

(1986) 04 PAT CK 0014

In the Patna High Court

Case No : Civil Writ Jurisdiction Case No. 691 of 1981

Ram Dahin Singh

APPELLANT

Vs

The State of Bihar and others

RESPONDENT

Date of Decision : 02-04-1986

Acts Referred:

Bihar Consolidation of Holdings and Prevention of Fragmentation Act, 1956 — Section 5, 6
Bihar Land Reforms (Fixation of Ceiling Area and Acquisition of Surplus Land) Act, 1961 — Section 10, 8, 9

Citation : (1986) PLJR 888

Hon'ble Judges : S. Shamsul Hasan, J

Bench : Single Bench

Advocate : Sheo Kumar Singh, for the Appellant;

Final Decision : Allowed

Judgement

S. Shamsul Hasan, J.—The original petitioner in this application is aggrieved by the orders of the Deputy Director, Consolidation, dated 1.11.1980 (Annexure-5); Director, Consolidation, dated 3.2.1981 (Annexure-6), by which his application u/s 6 of the Bihar Consolidation of Holdings and Prevention of Fragmentation Act (hereinafter referred to as "the Act") for the sale of certain properties to the transposed petitioner, who was brought on the record after the death of the original petitioner, allowed by the Consolidation Officer by order dated 17.9.1980 (Annexure-4) was set aside by Annexures 5 and 6. The original petitioner filed a petition before the Consolidation Officer u/s 6 of the Act seeking permission for the sale of lands described in the present petition. On his application being allowed, it is submitted, the requisite deed of sale was executed and consideration passed, The effect of that registration by the impugned orders has become tainted. I may state straightaway that the authorities passing the impugned orders have not taken into consideration the provisions of section 6 of the Act and the necessity of a vendor to seek permission before making transfer of the land. The provision under which permission for such a transfer has to be

secured being section 6 of the Act is for specific purposes and any step taken u/s 6 of the Act must subserve the purpose of the Act as spelt out in section 6 itself. The main purpose is patently and apparently to prevent fragmentation and any transfer, which creates such a situation, could not be permitted. The Act also requires the observance of the provisions of the Bihar Land Reforms (Fixation of Ceiling Area and Acquisition of Surplus Land) Act, 1961 (hereinafter to be called "the Ceiling Act") in order to prevent the transfer and acquisition of any land in excess of what a landholder or the transferee can hold. All these considerations are dehors an inquiry into the right, title and interest of the parties seeking the transfer and are alien to the provisions of section 6 of the Act. For that purpose the provisions are sections 8,9,10 etc. A person can effect a transaction of sale and purchase if such a transaction does not create fragmentation of the land or is in accordance with the procedure prescribed and the requirement of the Rules and is not adversely affected by the Ceiling Act. The grounds on which permission can be refused have been set out in section 6 of the Act and its proviso, which are as follows:-

6 Procedure for sanction.-(1) A person intending to transfer or partition any land shall make an application for sanction u/s 5 in the prescribed form and Containing the prescribed particulars together with notices of the intended transfer or partition in the prescribed form and the process fees prescribed for the services thereof on the parties named in the application as well as for affixing copies thereof on the land, in the office of the Consolidation Officer and in such other places as may be prescribed.

(2) The Consolidation Officer shall fix a date for hearing and cause the notices specifying the date so fixed to be served on the parties named in petition by registered post or in such other manner as may be prescribed and shall also cause copies of the notice to be affixed on the land and other places referred to in sub section (1).

(3) On the date fixed for hearing or on any adjourned date the Consolidation Officer shall, after hearing the parties and after such inquiry as may be necessary, pass such orders as he thinks fit:

Provided that the Consolidation Officer shall not refuse sanction for transfer or partition of any land, except on any one or more of the following grounds, namely-

- (a) the prescribed particulars have not been furnished;
- (b) the transfer or partition is likely to interfere with the consolidation proceedings or to create a fragment; and
- (c) the transfer or partition will be against any provision of this Act or any provision of the tenancy law for the time being in force in the notified area:

Provided further that sanction shall not be granted for the transfer of any land to any person, if after such transfer the total area of land held by him will exceed

the maximum area that may be held by such person under any law for the time being in force in the notified area.

(4) Any person aggrieved by an order of the Consolidation Officer, under subsection (3), may within thirty days of such order, prefer an appeal to the Assistant Director of Consolidation and such appeal shall be heard and disposed of in the prescribed manner and the decision of the Assistant Director of Consolidation, therein, shall be final.

Basically these grounds relate to the prevention of fragmentation of land application of tenancy laws and the technicalities to be followed in behaviour to the requirements of the form filed for seeking permission and by the proviso preventing the lands beyond ceiling area coming into the hand of a purchaser. None of these clauses require an enquiry into the title of the vendor or the vendee. Regretfully, the authorities have not applied their mind to these aspects and have interfered with the permission granted by the Consolidation Officer on grounds quite alien to the statute.

I, therefore, feel that Annexures 5 and 6 must be quashed and I do so accordingly.

2. The application is allowed with costs against the private respondents.