(2007) 05 PAT CK 0001

In the Patna High Court

Case No : LPA No. 367 of 1998

Smt. Subhadra Devi APPELLANT

Vs

The State of Bihar and Others RESPONDENT

Date of Decision : 04-05-2007

Acts Referred:

Citation : (2007) PLJR 14

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

Bench : Division Bench

Advocate : Tarakant Jha and Shobha Nath Jha, for the Appellant; Ajay for the State and M/s. Amit Shrivastava and Girish Prasad for the Respondent No. 6, for the Respondent

Judgement

Barin Ghosh and Navaniti Pd. Singh, JJ.—Heard learned counsel for the parties. After 9th September, 1970, without permission of the Collector, the uncle-in-law of the appellant whose wife is respondent No. 6 purported to transfer 7.67 acres of land held by him under a gift in favour of the appellant. In the consolidation proceedings the husband of the respondent No. 6 purported to contend that these 7.67 acres of land be treated as land beyond the ceiling limit of land to be retained by him. This dispute was the subject matter of controversy in CWJC No. 10856/1992. A Division Bench of this Court while dealing with the said Writ Petition and subsequently by its review order made it abundantly clear that in view of the provisions contained in Section 9 (ii) of the Ceiling Act, the husband of the respondent No. 6 opted to retain 7.67 acres of land so purported to have been gifted in favour of the appellant within his ceiling limit and accordingly issued directions to that effect. The review petition was filed in the said writ petition by the husband of the respondent No. 6, who purported to contend that the gift is invalid. The Court felt that the dispute pertaining to invalidity of the gift is to be decided independently, in terms of the remand order passed by this Court in CWJC No. 536/1978. However, the Court did not postpone the option purported to have been exercised by the gift until disposal of such dispute and accordingly reaffirmed that by reason of the said gift purported to have been made by the husband of the respondent No. 6 in favour of the appellant, the husband of the respondent No. 6 opted to retain the said 7.67 acres of land within his ceiling limit.

2. We feel that the Collector while discharging his obligations in terms of the directions contained in the order of the Division Bench passed in the said writ petition appropriately brought within the ceiling limit of the husband of the respondent No. 6, the 7.67 acres of land and inasmuch as the dispute pertaining to the validity of the gift had not been decided then, rightly directed opening of an account in the name of the appellant in respect of the said 7.67 acres of land in Register II for collection of rent. This order had no scope of interference as was done by the revisional authority and then by the Writ Court.

3. We, therefore, uphold the original order of the Collector and set aside the order of the revisional authority as well as of the Writ Court.

4. While doing so we make it clear that by reason of bringing the said 7.67 acres of land within the ceiling limit of the husband of the respondent No. 6 coupled with opening of an account in the name of the appellant in Register II pertaining to the said land, the challenge to the gift thrown by the husband of the Respondent No. 6 did not stand concluded and accordingly if later on the consolidation authority on the basis of the remand order decides the dispute in favour of the respondent No. 6, on the basis of such decision the entry in favour of the appellant in Register II so created by the order of the Collector should be erased and the name of the respondent No. 6 should be substituted.

5. Learned counsel for the respondent No. 6 has contended that the consolidation authority has held that the gift is invalid. If that be so, it is upto the respondent No. 6 to take appropriate steps in accordance with law. The appeal stands disposed of.

