisions of the Act, such intention must be present on the date of the transfer; and,
- (c) Where the transfer is such as defeats the provisions of the Act.

It is only on the existence of any one of the aforesaid conditions that annulment is possible or permissible under the Act. This is also the view taken by a Bench decision of this Court in the case of Mahabir Prasad and Others Vs. The State of Bihar and Others, .

12. In the instant cases, the parties to the documents, the petitioners and the purchasers, did all that they had to do in the matter before the 22nd October, 1959, namely, they executed the documents, paid the consideration in the presence of the Registrar, either by cheques or by Bank drafts or by cash, which fact has been noted in the sale-deeds by the Registrar, and the execution was admitted. In such a situation, so far as the parties were concerned, they could not resile from the position or back out from the transaction, and such completed transfers could not be defeated only on account of some delay that may have been caused by the registering authority in copying out the documents. The Transfer of Property Act deals with law relating to transfer of properties by acts of parties and the principles embodied in some of the provisions of the said Act have been applied to transfer by operation of law in some cases.

13. Section 5 of the Transfer of Property Act defines "transfer of property" to mean, an act by which a living person conveys property, in present or in future, to one or more other living persons, etc. Section 7 lays down that every person competent to contract and entitled to transfer property, can transfer the same to the extent and in the manner allowed and prescribed by law for the time being in force. u/s 8, a transfer of property passes to the transferee all the interests that the transferor is capable of passing in the property and in the legal incidents thereof. Section 54 of the Transfer of Property Act defines "sale" as a transfer of

ownership in exchange for a price paid or promised or part paid and part promised, and such transfer, in case of tangible immovable property of the value of one hundred rupees and upwards, or in the case of a reversion or other intangible thing, can be made only by a registered instrument. In the case of tangible property of a value of less than one hundred rupees, such transfer may be made either by a registered instrument or by delivery of the property; and delivery of tangible immovable property takes place when the seller places the buyer, or such person as he directs, in possession of the property.

14. Section 32 of the Registration Act requires every document to be registered under the said Act, whether such registration be compulsory or optional, to be presented before the proper registration-office by the person executing the document or claiming under the same, or the representative or duly authorised agent etc. u/s 34, shortly stated if the document is presented in time, the registering officer shall require as to whether or not the document was executed by the person by whom it purports to have been executed and as to the identity of the person appearing for him and alleging to have executed the document, or, in case of any person appearing as a representative, assignee or agent, shall satisfy himself that such person had authority to appear. u/s 35, if he is so satisfied, "the registering officer shall register the document, as directed in Sections 58 to 61." If not so satisfied, he shall refuse to register that document If the person by whom the document purports to have been executed appears to be a minor, idiot or lunatic and if the executant is dead, and his representative or assignee denies the execution, he shall refuse to register the same. Section 47 of the Registration Act states that a registered document shall operate from the time when it should have commenced to operate, and not from the time of its registration. Section 51 lays down that Book Nos. 1 to 5 should be maintained in all registration offices. Book No. 1, which is relevant, is called the "Register of non-testamentary documents relating to immovable property". Section 52 lays down that endorsements shall be made on such documents at the time of presentation and a receipt of such document shall be given by the registering officer to the person presenting the same. Sub-section (1) (c) of this section enjoins that subject to the provisions contained in Section 62, every document admitted to registration shall, without unnecessary delay, be copied out in the proper book in order of its admission. Section 58 deals with particulars to be endorsed on the documents admitted for registration. Section 59 requires the registering officer to affix the date and his signature to all endorsements made under Sections 52 to 58, relating to the document and made in his presence on the same date. Section 60 deals with certificate of registration and provides that after such of the provisions of Sections 34, 35, 58 and 59 are complied with, the registering officer shall endorse the volume of the Registration Book with number of pages on which the document has been registered, Section 61 lays down that the endorsements referred to in Sections 59 and 60 shall thereupon be copied in the margin of the document and shall be filed in Book No. 1. The registration of the document shall thereupon be deemed to be complete and the document shall

thereafter be returned to the person presenting the same for registration or to some other person mentioned in Section 52 of the Registration Act.

15. It is thus apparent that where a person competent to contract, executes a deed of transfer, accepts the full consideration amount and admits the execution of the document before the Registrar, the matter is concluded between the Vendor and the vendee and the registering officer is bound to register the document and copy out the same as expeditiously as possible into the Books prescribed. The parties cannot realise (Sic) (resile?-Ed) from the position. Even if the executant would not admit the execution, the vendee has a right u/s 73 to get the document compulsorily registered. Section 47 of the Registration Act makes a registered document effective from the date of its execution and not from the date of its registration.

