
(1988) 04 PAT CK 0042
In the Patna High Court
Case No : C.W.J.C. No. 4191 of 1982

Ram Prakash Mahto

APPELLANT

Vs

State of Bihar

RESPONDENT

Date of Decision : 12-04-1988

Acts Referred:

Bihar Consolidation of Holdings and Prevention of Fragmentation Act, 1956 — Section 32, 5

Citation : (1988) 36 BLJR 650

Hon'ble Judges : S.B. Sinha, J

Bench : Single Bench

Final Decision : Allowed

Judgement

S.B. Sinha, J.—This writ application is directed against an order dated 30.12.1980, passed by the Collector, Samastipur (respondent no 3) in Suit No. 364 of 1979 whereby and whereunder the respondent No. 3 in purported exercise of power conferred upon him u/s 32 of the Bihar Consolidation of Holdings and Prevention of Fragmentation Act (hereinafter referred to as "the Act") declared the sale deed dated 12.6.1978 as void and ordered the petitioners to pay a fine of Rs. 150/- as the same was executed without obtaining permission u/s 5 of the Act.

2. The facts of the case lie in a very narrow compass. The petitioner No. 2 by registered sale deed dated 12.6.1978 sold 3 kathas 16 dhurs of land for a consideration of Rs. 2000/-. According to the petitioner at that point of time there was no publication of register of lands in terms of Section 10 (1) of the Act. It however, appears that on 20.3.1979 one Ram Karan Thakur filed an application u/s 32 of the Act, wherefor a report was called for from the Consolidation Officer, Bibhutipur and on the receipt thereof the notice was directed to be issued against the petitioners. The petitioners have stated that they have no knowledge of filing of the said application and a purported service report was shown in collusion with the process server. By the impugned order, the Collector cancelled the sale deed

and imposed a fine of Rs. 150 upon the petitioners.

3. No counter affidavit in this case has been filed on behalf of the respondents and as such statements made by the petitioners hereinbefore have to be accepted as correct.

4. In this view of the matter it must be held that the impugned order as contained in Annexure-4 was passed behind the back of the petitioners and although no notice was served upon them in that regard. Further from the perusal of the impugned order, it does not appear as to why the learned court below while directing cancellation of the sale deed purported to be on the ground that no permission was obtained chose to impose a fine of Rs. 1.50. In the said order, it was not stated that the condition precedent therefore were existing viz. that before 12.6.1972 there had been a publication of a notification in terms of Section 10 (I) of the said Act.

5. In the facts and circumstances of the case, therefore, the impugned order can not be sustained and it is hereby quashed.

6. In the result this writ application is allowed and the respondent No. 3 is hereby directed to consider the matter afresh after giving an opportunity of hearing to the petitioner. However, in the facts and circumstances of the case, there will be no order as to costs.