

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.11444 of 2013

JAI PRAKASH GUPTA SON OF LATE KESHWAR NARAYAN, RESIDENT OF MUGAL
BAZAAR, POST OFFICE BASUDEOPUR, POLICE STATION KOTWALI, DISTRICT
MUNGER Petitioner

Versus

1. THE STATE OF BIHAR
2. THE SECRETARY, ENVIRONMENT AND FOREST DEPARTMENT, STATE OF BIHAR
3. ADDL. CHIEF CONSERVATOR OF FOREST CUM CHIEF WILD LIFE WARDEN,
DEPARTMENT OF ENVIRONMENT AND FOREST DEPARTMENT, STATE OF BIHAR
ATPATNA
4. THE CONSERVATOR OF FOREST, PURNEA CIRCLE, PURNEA
5. THE COLLECTOR, BEGUSARAI
6. THE DFO, FOREST DIVISION, BEGUSARAI
7. THE COLLECTOR CUM DIVISIONAL OFFICER, KIAWAR JHHIL BIRD VIHAR
SANCTUARY, MANJHAUL
8. ADDL CONSERVATOR OF FOREST, BEGUSARAI Respondents

Appearance :

For the Petitioner : Mr. R.S.Roy, Senior Advocate and
Mr. Binod Bihari Singh, Advocate
For the Respondents : Mr. SC 23

CORAM: HONOURABLE MR. JUSTICE SAMARENDRA PRATAP SINGH
ORAL JUDGMENT

Date: 21-08-2015

Heard learned counsel for the parties.

The petitioner prays for declaring the notification no. SO
781 published on 10.6.1989 in Bihar Gazette by the Joint Secretary,
Department of Environment and Forest Department, State of Bihar
under the order of the Hon'ble Governor, Bihar by which an area of
land measuring about 6311.63 hectare in the district of Begusarai
constituted for “Kawar Jhhil Bird Vihar Sanctuary” under Section
18(1) of Wild Life (Protection) Act, 1972, has lapsed its force. He
has further prayed for setting aside consequential Letter no. 38,
dated 5.1.2013 issued by the Collector, Begusarai by which the

District Sub Registrar, Begusarai and the Sub Registrars of Teghra, Bakhri and Balia Sub-divisions of the District have been directed not to register the sale/purchase of the lands, mentioned in the Notification dated 20.6.1989 published in Bihar Gazette, Extraordinary.

2. Before I consider the issues involved in the case, it would be relevant to notice the petitioner's case in brief. In a ceiling proceeding under the Bihar land Reforms (Fixation of Ceiling Area and Acquisition of Surplus Lands) Act, 1961, 362.85 acres of land of different villages were notified as exempted under section 5 of the Act, including the lands measuring 18.63 acres of Plot no. 2032 Khata no.1269 of village Akauma (Thana no. 116) in the district of Begusarai, which has been allotted in his share after partition in the family.

3. The notification under section 5 of the Ceiling Act was published in District Gazette, Begusarai on 1.11.1989. In the year 2012, the petitioner decided to sell his entire land measuring 18.63 acres of land of village Akauma, Thana 116 in the district of Begusarai. Consequently, some persons approached and agreed to purchase his land and some advance was also tendered. In the meanwhile, the District Magistrate vide his letter dated 5.1.2013 directed the District Sub-Registrar, Begusarai and Sub-



Registrars, Teghra, Bakhri and Balia not to admit sale and purchase of land mentioned in the notification published in Bihar Gazette on 20.6.1989 for Kanwar Jheel Bind Sanctuary, Majhaul for registration. A copy of letter, dated 5.1.2013 is annexed as Annexure-1. It is relevant to point out that the State Government vide notification no. S.O. 781 under section 18(1) of the Wild Life (Protection) Act, 1972 declared total area of land measuring 6311.63 hectares of land in Begusarai district as “Kanwar Jheel Bird Sanctuary”. After publication of the notification under section 18(1) of the Act, 1972 in Bihar Gazette on 20.6.1989, a proclamation was published under section 21 of the Act on 20.6.1997 by the Assistant Forest Conservator, acting as Collector, under the delegated power contained in notification no.114 dated 3.2.1997 under section 26 of the Act,

