

(1984) 11 PAT CK 0025

In the Patna High Court

Case No : Civil Writ Jurn. Case No's. 2397, 2759, 2773, 2776 and 2777 of 1979

Yamuna Shahi and Others

APPELLANT

Vs

State of Bihar and Others

RESPONDENT

Date of Decision : 28-11-1984

Acts Referred:

Bihar Consolidation of Holdings and Prevention of Fragmentation Act, 1956 — Section 3, 3(1), 3(2), 4, 5

Citation : AIR 1986 Patna 11 : (1985) PLJR 965

Hon'ble Judges : Yadunath Hari Lalsharan Singh, J;Agrawal, J

Bench : Division Bench

Advocate : Balbhadra Prasad Singh, Ram Janam Ojha and Banwari Sharma, for the Appellant; Umesh Prasad Singh, Ram Krishna Prasad, Kusum Lata Singha, Jr. Counsel to Govt. Pleader No. 1, Mani Lal, (Standing Counsel No. 4), Madan Mohan Prasad Singh, Md. Shahjehan Ali, Kisto Kumar Gupta and K.K. Mandal, for the Respondent

Final Decision : Allowed

Judgement

Hari Lal Agrawal, J.—This is a batch of five writ applications which have been heard together as the facts and the question of law are identical. They arise out of a proceeding under the Bihar Consolidation of Holdings and Prevention of Fragmentation Act, 1956.

2. The question of law that arises for our consideration is as to what would be the date for applying the bar provided u/s 5 of the Act for transferring of any land where the scheme of consolidation had started, i.e. whether it will be from the date of publication of the notification in the official gazette of one intention to make the scheme for the consolidation of holdings in the particular area, or it would be from the announcement of its substance by beat of drums and other procedures for apprising the general public as provided in Sub-section (2) of Section 3 of the Act.

3. Granting of the relief prayed for, namely, quashing the order of Director,

Consolidation, Bihar, dated 16-6-1979, contained in Annexure 1 to each of the writ applications, will depend upon the answer to the above question.

The facts

4. The lands which have been the subject-matter of various sale deeds in question originally belonged to one Langat Sahi. In Title Suit No. 89 of 1958 a compromise was arrived at between his legal heirs in which the lands were held to belong to Tulsi Singh and Ram Swarath Singh. Tulsi Singh sold 6 bighas 14 kathas of land by a registered sale deed dated-11-1-1961 to Yamuna Shahi, petitioner No, 1, in all the cases, and 1 bigha was sold to him by Ram Swarath Singh, by another sale deed dated 26-5-1961, who got himself mutated in the records of the State of Bihar.

Yamuna Shahi then sold 2 kathas and 2.5 dhurs of land in the year 1962 to one Bhup Narain Shahi.

5. The State of Bihar made a declaration u/s 3 of the Consolidation Act for consolidation of holdings in Aurai Anchal in which the lands in question are situate. This notification was published in the Bihar Gazette on 17-11-72. The private respondents took five sale deeds in their favour on 12-12-1972 from Umesh Prasad Singh and Madan Prasad Singh sons of Bigan Singh alias Narain Singh, which were executed without any sanction of the consolidation authorities as contemplated u/s 5 of the Act. Thereafter they filed five petitions u/s 10(2) in November, 1974 before the Chakbandi Officer for opening a chak in their names in respect of the lands in question claiming possession of the lands under their purchase. The petitioners of the writ applications having come to know of the said petitions filed objections before the Consolidation Officer who on taking oral and documentary evidence produced by the parties, passed a composite order dated 26-3-76 (Annexure 2) in favour of the petitioners. Five appeals were filed by the private respondents before the Deputy Director, Consolidation, Muzaffarpur, who by his order dated 26-4-77 (Annexure 3) dismissed the appeals on the ground that they had purchased the lands without the permission of the Consolidation Officer and hence their claim was not acceptable -- a ground which had also prevailed with the Consolidation Officer.

