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(1999) 07 PAT CK 0072

In the Patna High Court

Case No : C.W.J.C. No. 8667 of 1991

Smt. Sonahula Devi — APPELLANT

Vs

State of Bihar and Others — RESPONDENT

Date of Decision : 28-07-1999

Acts Referred:

Bihar Land Reforms (Fixation of Ceiling Area and Acquisition of Surplus Land) Act, 1961 — Section 5(3)

Citation : (1999) 3 BLJR 1946 : (1999) 3 PLJR 534

Hon'ble Judges : R.N. Sahay, J

Bench : Single Bench

Final Decision : Allowed

Judgement

R.N. Sahay, J.—Petitioner is the second daughter of Shri Kam Kumar Dubey of village Lakhan Dehra, P.S. Dumraon, district Bhojpur. She was married to Shri Sarbdeo Upadhyaya in the year 1956. At the time of her marriage 4.48 acres land was gifted by her father in the Khoinchha. However, the gift was duly registered on 29-7-1970, The petitioner claims to be in cultivating possession of the land since the year 1956 after land was transferred to her at the time of her marriage. During Chakbandi operation in the year 1972, separate Chaks were allotted and Khatas were opened in favour of the petitioner.

2. It appears that in the year 1979, Land Ceiling Case No. 48 of 1979 was started against the father of the petitioner in which the land gifted to the petitioner was shown with the land of her father. Father of the petitioner filed objection in the land ceiling case to the effect that land of the petitioner has been wrongly tagged because since the day of her marriage in 1956 the land is in exclusive possession of her daughter of which separate Chaks have already been allotted to the petitioner in Chakbandi operation and also separate Khatas have been given. By order dt. 24 7-1975 the Sub-Divisional Officer did not consider the case and annulled the gift-deed executed after 18-4-1963 as it was invalid and that the donee was not in possession. Father of the petitioner voluntarily

surrendered in the year 1976 an area of 15 acres 45 decimals land to the State Government for distribution. On appeal filed by father of the petitioner before the Collector, the Collector remanded the matter to Sub-Divisional Officer for re-consideration after giving due notices to the petitioner. He further directed that inquiry regarding the possession of the land be made as to whether the donee is in actual possession of the lands or not and who is utilising the usufructs pursuant to the order of the Collector/Anchal Adhikari, Dumraon, held inquiry and submitted report dt. 7-2-1977 that the petitioner was in possession on the land in question. The Anchal Adhikari had clearly found that the petitioner was in actual possession of the transferred lands from the date transfer were effected in favour of the petitioner in the year 1956. It was also found that the petitioner was enjoying usufruct in getting rent receipts. Report of the Anchal Adhikari is Annexure-1 to the writ application.

3. The Sub-Divisional Officer, Buxar, completely ignored the above report of Anchal Adhikari, Dumaron and also ignored the entries in the Chakbandi records as ordered in the year 1977 and held that beneficiary was not in possession of the gifted lands and that the deed of gift should be annulled as there was merely paper transactions for which there was no material before him

4. Ceiling Appeal No. 83 of 1977-78 was filed by father of the petitioner along with the petitioner before the Collector, Bhojpur. Appeal was dismissed not on merit but on technical ground. Thereafter, petitioner filed revision before the Board of Revenue. That too was rejected without considering the case on merit. Ultimately, petitioner and her father filed C.W.J.C. No. 13898 of 1979 in this Court. The writ petition was heard by Division Bench of this Court and by judgment dated 27th September, 1984 quashed the impugned order so far as it related to the petitioner on the basis of deed of gift is concerned, the case was remanded to the Sub-Divisional Officer for further verification. This Court had considered the report of the Karmchari regarding possession of petitioner. It also considered the fact that the deed of gift was executed in the year 1956 which was duly registered on 29-7-1970.

5. On remand the Sub-Divisional Officer by his order dated 7-3-1987 re-considered the matter and the land of the petitioner was again tagged with the lands of her father. Consequently, it was ordered that 10.96 acres land was declared surplus and to that effect final publication u/s 12(1) was to be made (Annexure-3). There was no new material before the Sub-Divisional Magistrate except the report dt. 4-2-77 submitted by the Circle Officer through Karamchari which was duly considered by this Court. The Sub-Divisional Officer recorded that the petitioner was not present nor she had filed any objection. He disbelieved the gift of 1956, registered possession, land receipts and the chak opened in the name of the petitioner. This was so, according to the Sub-Divisional Officer, because Pairbi was being done by father of the petitioner in the case.

6. Mr. Tara Kant-Jha, learned Senior Counsel appearing on behalf of the petitioner submitted that petitioner had appeared through her lawyer on each

say of the proceeding and accordingly objections were filed. The Sub-Divisional Officer should not have expected that the petitioner being a lady will not appear in the Court in person on day-to-day proceedings. Ceiling Appeal filed before the Collector was dismissed on 29-4-1989. Counsel further submit d that the Collector disbelieved the gift, land receipts, possession of the petitioner and Khata opened in the Consolidation proceeding without any new material. The material before the Revenue authoritie are only the reports submitted by the Circle Officer in which possession of the petitioner has clearly been found, by this Court. Thereafter, revision was filed before the. Board of Revenue. The Additional Member Board of Revenue by his order dt. 3-3-1991 (Annexure-5 & 5(a)) maintained the order of the Sub-Divisional Officer and Collector Counsel further submitted that Board of Revenue did not take any consideration on the salient facts mentioned above and passed a mechanical order.

7. In the instant case, the land was transferred by gift in 1956 which was duly registered on 29-7-1970, i.e. prior to 9-9-1970. Under Sub-clause (3) of Section 5 of the Bihar Land Ceiling Act, Collector has power to make inquiries respect of any transfer of land by a landholder whether 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 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 but law does not vest much power in the Collector. There must be an adequate material for annulling the transfer. In the instant case, report of the Karmchari shows that the petitioner was in actual possession of the land gifted by her father to her daughter at the time of her marriage. During the Consolidation Proceeding, her name was mutated. This gift cannot be said to be an unusual character. There was no material before the Collector to hold that the transfer was not genuine. There is no material to hold that the gift was made in order to defeat of the Ceiling Act. It is high time to set the controversy at best,

8. This application is, accordingly, allowed and the order of Ceiling authorities declaring the gifted land to the surplus land of the donor is quashed. No. costs.

