
(2015) 01 PAT CK 0142

In the Patna High Court

Case No : LPA No. 992 of 2013 in C.W.J.C. No. 5034 of 2003

Surendra Rai and Others

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 27-01-2015

Acts Referred:

Bihar Consolidation of Holdings and Prevention of Fragmentation Act, 1956 — Section 10, 11, 13, 26-A, 3

Citation : (2015) 2 PLJR 774

Hon'ble Judges : L. Narasimha Reddy, C.J.;Gopal Prasad, J

Bench : Division Bench

Advocate : Sunil Kumar, for the Appellant; Sanjay Kumar, Advocates for the Respondent

Final Decision : Allowed

Judgement

L. Narasimha Reddy, C.J.—The unsuccessful petitioners in C.W.J.C. No. 5034 of 2003 are the appellants. The facts that are relevant for the purpose of this appeal are as under:

2. Lachhami Rai, the 3rd respondent is the owner of the land situated in Village Matiyara Tok, Cirlce-Lalganj, District-Vaishali. He executed two gift deeds on 10.12.1996 in favour of the appellants. The 2nd respondent submitted an objection petition before the District Magistrate, Vaishali-1st respondent herein, stating that the two gift deeds referred to above were executed in contravention of the provisions of the Bihar Consolidation of Holdings and Prevention of Fragmentation Act, 1956 (for short, "the Act"). The 1st respondent took up the matter and passed an order dated 8.9.1997 setting aside the deeds of gift and imposing penalty of Rs. 250/- on the petitioners.

3. Aggrieved by that, the appellants filed C.W.J.C. No. 11119 of 1997. The writ petition was disposed of on 8.3.1999 remanding the matter to the District Magistrate observing that the order dated 8.9.1997 is bereft of any reasons. Thereafter, the 1st respondent passed an order dated 30.9.2002 taking the view

that the order dated 8.9.1997 does not warrant any modification. Feeling aggrieved by that order, the appellants filed C.W.J.C. No. 5034 of 2003. The learned Single Judge dismissed the writ petition through the order dated 7.8.2012. Hence, this Letters Patent Appeal.

4. Sri Sunil Kumar, learned counsel for the appellants submits that neither the 1st respondent; nor the learned Single Judge have recorded any finding as to the existence of any Notification, referable to Section 10 of the Act and simply the provisions contained under Section 5 of the Act were applied. He contends that the sole basis for the 2nd respondent to initiate proceedings was that the Notification under Section 3 of the Act for consolidation of the holdings was issued for the area and there was not even a whisper about any order, passed under Section 10 of the Act. He contends that a citizen has the right and liberty to deal with the property as per his wishes and as such a right can be curtailed only when the circumstances contemplated under the relevant provisions of law are proved to be existing. He submits that while the 1st order passed by the District Magistrate was bereft of any reason, the 2nd order did nothing more than put a seal of approval on the 1st one.

5. Learned counsel for the respondents, on the other hand, submits that operation contemplated under the Act is very comprehensive and important, and obviously for that reason, the prohibition of different kinds, be under Section 4 or 5 of the Act, are imposed during the process of such operation, They submit that the learned Single Judge was satisfied that the gift deeds in favour of the appellants were executed at a time, when the prohibition, under the Act, was in force and that the order passed by the learned Single Judge does not warrant interference.

6. Agrarian reforms introduced in the State of Bihar are substantially different from those taken up by other States. Except for minor differences as to the details, the general pattern is to confer rights of ownership on the tenants or to restrict the extent of lands that can be owned by a family or individual. In addition to taking such steps, the State of Bihar has undertaken the work of consolidation of holdings. The object is to ensure that agricultural lands are not fragmented to small bits rendering the agriculture unviable or uneconomic. A detailed and complicated process of consolidation of holdings is provided for, under the Act. Thereafter draft scheme under Section 11 is required to be prepared. Once objections are received to the draft scheme, final scheme is to be prepared and published after obtaining approval of the Director of Consolidation under Section 13 of the Act.

7. Having regard to the fact that the process of consolidation would result in change of ownership by operation of law, in respect of certain extents of land, the Act has placed certain restrictions on the rights of owners of the lands during the subsistence of operation. The intention of the Government to undertake the operation of consolidation in a particular area is to be notified under Section 3 of the Act. Once the Notification is published in the Gazette, the prohibition

contained under Section 4 of the Act comes into play. The institution of suit or other legal proceedings for correction of entries in the revenue records and similar steps are prohibited during the subsistence of operation of Section 3 of the Act.