The non-official respondents then filed revision applications before the Director, Consolidation, where all the cases were made analogous and were disposed of by the common impugned order (Annexure 1) by which he has set aside the orders of the subordinate authorities and remanded the cases for a fresh consideration of the same. The Director took the view that since the petitioners had no other avenue it was necessary that their case should be "examined properly before it is finally disposed of. With respect to the main question of taking permission in terms of Section 5 of the Act he was obsessed by the amendment made in Section 5 in the year 1975, which I shall indicate hereinafter, and took the view that there was no bar to the transfer in favour of the said respondents, in law and, therefore, he observed that if it was held by the Consolidation Officer that

the transfer of the respondents (petitioners before the Director) had a right in the disputed lands on the date of the execution of the sale deeds, they were entitled to the relief prayed before him.

I have noticed the facts from C.W.J.C. No. 2397 and it was agreed between the learned counsel for the parties that the facts were common in all the five cases.

6. Now I proceed to examine the relevant provisions of the Act. The Bihar Consolidation Act has been amended from time to time but the relevant provisions with which we are concerned in these cases may be quoted hereunder for their proper appreciation and construction, as they were at the relevant time, they being Sections 3 and 5 :

"3. Declaration by State Government of its intention to make scheme for consolidation of holdings.-

(1) With the object of effecting consolidation of holding for the purpose of better cultivation of lands in any area, the State Government may, after such enquiries as it may deem fit, by notification in the Official Gazette declare its intention to make a scheme for the consolidation of holdings in that area.

(2) The substance of the notification shall be announced by beat of drum in the villages comprised in the notified area and copies of the notification shall be hung up at the offices of all the Gram Panchayats, if any, the police-stations, the offices of the Anchal Adhikaris and the village cutcherries of the State Government for collection of rent in such area."

"5. Land not to be transferred without sanction.-- During the period commencing from the date of the publication of the notification u/s 3 to the date when the scheme of consolidation comes into operation in any notified area, no person shall transfer or partition any land in such area except with the previous sanction of the Consolidation Officer and, if the sanction is granted, the 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 in respect of such area."

In the year 1975 there were various amendments in the Act by Bihar Act XXVII of 1975 including in section 5 and after the amendment it reads as follows :

"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 the notification under Sub-section (1) of Section 3 has been issued."

From the changes made in Section 5 by the amendment of 1975 it would appear

that whereas Section 5 before the amendment simply prohibited the transfer of land except with the previous sanction of the Consolidation Officer "during the period commencing from the date of the publication of the notification u/s 3....." generally without specifying the compliance of the requirements indicated in Sub-section (2) of Section 3 as well, after the amendment the legislature made the matter more specific by specifying that the provisions of Sub-section (1) of Section 5 shall take effect right from the date of the issuance of the notification under Sub-section (1) of Section 3.

7. As already said earlier, the Director of Consolidation has taken the view that since the Legislature fixed the embargo or prohibition for transfer of land without the prior sanction for the first time in the year 1975, with effect from the date of publication of the notification in the Official Gazette, the formalities prescribed in Sub-section (2) of Section 3 must be deemed to be imperative -for applying the restrictions on transfers and inasmuch as on the date when the said respondents had purchased the lands the formalities of Sub-section (2) of Section 3 were undisputedly required and the sale deeds executed in their favour were not hit by the provisions of Section 5.

8. Whereas the argument of Mr. Balbhadra Prasad Singh, appearing for the petitioners, was that the bar created u/s 5 would become operative right from the date of the publication as contemplated under Subsection (1) of Section 3, the stand of the learned counsel for the respondents was that it would not be applicable until the other requirements provided under Sub-section (2) of Section 3 were completed.

9. There is no gainsaying that the embargo was put upon the transferees so that the consolidation authorities may feel no difficulty in determining the lands held by the landholders for fixing the Chaks. On publication of the notification of the scheme of consolidation u/s 3 the Legislature provided various other matters for working out the scheme smoothly and without any intermittant disturbances in the successful working out of the scheme including abatement of the pending suits and proceedings before the various courts and authorities and bar of institution of any fresh suit (Section 4), restriction on the transfer of any land (Section 5), preparation of an up to date records of rights in respect of lands comprised in the notified area together with a map (Section 8), preparation of register of lands (Section 9) etc.