4. The petitioner argued that the proclamation under section 21 of the Act, has lapsed for two reasons; firstly, the proclamation under section 21 was notified after about 8 years from the publication of the notification under section 18(1) of the Act; secondly, the proclamation was not published and circulated in every town and village concerned, as mandatorily required under section 21 of the Act, itself. Further more, the letter of the Collector dated 15.1.2013 directing the District Sub Registrar, Begusarai and



Sub Registrars, Teghra, Bakhri and Balia not to register any land which are notified under section 18(1) of the Act as Kanwar Jheel Bird Sanctuary” as being in teeth of decision of learned Single Judge in the case of Deo Prasun v. State of Bihar, reported in 2014(4) PLJR 715 relying upon judgment of Division Bench in the case of Bihar Deed Writers’ Association vs State of Bihar, reported in 1988 PLJR 671.

5. A counter affidavit has been filed on behalf of the respondents. The respondents dispute the submissions of the petitioner that proclamation was not published in accordance with Section 21 of the Wild Life (Protection) Act, 1972. They specifically state in paragraph 11 that after notification under section 18 of the Act, proclamation under section 21 of the Act was duly made and a wide publicity was given to the same, pursuant to which 1800 objections were received. They submit that altogether 49 objections were disposed of and 1527 acres of land were declared free from all encumbrances under section 24(2) of the Act. The Sub-divisional Magistrate, Manjhaul who has been declared Collector under section 18(b) of the Act, in place of Conservator of Forest, is continuously hearing objections and monitoring the whole process under the provisions of the Act. They submit that Kanwar Jheel Bird Sanctuary is a rare fresh water habit of immense

ecological and geological significance and matter of pride for the State of Bihar.

6. So far as letter dated 5.1.2013 of the District Magistrate directing the District Sub Registrar and Sub-Registrars of Teghra, Bakhri and Balia not to admit registration of sale or purchase of the land constituting Kanwar Jheel Bird Sanctuary, learned counsel appearing for the respondents submits that the said communication was issued in view of Section 20 of the Act. He submits that Section 20 of the Act puts a ban on accrual of rights notified under section 18(1) of the Act except by way of succession, testamentary or intestated.

7. I have heard learned counsel for the parties. Before, I examine the issues raised by the petitioner, it would be relevant to notice the circumstances leading to issuance of notification under section 18(1) of the Act:

(i) The Kanwar Lake, as would appear from the pleadings, situated in Begusarai district is a wetland and as per bio-geographic regions of India fall into Indo-gangetic plain category. The Lake has been formed because of meandering of the river Budhi Gandak. The wetland has developed especially adopted vegetations and some unique representative fauna. It is a wonderful freshwater habitat of about 140 species of flora, 170 species of birds including

58 migratory birds, 41 species of fishes and a lot of arthropods, molluscs and phyto-planktons and several other botanical and zoological species are still awaiting their discovery. The legendary ornithologist late Dr. Salim Ali, the founder of Bombay Natural History Society visited the area several times in sixties.

(ii) Realizing the importance of the area, the Collector of Begusarai had notified the area as “Gair Mazarua Jheel” and Government property in 1986. The Government of Bihar declared the Kanwar wetland as closed area bearing the name Kanwar Jheel Pakshi Vihar in the year 1987 and finally in the year 1989, it was notified as Kanwar Lake Bird Sanctuary as per which 6311.63 hectare land of 10 villages were declared as Sanctuary under section 18(1) of the Wild Life (Protection) Act, 1972.

8. The petitioners have argued that the notification under section 18(1) of the Act does not survive as there has been delay of about 8 years in publication of proclamation under section 21 of the Act, as also because the publication was not made in every town and village concerned of the area, comprised under section 18(1) of the Act. As per the first submissions of the petitioner, an issue would arise whether proclamation under section 21 would lapse as the notification was published after about 8 years.

9. In order to appreciate the point, it would be necessary to

notice section 21 of the Act, which is quoted hereinbelow for easy reference:

“21- Proclamation by Collector.- When a notification has been issued under section 18, the Collector shall (within a period of sixty days) publish in the regional language in every town and village in or in the neighbourhood of the area comprised therein, a proclamation-

(a) specifying, as nearly as possible, the situation and the limits of the sanctuary; and

(b) requiring any person, claiming any right mentioned in section 19, to prefer before the Collector, within two months from the date of such proclamation, a written claim in the prescribed form. Specifying the nature and extent of such right with necessary details and the amount and particulars of compensation, if any, claimed in respect thereof”.

