

(1993) 05 PAT CK 0018
In the Patna High Court
Case No : C.W.J.C. No. 11385 of 1992

Smt. Banuka Devi and Others

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 21-05-1993

Acts Referred:

Citation : (1993) 05 PAT CK 0018

Final Decision : Dismissed

Judgement

S.B. Sinha, J.—This application is directed against an order dated 26-9-1992, passed in Ceiling Revision Case No. 107 of 1991 as contained in Annexure-3 ; the order dated 13-8-1991 passed by the Collector, Begusarai, in Ceiling Appeal No. 16/86 as contained in Annexure-2 ; as also the order dated 23-11-1985 passed by the Additional Collector, Begusarai, in Ceiling Case No. 7/76-71 as contained in Annexure-1 to the writ application.

2. One Shiv Shankar Prasad Singh was the original landholder. A proceeding tinder the Bihar Land Reforms (Fixation of Ceiling Area and Acquisition of Surplus Land) Act, 1961 (hereinafter referred to as "the said Act") was initiated against him.

3. A draft statement was prepared showing a total area of 125.26 acres of land available at the hands of the said landholder.

4. The landholder filed an objection u/s 19(3) of the said Act. Separate objections were also filed by the petitioner Nos. 1 and 2 respectively as also Smt. Renuka Devi, Smt. Kanak Devi, Smt. Urmila Devi, Sri Ram Bilash Singh and Smt. Nirmal Devi.

3. The case of the petitioner No. 1 is that she was gifted 11.47 acres of Class IV lands in the year 1962 by her mother Most. Urmila Devi.

6. According to the petitioner No. 2 the land claimed by her was taken settlement of by Smt. Urmila Devi in the year 1945 from her father in law, Late Baleshwar

Prasad Singh. The objection of the petitioner No. 2 was that she was gifted 12.01 acres of land in year 1962 by her mother which was also taken settlement of by her from her father in law. The said proceeding under the said Act was initiated in the year 1976 and by an order dated 30-12-1977 the Deputy Collector Incharge Land Reforms referred the matter to the Incharge Additional Collector Begusarai. While the matter was pending before the Additional Collector, Section 32-A and Section 32-B were inserted in the said Act by reason of Ordinance No. 66 of 1981 and thereafter a fresh draft statement was prepared.

7. According to the petitioners however no notice of the said proceeding was given to them. However, the petitioners filed as objection u/s 10(3) of the Act alleging inter alia as follows:

The late Shri Baleshwar Prasad Singh had some self-acquired properties.

That Shri Baleshwar Prasad Singh settled some lands measuring 55 bighas odd all class V land with Smt. Urmila Devi by granting rent receipt over which she came in peaceful possession.

That this Smt. Urmila Devi gifted an area of 15 bighas 3 kathas 8 1/2 dhurs all class V land to petitioner/objector No. 1 and 16 bighas 2 kathas 19 dhurs in favour of petitioner No. 2 but of her self acquired properties in 1962.

That after the said gift, these petitioners continuing in possession/ since then uptil now they getting receipts on payment of rent.

That the Revenue authorities mutated the name of the petitioners objectors after proper enquiry and finding the petitioners in peaceful possession.

That this petitioners/objectors are managing the lands through their men and servants and the land holder has nothing to do with it.

That the lands of the petitioners are not farzi lands of the landholder.

8. According to the petitioner late Baleshwar Prasad Singh had settled 53 bighas 3 kathas 21/2 dhurs of lands in favour of his two daughters, namely, Most. Shavitri Devi and Most. Urmila Devi. He died in the year 1948 leaving behind two sons, namely, Late Ramashankar Prasad Singh and late Shiv Shankar Prasad Singh.

9. According to the petitioners, there had been a partition between the aforementioned two brothers.

10. The petitioners have contended that the lands which have been taken settlement of by their mother were being looked after by herself.

The claim of the petitioner, however, had been rejected by the court below.

11. The learned Counsel appearing on behalf of the petitioner has raised a short question in support of this application.

The learned Counsel submitted that although gifts in favour of the respective petitioners, were made orally, the question which should have been posed and answered by the courts below was as to whether the said transactions had been made in good faith or not.

12. The learned Counsel appearing on behalf of the petitioner further submitted that the petitioner No. 2 has transferred 3 bighas of lands in the year 1984 in favour of persons whose name appear in paragraph 25 of the application.

13. Mr. Verma, the learned Standing Counsel appearing for the Respondents, however submitted that as the purported-gifts were made orally, the same cannot be recognised in terms of the provisions of the said Act. He further drew my attention to the fact that the courts have come to the conclusion that the documents which were prepared in relation to the said purported gifts, ex-facie appear to have been executed much After 1962.

