

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.7340 of 1998

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1. Govind Mahto, son of late Chalitar Mahto, resident of village-Tek Nari, P.S. Patepur, District-Vaishali
 2. Maheshwar Prasad Singh, son of late Ram Deyal Singh, resident of village-Har Lochanpur Sukki, P.S. Patepur, District-Vaishali

.... Petitioner/s

Versus

1. The Collector, Vaishali at Hajipur
2. Raja Ram Sah, son of late Jugeshwar Sah, resident of village-Tek Nari, P.S. Patepur, District-Vaishali

.... Respondent/s

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Appearance:

For the Petitioner/s : Mr. Naresh Chandra Verma, Advocate
For the Respondent/s : Mr. Rajiv Kumar Singh, G.P.-2

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CORAM: HONOURABLE MR. JUSTICE JYOTI SARAN
ORAL JUDGMENT
Date: 23-04-2015

Heard Mr. Naresh Chandra Verma, learned counsel
appearing on behalf of the petitioners.

This writ petition under Article 226 of the Constitution of India has been filed questioning the order dated 26.6.1995 / 10.10.1995 passed by the respondent Collector, Vaishali at Hajipur in Revenue Case No. 62 and 63 of 1993-94, copy of which is placed at Annexure-2 to the writ petition whereby the Collector relying upon the provisions of Section 5 of the Bihar Consolidation of Holding and Prevention of Fragmentation Act, 1956 (hereinafter referred to as 'the Act') has held the transaction entered in between the petitioner and the private respondent vide registered sale deed dated 2.6.1984 executed by the private respondent in favour of the petitioner in

respect of plot bearing R.S.P. No. 1539 and 1540 of Khata No. 251 admeasuring four ½ decimals situated in village-Tek Nari, Thana No. 448 in the District of Vaishali, as a void document in absence of previous permission taken by the transacting parties from the consolidation authorities.

Whereas a stand was taken by the petitioner before the Collector as well as before this Court that the constraints provided under Section 5 of 'the Act' becomes applicable only upon happening of certain circumstances i.e. after publication of preparation of register of land and statement of principles under sub-section (1) of Section 10 of 'the Act' and since in the present case although the register of lands have been prepared but the statement of principles had not been prepared or published in the manner provided under Section 10 of the Act hence there was no occasion to obtain any permission from the consolidation officer. The plea taken by the petitioner was rejected by the Collector vide order impugned present at Annexure-2 to the writ petition relying upon a report of the Consolidation Officer which merely reported that a prior permission was essential.

The writ petition was considered on this issue and vide order recorded on 23.8.1999 the Court required the counsel for the respondents to rebut the issues raised by placing relevant documents but despite the matter being taken up on 5.10.1999, 21.12.1999 and again on 24.1.2000 when the counter affidavit was not forthcoming

that this application was admitted on 24.1.2000 and the operation of the order impugned at Annexure-2 was stayed.

A counter affidavit has been filed on behalf of the Collector, Vaishali through the Deputy Collector thereafter but despite the issue having been recorded by this Court in the order dated 23.8.1999 and 21.12.1999 as well as at the stage of admission of the case on 24.1.2000 but yet the counter affidavit is silent on the issue. A report of the Circle Officer has been enclosed addressed to the In-charge Deputy Collector dated 28.1.2000 in which he simply reiterates the statutory provisions underlying Section 5 of 'the Act' which requires a prior permission in the circumstances explained. Despite the specific orders of this Court, no document has been placed on record reflecting the preparation of statement of principle and its publication in the manner required under Section 10(1) of 'the Act'.

I have heard learned counsel for the parties and I have perused the materials on record. A legal issue having been raised by the petitioner before the Collector as well as before this Court and which issue also stands recorded in the orders of this Court, yet the counter affidavit simply relies upon a communication of the Circle Officer-cum-Consolidation Officer to respond in paragraph-20 that the statement of principle has been published, though no copy thereof is on record.

Section 5 of the Act prohibits a transfer without obtaining



sanction of the Consolidation Officer but such restraint comes into operation only after the publication of preparation of register of lands and statement of principle under sub-section (1) of Section 10 of 'the Act'. Whereas the register of lands are prepared in the manner provided under Section 9, the statement of principles are prepared in the manner provided under Section 9A of 'the act'. Once this exercise is carried out that under Section 10(1) of 'the Act' the register of lands prepared under Section 9 alongwith the statement of principles prepared under Section 9A is to be published in the manner prescribed affording opportunity to a person aggrieved to file his objection as to the correction thereof. The prescription in respect of publication of register of lands and statement of principles is provided under Rule 6D of the Bihar Consolidation of Holding Rules, 1958 (hereinafter referred to as 'the rules') and which mandates that the statement of principles under Section 9A and the register of land prepared under Section 9 shall be published in the unit alongwith the map for a period of 30 days by a beat of drum and a general notice in Form-XA shall be published in the unit in the manner prescribed in Rule 13. It further provides that before the date of such publication a notice in Form-XB alongwith extracts of relevant entries of the register of land shall be served upon the raiyats and under raiyats of the land to which the entries relates. Rule 6D further enables any person interested to file his objection within 45 days of publication

under Section 10(1) of 'the Act' and which has to be disposed of in the manner prescribed.

A plain reading of the statutory provisions referred to above would manifest that the publication of register of lands and statement of principles are not an empty formality rather is a full-fledged exercise to be undertaken by the consolidation authorities as per the statutory provisions. A specific issue having been raised by the petitioner regarding non-publication of the statement of principles in tune with Section 10(1) of 'the Act' read with Rule 6D of the Rules and an issue to that effect having been framed by this Court while admitting the writ petition but the answer is not forthcoming meaning thereby the contention of the petitioner goes uncontested.

For the reasons aforementioned, the order dated 26.6.1995 / 10.10.1995 passed by the respondent Collector, Vaishali at Hajipur in Revenue Case No. 62 and 63 of 1993-94 cannot be upheld and is accordingly set aside. The writ petition is allowed but without any order as to costs.

(Jyoti Saran, J)

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