

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.4051 of 1991

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1. Kameshwar Tiwary
 2. Arun Tiwary
 3. Pawan Tiwary
 4. Suman Tiwary, all sons of Paspas Tiwary- deceased sole petitioner
 5. Rita Kumari D/o Paspas Tiwary, deceased, all residents of Paru Tola-
Mahuwariya PS Paru District Muzaffarpur

.... Petitioners

Versus

1. The State of Bihar
2. The Collector, Muzaffarpur
- 3(a) Suresh Choudhary
- 3(b) Dinesh Choudhary
- 3(c) Most. Laxminia Devi
4. Braj Bhushan Sharma son of Late Hardeo Narain Thakur resident of village &
PO Paroo PS Paroo district- Muzaffarpur

.... Respondents

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Appearance :

For the Petitioners : Mr. Anshay Bahadur Mathur, Advocate

For the Respondents: Mr. Bijoy Kr. Sinha, AC to AAG IX

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CORAM: HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN SINGH

ORAL JUDGMENT

Date: 03-02-2015

The petitioners seek quashing of an order dated 15.03.1991 passed by the Collector, Muzaffarpur in Misc. case No. 22/84-85 whereby, he has declared two registered sale deeds dated 09.11.1979, executed by respondent No.4 in favour of the original petitioner, as void and has, in exercise of power under section 32 of Bihar Consolidation of Holdings and Prevention of Fragmentation Act, 1956 (hereinafter referred to as the Act) imposed a fine of Rs. 200/- on respondent No.4 on account of violation of mandatory provisions of the Act.

This writ application was filed by one Paspas Tiwary who died during the pendency of this application and has been substituted of his legal heirs.

Despite service of notice, respondents have not appeared. This writ application is, accordingly, disposed of on the basis of averments made in the writ application, which have remained uncontroverted.

This is the case of original petitioner that respondent No.4, Braj Bhushan Sharma, had applied before the Consolidation Officer, Paroo, Muzaffarpur, seeking transfer of two plots in question in favour of the petitioner appertaining to Thana No. 431, Khata 2657, Khesra 9829 and 9804 admeasuring .95 decimal and .84 decimal respectively. The permission is said to have been granted by the Consolidation Officer, Paroo, Muzaffarpur and Consolidation case No. 1693 was, accordingly, registered and the Consolidation Officer, Paroo, Muzaffarpur vide order dated 07.11.1979 (annexure-2) granted permission for such transfer by the said Braj Bhushan Sharma in favour of the original petitioner. It has further been asserted that the step mother of respondent No. 4, namely, Kabutari Devi, preferred an appeal against the order of Consolidation Officer, Paroo, granting respondent No.4 permission to sale the two plots before the Deputy Director, Consolidation. In

the meanwhile and immediately after grant of sanction by order dated 07.11.1979, the two plots were transferred by respondent No.4 to the petitioner by two separate sale deeds executed on 09.11.1979. It has further been averred that the Deputy Director, Consolidation by an order dated 08.04.1981 dismissed the appeal preferred by the said Kabutari Devi and affirmed the order of Consolidation Officer. The order of the Appellate Authority dated 08.04.1981 has not been brought on record by the petitioner. However, there is statement in the form of undertaking given in the writ application that a copy of the said order will be produced before this court at the time of argument. It is indicated herein itself that the order of the Appellate Authority, said to have been passed dismissing the order passed by the Consolidation Officer has not been brought on record nor has been produced before this court on behalf of the petitioner even otherwise. It has further been asserted in the writ application that a revision case No. 1290/81 was filed by the said Kabutari Devi before the Joint Director, Consolidation giving rise to revision case No. 1290/81. The revision case was, however, dismissed for default by virtue of an order dated 20.08.1983. It was the original petitioner's case that the Joint Director, Consolidation appears to have restored the said revision case No. 1290/81 without notice to him and by an ex-





parte order dated 6/11.04.1984 allowed the revision application and set aside the order of the Appellate Authority dated 08.04.1981. After passing of the order by the Joint Director, one Bishwanath Choudhary appears to have approached the district Collector, Muzaffarpur by filing Misc. case No. 22/84 seeking action under section 32 of the Act for imposition of fine and seeking declaration that the sale deeds dated 09.11. 1979 were void. The collector heard the matter ex parte and by an order dated 15.03.1991 declared the two sale deeds dated 09.11.1979 as void and imposed fine of Rs. 200 on the executant (respondent No.4).

Mr. Anshay Bahadur Mathur, learned counsel for the petitioners, has contended that the Collector, in exercise of power under section 32 of the Act, passed the impugned order solely on the basis of ex parte order by the Joint Director, Consolidation dated 6/11.04.1984 whereby, he held that the sale deeds were executed without due permission. He has submitted that the order of the revisional authority dated 6/11.04.1984, being cryptic, is not sustainable in the eye of law. He has also submitted that since the revisional authority passed the order without giving the original petitioner due notice, after revision application was dismissed for default, the same is bad for violation of principles of natural justice and fair play.