10. It is true that as per Section 21 of the Act, once a notification under section 18(1) is made, the Collector is to publish proclamation in every town and village or in the neighborhood of such area. However, from bare perusal of the provisions, as existing prior to 1.4.2003, no time limit was prescribed for issuance of such proclamation. It was only by Act 16 of 2003, that a time limit of 60 days was prescribed w.e.f. 1.4.2003. The proclamation made in the year 1997, thus would not be hit by the time limit prescribed by Act 16 of 2003, which is not with retrospective effect. As such, I find no merit in the submission of the petitioner that the notification under section 18(1) is rendered defective or *non-est* as the

proclamation was made belatedly after about 8 years. The plea of the petitioner as such is rejected.

11. The petitioner next argued that the proclamation was not made in accordance with law and it has not been published in every town and villages or in the neighborhood of the area comprised under section 18(1) of the Act. The submission of the petitioner is only to be noted to be rejected, on two counts;

(a) firstly the proclamation made under section 21 in the year 1997 has been challenged after 16 years of its publication. The challenge is fit to be dismissed on the point of delay and laches alone;

(b) Even on facts, the objection has no merit. The respondents in paragraph 11 of the counter affidavit, specifically stated that wide publicity was given under section 21 of the Act, which was the reason that as many as 1800 objections were received. Though the counter affidavit was served upon the petitioner on 7.4.2011, there is no rejoinder denying the claim of the respondents. Thus, it is difficult to accept the petitioner's contention that notification was not issued in accordance with section 21 of the Act. As such, the contention of the petitioner that there was no proclamation in accordance with section 21 of the Act is devoid of merit and is accordingly rejected.



12. This takes me to the other issue whether the Collector, Begusarai was within his right in issuing direction to the District Sub-Registrar, Begusarai and Sub-Registrars, Teghra, Bakhri and Baliya Sub-Division, not to admit sale and purchase of the land covered under notification, dated 20.6.1989 under section 18(1) of the Act for registration.

13. The petitioner submits that a Collector of a district is not vested with power under the Registration Act to direct a Sub-Registrar not to register a land presented for registration, if it complies with statutory formalities. The direction of the Collector is in teeth of the decision of learned Single Judge in the case of Dev Prasun vs. State of Bihar, reported in 2014(4) PLJR 715, relying upon a Division Bench judgment in the case of Bihar Deed Writers' Association vs State of Bihar, reported in 1988 PLJR 671. He submits that in the said case, the Court held that the Registrar in exercise of its power under section 68 of the Registration Act cannot direct the Sub-Registrars not to register a document presented for registration, if the documents comply with the statutory requirements and formalities. The Division Bench further observed that similarly if the documents otherwise comply with the statutory requirements and formalities, if presented for registration, the registering authority is bound to register it and it is not open for

the registering authority to enquire and ascertain the title to its own satisfaction.

14. On the other hand, learned counsel for the State submits that the Collector, Begusarai directed the District Sub-Registrar, Begusarai and Sub-Registrars, Teghra, Bakhri and Balia Sub-Division not to admit sale and purchase of lands notified under section 18(1) of the Act for registration in view of statutory bar contained under section 21 of the Act.

15. As the submission of the petitioner is based upon the Division Bench judgment of this Court, and as the learned Single Judge has given his decision relying upon the same, it would be necessary to notice the brief facts of the case before the Division Bench in the case of Bihar Deed Writers' Association & Ors (supra).

16. In the said case, the petitioners made a grievance that though they have complied with the provisions of the Bihar Land Reforms (Fixation of Ceiling Area & Acquisition of Surplus Land) Act, 1961, the respondents have refused to register the sale deed. On the other hand, the case of the respondents before the Division Bench was, that a direction has been given by the Registrar under power of superintendence under section 68 of the Registration Act to Sub-Registrars to check and verify the facts so that the



provisions of the Ceiling act are not violated. Not agreeing with the submissions of respondents, the Division Bench observed that power under section 68 of the Act (power of superintendence and control over Sub-Registrars) is an administrative power. The Division bench as such observed that in exercise of powers under section 68 of the Registration Act, the Registrar (Collector) cannot direct the Sub-Registrars not to register a document presented for registration, if the same complies with the statutory requirements and formalities. The Division Bench in paragraph 3 has observed that the registering authority is under obligation to register a document if it otherwise complies with the statutory requirements and formalities and it is not for the registering authority to enquire and ascertain the title to its own satisfaction. Furthermore, it was stated that if the transferor does not have any title or has an imperfect title to the property, then the transferee or the transferor in view of provision of Transfer of Properties Act, 1982 will get no title or imperfect title. The relevant extract of paragraphs 3 and 5 of the judgment of Division Bench is quoted herein below for easy reference:

“3.In our view, if a document otherwise complying with the statutory requirements and formalities is presented for registration, the registering authority is bound to register it. It is not for the registering authority to enquiry and ascertain the title to its own

satisfaction.....”