8. The next step under the Act is preparation of register of lands under Section 9 of the Act. All the particulars in respect of bits of lands in the area in which the consolidation operations are being undertaken, is required to be made. Once the particulars mentioned under Section 9 are gathered, the register containing those particulars is required to be published under Section 10. Section 10, to the extent it is necessary for this case reads as under:--

10. Publication of registers of lands and statement of principles and objections thereon.--(1) The registers prepared under sub-section (2) of Section 9 and the statement of principles prepared under Section 9-A shall be published in the manner prescribed and shall remain published for not less than 30 days.

(2) Any person may, with 45 days of the date of the publication of the register under sub-section (1) file before the Assistant Consolidation Officer, objection in respect thereof, disputing the correctness and nature of entries in the records or in the statement of principles.

(3) The Assistant Consolidation Officer shall, after hearing the persons interested and after such enquiries as may be necessary, decide the objection, settle the disputes or correct the mistake, as far as may be, by way of compromise between the parties appearing before him and pass orders on the basis of such compromise."

9. With the publication of register under Section 10, the prohibition contained under Section 5 of the Act comes into force. Section 5 of the Act reads as under:--

"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 provision of sub-section (1) shall take effect from the date of the notification under sub-section (1) of Section 3 has been issued."

10. The consolidation operation comes to an end with the publication of Notification under Section 26-A of the Act.

11. Coming to the facts of the case, the 3rd respondent executed two deeds of gift in favour of the appellants on 10.2.1996. The 2nd respondent objected to this and filed an application under Section 32 of the Act before the Collector. The

provision of Section 32 reads as under:--

"32. Transfer of lands prohibited.--The transfer of any land or fragment contrary to the provisions of this Act shall be void; and the owner of any land, so transferred shall be liable to pay such fine, not exceeding two hundred and fifty rupees, as the Collector of the district may, subject to the general orders of the State Government, direct."

12. Initially, the 1st respondent passed an ex parte order on 8.9.1997 setting aside the gift deeds and imposing penalty of Rs. 250/-. The order of the Collector was challenged in C.W.J.C. No. 11119 of 1997. The writ petition was simply disposed of remanding the matter, mainly on the ground that the order was bereft of any reasons. It is such after remand the 1st respondent passed order dated 30.9.2002.

13. We have gone through the order dated 30.9.2002 carefully. It is rather unfortunate that even after remand of the matter by the High Court mainly on the ground that the order passed by the 1st respondent on earlier occasion was without any reasons; the 1st respondent did not choose to mention any reason whatever. After referring the circumstances under which the matter was remanded to him, the 1st respondent has simply observed as under:--

14. He simply stated that the transfer of the land has taken place before issuance of any Notification under Section 26-A of the Act. It was not even mentioned as to when the register under Section 10 were published or when the Notification under Section 26-A of the Act was issued.

15. It has already been mentioned that prohibitions contained under the Act are of two kinds. The first is the one under Section 4 consequent upon publication of Notification under Section 3. This, however, does not prohibit the transfer of land from one person to another. It only prohibits the alteration of entries in the revenue records or institution of the suits. Voluntary or inter vivos transfers are not prohibited. Prohibition against such transfers, be it in the form of sale, mortgage, gift or exchange comes into play under Section 5; only with the publication of registers under Section 10.

16. Neither the 2nd respondent nor the 1st respondent have stated as to when the publication under Section 10 of the Act has taken place in respect of the concerned village. An individual or authority which intends to invoke the provision under Section 5 must be able to establish the factum of publication of register under Section 10. In absence of that, the very occasion to invoke Section 5 does not arise.

17. The learned Single Judge did not refer to this crucial aspect and has dismissed the writ petition. It hardly needs any mention that the right and liberty of a citizen to arrange and deal with his own property, including the right to contract cannot be curtailed unless any prohibition is imposed under law and the facts pertaining to the relevant provisions are established, beyond any doubt.

Such an exercise is totally lacking in the instant case. A gift deed, which is otherwise valid cannot be set aside on the basis of unverified facts.

18. We, therefore, allow this appeal and set aside the order dated 7.8.2012 passed by the learned Single Judge in C.W.J.C. No. 5034 of 2003. As a result, the writ petition is allowed and order dated 30.9.2002 passed by the 1st respondent in Misc. Case No. 89 of 1999 is set aside. Interlocutory application, if any, shall stand disposed of. There shall be no order as to costs.