He has relied upon an order of this court reported in **2005(3) PLJR 487 (Gopal Shankar Mishra v. the State of Bihar & Ors)** in support of submission that the order of the revisional authority is not sustainable, the same being cryptic and without discussing the material on record. He has also contended that the Joint Director, Consolidation had no power, while exercising revisional jurisdiction, to set aside the finding of facts recorded by the Deputy Director after reassessing the evidence on record. He has relied upon a judgement of this court reported in **1996(2) PLJR 924 (M/s Bhagalpur Cold Storage v. Oriental Fire and General Insurance Co. Ltd.)** in support of this submission and has also added that the Joint Director could not have substituted its own finding after reassessing the evidence on record in place of finding recorded by the Appellate Authority.

Before I deal with the legal submissions made on behalf of the petitioners, I must point out that, as noted above, that sanction for transfer for the plots in question was granted by the Consolidation Officer on 09.11.1979. On the other hand, I find from the order of the revisional authority that prior to 07.11.1979, on 02.08.1979 itself the Consolidation Officer, Paroo had refused sanction for transfer of the said land by respondent No.4 in favour of the original petitioner. This aspect has not been dealt with in the



writ application. There is no denial or there is no averment in the writ application that no such order was passed on 02.08.1979 by the Consolidation Officer refusing to grant permission for such transfer. Secondly, the appeal preferred by the said Kabutari Devi is said to have been dismissed by the Appellate Authority by an order dated 11.04.1981. The said order dated 11.04.1981 has not been brought on record, though there is statement in the writ application that the same shall be produced at the time of argument. Thirdly, the revisional order was passed on 6/11.04.1984 by the Joint Director, Consolidation. The said order has not been challenged by the petitioners. As a matter of fact, Kabutari Devi, who had preferred appeal against the order granting sanction and revision against the order dismissing her appeal has not been impleaded as a party in the present writ proceeding. In such circumstances, this court is not required to consider validity of the order dated 6/11.04.1984 passed by the revisional authority. The revisional authority appears to have come to the conclusion that respondent No.4 executed the sale deeds despite refusal of sanction for transfer of the plots in question in favour of the original petitioner.

Section 5 of the Act prescribes transfer of a land by any person in the notified area by way of sale, gift, exchange or



partition with the previous sanction of the Consolidation Officer, after the date of publication of preparation of register of lands and statement of principles under sub-section(1) of section 10 of the Act. From the conclusion arrived at by the revisional authority, in his order dated 6/11.04.1984, it appears that permission/ sanction as required under section 5 of the Act was refused to respondent No.4 on 02.08.1979 itself. This finding of fact arrived at by the revisional authority has remained unchallenged.

Section 32 of the Act reads thus:-

*“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.”*

Effect of section 32 is that transfer of any land or fragment contrary to the provisions of the Act shall be void, by the operation of the said provision. Therefore, there being conclusive finding by the revisional authority, which has not been challenged by the original petitioner, to the effect that plots were transferred despite refusal to grant sanction for such transfer, by operation of law under section 32 of the Act, the transfers in question became



void. The Collector is not required separately to pass an order under section 32 of the Act to the effect that a particular transfer became void for non compliance of or being contrary to various provisions of the Bihar Consolidation of Holding and Prevention of Fragmentation Act, 1956. Section 32 simply makes it clear that owner of the land is liable to pay fine for having transferred a land contrary to provisions of the Act and confers upon the Collector of the district power to impose such fine upon owner of the land not exceeding Rs. 250. In the present case the Collector has imposed a fine of Rs. 200 by the impugned order dated 15.03.1991, in view of the finding of the revisional authority that respondent No.4 transferred the land in a manner contrary to the provisions of the Act.

I must point out that the Collector did not come to his own finding as regards the transfer of land by respondent No.4 to the original petitioner. He, on the basis of findings already arrived at, exercised his power by the impugned order under section 32 of the Act of imposing fine. Such order, in my opinion, in the facts and circumstances of the case, cannot be faulted with.

The reliance placed on behalf of the petitioners upon the decision of this court in case of *M/s Bhagalpur Cold Storage v. Oriental Fire and General Insurance Co. Ltd.* (supra) is of no help

to the petitioners in the present facts and circumstances of the case as the order of the Joint Director, Consolidation passed in exercise of revisional jurisdiction is not under challenge in the present writ application.

For the same reason, the order of this court in the case of *Gopal Shankar Mishra v. the State of Bihar & Ors* (supra) cannot be applied in the present facts and circumstances of the case as the order of the revisional authority attained finality and I find no reason to go into the correctness of the order of the revisional authority, which has not been specifically challenged in the present writ application. More so, there is no sufficient pleadings supported by documents as regards nature of the order passed by the Appellate Authority dated 11.04.1981 and the order of the Consolidation Officer, mention of which finds place in the order of the revisional authority dated 02.08.1979.

There being no merit in the application, for the reasons recorded above, the application is dismissed.

(Chakradhari Sharan Singh, J)

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