

IN THE HIGH COURT OF JUDICATURE AT PATNA

Letters Patent Appeal No.8 of 2016

In

Civil Writ Jurisdiction Case No.1164 of 1995

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1. Baleshwar Mishra son of Late Chhabiraj Mishra, resident of village- Purkhauli, P.s.- Lalganj, District- Vaishali at Hajipur
 2. Sushila Devi, wife of Late Nawal Kishore Mishra,
 3. Nitesh Kumar Mishra, son of Late Nawal Kishore Mishra, Both residents of village- Purkhauli, P.S.- Lalganj, District- Vaishali at Hajipur. Appellants

Versus

1. The State of Bihar
 2. The Director of Consolidation, Bihar, Patna
 3. Principal Consolidation Training Institute, Bihar, Patna
 4. Deputy Director of Consolidation, Vaishali at Hajipur
 5. Consolidation Officer, Lalganj, District Vaishali at Hajipur
 6. Satyendra Kumar Mishra, son of Late Chhabiraj Mishra, resident of village- Purkhauli, P.S.- Lalganj, District- Vaishali
 7. Sharda Devi, wife of Satyendra Kumar Mishra, resident of village- Purkhauli, P.S.- Lalganj, District- Vaishali. Respondents
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with

Letters Patent Appeal No. 803 of 2016

In

Civil Writ Jurisdiction Case No.921 of 1995

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1. Baleshwar Mishra son of Late Chhabiraj Mishra resident of Village - Purkhauli, P.S. Lalganj, District : Vaishali at Hajipur.
 2. Sushila Devi wife of Late Nawal Kishore Mishra
 3. Nitesh Kumar Mishra son of Late Nawal Kishore Mishra Both residents of Village - Purkhauli, P.S. : Lalganj, District : Vaishali at Hajipur. Appellants

Versus

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 4. Deputy Director of Consolidation, Vaishali at Hajipur.
 5. Consolidation Officer, Lalganj, District : Vaishali at Hajipur.
 6. Satyendra Kumar Mishra son of Late Chhabiraj Mishra resident of Village - Purkhauli, P.S. Lalganj, District : Vaishali at Hajipur. Respondents
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Appearance :

(In both cases)

For the Appellants	:	Mr. Vindhya Keshari Kumar, Senior Advocate Mr. Neeraj Kumar @ Sanidh, Advocate Mr. Ravi Shankar Pathak, Advocate
For the Private Respondents:		Mr. Ajay Kumar Thakur, Advocate Mr. Md. Imteyaz Ahmad, Advocate Mr. Amit Kumar, Advocate Mr. Rituraj Raman, Advocate
For the Respondent State:		Mr. Anwar Karim, AC to GP-10



**CORAM: HONOURABLE MR. JUSTICE AJAY KUMAR TRIPATHI
and
HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD
ORAL JUDGMENT
(Per: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD)**

Date : 07-12-2017

Heard learned senior counsel representing the appellants and learned counsel representing the private respondents as well as the State in both the appeals.

The facts to certain extent are not in dispute. A consolidation proceeding was initiated in the concerned mauza, objections were invited, records were also prepared and the principles of consolidations were settled, land holdings were also consolidated and consolidated lands possession were confirmed as per the consolidation plans. The parties, who were put in possession of the consolidation, possession certificates were also issued to them. Thus, for all practical purposes the entire consolidation proceedings were over but the fact remained that an appropriate notification under Section 26 of the Bihar Consolidation of Holdings and Prevention of Fragmentation Act, 1956 (hereinafter referred to as 'the Act') was still to be issued.

The contention of the learned senior counsel representing the appellants revolves around this technicality of law. His submission is that for whatsoever reason if the notification under Section 26 of



the Act was not issued, the permission granted to Late Sampat Kunwar, the stepmother of the appellants, to execute a gift deed in favour of her daughter was not a legal and valid permission. Learned senior counsel submits that the learned single Judge is not correct in allowing the writ application by setting aside the revisional order passed by the authority under the Act whereby the permission granted by the Deputy Director, Consolidation, was set aside.

On the other hand, learned counsel representing the private respondents as well as the State are unanimous that for all practical purposes the consolidation work in the area was over and what has been recorded by the learned single Judge as a finding of fact that even the possession certificates were issued are not in dispute. Thus, according to them, the only technicality as regards Section 26 notification under the Act would not come in the way of execution of the transfer deeds particularly when the appellate authority had granted permission.

Learned counsel submits that under the scheme of the Act, there is no blanket ban on the execution of the transfer deeds. What is required is only the permission from the competent authority for such transfer, which has been granted in the present case.



We have considered the rival submissions at the bar and have also perused the records. The learned single Judge has taken a view after going through the letter issued by the Director, Consolidation, which clearly states that the consolidation proceedings in the village has been finalised and concluded for all practical purposes and there would be no restriction on the transfer of the land by the landholders. It is by virtue of this letter of the Director, Consolidation, the learned single Judge has found that what was permitted by the Deputy Director, Consolidation, by way of a permission to the said Sampat Kunwar cannot be faulted with.

We are in agreement with the order passed by the learned single Judge. There is no illegality or infirmity in the impugned order. These appeals have no merit. They are accordingly dismissed. The parties can act as per the order of the learned single Judge, if they want to assail the deed of gift.

(Ajay Kumar Tripathi, J)

(Rajeev Ranjan Prasad, J)

Pawan/-

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