

IN THE HIGH COURT OF JUDICATURE AT PATNA

Letters Patent Appeal No.375 of 2010

IN

Civil Writ Jurisdiction Case No. 14710 of 2009

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Panna Devi, W/O Vindhyachal Ojha, R/O Vill.- Amarpur, P.S.- Dhansoi, District.- Buxar.

.... Petitioner/Appellant.

Versus

1. The State of Bihar through the Secretary, Revenue and Land Reforms Department, Government of Bihar, New Secretariat, Patna.
2. The Principal Secretary, Revenue and Land Reforms Department, Government of Bihar, New Secretariat, Patna.
3. The Collector Buxar.
4. The Director, Consolidation Bihar, Patna.
5. The Consolidation Officer Rajpur, Buxar.
6. Pramod Kumar Singh, S/O Paras Nath Singh, R/O Village- Amarpur, P.S.- Dhansoi, District.- Buxar.

.... Respondents/Respondents.

with

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Letters Patent Appeal No. 511 of 2010

IN

Civil Writ Jurisdiction Case No. 1927 of 2010

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Panna Devi, W/O Vindhyachal Ojha, R/O Village- Amarpur, P.S.- Dhansoi, District.- Buxar.

.... Petitioner/Appellant.

Versus

1. The State of Bihar through the Secretary Revenue and Land Reforms Department, Government of Bihar, New Secretariat, Patna.
2. The Principal Secretary, Revenue and Land Reforms Department, Government of Bihar, New Secretariat, Patna.
3. The Collector, Buxar.
4. The Director Consolidation, Bihar, Patna.
5. The Consolidation Officer, Rajpur, Buxar.
6. Pramod Kumar Singh, S/O Paras Nath Singh, R/O Village- Amarpur, P.S.- Dhansoi, Distt.- Buxar.

.... Respondents/Respondents.

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Appearance :

(In LPA No. 375 of 2010 & LPA No.511 of 2010):

For the Appellant : M/s. Sanjay Kumar Verma & Bijay Bihari Sinha,
Advocates.

For the State : AAG-10.

For the Private Respondent : Mr. Nil Kamal. Advocate.

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CORAM: HONOURABLE MR. JUSTICE NAVANITI PRASAD SINGH
and
HONOURABLE MR. JUSTICE RAJENDRA KUMAR MISHRA
ORAL JUDGMENT
(Per: HONOURABLE MR. JUSTICE NAVANITI PRASAD SINGH)
Date: 01-07-2015

These Intra Court Appeals arise under identical situations and having been heard together are being disposed of by this common order.

2. This is a strange case wherein the bonafide purchaser for value of agricultural land is sought to be deprived of his purchased land at the instance of grand son of the vendor after 23 years of the registered sale deed not because of any dispute of right, title and interest but taking advantage of mere technicalities in law.

3. The appellant was the writ petitioner. She was aggrieved by the order of the Collector, Buxar, dated 22.07.2009 by which he imposed a fine of Rs.250/- on the writ petitioner-appellant being the vendee under Section 32 of the Bihar Consolidation of Holdings and Prevention of Fragmentation Act, 1956 (hereinafter referred to as "the Act"), while holding that the registered sale deed dated 01.08.1983 executed by Ram Briksh Singh, the grand father of the private respondent, Pramod Kumar Singh was void being without permission of the Consolidation Officer as required under Section 5 of the Act.



4. The private respondent has also appeared and has been heard. We asked the private respondent whether he challenges the right, title, interest or other authority of his grand father to sell the land to the writ petitioner-appellant. He admitted that, that was not in dispute. Learned counsel for the writ petitioner-appellant drawn our attention to the application filed by the private respondent before the Collector, Buxar, calling upon to declare the registered sale deed executed by the grand father to be void under Section 32 of the Act. The only ground for that was that the sale deed had been executed and registered before consolidation proceeding could be denotified upon finalization under Section 26A of the Act. How the private respondent could be effected and what was his locus to challenge the registered sale deed executed by his grand father was not disclosed? Upon notice, the writ petitioner-appellant appeared and filed before the Collector documents to show that the consolidation operations in the village for all practical purposes had concluded with the finalization of the Draft Consolidation Scheme under Section 13 of the Act in the year 1981 itself, almost two years prior to the execution of the sale deed. The sale deed itself was in terms of the new Chak that was allotted which had been finalized. This is not being disputed. Merely because the notification under Section 26A of the Act, has not yet been issued by the State of Bihar, even after 25 years of



