

(1980) 09 PAT CK 0008

In the Patna High Court

Case No : Civil Writ Jurn. Case No. 3923 of 1978

Smt. Sunania Devi and Another

APPELLANT

Vs

Additional Member, Board of Revenue, Patna and Others

RESPONDENT

Date of Decision : 25-09-1980

Acts Referred:

Bihar Consolidation of Holdings and Prevention of Fragmentation Act, 1956 — Section 39, 4, 5
Bihar Land Reforms (Fixation of Ceiling Area and Acquisition of Surplus Land) Act, 1961 — Section 16(3)

Citation : AIR 1981 Patna 273 : (1981) 29 BLJR 344 : (1981) PLJR 136

Hon'ble Judges : Hari Lal Agrawal, J

Bench : Single Bench

Advocate : S.C. Ghose and Ram Chandra Thakur, for the Appellant; Mani Lal, Standing Counsel No. 4 and Md. Shahjahan Ali, Jr. Counsel to Standing Counsel No. 4, for the Respondent

Final Decision : Dismissed

Judgement

Hari Lal Agrawal, J.—This application arises out of a proceeding initiated by respondent No. 4 u/s 16 (3) of the Bihar Land Reforms (Fixation of Ceiling Area and Acquisition of Surplus Land) Act, 1961 (hereinafter referred to as "the Ceiling Act").

2. The relevant facts are as follows: On 26-8-1974, one Md. Idris (respondent No. 5) executed a sale deed in favour of petitioner No. 1 with respect to certain lands measuring 1.50 acres situated in Mouza Shahpur in the District of Katihar, for a sum of Rs. 3,500/-. Thereupon Hari Prasad Singh (respondent No. 4) filed an application for pre-emption on the ground that he was an adjacent raiyat of the vended plots. One of the points raised in defence by the petitioners was that, in view of the provisions contained in Section 4 (c) of the Bihar Consolidation of Holdings and Prevention of Fragmentation Act, 1956 (hereinafter referred to as "the Consolidation Act"), the provisions of the Ceiling Act were rendered inoperative. The petitioners have authorities and I find that before the Board of

Revenue it was conceded on behalf of the petitioners that, in view of the last proviso brought in by Bihar Act XXVII of 1975, the provisions of Section 4 (c) of the Consolidation Act would have no application to the proceeding under the Ceiling Act. The proviso added to Section 4 (c) by this 1975 Act specifically lays down that nothing in this section shall apply to any proceedings under the Bihar Land Reforms (Fixation of Ceiling Area and Acquisition of Surplus Land) Act, 1961 (Act XII of 1962).

3. Faced with this difficulty Mr. S. C. Ghose appearing for the petitioners advanced an argument on the basis of Section 5 of the Consolidation Act. Section 5 lays down that after the date of publication of preparation of the register of lands and statement etc. 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,"

On the basis of this provision Mr. Ghose contended that inasmuch as Section 16 (3) (iii) of the Ceiling Act empowered the Collector under the Act by an order to direct the transferee to convey the land in favour of the applicant by a document of transfer within a period to be specified in the order and, on his failure, to follow the procedure prescribed in Order 21, Rule 34 of the Code of Civil Procedure, such a direction for a transfer in favour of the pre-emptor was in violation of the provisions contained in Section 5 of the Consolidation Act. In this connection he also placed reliance upon Section 39 of the Consolidation Act which provides that the provisions of this Act are to prevail over other Acts notwithstanding anything to the contrary contained in any other law for the time being in force. In view of this non obstante clause, it was contended that the direction of the Collector under the Ceiling Act was in direct conflict with the restrictions contained in Section 5 of the Consolidation Act and, therefore, in a case where the land was subject to a consolidation proceeding no order u/s 16 (3) of the Ceiling Act could be passed.

4. The argument advanced by Mr. Ghose seems to be attractive and, if I may say so, ingenious but, giving a deeper thought to the provision, I do not find it possible to accept the same. The Ceiling Act is a later legislation being an Act of 1961. The legislature, therefore, must be deemed to be aware of the provisions contained in Section 5 of the Consolidation Act while enacting the provisions of Section 16 (3). The non obstante clause contained in Section 39 of the Consolidation Act, referred to earlier, is to make the provisions of the Consolidation Act to prevail over any other Act or law to overcome any contrary provision contained therein With the sole and dominant purpose to achieve the objects of the consolidation namely for providing the consolidation of holdings and avoiding fragmentation.

On reading the scheme of Section 16 (3) of the Ceiling Act also it is obvious that the dominant object underlying the said provision is also consolidation of holdings and prevention of their fragmentation, as by the said provision the legislature intended that if a transferee of the land happened to be an outsider, then a co-sharer of the land or an adjacent raiyat must be allowed to pre-empt the transactions so that fragmentation of holdings can be avoided. The underlying intention of the legislature under the provision for pre-emption, therefore, is the same and similar to that as contained in the Consolidation Act. The legislature, therefore, by providing Section 16 (3) of the Ceiling Act did not make any inroad on the provisions of the Consolidation Act. Rather, it wanted to achieve the same purpose and object as was intended under the Consolidation Act and to strengthen the scheme of consolidation and to prevent fragmentation even after the scheme of consolidation was over.

5. The golden rule of harmonious construction of a statute is to see the purpose behind the enactment and the general rule the Courts are to apply is to put that construction which best carries into effect the purpose of the statute under consideration. Even in a case where two enactments are inconsistent, obedience to each of them may be possible without doing any violence to the other. It was observed by Lord Langdale, M.R., in the *Dean, etc. of Ely. v. Bliss* (1842 49 ER 700) that if two inconsistent Acts be passed at different times, the last is to be obeyed, and if obedience cannot be observed without derogating from the first, it is the first which must give way. The Supreme Court in the case of *Shri Sarwan Singh and Another Vs. Shri Kasturi Lal*, also took a similar view. Every Act is made either for the purpose of making a change in the law, or for the purpose of better declaring the law, and its operation is not to be impeded by the mere fact that it is inconsistent with some previous enactment. For one statute to cancel another they must be mutually destructive. Examining, therefore, the provisions of the two Acts under consideration, I am of the view that there is no apparent conflict between the two provisions, rather the principle behind Section 16 (3) of the Ceiling Act is to consolidate the scheme of the Consolidation Act, that is, to avoid fragmentation of a holding even after the consolidation work is over and completed by conferring a legal right in an adjacent raiyat or a co-sharer of the land to get it transferred in his favour from a third person or an outsider for maintaining the compactness of the block. The proviso added to Section 4 (c) by the amending Consolidation Act also lends support to such a construction,

6. For the reasons discussed above, I must reject the argument advanced by Mr. Ghose and hold that the provisions of Section 5 of the Consolidation Act do not abrogate the right of the Collector u/s 16 (3) of the Ceiling Act to make an order of transfer in favour of the pre-emptor. However, a transfer made in favour of a pre-emptor in pursuance of an order u/s 16 (3) of the Ceiling Act would be subject to the scheme of consolidation if the consolidation work happens to be going on in the area. Accordingly this application fails and it is hereby dismissed but in the circumstances I shall make no order as to costs.