

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.5501 of 1990

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Brahmdeo Singh, son of Chulhai Singh, resident of village Mail, P.O. Bhairapur
Deorhi, P.S. and Anchal Bidupur, District Vaishali

.... Petitioner

Versus

1. Collector, Vaishali, District Vaishali
2. Pramanand Bhagar, son of Ramchandra Bhagat, resident of village Mali, P.O. Bhairapur, Deorhi, P.S. and Anchal Bidupur, District Vaishali
3. Mostt. Saleha Khatoon, wife of Seikh Wazul Haque (decd.) resident of village Mali, P.O. Bhairapur, Deorhi, P.S. and Anchal Bidupur, District Vaishali

.... Respondents

with

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Civil Writ Jurisdiction Case No. 5530 of 1990

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Smt.Meghani Devi, wife of Brahamdeo Singh, resident of village Mail, P.S. and
Anchal Bidupur, District Vaishali

.... Petitioner

Versus

1. Collector Vaishali, District Vaishali
2. Pramanand Bhagar, son of Ramchandra Bhagat, resident of village Mali, P.O. Bhairapur, Deorhi, P.S. and Anchal Bidupur, District Vaishali
3. Mostt. Saleha Khatoon, wife of Seikh Wazul Haque (decd.) resident of village Mali, P.O. Bhairapur, Deorhi, P.S. and Anchal Bidupur, District Vaishali

.... Respondents

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Appearance :

(In CWJC No.5501 of 1990)

For the Petitioner/s : None

For the Respondent/s : None

(In CWJC No.5530 of 1990)

For the Petitioner/s : None

For the Respondent/s : None

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CORAM: HONOURABLE MR. JUSTICE JYOTI SARAN

ORAL JUDGMENT

Date: 28-09-2018

Since the issue arising in each of the two writ petitions is the same that the two writ petitions have been made analogous for the purpose of hearing and disposal.



While the petitioner in C.W.J.C. No. 5501/1990 is the husband, the petitioner in the second writ petition i.e. in C.W.J.C. No. 5530/1990 is the wife and each of them have been held liable for being proceeded for executing sale deeds during the pendency of the consolidation operation in violation of the provisions of Section 5 of the Bihar Consolidation of Holdings and Prevention of Fragmentation Act, 1956 (hereinafter referred to as 'the Consolidation Act').

The prayer in C.W.J.C. No. 5501/1990 is for quashing of the order dated 01.2.1990 passed by the Collector, Vaishali in Revenue Case No. 42 of 1987-88 (**Parmanand Bhagat v. Brahmdeo Singh & ors.**), whereby he in exercise of power vested under section 32 of 'the Consolidation Act' has declared the sale deed executed by the writ petitioner Brahmdeo Singh in favour of respondent no.3 as void and a fine of Rs.150/- has been imposed realizable through the proceedings under the Bihar and Orissa Public Demand Recovery Act, 1914.

By an identical order arising from a proceeding in Revenue Case No. 43 of 1987-88, which is impugned in the second writ petition, the Collector has declared the sale deed executed by the petitioner Meghani Devi in favour of respondent no.3 as void and a sum of Rs.150/- has been imposed as fine under section 32 of 'the Consolidation Act'.

While C.W.J.C. No. 5501/1990 was admitted for hearing



vide order passed on 11.12.1990, the second writ petition was admitted on 10.01.1991 with a direction of its analogous hearing with C.W.J.C. No. 5501/1990.

These two writ petitions were dismissed for non-prosecution on 08.12.2008 and have been restored on 17.10.2017 and 02.12.2015 respectively, yet none have appeared on behalf of the parties.

In absence of learned counsel representing the petitioners, the State or the private respondent, I have perused the records and taking note of the statutory provisions underlying Section 5 read alongside Section 32 of 'the Consolidation Act' I do not find any infirmity in the order passed by the Collector, Vaishali which is in tune with the provisions present in Section 5 of 'the Consolidation Act' which, inter alia, mandates for a prior permission be taken by a vendor in respect of any proposed sale before he enters into a transaction in respect of a land which situated in the area where the consolidation proceedings are on.

Section 5 of 'the Consolidation Act' inter alia mandates that after the date of publication of preparation of register of lands and statement of principles under sub-section (1) of section 10, no person shall transfer any land in the notified area by way of sale, gift, exchange or partition without the previous sanction of the Consolidation Officer and if the sanction is granted, such transfer or



partition, as the case may be, shall be, subject to the rights and liabilities attached to the land under the scheme of Consolidation prepared with respect to that area. Section 32 of 'the Consolidation Act' further holds that 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.

Perusal of the pleadings on record would show that the only objection that has been raised in the two writ petitions is that the land is 'Firni' and situated in the midst of the village and thus incapable of being cultivated. The petitioners even while making such submission do not dispute that they did not take permission from the Consolidation Officer as mandated under section 5 of 'the Consolidation Act.'

The two orders passed by the Collector, Vaishali in Revenue Case No. 42 of 1987-88 and Revenue Case No. 43 of 1987-88 impugned in the two writ petitions respectively specifically mentions that:-

- (a). the Consolidation proceedings were going on in the village in question;
- (b) despite service of notice no rejoinder was filed on behalf



of the opposite party nor any ‘pairvi’ was done on their behalf; and

(c). the two sale deeds were executed without seeking prior permission of the Consolidation Officer.

It is taking note of these un-contesting circumstances existing that the orders impugned have been passed which is in tune with the statutory provisions and thus, requires no indulgence.

The two writ petitions are accordingly dismissed.

(Jyoti Saran, J)

Archana/Surendra

AFR/NAFR	AFR
CAV DATE	NA
Uploading Date	02.11.2018
Transmission Date	NA