conclusion of the proceedings, the sale deed should not be interfered with. The Collector wrongly holding that the confirmation of chak and finalization of the consolidation proceedings took place in 1991, whereas the sale deed is of 1983, declared it to be void under Section 32 of the Act and went on to impose a fine of Rs.250/- upon the writ petitioner-appellant, who was the vendee and not upon the grand father of the applicant, who was the land holder. In our view, case calls for interference.

5. Before proceeding further, we may notice that the learned Single Judge, relying upon the several decisions, held the sale deed executed without permission of the authorities to be void. When the appeal was taken up, reliance was placed by the appellant on the Division Bench Judgment of this Court in the case of **Ram Raji Sharma & Anr. V. The State of Bihar & Ors.**, since reported in **2007(4) PLJR 449**, the correctness whereof was doubted by the Division Bench during the hearing of the appeal and it was referred to the Full Bench. The Division Bench in **Ram Raji Sharma** (supra) held that Section 32 of the Act speaks about the transaction being void in respect of which no permission was taken from the consolidation authority. The voidness was in relation to the consolidation proceedings alone. In other words, the Division Bench was of the view that such transaction was not void for all purposes, they were



void for the purposes of consolidation proceedings because the whole object of such a provision was not to disturb or complicate the consolidation proceedings or become impediment thereto but it did not intend to restrict the civil rights of the people to enter into the transaction and to make it dependent upon the discretion of the Consolidation Officer. The Full Bench of this Court disagreed with the view and held that once Section 5 of the Act provided that there would be no transfer without permission and Section 32 of the Act provided that transfer in violation of Section 5 of the Act would be void, then the transaction would be void ab initio for all purposes and the Division Bench was wrong in holding the transaction not to be void for all purposes and to be void for the limited purposes of the Consolidation Act. The Full Bench having, thus, answered the same (reported is **2010(2) PLJR 1066**) remitted back the matter to the Division Bench wherein at the time of admission, two main issues were framed vide order dated 29.01.2014.

- (i). Whether in absence of limitation provided under the Act, the District Collector can exercise the power at any time, after 23 years in the present case, or shall the principle of reasonable period enunciated in the matter of *State of Gujarat vs. Patel Raghae Natha* [AIR 1969 SC 1297] apply;

(ii). Whether the power under Section 32 of the Act can be exercised *suo motu* or at the instance of the parties to the transfer and whether this power can be exercised at the instance of the successor-in-interest of the vendor, the grandson of the vendor in the present case.

6. We have heard learned counsel for the appellant, learned counsel for the State as well as the private respondent.

7. As noted above, the private respondent has no objection as to right, title, interest, the authority or the need of his grand father to sell the land and if it is so, why he chooses to challenge the same and that too after 23 years, he could not give any answer to this Court. The reason is obviously that now the grand son wants to grab the land, which has become valuable in course of time and, therefore, this super technicality.

8. We are unable to accept the bonafide of the grand son which the Collector himself ought to have first questioned before obliging the grand son in the matter. Before proceeding further, we may notice some parts of the scheme of the Act to show that this is one of those cases where apart from the facts, noted above, the Collector ought not to have interfered. The Consolidation Act has been made to prevent the fragmentation. It was for public good. It



was not intended to effect the property rights or the right to enjoy the property of any agriculturist rather it was meant to facilitate the better usage of agricultural land by the agriculturalist. Whenever in any area, the consolidation scheme was to be taken up, a notification under Section 3(1) of the Act has to be issued. Once such a notification is issued then the consolidation proceedings start, various steps are then taken. First the area is surveyed, then classification and valuation of the land are done, then records are prepared, then principles of consolidation are made out. Objections are heard. Consolidation of holdings is then worked out according to the principles of the consolidation. Objections are again heard. It is for this purpose, Section 5 of the Act, inter alia, provides that once the proceedings have been notified under Section 3(1) of the Act, no person could transfer the land without permission of the Consolidation Officer. The reason is simple. Once these process are being carried out and the people start transferring their lands, then the whole scheme would be upset with each transfer and subsequently the exercise would be required to be done again because the ownership of the land and the area of the land would change. That is the object of Section 5 of the Act.