14. The learned Counsel in support of this contention has relied upon a decision of this Court in the case of Dwarka Singh v. State of Bihar reported in 1977 BBCJ 696 ; Nanhak Singh and Ors. v. The Additional Collector of Bettiah and Ors. reported in 1978 BLJR 478 ; Brijendra Singh Vs. State of Uttar Pradesh and Others, ; State of Assam and Others Vs. Banshidhar Shewbhagavan and Company, and Jagmal Singh Vs. State of U.P. and others, .

15. the said Act received the assent of the President of India on 8th March, 1962.

By reason of Section 5(5) of the said Act the State permitted the land-Holders to execute any deed of gift in favour of any person who was to succeed to his interest if the landholder died interest for a period of six months. The said period of six months was thereafter extended by Bihar Act No. 18 of 1961 by a further period of six months.

16. Such gifts, it is needless to say are required to be made by registered instrument. An oral gift be any landholder in favour of any other person is not contemplated under Jaw.

17. Sub-section (5) of Section 5 of the Act as it then stood which reads as follows:

Any landholder, subject to the provisions of the tenancy law of the area, may, if he has not already transferred, transfer, till the commencement of this Act and within I (one year), there for, by way of gift any land held by him as raiyat to his son, daughter, children of his son or daughter or to such other persons who would have inherited such land or would have been entitled to a share therein had the landholder died intestate in respect whereof, at midnight between the date of the commencement of this Act and the day just preceding such date so as not to exceed, together with any other land held by the donee, the area the donee can hold u/s 5.

18. There cannot be, any doubt that a gift could only be made in accordance with

law i.e. upon compliance of the terms of the provisions of Section 17 of the Indian Registration Act and Section 122 and Section 123 of the Transfer of Property Act.

19. Further, a finding has been arrived at by the Collector that the document to support the transaction of the gift ex-fide appears to have been prepared many years after 1961. The said finding is a finding of fact and thus binding on this Court.

20. In exercise of our jurisdiction under Article 227 of the Constitution of India, it is thus not possible to interfere with the said finding of fact.

21. It is true that Jam band has been created in the name of the petitioners but creation of Jamabandi by itself does not confer any right, title or interest (sic) on the donees.

22. It has further been stated in the counter-affidavit that mutation in the name of the petitioner was done in collusion with the employees of the Anchal Officer and in any event as the said order of mutation was passed on the basis of the purported gift deeds which being void, the orders of mutation must also be held to be nullities.

23. The submission made on behalf of the petitioner that the transaction was bona fide, cannot, thus also be accepted in view of the aforementioned findings of fact.

24. In any event, as the gifts themselves are invalid, the question of giving any recognition thereof by the respondents did not arise.

25. In *Dwarika Singh v. State of Bihar* reported in 1977 BBCJ 696, registered deed of gifts were made in favour of the daughter of the landholder in conformity with the provisions of Section 5(5) of the Act as it stood in 1962. Such is not the case here.

26. In *Brijendra Singh Vs. State of Uttar Pradesh and Others*, and *Bhupendra Singh Vs. State of U.P. and Others*, the Supreme Court while considering the provisions of proviso (b) to Section 5 of the U.P. Imposition of Ceiling of Land Holding Act, in terms whereof the benefit therein was available to a transferee made in good faith, that is, to a bona fide transfer whereby the tenure-holder genuinely and irrevocably transfers all right, title and interest in the land in favour of the transferee, in the ordinary course of management of his affairs and which is not a collusive arrangement, or device or subterfuge to enable the tenure holder to continue to hold the surplus land or any reserved interest in the present or in future merely to convert it into cash, and thus circumvent the bar u/s 5 of the Act.

27. These decisions are, therefore, do not advance the case of the petitioner inasmuch as, as the transferees by reason of invalidity of the transaction do not acquire any right, title and interest in the property, the question of such

transaction being bona fide does not arise.

28. In Jagmal Singh Vs. State of U.P. and others, , the Supreme Court again was considering the aforementioned provisions U.P. Imposition of Ceiling on Land Holdings Act. In that case the Supreme Court followed its earlier decisions in Brijendra Singh Vs. State of Uttar Pradesh and Others, and Bhupendra Singh Vs. State of U.P. and Others, .

In that case on facts it was held that the land in question was sold in good faith.

29. In Nanhak Singh v. Additional Collector reported in 1978 BLJR 478 it has been found that the execution of the documents were made prior to 9th September, 1970, and the same was registered after the said date. In that situation; it was held that the transfer cannot be annulled on the ground that the same are farzi in nature and it was held that in law the title would pass to the transferee from the date of the execution of the deed and not from the date of the registration thereof. None of the decision relied upon by the learned Counsel for the petitioner, therefore, is applicable to the facts and circumstances of the present case.

30. For the reasons aforementioned, in my opinion, no case for interference with the impugned order has been made out.

31. This application is therefore, dismissed but there shall be no order as to costs.

Om Prakash, J.

32. I agree.