16. From a reference to the aforesaid provisions of the Transfer of Property Act and the Indian Registration Act it is manifest that the transfer is effected as between the transferor and the transferee on the date the document is executed and full consideration is paid, and the document is handed over to the purchaser or filed for registration and execution is admitted. The rest of the formalities are for the registering authority, in which the parties have no hand. Looked at from that point of view, the transfers in each of these writ applications must be held to have been made prior to the 22nd October, 1959.

17. This view seems to be consistent with the provisions of Section 5 of the Act as also its legislative history. What the Collector under Clause (Hi) of Section 5 (1) of the Act has been authorised is to make inquiry in respect of any transfer by a land-holder, whether made by a registered instrument or otherwise after the 22nd day of October, 1959. In other words, a transfer howsoever made, either by a registered instrument or otherwise, before that date was outside the mischief of this section. The emphasis is not on "registration", but on "transfer" made before that date, unlike in Section 16 of the Act, to which I will refer later. I may elucidate it with an example. Supposing "A" transfers his agricultural land valued less than Rs. 100/-, which does not require registration, orally, in favour of "B" and hands over possession a day before the 22nd October, 1959, then it cannot be doubted that the transfer will be protected from the mischief of Clause (iii) of Section 5 (1) of the Act. In another case "X" transfers agricultural land valued less than Rs. 100/- several months before the 22nd October, 1959, by means of a sale-deed. The consideration was paid, possession delivered, the document filed for registration and the execution admitted long before the 22nd October, 1959. But because of the pressure of work or on account of lethargy, it took several months for the registration authority to copy it out and it was actually copied out, say, on the 23rd October, 1959. Can it be said that in this case transfer was effected after the 22nd October, 1959, within the meaning of Clause (iii) of Section 5 (1) of the Act, on the ground of the delay caused by the registering authority, in copying out the document? In my view, the answer will be in the negative. Such anomalous results could never have been contemplated

by the Legislature, As a matter of fact, it is not all transfers made after the 22nd October, 1959, which could be annulled under Clause (iii) of Section 5 (1) of the Act, but only such of them as have been made with the object of defeating the purpose of the Act or in contravention of the provisions of the Act or for retaining Benami or Farzi lands in excess of the ceiling area. That also gives clue to the interpretation of this clause. It may be relevant to mention that when these transfers were effected, there was no provision in the parent Act of 1961 for annulling such transfers. All that was there in the parent Act was Section 5 (1) (ii), which read as follows:--"(ii) If any land-holder while holding land in excess of the ceiling area has, after the 22nd day of October, 1959, transferred any land held by him, except by a registered document for valuable consideration, or if he had after the said date made any gift in contravention of Sub-section (5), the area of the land so transferred or gifted shall be taken into account in determining the area he may retain under this section as if the said transfer or gift had not been made." This provision now stands repealed and the impugned provision has been incorporated twelve years after in the Parent Act by Amending Act 1 of 1973, which has been made effective from the 9th September, 1970.

18. The view I have taken gains support from cases relating to gifts & cases relating to attachment of property after execution of sale-deed and before its registration, as also with reference to cases of lis pendens under ,S. 52 of the Transfer of Property Act. In the case of AIR 1927 42 (Privy Council) , the question that fell for consideration was whether a deed of gift of immovable property, which requires registration u/s 123 of the Transfer of Property Act becomes effective even before the registration. In that case, a Hindu had executed a deed of gift of a particular Immovable property and delivered it to the donee. On the following day, he adopted a son, and after three days, he registered the deed. It was held that the gift was valid against the adopted son, subject to registration as required u/s 123 of the Transfer of Property Act. The question raised before their Lordships of the Judicial Committee was whether on account of the adoption before the deed was presented for its registration, the deed of gift was valid or not. Negating the contention that absence of registration before the date of adoption would defeat the gift, their Lordships followed the decision in the case of *Atmaram Sakharam Kalkye Vs. Vaman Janardan Kashelikar*, and approved the decision of the Madras high Court in the case of *V. R. Reddi v. P. R Reddi* ILR Mad 204 : AIR 1917 Mad 27 (FB), and observed as follows:--

"They are unable to see how the provision of Section 123 of the Transfer of Property Act can be reconciled with Section 47 of the Registration Act, except upon the view that, while registration is a necessary solemnity in order to the enforcement of a gift of Immovable property, it does not suspend the gift until registration actually takes place. When the instrument of gift has been handed by the donor to the donee and accepted by him, the former has done every thing in his power to complete the donation and to make it effective. Registration does

not depend upon his consent, but is the act of an officer appointed by law for the purpose, who, if the deed is executed by or on behalf of the donor and is attested by at least two witnesses, must register it if it is presented by a person having the necessary interest within the prescribed period. Neither death, nor the express revocation by the donor, is a ground for refusing registration, if the other conditions are complied with."

