

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.13817 of 2003

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Sita Devi wife of Ambika Sharma, resident of village Akbar Malahi, P.S.Sarai, District Vaishali (vendee) (**expunged vide order dated 24.07.2015 and substituted by her following heirs and legal representatives**)

1. Bandhu Sharma son of Late Ambika Sharma
2. Durga Shama son of Late Ambika Sharma
3. Nagmani Sharma son of Late Ambika Sharma
All are residents of village Akbar Malahi, P.S.Sarai, District Vaishali
4. Munni Devi daughter of Late Ambika Sharma and wife of Rajendra Sharma, resident of village Rariyahi Zandaha, Post Jandaha, P.S.Jandaha, District Vaishali
5. Poonam Devi daughter of Late Ambika Sharma and wife of Pradeep Sharma, resident of Mohalla Aamgola, P.S.Muzaffarpur Town, Post Muzaffarpur, District Muzaffarpur
6. Rani Devi daughter of Late Ambika Sharma and wife of Suman Sharma, resident of Mohalla Aamgola, P.S.Muzaffarpur Town, Post Muzaffarpur, District Muzaffarpur

..... Petitioners

Versus

1. The State of Bihar
2. The Collector, Vaishali
3. Satyendra Rai son of Late Daroga Rai, resident of village Mansurpur, P.S. Sarai, District Vaishali
4. Pradeep Kumar Sharma son of Late Raghu Sharma, resident of village Phakuli, P.S.Kudhani, District Vaishali (vendor)

.... Respondent/s

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Appearance :

For the Petitioner/s	: Mr. Chandra Mauli Chaurasia, Advocate
For the Respondent 1 & 2	: None
For the Respondent No. 3	: Mr.Ramesh Kumar Choudhary, Advocate
For the Respondent No.4	: Mr.Pawan Kumar Chaurasiya, Advocate

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CORAM: HONOURABLE MR. JUSTICE BIRENDRA PRASAD VERMA
ORAL JUDGMENT

Date: 28-08-2015

Heard learned counsel appearing on behalf of the substituted petitioners, learned counsel appearing on behalf of the respondent no. 3 and the learned counsel appearing on behalf of the respondent no.4. However, none appears on behalf of the respondent nos.1 and 2, though name of learned State counsel is printed in the daily cause list.

2. The original writ petitioner Sita Devi, who is now



dead and has been substituted by her heirs and legal representatives, filed the present writ petition under Article 226 of the Constitution of India assailing the validity and correctness of the order dated 24.05.2003 (Annexure-7) passed in Case No. 40 of 1997-1998 by the respondent District Collector, Vaishali in exercise of his powers under Section 32 of the Bihar Consolidation of Holdings and Prevention of Fragmentation Act, 1956 (in short, “the Consolidation Act”), whereby he has declared the registered sale deed dated 16.09.1995 executed in favour of the original writ petitioner Sita Devi by the respondent no.4 as void, and the vendor-respondent no.4 has been awarded a fine of Rs. 250/- for executing the aforesaid sale deed without obtaining permission under Section 5 of the Consolidation Act.

3. Learned counsel appearing on behalf of the substituted petitioners submits that it is true that a notification under Section 3 of the Consolidation Act was issued by the State Government on 26.11.1970 and consolidation proceeding was started in Mauza in question. According to him after conclusion of the consolidation proceeding in the said Mauza, the draft consolidation scheme was confirmed under Section 13 of the Consolidation Act on 28.02.1981. It is contended by the learned counsel for the petitioners that once Mauza was confirmed in terms of Section 13 of the Consolidation Act, there was no necessity for obtaining permission under Section 5 of the Consolidation Act for transfer of the lands in question by the respondent no.4 in favour of the original writ petitioner by a sale deed dated 16.09.1995. In support of the aforesaid contention, he has placed reliance on a judgment of a Division Bench of this Court in the case of **Kamla Devi Vs. The State of Bihar & others [1998 (3) All PLR 142]**. He further contends that the impugned order passed by the respondent District Collector is in the

teeth of the aforesaid Division Bench judgment of this Court, therefore, it is not sustainable in law.

4. The matter has been contested by the learned counsel appearing on behalf of the respondent no. 3. He submits that though the respondent no.3 has no concern with the lands in question, but he, being a co-villager, was entitled to file a petition under Section 32 of the Consolidation Act before the respondent District Collector, as the transfer made by the respondent no.4 of the land in question through registered sale deed dated 16.09.1995 in favour of original writ petitioner was effected without obtaining permission of the Consolidation Officer under Section 5 of the Consolidation Act. Therefore, according to him, the order impugned cannot be legally faulted. He places reliance on a Government letter dated 02.11.1993 (Annexure-A to the counter affidavit filed on behalf of the respondent no.3).

5. After having heard the parties and on consideration of the materials available on the record, this Court finds that it is not in dispute that the notification under Section 3 of the Consolidation Act was issued by the State Government on 26.11.1970 with respect to Mauza in question and after conclusion of the consolidation proceeding, a draft consolidation scheme prepared for the Mauza in question was confirmed under Section 13 of the Consolidation Act on 28.02.2081. It is also not in dispute that the original writ petitioner had purchased the land in question on 16.09.1995 i.e. much after the confirmation of Mauza in question in the year 1981. However, no notification under Section 26 A of the Consolidation Act has been issued closing the consolidation operation in the Mauza in question. Admittedly, the respondent no.3 does not have any locus standi with respect to the land in question. He is completely a stranger. This

Court is of the considered opinion that the impugned order passed by the respondent District Collector, Vaishali is in the teeth of the Division Bench judgment of this Court in the case of **Kamla Devi Vs.The State of Bihar (supra)**, wherein exactly the same issue was for consideration before the Division Bench of this Court. In the aforesaid decision, the Division Bench has recorded its conclusion in paragraph 33, operative part of which reads as follows:

“the bar of Section 5 would remain operative till the stage of section 13 and once the scheme of consolidation is confirmed under Section 13, the bar under Section 5 would no longer remain in force.”

6. In view of the principles enunciated by a Division Bench of this Court, referred to above, which is a binding precedent, this Court is of the considered opinion that the impugned order date 24.05.2003 passed in Case No. 40 of 1997-1998 by the respondent District Collector, Vaishali cannot be sustained. Accordingly, the order impugned as contained in Annexure-7 is hereby set aside and quashed.

7. The writ petition thus stands allowed. However, the parties are left to bear their own costs.

(Birendra Prasad Verma, J)

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