

Civil Writ Jurisdiction Case No.9430 of 1998

2. (i) Priya Ranjan Panjiyar

(ii)Gupta, wife of deceased

(iii) Pushpanjana Rajbriti

(iv) Divyanganj, all three daughters of deceased

.... Petitioner/s

Versus

1. The State of Bihar

2. District Magistrate-cum-Collector, Vaishali, at Hazipur

3. Pasupati Tiwari, son of Late Sahdeo Tiwari, resident of village-Bhathandi, P.S. Hazipur, P.O. Dharhara, District-Vaishali

4. Smt. Sarda Devi

wife of Raghuvir Pandey

5. Rajnikant Pandey

son of Raghuvir, respondent Nos. 4

and 5 resident of village-Harihar Harishankarpur Alias Babhangawan, P.S. & Anchal-Hazipur, P.O. Rajauli, District Vaishali

.... Respondent/s

Appearance : For the Petitioner/s : Mr. Nirmal Kumar Sinha 3, Adv.

Mr. Arun Kumar, Adv.

For the Respondent/s :

Mr. (GP2)

Mr. Ritesh Ranju, Adv.

Mr. Sudhir Kumar Raj, Adv.

Mr. Arun Kumar Lal, Adv.

Mr. Saroj Kumar Choubey, Adv.

Mr. Neeraj Nandan, Adv.

CORAM: HONOURABLE MR. JUSTICE JYOTI SARAN

ORAL JUDGMENT

Date: 23-07-2015

Heard Mr. Bhubneshwar Prasad, learned counsel for the petitioner,

learned counsel for the state and learned counsel for the private respondent.

The petitioner has questioned the order dated 20.09.1990 passed by the District Magistrate-cum Collector, Vaishali in Suit No.33 of 1984-85 whereby he has declared the sale deed executed by the private respondent nos. 4 and 5 in favour of the two writ petitioners along with one other namely, Satya Narayan Sah, as void for having been executed without following the statutory prescriptions provided under Section 5 of the Bihar Consolidation of Holdings

and Prevention of Fragmentation Act, 1956 (hereinafter referred to as 'the Act') and thus in view of the statutory provisions of Section 32 of 'the Act' it has been rendered void ab initio.

Facts of the case are in a very narrow compass, the sale deed in question was executed by the respondent Nos. 4 and 5 in favour of the two petitioners and one Satya Narayan Sah on 4.9.1982, a copy of which is placed at Annexure-1. Complaining of statutory violation in the matter of execution of the sale deed in question, the respondent No.3 filed an application under Section 32 of 'the Act' before the Collector, Vaishali which was registered as Chakbandi Case No.33 of 1984-85. Petitioners contested the matter by filing a rejoinder and by the impugned order passed on 20.9.1990, the Collector, Vaishali has declared the sale deed void and being aggrieved the petitioners are before this Court.

Mr. Bubneshwar Prasad learned appearing for the petitioners submits that the village in question was exempted under the Notification issued under Section 5 of 'the Act' and thus the parties were at liberty to execute any sale deed. He further submits that the nature of land in question was an orchard and thus was not covered under the statutory provisions. It is also the contention of the petitioners that since the village was confirmed hence the prohibition did not apply.

The arguments of Mr. Prasad has been contested by learned counsel for the State and the private respondent to submit that the notification exempting such transactions as relied upon by the petitioner present at Annexure-3 does not apply to the transaction in question for it was published only after 10.12.1982 and was operative for a period of six months thereafter whereas the sale deed in question was executed prior thereto on 4.9.1982 and hence the exemption was not applicable to the present case. In so far as the confirmation of the village is

concerned, it has been argued that although the village had been confirmed and the 'Chaks' had been distributed but in absence of a notification under Section 26A of 'the Act', the bar continued in terms of Section 5 of 'the Act'.

I have heard learned counsel for the parties and I have perused the materials on record.

There is no dispute that the sale deed was executed on 4.9.1982 i.e. prior to the exemption granted vide the notification issued under Section 5 of 'the Act' which was circulated only on 10.12.1982 and must have been published thereafter. Thus the reliance of the petitioner on the exemption notification present at Annexure-3 cannot be upheld. In so far as the issue of orchard is concerned, the records manifest that this issue was never argued by the petitioners before the Collector. Being an issue of fact he cannot be permitted to argue the same before this Court. In so far as the issue of confirmation of village is concerned, the impugned order records that until 14.10.1985, no notification under Section 26A of 'the Act' had been published and even when this writ petition is pending consideration at the hearing stage since 1998 yet nothing has been brought on record by the petitioners to support the issuance of any such notification.

In the circumstances discussed and in view of the clear prohibition under Section 5 of 'the Act' the sale deed executed by the respondent Nos. 4 and 5 in favour of the two petitioners and Satya Narayan Sah was void and has been right declared as such by the impugned order which requires no interference.

The writ petition is dismissed.

(Jyoti Saran, J)

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