“5.The Registrar, in our view, cannot, in exercise of the power under this section, direct the Sub-Registrars not to register a document presented for registration if the document complies with the statutory requirements and formalities”.

17. It would appear from the facts that though there was declaration that the sale deed was in accordance with the Ceiling Act, 1961, the same was not being registered. The Division Bench as such observed and rightly so, that if statutory requirements and formalities are fulfilled, the Registrar cannot direct the Sub-Registrars not to register a document presented for registration.

18. There cannot be any dispute to the proposition that if the statutory requirements are fulfilled, the Registrar (Collector) cannot direct the Sub-Registrars to register the land. However, the decision rendered in the facts of the case would not extend to a case where the registration itself specifically is barred under a statute in contradistinction with one being registered in violation of law, like Ceiling Act. Section 20 of the Wild Life (Protection) Act, 1972 puts a bar on accrual of rights over the land notified under section 18(1) and of the Act. Sections 18(1) and 20 of the Act is quoted herein below for easy reference:

“18. Declaration of sanctuary.- (1) The State Government may, by notification, declare its



intention to constitute any area other than an area comprised within any reserve forest or the territorial waters as a sanctuary if it considers that such area is of adequate ecological, faunal, floral, geomorphological, natural or zoological significance, for the purpose of protecting, propagating or developing wild life or its environment”.

20. Bar of accrual of rights.- *After the issue of a notification under section 18, no right shall be acquired in, on or over the land comprised within the limits of the area specified in such notification, except by succession, testamentary or intestate.”*

19. It appears from bare perusal of Section 20 that after issuance of notification under section 18 of the Act, no right would be acquired save by succession, either testamentary or intestate. The provision creates a bar on accrual of right other than by way of succession. In such circumstances, the registration of documents was not permissible in view of bar created under section 21. It is true as held by the Division Bench that power of Registrar of superintendence and control over the Sub-Registrars under section 68 of the Registration Act, 1908, is an administrative power, and the same cannot be stretched to vests him/her with power of issuing specific direction not to register document, if document complies with the statutory requirements and formalities. However, the Collector would be within his right to bring to the notice of the Sub-Registrars any such statutory bar prohibiting registration under the

statute. The letter of the Collector dated 5.1.1993 to the extent at variance of the provision of law noted above is not sustainable.

20. In the instant case, section 20 of the Wild Life (Protection) Act puts bar on accrual of rights over the land notified under section 18(1) of the Act and no right would be acquired except by way of succession and as such no registration of sale and purchase would be permissible with respect to area covered under it unless released under section 24 of the Act.

21. I would like to point out here that the S.D.O. Manjhaul, who is delegated the power of Collector under section 18 of the Wild Life (Protection) Act, 1972, is already in seisin of the matter and processing the objections filed under section 24 of the Act. Moreover, he has already disposed of 49 objections and has declared approx. 1527 acres of land free from all encumbrances.

22. Before parting with the order, I would also like to observe that Kanwar Jheel Bird Vihar sanctuary is one of the rare gifts of nature to the State. But, due to excessive use of chemicals, loss of habitat and killings of Birds, the population of the critically endangered, vulnerable and near threatened species are falling. As such, the Government is directed to take all endeavour, including forming of a Committee consisting of the Secretary, Environment and Forest, the District Magistrate, noted environmentalist and a

local representative, for monitoring and preserving this natural habitat, as the Kanwar Lake is arguably one of the largest freshwater oxbow lake of Asia, having all potentiality of becoming a global tourist destination.

23. With the aforesaid observations and directions, the writ application is dismissed. Let a copy of this order be forwarded to the Chief Secretary, Government of Bihar, Patna for the needful.

(Samarendra Pratap Singh, J)

Md. Jamaluddin Khan / Shashi.

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