

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.11235 of 1996

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1. Hari Lal Sah.
 2. Ram Nath Sah.
 3. Ganesh Sah.
All sons of Late Bishwanath Sah.
All residents of village-Makhdumpur, P.S.-Goraul, District-Vaishali.
 4. Fulpati Devi, W/o Ram Bilash Sah, Resident of Village+P.O.-
Pachnapur, P.S.-Belsand, District-Sitamarhi.
 5. Laxminia Devi W/o Deo Narain Sah, Resident of Village+P.O.-Karyani,
Chapra, P.S.- Tariani, District-Sheohar.
 6. Dhanwanti Devi, W/o Bikau Sah, Resident of Village-Chandwara, P.S.-
Runisaidpur, District-Muzaffarpur.
 7. Jailas Devi W/o Lalu Sah, Resident of Village-Arrah, P.S.-Kanti,
District-Muzaffarpur.
- **Petitioners.**

Versus

1. State of Bihar.
 2. The Collector, Vaishali.
 3. Ram Chandra Paswan, Son of Bishashwar Paswan.
 4. Ganesh Kumar Sah Son of Late Bishwanath Sah.
Both residents of village-Makhdumpur, P.O.+P.S.-Goraul, District-
Vaishali.
- **Respondents.**
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Appearance :

For the Petitioner/s : Mr. Mahesh Prasad No.-2, Adv.
For the Respondent/s : Mr. M.Nasrul Huda Khan, S.C.-18.
Mr Md. Irshad, A.C. to S.C.-18

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CORAM: HONOURABLE MR. JUSTICE V. NATH

ORAL JUDGMENT

Date: 19-05-2015

V.Nath, J.

Heard Mr. Mahesh Prasad No.-2, the learned counsel

appearing on behalf of the petitioners (now substituted petitioners).

The learned counsel for the respondent nos.1 and 2 has also been

heard. No body has appeared on behalf of the respondent nos.3 and 4.

Taking exceptions to the order passed by the
Collector rejecting the prayer of the petitioners under Section 32 of
the Bihar Consolidation of Holding and Prevention of Fragmentation

Act (hereinafter referred as Act) for declaring the sale transaction dated 15.09.1995 by respondent no.4 in favour of the respondent no.3 and imposing fine on respondent no.4, the original petitioner (now deceased through L.R.) has filed this writ application.

The original petitioner in the writ application has claimed herself to be exclusive owner of the land transferred by respondent no.4 in favour of respondent no.3 by registered sale deed dated 15.09.1995. It is the case of the original petitioner that the land in dispute has been inherited by her after the death of her husband, and in a land acquisition proceeding also the award amount had been paid to her with regard to the part of the disputed land wherein the respondent no.4 had given 'no objection' recognizing her exclusive title over the same. The original petitioner in paragraph-11 of the writ application has specifically averred that the respondent no.4 has no concern with the disputed land.

It would be pertinent to notice here that the disputed land is 10 dhurs out of R.S.Plot No.281 corresponding to C.S.Plot No.182. The respondent no.4 by registered sale deed dated 15.09.1995 had sold the said 10 dhur of land in favour of the respondent no.3. The original petitioner filed a petition before the Collector invoking Section 32 of the Act. It was the case of the original petitioner that the sanction was required under the provisions of the said Act before



making the transfer of the land in question. The respondent-Collector called for a report from the concerned Deputy Director, Consolidation and also from the Consolidation Officer. The report submitted by the Deputy Director, Consolidation has been brought on record as Annexure-1 to the writ application wherein it has been specifically mentioned that the permission was required before the execution of the sale deed dated 15.09.1995. The Collector, however, has rejected the petition of the original petitioner after coming to the conclusion that no permission was required.

Mr. Mahesh Prasad No.-2, the learned counsel for the petitioners has submitted that the respondent-Collector has failed to exercise his jurisdiction in rejecting the petition filed by the original petitioner by simply stating that the date of publication of statement of principles and register of lands were not available. It has also been submitted by the learned counsel for the petitioners that the respondent-Collector has entirely ignored the report submitted by the Deputy Collector (Annexure-1) stating the requirement of permission before the sale in question. It has also been submitted by the learned counsel for the petitioners that in view of the report of the Deputy Collector, Consolidation and the absence of any material to contradict the same, the order passed by the Collector is clearly illegal and without jurisdiction.

The learned counsel for the respondent has opposed the prayer and has submitted that there is no illegality in the order passed by the Collector in the facts and circumstances of the case.

In order to appreciate the submissions on behalf of the parties, it would be necessary to take into notice the provision of Section 32 of the Act which reads as follows:

Sec.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.

It would be manifest from the aforesaid provision that the transfer made without the requisite permission is declared to be void and the owner of the land so transferred has been made liable to fine to be imposed by the Collector. The declaration of the transfer to be void is to be made only for the purpose of imposition of fine. The Collector has been expressly given the power to impose fine upon the owner of the land so transferred. The aforesaid provision came to be considered by this Court in the case of **Rabindra Thakur Vs. The Collector, Muzaffarpur ,1995 (2) PLJR 710** wherein it has been observed as follows:



“...Counsel for the petitioner contended that the application filed by Respondent No.2 before the Collector was barred by limitation. I do not find any merit in this contention inasmuch as any document which is void is not only void ab initio but non-est in the eye of law. It is not required to be set aside or annulled. Section 32 is intended to act as a deterrent against transfers in contravention of the provisions. It provides for imposition of a token fine upto Rs.250/-.So for as nature and effect of the transfer is concerned, the provisions of Section 5 read Section 32 render them void. Only a declaration to that effect is to be made for the purpose of imposition of fine. There is no question of law of limitation coming into play...”

It is thus clear that the statute has declared the transfer made without permission to be void, and thereafter, has given the jurisdiction upon the Collector to impose fine on the owner of the land. No doubt the Collector, before proceeding to impose the fine, will have to declare the transfer to be void for want of permission but that enquiry/declaration is to be made for the purpose of imposition of fine. The learned counsel for the petitioners, at this juncture, has submitted that even without imposition of the fine, the Collector can make the enquiry and declare the document to be void. This Court, in view of the specific provision, does not find substance in the

submission. The predominant purpose of the provision is to deter transfer without sanction by imposition of fine on the owner of such land and the declaration of such transfer to be void is to be made for that purpose. There cannot be such declaration by the Collector when he has no power to impose the fine on the owner as envisaged.

In the present case, the categorical stand of the petitioners is that the respondent no.4 is not the owner of the land. In this view of the matter, the Collector could have no jurisdiction to impose fine on respondent no.4 as such fine is to be imposed on the owner of the land alone. No doubt, the respondent-Collector has passed the order refusing the prayer of the petitioners on other grounds but in view of the aforesaid facts and the provisions of law, this Court is of the opinion that the impugned order does not require interference.

For the aforesaid facts and reasons, this Court does not find any merit in this application, which is, accordingly, dismissed.

(V. Nath, J)

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