This decision has been followed by the Privy Council in the case of AIR 1928 86 (Privy Council) .

19. The principle as laid down by the above decision is equally applicable to a case of transfer by a registered instrument. This has been held to be so in the case of Chander Singh and Others Vs. Jamuna Prasad Singh and Others, .

20. In the case of Basant Lal Vs. Bala Misra and Others, , 0 question arose, whether a transferee from the execution purchaser was entitled to notice of action for setting aside the sale under Order XXI Rule 92, although his sale deed was registered subsequent to the filing of the application under Order XXI Rule 90 of the Code of Civil Procedure. Relying on the decisions in the cases of AIR 1927 42 (Privy Council) , and Faiyazuddin Khan Vs. Mt. Zahur Bibi, , a Bench of this Court held that the transferee was entitled to a notice. What is meant by the expression "transferee for value" u/s 27(b) of the Specific Relief Act came up for consideration before a Bench of the Calcutta High Court in the case of Satya Mandalini and Another Vs. Sahadur Mondal and Others, , and it was held that a buyer is a transferee from the date of the execution of the Kebala, If the transferee has paid the full consideration before that date, and the subsequent knowledge of the transferee about prior sale, before the registration, would not defeat his transfer. In the case of Commissioner of Income Tax Vs. Bhurangya Coal Co., , their Lordships of the Supreme Court, while considering as to what will be the actual date of transfer of the capital assets u/s 12B of the Income Tax Act which came in force with effect from the 1st April, 1946, observed as follows:-- (at p. 256)

"Now the point that arises for determination in these proceedings is as to the extent to which the profits of the transaction entered into on 16-3-1946 and completed by the sale dated 17-5-1946, are assessable to Income Tax under the above section.

"So far as the immovables are concerned, the" position is clear. The title to them passed to the transferee only when the sale deed was executed on 17-5-1946, and not when the agreement was concluded on 16-3-1946, The transaction therefore, falls directly within the operation of Section 12 (b). So far as the movable properties are concerned, the position is equally clear. Title to the moveables passed when they were delivered to the transferee and that was on 30-3-1946 and their sale falls outside the section."

(Underlinings are mine).

21. In the case of *Bijli Sahu v. Bahadur _ Mahto* 1968 BLJR 281 , a somewhat similar question came up for consideration before this Court. Section 49-C of the Bihar Tenancy Act, 1885, came into force with effect from the 4th November, 1955, i. e., the date of the enforcement of the Amending Act, Bihar Tenancy (Amendment) Act, 1955 (Bihar Act XIX of 1955), putting restriction on the right of the tenants to transfer their holdings, which reads as follows:--

"No transfer by a protected tenant of the right in his tenure, holding or tenancy, or in any portion thereof, by private sale, gift, will, mortgage, lease or any contract or agreement, shall be valid to any extent, except as provided in this Chapter."

In that case the question was whether a transfer made prior to the 4th November, 1955, but filed for registration subsequent to that date, would be hit by the restriction imposed, and it was held that, "Section 49-C does not say that registration of previously executed transfers will be invalid. Section 49-C places restriction only on the transfer."

22. As to what will be the date of transfer, that is to say, the divestation of property and creation of title in another, is well illustrated in the cases of attachment of property after execution of the sale deed and before its registration. It has been held that the attachment of property after execution of the sale deed is infructuous since the title passes away after the execution of the sale deed (*Faiyazuddin Khan Vs. Mt. Zahur Bibi*,).

23. While considering the provisions of Section 52 of the Transfer of Property Act, which prohibits transfer of property pending suit relating thereto, it has been held that a transfer deed executed before the institution of the suit would not be hit by S, 52, even if the deed is registered subsequent thereto, as held by this Court in the case of *Sadei Sahu Vs. Chandramani Dei and Another*, , which has been followed in the cases of *Hari Chand L. Sharna Mal Vs. Gordhan Das Faqir Chand Vaish and Others*, and *Smt. Sudama Devi and Others Vs. Rajendra Singh and Others*, . The latter case is a case under this very Act, where the provisions of Section 16 of the Act also came in for consideration, to which case I shall later revert, while considering the submissions made by the learned Solicitor General.