Section 4 creating a bar on legal proceedings read "During the period commencing from the date of the publication of the notification u/s 3....." a language in similar terms to that in Section 5 already extracted earlier. Reading Section 3 of the Act it seems to me obvious that to make the scheme for consolidation of holdings that State Government has been required to declare its intention by a notification in the Official Gazette. Sections 4 and 5 even before their amendments in the year 1975 clearly mentioned the bars created thereunder right from "the date of the publication of the notification u/s 3". The publication of the notification is contemplated in Subsection (1) of Section 3. Sub-

section (2) merely prescribes some other formalities to be done, namely, the announcing of the substance of the notification by beat of drum and hanging up of the copies of the notification at the offices of the Gram Panchayats, Anchal Adhikaris, village cutcherries and at the police stations etc. The wide publicity contemplated under Sub-section (2) is simply for publicising the purport of the notification to the residents of the rural areas for their convenience and not otherwise.

Section 6 of the Bihar & Orissa General Clauses Act may also be noticed in this connection which says that where any Bihar Act is not expressed to come into operation on a particular day, as in the case of an Act made after the commencement of the Constitution, then "it shall come into operation on the day on which the assent thereto of the Governor or the President, as the case may require, is first published in the Official Gazette....". Although the Act is clear, reference can be usefully made to a decision of the Supreme Court also in this respect in *Haji Lal Mohd. Biri Works, Allahabad through Abdul Hamid Vs. The state of U.P. and Others*, .

The Supreme Court in the case of *Thiru Manickam and Co. Vs. The State of Tamil Nadu*, observed that an amendment which is by way of clarification of an earlier provision can be useful aid in construing the earlier provision even though such amendment was not given retrospective effect. The amendment of the year 1975, therefore, does not help the respondents' contention that it was for the first time in the year 1975 that the Legislature had intended that it was the publication of the notification in the Official Gazette which was the starting point and before that, the requirement of Sub-section (2) of Section 3 of the Act was essential, which cannot be accepted, and it must be held that the restrictions for effecting transfer of lands became operative right from the date of the publication of the notification in the Official Gazette as provided u/s 3(1) of the Act.

10. Learned counsel for the respondents, however, tried to take support from the provisions contained in Section 4 of the Land Acquisition Act which deals with the publication of preliminary notification and powers of the officers thereupon. Subsection (1) of this Section reads as follows :

"Whenever it appears to the appropriate Government that land in any locality is needed or is likely to be needed for any public purpose, a notification to that effect shall be published in the Official Gazette, and the Collector shall cause public notice of the substance of such notification to be given at convenient places in the said locality."

From reading the above provision it is clear that the law itself has prescribed that in addition to the publication of the notification in the Official Gazette, the Collector must also give publicity of the substance of the notification in the concerned locality. Both the obligations have been made imperative by use of the word "and" and, therefore, unless both these conditions are satisfied, Section 4

of the Land Acquisition Act cannot be said to have been complied. The mandatory character of Section 4 as to the proper notice, in my opinion, cannot be compared with the provisions contained in Section 3 of the Consolidation Act as the requirement of Sub-section (2) thereof has not been made a necessary condition precedent for the applicability of the various consequences mentioned in Sections 4 and 5 of the Act. It is, therefore, not necessary to refer to some authorities which were cited by the learned Advocates for the respondents dealing with Section 4 of the Land Acquisition Act, including the case of *State of Mysore Vs. Abdul Razak Sahib*, , which are distinguishable on the face of them in view of the special provision in the relevant Act.

Reference, however, can be made to the case of *Raja Bahadur Giriwar Prasad Narain Singh Vs. Dukhu Lal Das and Others*, which deals with the notification of vesting of an estate or tenure in the State of Bihar under the provisions of the Bihar Land Reforms Act, which reads as follows :

"Notification vesting an estate or tenure in the State -

(1) The State Government may, from time to time, by notification, declare that the estates or tenures of a proprietor or tenure-holder, specified in the notification, have passed to and become vested in the State.

(2) The notification referred to in Subsection (1) shall be published in Official Gazette and at least in two issues of two newspapers having circulation in the State of Bihar, and a copy of such notification shall be sent by registered post, with acknowledgment due, to the proprietor of the estate recorded in the general registers of revenue-paying or revenue free lands maintained under the Land Registration Act, 1876 (Ben. Act VIII of 1876), or in case where the estate is not entered in any such registers and in the case of tenure-holders, to the proprietor of the estate or to the tenure-holder of the tenure if the Collector is in possession of a list of such proprietors or tenure-holders together with their addresses, and such posting shall be deemed to be sufficient service of the notification on such proprietor or, where such notification is sent by post to the tenure-holders, on such tenure-holders for the purposes of this Act.

