

**IN THE HIGH COURT OF JUDICATURE AT PATNA**

**Civil Writ Jurisdiction Case No.3003 of 1988**

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1. Mira Devi wife of late Mangal Pathak
  2. Rajesh Pathak
  3. Sanjay Kumar
  4. Ajoy Kumar, petitioners Nos. 2 to 4 minor sons of late Mangal Pathak under the guardianship of their mother Mira Devi (Petitioner No.1), all residents of village Neazipur, PS Simri, District Bhojpur

.... .... Petitioners

Versus

1. The State of Bihar through the Joint Director, Consolidation, Bihar, Patna
2. The Assistant Director of Consolidation, Bhojpur, Ara
3. The Assistant Consolidation Officer, Simri, Bhojpur
4. Chiranji Pathak S/O late Jugal Pathak
5. Dharmdatta Pathak S/o late Ramdhari Pathak
6. Jagya Narain Pathak, S/o Yamuna Pathak
7. Janeshwar Pathak, S/o late Ram Sankal Pathak, Nos. 4 to 7 residents of village Nezipur, PS Simir, District Bhojpur.

.... .... Respondents

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**Appearance :**

For the Petitioners : Ms. Manisha Singh, Advocate  
Mr. Prem Ranjan Raj, Advocate  
For the Respondents: Mr.

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**CORAM: HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN SINGH**  
**ORAL JUDGMENT**  
**Date: 02-02-2015**

Heard Ms. Manisha Singh, learned counsel appearing on behalf of the petitioner.

The present writ application has been filed seeking quashing of an order dated 18.11.1983 passed by the Consolidation Officer, Simri Sthan, Purana Bhojpur (annexure-1) whereby, he partly sustained the objection under section 10(2) of Bihar Consolidation of Holdings (Prevention of Fragmentation) Act, 1956 (hereinafter referred to as the Act) and partly rejected



the objection pertaining to land covered by sale deed dated 05.11.1982 pertaining to plot No. 803 of Khata No. 67 (17 decimals). The appeal preferred against the order dated 18.11.1983 came to be rejected by the Assistant Director, Consolidation, Bhojpur, Arrah vide order dated 14.11.1985 in appeal case No. 64 of 1983-84, which is also under challenge in the present writ application. The revision petition challenging the orders passed by the Consolidation Officer and Assistant Director, Consolidation before the Joint Director, Consolidation (headquarters), Patna was dismissed by an order dated 10.09.1987 passed in revision case No. 240 of 1985. The petitioners also seek quashing of the order passed by the Revisional authority.

The facts relevant for adjudication of the present writ application are short and not much in dispute.

The petitioners claimed before the Consolidation Officer that the sale deed executed by the husband of petitioner No.1 (since deceased) in favour of one Jagya Narain Pathak was illegal and void and should be declared to be illegal. Two grounds were taken for declaring the sale deed illegal. Firstly, that the husband of petitioner No.1, Mira Devi, (since deceased) was not in proper state of mind and was mentally sick at the time of execution of the sale deed. Secondly, the village in which the plot

under dispute is situated was notified under section 5(1) of the Act on 24.06.1981. It was, accordingly, pleaded before the Consolidation Officer that without obtaining prior permission from the Consolidation Officer, sale of the property could not have been effected through registered sale deed dated 05.11.1982.

I have perused all the three impugned orders passed by the Consolidation Officer dated 18.11.1983, Assistant Director, Consolidation dated 14.01.1985 as well as the order dated 10.09.1987 passed by the Joint Director, Consolidation, Patna.

It appears that upon considering the fact that the village was de-notified under section 5(2) of the Act through letter No. 1140 dated 11.08.1981, making it clear that there shall be no requirement of seeking prior permission for effecting sale, all the three authorities refused to accept the plea that sale could not have been effected because of the notification dated 24.06.1981. I do not find any infirmity with the reasoning to this effect.

Learned counsel for the petitioners has vehemently argued that the vendor, Mangal Pathak, did not have the title to transfer the land in dispute, the property being a joint family property. She further submits that without going into the enquiry, as regards mental status of late Mangal Pathak, the authorities under the Act, rejected the petitioners claim that the sale deed

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cannot be said to be valid and legal. From the orders under challenge, it appears that nothing was brought to the notice of the authorities, as regards mental status of said Mangal Pathak. In any case, whether he was of unsound mind or not, at the time of execution of sale deed, cannot be decided in a proceeding under Article 226 of the Constitution of India. The plea that Mangal Pathak did not have the title over the disputed land and, therefore, he did not have right to transfer the property through the sale deed in question dated 05.11.1982 can also not be entertained under writ jurisdiction of this court.

I, therefore, find no merit in this writ application. This application is, accordingly, rejected. The order will, however, not be a bar to the petitioners from approaching any appropriate forum for appropriate relief.

**(Chakradhari Sharan Singh, J)**

BKS/-

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