24. The learned Solicitor General has contended that under the Scheme of the Act, u/s 16, there could be no transfer without a document registered in accordance with the provisions of the Indian Registration Act, 1908. Therefore, completion of the registration was the essence of transfer contemplated under the Act. This argument, based on Section 16 of the Act, is, undoubtedly, correct. But, what it overlooks is the basic fact that this restriction is to apply in relation to the transfers after the commencement of this Act, which came into force in 1961, as Sub-section (1) in clear terms states that "No person shall, after the commencement of this Act..... acquire or possess by transfer..... any land which together with the land, if any, already held by him, exceeds in the aggregate the ceiling area". Sub-sec, (2) (i) lays down that "after the commencement of this

Act, no document incorporating any transaction for acquisition or possession of any land by way of transfer" etc. shall be registered, unless a declaration in writing, duly verified, is made and filed by the transferee before the registering authority, as to the total area of land held by himself or through any other person anywhere in the State. Sub-clause (ii) lays down that no registering authority shall register any document evidencing any transaction, if, from the declaration made under Clause (i), it appears that the transaction has been effected in contravention of the provision of Sub-section (1). Sub-clause (iii), on which reliance has been placed, lays down as follows:--

"(iii) No land shall be transferred, exchanged, leased, mortgaged, bequeathed or gifted without a document registered in accordance with the provisions of the Indian Registration Act, 1908 (XVI of 1908).

"Explanation.-- Nothing in this subsection shall be deemed to have any effect on the provisions of the Tenancy Law of the area relating to transfer, exchange, lease, mortgage, agreement of settlement."

In the instant cases, we are concerned with the transfers made about two years before the coming into force of the Act in 1961. Therefore, the argument of the learned Solicitor General that transfers by documents whose registration is completed in accordance with the provisions of the Indian Registration Act are the only transfers contemplated under the Act and those alone would be good transfers and not the transfers of any other type, even if made prior to the coming into force of the Act in 1961, is not sustained on the language of Section 16 of the Act. Sub-section (1) (iii) of Section 5 of the Act itself contemplates that the transfers could be by registered instrument or otherwise, even after the 22nd October, 1959, and makes no distinction between a transfer made by a registered instrument or otherwise. What is of importance is as to whether the transfer has been made before or after the 22nd October, 1959, and not its registration.

To get over this difficulty, learned Solicitor General has submitted that the expression "or otherwise" occurring after the expression "registered instrument" is redundant, as the basic idea behind the Act was that no land could be transferred without a document registered in accordance with the provisions of the Indian Registration Act. In my opinion, there is no substance in the submission of the learned Solicitor-General. As already mentioned, this provision was incorporated about twelve years after the coming into force of the Act, i. e., from the 9th September, 1970. The Legislature must be deemed to have knowledge of the provisions of Section 16, and, it being fully aware of the provisions of Section 16, they used the expression "registered instrument or otherwise" in Sub-clause (iii) of Section 5 (1) of the Act, then it must not be without any purpose. In my considered opinion, the Legislature wanted to authorise the Collectors to make inquiries in all types of transfers made after the 22nd day of October, 1959, be it by a registered instrument or otherwise. In other words, the Legislature wanted to treat, on par all types of transfers. If the

argument of the learned Solicitor-General is accepted, then a transfer made otherwise than by a registered instrument, i. e., made orally, of land valued less than Rs. 100, by delivery of possession, could not have been annulled by the Collector. That obviously was not the intention behind the enactment of Clause (iii) of Section 5 (1) of the Act.

