
(2007) 05 PAT CK 0054
In the Patna High Court
Case No : LPA No. 391 of 1998

Ram Raji Sharma and Another APPELLANT
Vs
The State of Bihar and Others RESPONDENT

Date of Decision : 07-05-2007

Acts Referred:

Bihar Consolidation of Holdings and Prevention of Fragmentation Act, 1956 — Section 10(1), 32, 5

Citation : (2007) 4 PLJR 449

Hon'ble Judges : Navaniti Pd. Singh, J; Barin Ghosh, J

Bench : Division Bench

Advocate : Pushkar Narar Shahi and Onkar Nath Ritesh Kumar, for the Appellant; S.S. Mishra, for the Respondent

Final Decision : Allowed

Judgement

Barin Ghosh & Navaniti Pd, Singh, JJ.—In order to construe Section 5 of the Bihar Consolidation of Holdings and Prevention of Fragmentation Act, 1956 one must take note of the said section as contained in its entirety. The same is as follows:- "5. No transfer without sanction.- (1) After the date of publication of preparation of register of lands and statement of principles under sub-section (1) of Section 10 no person shall transfer any land in the notified area by way of sale, gift, exchange, or partition without the previous sanction of the Consolidation Officer and if the sanction is granted, such transfer or partition, as the case may be, shall be, subject to the rights and liabilities attached to the land under the scheme of Consolidation prepared with respect to that area.

(2) The provisions of sub-section (1) shall take effect from the date of Notification under sub-section 1 section 3 has been issued."

As provided in the said section while the transfer of any land is barred after the date of publication of preparation of register of land and statement of principles under sub-section (1) of Section 10 of the Act without the previous sanction of the Consolidation Officer, but it provides that if transfer with permission is

granted the transfer shall be subject to the rights and liabilities attached to the land under the schema of consolidation prepared with respect to that area. The object of the section was to ensure that by reason of transfer effected after publication of preparation of register of land and statement of principles, such transfer does not affect the register of lands and statement of principles as prepared, so that it becomes difficult for ultimately preparing the scheme and taking steps in pursuance therewith. Section 5 at the same time does not provide since when such transfers can be effected without permission. That clearly indicates that the intention was to maintain the scheme intact. 2. In the instant case, some times in early 1980 preparation of register of lands and statement of principles under sub-section (1) of Section 10 of the Act were published. Subsequent thereto whatever steps were required to be taken, were taken and, ultimately, the scheme was prepared. The land in question was kept outside the scheme. The holder of the land in question sold the same to the appellants by a registered sale deed dated 28th January, 1987. The respondent No. 3, who does not claim to have any interest of any nature in the land in question, approached the Collector and informed him that the said transfer has been effected without the permission of the Consolidation Officer and inasmuch as the said transfer was effected without the permission of the Consolidation Officer, the Collector passed an order and thereby declared the transfer as void.

3. On a challenge thrown to the said order of the Collector by filing a writ petition, the writ court dismissed the writ petition and hence the present appeal.

4. The writ court held that since the subject transfer was without permission, which required permission, and since any transfer without permission is void in view of Section 32 of the Act, the transfer was void. Section 32 of the Act provides that transfer of any land or a fragment thereof contrary to the provisions of the Act shall be void provided the owner of any land, so transferred, shall be liable to pay such fine, not exceeding two hundred fifty rupees as the Collector of the District may, subject to the general orders of the State Government, direct. Section 32, therefore, provides that a transfer made in contravention of Section 5 of the Act will be void and the owner of the land shall be liable to pay a fine not exceeding two hundred fifty rupees. Section 32, therefore, makes it abundantly clear that the transfer declared to be void thereby is in relation to consolidation proceedings. Section 32 is in aid of completion of consolidation proceedings. In such view of the matter, transfer of any land contrary to Section 5 of the Act would make the same void in so far as consolidation proceedings are concerned and not inter se the person who has transferred the same and his transferee. In other words, such a transfer if effected pursuant to the provisions contained in the Transfer of Property Act read with Registration Act the same would though bind the parties thereto but would not bind the Consolidation Authority. In addition thereto the Consolidation Authority has been empowered to levy fine upon the person who has effected the transfer in question.

5. In the instant case, after declaring the transaction to be void, the Collector has levied fine of two hundred and fifty rupees. We personally feel that this order should have been understood as if the transaction is void in so far as the consolidation proceedings are concerned and not the transaction inter se the transferrer and transferee.

6. With this clarification, we allow the appeal, set aside the judgment and order of the learned single Judge and allow the writ petition to the extent of the declaration as above. The judgment of a learned single Judge of this court rendered in the case of Sitaram Singh Vs. The State of Bihar and Others, , upon which the writ court relied while holding the transaction void ab initio, to our mind did not take note of the object and purpose of the Consolidation Act. The principal object of the Act was to provide for consolidation of holdings and prevention of fragmentation. It did not intend to take away the right of a landholder to transfer his land to another. The right to transfer has been preserved in Section 5 of the Act, but with prior approval. If approval is given the land will continue to have the same rights and liabilities attached to the land under the scheme. The object was to ensure that. If that is the true intention then the transfer is void to ensure the same. The conclusion would be that the transaction is void in so far as consolidation proceedings are concerned, but not inter se the parties to the transaction.