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It was argued before the Supreme Court that direction for publishing the notification in two issues of two newspapers should be held to be merely directory and not mandatory and consequently mere publication of the notification in the Official Gazette should be held to be sufficient. The Supreme Court rejected the contention with the following observations :

".....Alteration in the rights was to be brought about by notifications issued in respect of individual estates of a proprietor and it appears that it was because of this importance of the notification that the Legislature did not consider it sufficient that the notification should be published in the Official Gazette only. Sub-section (2) of Section 3 of the Act, therefore, contained the clause requiring

the publication in at least two issues of two newspapers."

If I may say so, the scheme of the Land Reforms Act and the procedure provided thereunder regarding publication of the notification and its due publicity is in pari materia with the scheme of Section 4 of the Land Acquisition Act and, therefore, cases under those Acts can hardly be of assistance to the respondents in the absence of any similar provision in Section 3 or, for the matter of that, Section 5 of the Consolidation Act. I have already emphasised in the foregoing paragraphs that wherever the occasion arose, it mentioned "the publication of the notification in the Official Gazette" only. Apart from that, the publication of the scheme of consolidation was general in nature and was not directed to any particular individual as in the case of the acquisition of land or vesting of any estate under the two other Acts, which contained a categorical provision for individual and public notices even after the publication of the notification.

11. I have, therefore, no hesitation in coming to the irresistible conclusion that the requirement of the other formalities regarding making publicity of the notification under Subsection (1) of Section 3 of the Consolidation Act was not necessary formalities to be completed as condition precedent for the application of the bar for the provisions contained in Section 5 of the Consolidation Act for the transfer of lands without the prior sanction of the Consolidation authorities and, therefore, the transfers of the lands in favour of the respondents must be deemed to be void in view of the provisions contained in Section 32 of the Act which provides that transfer of any land or fragment contrary to the provisions of this Act shall be void.

12. Now I am left with another argument that was raised on behalf of the respondents with respect to two cases, namely, C.W.J.C. Nos. 2397 and 2777 of 1979, that both of them had become incompetent in view of the fact that in the former case the heir of one of the deceased purchasers, namely, Anup Pandit, was not impleaded in this Court as a respondent and only his wife was impleaded; and in the latter case Ramlakhan Shahi, one of the purchasers, having died during the revisional stage when the case was before the Director and was substituted by his sons and daughters, his sons only were impleaded and his daughters being left out. It was further contended that one of his sons also, namely, respondent No. 5, had also died about 15 days back. On these facts it was argued that in any view of the matter both these writ applications had become incompetent and, therefore, they must be dismissed. It was also contended that in view of the incompetency of these two writ applications, the other three writ applications must also fail as the order of the Director was a composite order.

The last submission has been noticed only to be rejected as the three cases are quite separable and independent of the two cases where the defect of parties has been pointed out. The Director of Consolidation has remanded the matter for a fresh decision and, therefore, if this technical objection is sustained then the position will be that the remand order will have to be carried out and the

Consolidation Officer will have to undergo the formality of deciding the same issue afresh and nothing more. He has already held under his earlier order that the transactions of sale by the respondents was void in view of the restriction imposed u/s 5 of the Act. I have also taken the same view and, therefore, if the remand order is allowed to be maintained with respect to the two writ applications, the result would be that the empty formality on account of technical objection will be carried out without any advantage to the respondents, although some of the heirs of both the deceased persons are on the record before us. No prejudice, therefore, would be caused to the heirs of the deceased respondents if the order of the Director is also quashed with respect to those two cases also. I, therefore, would reject the last objection raised on behalf of the respondents with respect to the two applications.

13. The Director has rightly said in the impugned order that the respondents had purchased simply litigation and, therefore, I would saddle them with costs for the proceedings.

14. The result of the above discussions is that all these applications must succeed and the order of Director of Consolidation be cancelled. I would accordingly allow the applications and quash the order of the Director of Consolidation contained in Annexure 1 to each of the Writ applications. The petitioners must also be awarded costs. One consolidated hearing fee of Rs. 500/- is fixed to be apportioned against the respondents and each case equally.

Yadunath Sharan Singh, J.

15. I agree.