25. Coming to the three decisions relied upon by learned Solicitor-General, namely, *Tilkdhari Singh Vs. Babu Gour Narain*, ; *Ram Saran Lall and Others Vs. Mst. Domini Kuer and Others*, ; and, *Hiralal Agrawal etc. Vs. Rampadarath Singh and Others*, etc., , the last of the two Supreme Court decisions is a case relating to pre-emption under the Act. Subsection (3) of Section 16 of the Act, under which the right of pre-emption is granted to a co-sharer or a raiyat of an adjoining land, requires that the application for pre-emption should be filed in accordance with the provisions of the Act and the Rules, "within three months of the date of registration of the document of transfer"". In the last case, the Supreme Court was concerned with the question as to what will be the starting point for filing an application for preemption u/s 16 (3) of the Act. Obviously, as the section required preemption application to be filed three months after the date of "registration" of the document of transfer, the date of completion of registration was held to be the starting point of limitation. It was in that context that the transfer for the purposes of the provisions u/s 16 of the Act was held to be complete only after the document was copied out in the Books of the Registration Department in accordance with the provisions of Section 61 of the Indian Registration Act. The earlier Supreme Court case (*Ram Saran Lall and Others Vs. Mst. Domini Kuer and Others*,) was a case of pre-emption under the Mohammedan Law, under which the right to pre-emption and to perform the necessary ceremonies arise "only out of a valid, complete and bona fide sale"" as stated in the Mulla's Principles of Mohammedan Law. It was in that context that it was held that the sale would be complete only after the completion of the registration and the document was copied out in the Books of Registration, as provided u/s 61 of the Indian Registration Act, and that S. 47 of the Registration Act was of no assistance in this regard. All these three decisions, relied upon by learned Solicitor-General, came to be considered in the case of *Smt. Sudama Devi and Others Vs. Rajendra Singh and Others*, by a Bench of this Court and distinguished. *Untwalia, J.* (as he then was), who delivered the judgment of the Bench, observed as follows (at p. 204):--

"13. In *Tilkdhari Singh Vs. Babu Gour Narain*, , the observations were made with reference to the law relating to mortgage actions. The mortgage suit was filed on 7th November, 1906. A decree was obtained. But the plaintiff was resisted by a person who claimed to have purchased the property by a sale deed executed on 11th August, 1906. The sale deed was registered on 22nd November, 1906. It would thus be noticed that the execution of the sale deed was prior to the filing of the suit, but registration was later. Subsequently, a suit for possession was filed by the mortgagee decree-holder, and in that suit the District Judge directed that the person who was defendant No. 5 should pay the mortgage money with

costs and interest within six months from the date of the decree and on failure to do so, the plaintiff was to get possession of the disputed property.

Under such circumstances, it was held that since the sale was complete after the institution of the suit, the plaintiff's right which was in existence on the date of the institution of the suit could not be defeated by a sale completed during its pendency. It will, however, be noticed that the right of defendant No. 5 was not obliterated altogether on the doctrine of *lis pendens*. The well-known principle that he should be given an opportunity to redeem the mortgage was applied. In the first instance, by the decree passed by the District Judge he was given that opportunity, and on his failure to do so, the plaintiff was to get possession.

14. *Tilkdhari Singh Vs. Babu Gour Narain*, . has not been followed by the Madras High Court in *Pingali Venkataramana Reddi* by his authorised agent *Brahmanda Narasimha Rau Vs. Kotigari M. Rangiah Chetti and Others*, and *Akki Guru Basappa and Another Vs. Vuluvathi Setra Santhappa and Others*, . A Bench decision of this Court in *Sadei Sahu v Chandramani Dei* AIR 1818 Pal 60 has pointed out that a deed of sale executed before the institution of the suit for specific performance of prior contract for sale of the same property but registered thereafter cannot be held to be executed *pendente lite*. *Tilkdhari Singh Vs. Babu Gour Narain*, is not noticed in this judgment, but two Calcutta cases reported in *Naresh Chandra Dutta Vs. Girish Chandra Das and Another*, and *Gobardhan Bar Vs. Gunadhar Bar*, , have been noticed in para 6. I am conscious that the Supreme Court in *Ram Saran Lall and Others Vs. Mst. Domini Kuer and Others*, has quoted with approval in para. 8 of the judgment the decision of this Court in *Tilkdhari Singh Vs. Babu Gour Narain*, , as also the two Calcutta cases which have been noticed and distinguished in *Sadei Sahu Vs. Chandramani Dei and Another*, . But, I venture to point out that the ratio in those decisions has been approved by the Supreme Court in a different context.

The . question before the Supreme Court was: when was the pre-emptor to perform the ceremonies under the Muhammadan Law? The majority decision of the Court was that the sale was complete on completion of the registration u/s 61 of the Registration Act and, therefore, the ceremonies had to be performed after completion of the registration. A similar view has been expressed in *Hiralal Agrawal etc. Vs. Rampadarath Singh and Others*, etc., . In the customary law the question assumes importance as to the "point of time when the ceremony is to be performed and u/s 16 (3) of the Act, the question arose as to when the pre-emptor gets a right to file an application u/s 16 (3). In *Budhnandan Ram v. State of Bihar* (C.W.J.C. No. 133 of 1969) (Pat), decided by a Bench of this Court, of which I was a member, on 30th January, 1970, I had elaborately .considered the point. I had pointed out that there could not be two starting points of limitation u/s 16 (3) of the Act, starting point must be one either the date of execution of the sale deed or the date when its registration is complete,

I held, following *Hiralal Agrawal's* case, that the latter was the date which was the starting point of the period of three months for the filing of the application u/

s 16 (3)....."