9. Now, we may refer Section 13 of the Act, which provides that once all these exercises are over and plots are



consolidated, then the drafts scheme is published in terms of Section 13(1) of the Act and Section 13(2) of the Act, it is deemed to be final. There may be certain objections but ultimately once it is done, then new Chak Certificates are issued under Section 15 of the Act to the land owners and then under Section 16 of the Act, the scheme is confirmed altering the record of rights. This finishes the consolidation proceedings. What is then left is formality for the Government to issue the Gazette Notification in terms of Section 26A of the Act, denotifying the consolidation proceedings but, as noted above, for all practical purposes the consolidation activities are finalized and come to an end, after the Draft Scheme is put up under Section 13(1) of the Act. It is a matter of regret that in most of the areas in the State of Bihar, though consolidation operations were notified in the year 1970 or thereupon, till date, i.e., 45 years, Notification under Section 26-A of the Act have not been issued. In the present case, as noted above, the stage of Section 13(1) of the Act had crossed in 1981 itself (and not 1991 as noted by Collector) while in 1983 Chak Certificate had been issued. Nothing remained to be done and even at that time when the grand father of the private respondent executed the sale deed in favour of the writ petitioner-appellant for well being of his family including his grand son, the private respondent. The private respondent has now become wiser.



He saw a legal lacunae and challenges the sale deed to get back the land after 23 years. In this fact, we hold that the consolidation proceedings being over in all respects and for all practical purposes, the Collector should not have exercised this power under Section 32 of the Act after delay of more than 23 years. The argument that there is no time limit fixed and, as such, the Collector, could have exercised his jurisdiction to levy fine consequent upon the declaration about the voidness of the deed at any time even after 23 years cannot be accepted. We may notice here that there are series of judgments of this Court and the Apex Court wherein it has specifically been held that where authority is conferred upon an officer to exercise a power without any limitation as to time, he must exercise the authority within a reasonable time and not after undue delay. In this connection we may refer first to decisions of the Apex Court. AIR 1969 SC 1297 Pr. 11 and 12, a delay of over one year where no limitation was provided for exercise of revisional power was held to be fatal. Then in (1984)1 SCC 125 Pr. 12 the Court held that though order of eviction could be passed but Collector not having done so for 22 years, even when no limitation was prescribed, could not be permitted to do so now. In (2002)4 SCC 188 Pr.17 the Court held that even inherent powers could not be resorted to after 4 decades. In (2006)8 SCC 502 Pr.18 it was emphasized that statutory power must be exercised within



a reasonable time. In (2015)3 SCC 695, a recent judgment of the Apex Court reviewed large number of cases and held that even suo motu power without limitation as to time could not be exercised after undue delay. Relying on some of the aforesaid judgments this Court in 2011(4) PLJR 26(HC) has in relation to Section 35 of this Act held that revisional power could not be exercised after undue delay. The above cases have noted these propositions here. There is no explanation by the private respondent as to why he took 23 years to challenge the sale deed. Most probably he was waiting for his grand father to die and it may be noted that the elder brother of the private respondent was also the witness to the sale deed. In the circumstances, we also hold that successor in interest cannot be permitted to challenge the actions of their ancestors by which he is bound unless the ancestor lacked the authority to sell.

10. In the facts aforesaid, the consolidation proceedings having been concluded for all practical purposes, there being no valid ground for challenging of the sale deed and there is undue delay in moving the Collector, the Collector ought to have refrained from interfering. The question framed by this Court at the time of admission is answered accordingly.

11. In view of the aforesaid, we allow the appeal, set aside the order of the learned Single Judge and set aside the

consolidation proceeding before the Collector and as also the
impugned order of the Collector.

(Navaniti Prasad Singh, J)

(Rajendra Kumar Mishra, J)

**Bhardwaj/-P.S./
AFR**

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