

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.13116 of 1992

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Mostt.Indrashana Kuer W/o Late Shri Brij Bihari Singh, resident of village-
Niranjanpur, P.S. Koransarai, District-Buxar

.... Petitioner/s

Versus

1. The State of Bihar
2. District Collector, Bhojpur
3. Mostt. Jagrano Kuer, W/o Late Ramendra Krishna Singh
4. Nagendra Singh son of Late Ram Subhag Singh
5. Rudal Singh son of Late Ram Subhag Singh
6. Smt. Kumaro Devi W/o Shri Nagendra Singh
7. Smt. Jago Devi W/o Shri Rudal Singh
8. Smt. Atwaro Devi W/o Sripati Ram
9. Bhola Mian, S/o Late Sahadat Mian
10. Hansraj Singh son of Shri Rudal Singh
11. Anil Kumar Singh son of Shri Nagendra Singh
12. Sant Bilash Singh son of Late Ramadhar Singh
All resident of village-Niranjanpur, P.S. Koransarai, Distt.- Buxar
13. Shankar Dayal Yadav son of Shri Shri Rangila Yadav
Resident of village Pipari, P.S. Koransarai, Distt. Buxar

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Binod Kumar Singh
Mr. Arun Kumar Singh -1

For the Respondent/s : Mr. Ras Bihari Thakur
Mr. Binod Kumar
Mr. Anil Kumar Roy

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CORAM: HONOURABLE MR. JUSTICE PRABHAT KUMAR JHA
ORAL JUDGMENT
Date: 22-02-2018

(1) Heard Mr. Binod Kumar Singh for the petitioner and
Mr. Ajay Kumar Singh for the respondents.

(2) The petitioner prayed for the following reliefs:

- (i) The order contained in Annexure 1 passed by the
District Collector, Buxar in Miscellaneous Case No.75 of 1993 may
be quashed by writ of Certiorari or any appropriate writ.
- (ii) Sale deeds which were given in Schedule I be



declared void.

(iii) Any other reliefs with cost may be granted to the petitioner.

(3) The brief facts for the decision of this case is that Most. Indrashana Kuer (now deceased) and substituted by her legal heirs filed petition under Section 32 of the Consolidation Act for declaration that 21 sale deeds executed by Most. Jagrano Kuer on 12.05.1989 and 23.09.1989 are without any title and without any permission from any consolidation authority as required under Section 5 of the Consolidation Act. The Collector vide an order on 18.08.1992 passed in Misc. Case No.75 of 1992 dismissed the petition of the petitioner holding that the permission for selling the land under Section 5 of the Consolidation Act is required till the final preparation of record of rights and publication of the notification under Section 14 of the Act.

(4) One Phulbaso Kuer, wife of Ram Ratan Singh executed deed of gift with regard to her entire property in favour of her daughter-in-law, Indrashana Kuer, wife of Brij Bihari Singh and in favour of Ramendra Krishna Singh, her grandson and son of Brij Bihari Singh. Phulbaso Kuer had one son, Nathuni Singh who died issueless. Indrashana Kuer died leaving behind four daughters and one son namely Ramendra Krishna Singh. Jagrano Kuer is the wife of Ramendra Krishna Singh. The daughters of Indrashana Kuer filed



Title Suit No.58 of 1989 for declaration of deed of gift executed by Phulbaso Kuer in favour of Ramendra Krishna Singh and Indrasan Kuer and also the sale deeds executed by Jagrano Kuer in favour of different persons as illegal, without title and inoperative. Jagrano Kuer and others filed First Appeal No.101 of 2007 and this Court vide judgment and decree dated 10.02.2011 allowed the First Appeal and set aside the judgment of trial court and dismissed the suit. The plaintiffs filed Civil Review No.68 of 2011 and the same is also dismissed.

(5) Mr. Binod Kumar Singh, learned counsel for the petitioner submits that Section 5 of the Consolidation Act requires that once after issuance of notification under Section 3(1) of the Consolidation Act, the Consolidation operation starts. Section 5 of the Consolidation Act requires that after the date of publication of preparation of register of land and statement of principle 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 of partition, as the case may be, subject to the rights and liabilities attached to the land under the scheme of consolidation prepared to that area. It is further submitted that Section 32 of the Consolidation Act says that 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 Rs.250 as the Collector of the District may subject to the general order of the State Government direct. The learned counsel for the petitioner further submits that a Full Bench of this Court in the case of Panna Devi vs. State of Bihar reported in 2010(2) PLJR 1066 tested the law laid down in the case of Ram Raji Sharma and Anr. vs. State of Bihar and Ors., 2007(4) PLJR 449 and held that the law laid down in the case of Ram Raji Sharma is not good one. In the case of Ram Raji Sharma, a Division bench of this Court held that inter se transfer is void in view of the provisions as contained in Section 5 if done without permission and held that if such transfer is effected pursuant to the Transfer of Property Act read with Registration Act, the same would though bind the party thereto but would not bind the consolidation authority in addition thereto, the consolidation authority has been empowered to levy fine upon the persons who have effected the transfer in question. It is submitted that any transfer during the consolidation proceeding is bad and the Collector has illegally held that the sale deed executed by Jagrano Kuer in the year 1989 after final preparation of record of rights in the year 1978 during the consolidation proceeding is not illegal. The permission is not required after publication of record of rights and till the publication of completion of consolidation proceeding and notification under Section 26A of the Consolidation Act and, therefore, the order is liable to be



set aside.