It is, therefore, manifest that the two Supreme Court decisions are clearly distinguishable and were concerned with the question as to when the registration was complete, for which Section 47 of the Indian Registration Act may not be relevant. The decision in *Tilkdhari Singh Vs. Babu Gour Narain*, is also clearly distinguishable and not a decision on the point, in preference to the later decisions of the Privy Council in the cases of AIR 1927 42 (Privy Council) and AIR 1928 86 (Privy Council) .

26. Mr. Sanyal has challenged the vires of Section 5 (1) (iii) of the Act, being violative of the petitioners' right guaranteed under Articles 14, 19 and 31 of the Constitution of India. This contention is wholly untenable, in view of Article 31B of the Act, inasmuch as the Act in question is included in the Ninth Schedule to the Constitution.

27. Mr. Sanyal has also urged that the finding of the Collector that the transfers were to defeat the objects of the Act is wholly erroneous, and that the order of annulment of the deeds of transfer is perverse and not based on any evidence and, since the jurisdiction of the Collector is based on these facts, the High Court is entitled to determine by its own judgment the said facts independently, and interfere. He has urged that even if it be held that the transfers were effected after the 22nd October, 1959, the Collector had no jurisdiction to annul the same, unless he records the necessary finding on reliable evidence that the transfers were to defeat the objects of the Act or made in contravention of the Act for retaining Benami or Farzi lands in excess of the ceiling area. He has urged that the transfers were made in favour of three types of persons, namely to local people (C. W. J. C. Nos. 1526, 1528, 1529, 1399 and 1497 of 1975), to Limited Companies (C. W. J. C. Nos. 1523, 1524, 1527 and 1530 of 1975), as well as to some private individuals of Calcutta (C. W. J. C. Nos. 1519, 1520, 1521, 1522 and 1525 of 1975). Learned counsel has submitted that the consideration paid for the transactions in question have been adequate and the price paid for the lands is varying, indicating distinct negotiations. In spite of all these, the Collector has not given any material for holding in what manner these transactions were made with the object of defeating or contravening the provisions of this Act, beyond stating three facts, namely, that the need of the vendors to sell the lands is not indicated in the sale deeds, that Kanodia Brothers were the owners of the Company, and the sale-deeds were executed by Shree M.D. Sharma, holding power of attorney on behalf of the company. Mr. Sanyal has further submitted that it is surprising that same set of reasons have been given for annulling the sale-deeds in favour of local transferees, who were in possession of the lands in question from before, as also in case of transfers in favour of Limited Companies, and even in case of transfers in favour of individuals of Calcutta. Mr. Sanyal has also submitted that in the counter-affidavit, filed on behalf of the State it is asserted that the object of the transfers is "to defeat and to contravene the provisions of the Act and as such for retaining

Farzi and Benami lands in excess of ceiling area." In this regard his contention is that neither there is any material nor there is any finding that the transactions were Farzi or Benami, which has to be determined on the basis of the well established test for holding a transaction as Farzi or Benami. He has also submitted that the purchasers came in possession and their names were mutated by the State of Bihar after their purchase and rent receipts were issued in their favour. Thus they acquired right of occupancy by being in possession for more than twelve years in accordance with the provisions of the Bihar Tenancy Act. Mr. Sanyal has also urged that in certain cases the annulment is in respect of larger areas than mentioned in the notice (C. W. J. C. No. 1526 of 1975). It is not necessary to go into these questions, in view of the fact that I have already held that the transfers were made prior to the 22nd October, 1959, and, therefore, the Collector had no jurisdiction to annul those transfers under Clause (iii) of Section 5 (1) of the Act.

28. In the result, all these applications are allowed and the order of the Collector (Annex, "2") is quashed. In view of the fact that the petitioners have appeared and showed cause in pursuance of the notice (Annexure "1"), leading to the order contained in Annexure "2", the notice (Annexure "1") need not be quashed. In the circumstances of the cases, I shall make no order as to costs.

B.S. Sinha, J.

I agree.