

(2009) 01 PAT CK 0068

In the Patna High Court

Case No : Civil Writ Jurisdiction Case No. 10199 of 1989

Umesh Prasad Singh

APPELLANT

Vs

The State of Bihar, Collector, (Sri Krishna Singh and Others)
and Shri Raj Mohan Singh @ Ranjit Singh

RESPONDENT

Date of Decision : 15-01-2009

Acts Referred:

Bihar Consolidation of Holdings and Prevention of Fragmentation Act, 1956 — Section 10D, 12B(1), 32, 5

Citation : (2009) 57 BLJR 852

Hon'ble Judges : Ajay Kumar Tripathi, J

Bench : Single Bench

Advocate : S.C. P. Sinha and Ratan Kumar Sinha, for the Appellant; Debanjan Chaudhary, JC to SC III, for the Respondent

Final Decision : Dismissed

Judgement

Ajay Kumar Tripathi, J.—Vide Annexure-1 dated 14.9.1989 in exercise of power u/s 32 of the Consolidation of Holdings and Prevention of Fragmentation Act, 1956 a sale deed executed by one Ram Sakhi Devi was held to be void and a fine of rupees fifty was imposed for violating Section 5 of the Consolidation Act because the Collector came to a considered opinion that the transfer was in breach of the law as no permission was obtained from the Consolidation Officer.

2. Brief facts are that original respondent No. 3 late Ram Sakhi Devi executed a sale deed in favour of the writ petitioner way back on 1.3.1973. Petitioner came in possession of the said land. On 20.9.1974 the land register of the village in question was published but there was large number of errors which were pointed out by the villagers. On a Village Advisory Committee decision dated 12.8.1981 a decision was taken to cancel the consolidation scheme of the village and order for publication was made. In exercise of power u/s 12B(1) the Consolidation Officer agreed to cancel the consolidation scheme of the village and recommendation was made to the Deputy Director, Consolidation for

republication of the scheme u/s 10D of the Act. In view of the incongruity having been found in the publication the Consolidation Officer ordered for republication of register of lands and statement of principles which was finally done on 15.11.1981 and 17.11.1981 respectively.

3. Petitioner filed an application before the Consolidation Officer for recording his name in the consolidation records on the basis of the sale deed dated 1.3.1973. The claim of the petitioner was examined by the Consolidation Officer and the proceeding carried on from the year 1982 which culminated with an order having been passed in favour of the petitioner directing correction of the khata and entry of the name of the petitioner.

4. Respondent No. 4 Raj Mohan Singh after almost 15 years of the existence of the necessary entry having been made in the register, filed an application namely Case No. 107 of 1987-88 before the learned Collector for declaring the sale deed dated 1.3.1973 as void. The application was entertained by the Collector and without appreciating the facts and the background with regard to the time-frame when the, sale deed was executed as well as the register of land and statement of principle held the said transfer to be bad and also imposed a fine. The petitioner challenges the order contained in annexure-9 in this background.

5. Submission of the learned Counsel appearing on behalf of the petitioner is that notification u/s 3 was made on 26.11.1970 but the official publication with regard to the register of land made in 1974 was found to be erroneous and the same stood cancelled vide order dated 12.8.1981 as contained in annexure-1 and republication was done thereafter in the year 1981. Not only this, the private respondent No. 4 had jointly filed a petition along with the petitioner which is evident from annexure-4 with regard to correction in the name of the register of land. The same was entertained and order contained in annexure-3 was passed in favour of the petitioner but out of malice a belated time barred application was filed by respondent No. 4 before the Collector and the same was readily entertained. The action of the Collector holding that the execution of the sale deed dated 1.3.1973 to be bad was misplaced because statement of principle or the land register were not even published and in that view of the matter there was no requirement for obtaining permission from the Consolidation authorities.

6. Reliance has also been placed by the petitioner on a recent decision rendered in the case of Ram Raji Sharma v. State of Bihar 2007 P L J R 449. In the said order of the Division Bench the Court categorically records as under:

6. In the instant case, after declaring the transaction to be void, the Collector has levied fine of two hundred and fifty rupees. We personally feel that this order should have been understood as if the transaction is void in so far as the consolidation proceedings are concerned and not the transaction inter se the transferor and transferee.

It further concludes, "the conclusion would be that the transaction is void in so far as consolidation proceedings are concerned, but not inter se the parties to

the transaction.

7. Submission of the learned Counsel appearing on behalf of respondent No. 4, however, is that the sale deed executed in the year 1973 was a distress sale and even otherwise if the notification u/s 3 of the Act had already been issued then prior permission of the Consolidation Officer was a must and the Collector had done no wrong. To a pointed question as to under what circumstance the private respondent had filed a joint petition before the consolidation authority, annexure-4, and the order in favour of the petitioner was passed in terms of annexure-3, and whether it was a bonafide act on his part to raise an objection before the Collector after many years, he has no cogent or clear answer except that he was forced to do so under certain family compulsions.

8. Keeping in mind the factual position, the date of the sale deed and the way the consolidation proceeding had proceeded as well as a recent Division Bench's decision of the Court rendered in the case of Ram Raji Sharma v. State of Bihar (supra) this Court is of the opinion that the impugned order contained in annexure-1 cannot be sustained. It stands quashed and the writ application is allowed.