(6) On the contrary, contending the submission of the learned counsel for the petitioner, learned counsel for the respondents has submitted that a Division Bench of this Court in the case of Panna Devi v. The State of Bihar(LPA Nos.375 and 511 of 2010) has considered the ratio decided by Full Bench judgment in the case of Panna Devi(supra) and held that for all practical practices, the consolidation activities are finalized and come to an end, after the Draft Scheme is put up under Section 13(1) of the Consolidation Act in the year 1981 and in such view of the matter, the Collector should not have exercised his power under Section 32 after delay of more than 23 years for holding the deed of sale executed by a person 23 years ago as void as in most of the cases even after finalization of the record of rights during the consolidation proceeding and handing over the same to the land holders and issuance of certificate by transfer under Section 15 permission is not at all required to transfer the land by the land holder. Learned counsel for the respondents further placed his reliance on the judgment of Kamla Devi (deceased) substituted by her heirs Krishna Mohan Tiwary and ors. v. The State of Bihar and ors. reported in 1998(3) All PLR 142 and submitted that this question has been decided that till what stage the bar imposed against transfer of land under Section 5 of the Bihar Consolidation of Holdings and Prevention of Fragmentation Act, 1956 would continue to remain



operative.

(7) On the basis of the submissions of both sides, the question arises as to whether the bar of Section 5 of the Consolidation Act shall continue till the publication of notification of completion of the consolidation proceeding under Section 26-A of the Consolidation Act or till the transfer certificate after preparation of record of rights and carrying out the Chaks under Section 15 of the Consolidation Act?

(8) This question has been considered by a Division Bench of this Court in Kamla Devi (deceased) substituted by her heirs Krishna Mohan Tiwary and ors. v. The State of Bihar and ors., 1998(3) All PLR 142 and this Court after considering the provisions of Section 5, its amendment from time to time and other provisions of Consolidation Act regarding the preparation of record of rights and its finalization held in para 29 and 30 as follows:

“29. Now, it is undeniable that the bar against transfer of land under Section 5 of the Act is a restriction on the right of the citizen and causes considerable inconvenience in making any transfer of land in an area which comes under the mischief of that section. It is this fact and hence, while making provision for exemption under section 5A uses the expression ‘hardship to raiyat or under-raiyat’ resulting from the bar of section 5. The restriction on the citizen’s right can be justified having regard to the larger object and purpose of the Act and viewed from that angle it becomes evident that the object of section 5 is to ensure that the consolidation operations should be completed smoothly and without being interfered with by transfers causing



fragmentation while the consolidation operations are still under-way. Once the true nature and object of section 5 is clearly understood the matter becomes simple. For, a restriction on the right of a citizen can be sustained only so long as it subserves the object and purpose of the Act. This court cannot uphold a restriction of the citizen's right for no purpose. From the discussion of the provisions of the Act made above, it appears to me that the bar of section 5 exhausts its purpose at the stage of confirmation of the consolidation scheme under section 13 of the Act. And the extension of the bar beyond that stage could not serve any purpose of the Act and would, therefore, amount to an unreasonable and arbitrary restriction on the citizen's right.

30. It may further be noted that section 26A mandates that notification under that section should be issued as soon as may be after the stage of sections 13 and 15. However, it is common knowledge that no notifications are issued simply due to default on the part of the concerned officials for years and decades even after the stage of sections 13 and 15 of the Act is over. In other words, if the bar of section 5 is stretched upto the stage of section 26A, it would amount to subjecting the citizen to considerable hardship without serving any purpose under the Act."

(9) Another Division Bench of this Court in the case of

Panna Devi v. State of Bihar reported in 2015(4) PLJR 902 held in

para 9 as follows:

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 landowners 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 26-A 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 grandfather of the private respondent executed the sale deed in favour of the writ petitioner-appellant for well being of his family including his grandson, 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 grandfather 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) From perusal of the judgment of Full Bench of this

Court rendered in Panna Devi case, it appears that the matter was referred to the Full Bench after doubting the correctness of the law laid down in Ramraji Sharma and other case(supra) in which it has been held that of course in view of the provisions of Section 5 of Consolidation Act, the deed shall be deemed to be void for the purpose of Consolidation Act but the deed shall be binding inter se for the parties when the same is executed in pursuance of Transfer of Property Act and the Registration Act and the Full Bench held that in



view of the provisions as contained in Section 5 and 32 of the Consolidation Act any deed of transfer by way of sale deed, gift, exchange shall be void but this question has not come up for consideration before the Full Bench directly that how far and till what stage restriction of Section 5 shall continue either till the completion of record of rights under Section 14 and transfer of certificates under Section 15 of the Consolidation Act or till the issuance of notification under Section 26-A of the Consolidation Act and this point has been considered by a Division Bench of this Court in Kamla Devi case and it is held that requirement of Section 5 of the Consolidation Act is till the preparation and publication of record of rights under Section 14 of the Consolidation Act and not till the publication for completion of consolidation proceeding. Therefore, I do not find any illegality in the order of the Collector contained in Annexure-1.

(11) Having considered the facts aforesaid, I do not find any merit in this writ petition. Accordingly, the same is dismissed.

(Prabhat Kumar Jha, J)

Saurabh/-

AFR/NAFR	
CAV DATE	
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