

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.11820 of 1995

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Kamleshwari Devi & Ors		 Petitioner/s
	Versus	
The State of Bihar & Ors		 Respondent/s
	with	

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Civil Writ Jurisdiction Case No. 235 of 1996

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Krishna Kant Sharma & Ors		 Petitioner/s
	Versus	
The State of Bihar & Ors		 Respondent/s

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Appearance :

(In CWJC No.11820 of 1995)

For the Petitioner/s : Mr. Ambuj Nayan Choubey
Mr. Nagendra Dubey
Mr. Prashant Kumar
Mr. Animesh Kumar
Mr. Dineshwar Pandey
Mr. Ritu Priyadarshini
Mr. Yogendra Kumar Dwivedi
Mr. Ashok Kumar Garg
Mr. Anand K.Ojha

For the Respondent/s : Mr. H.P.SINGH (SC)
Mr. Rajiv Kumar Singh(G.P.)

(In CWJC No.235 of 1996)

For the Petitioner/s : Mr. MADAN MOHAN PD.SINGH
For the Respondent/s : Mr. J.RAHMAN (SC)
Mr. Hamendra Pd.Singh
Mr. Nagendra Dubey
Mr. Dhananjay Kumar
Mr. Arti Tripathi

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CORAM: HONOURABLE MR. JUSTICE PRABHAT KUMAR JHA
ORAL JUDGMENT
Date: 12-04-2018

1. Heard Mr. Kamal Nayan Choubey, learned senior
counsel and Mr. Mrigank Mauli, learned counsel for the petitioners



and learned counsel for the State.

2. The petitioners seek reliefs to quash the order dated 21.10.1995 passed by Additional Member, Board of Revenue in Revision Case No.97 of 1991 and 68 of 1991(Annexure-4) and order dated 17.04.1991 passed by the Commissioner, Magadh Division, Gaya in Case No.2 of 1991(Annexure 2) and the order dated 05.12.1990 passed by Collector, Aurgangabad in Land Ceiling Case No.69 of 1973-74(Annexure-1).

3. The admitted facts are that Raghav Prasad Singh, the original land holder got three sons namely Raj Kumar Prasad Singh, Nand Kumar Prasad Singh and Anjani Kumar Prasad Singh and six daughters. Land Ceiling Proceeding No.69 of 1972-73 was initiated against Raj Kumar Prasad Singh, the eldest son of Raghav Prasad Singh. The Collector, Aurangabad vide order dated 21.06.1983 granted five major units and three minor units to the landlord and declared 90.90 acres land as surplus. The petitioners moved before the Commissioner, Magadh Division and thereafter on dismissal of appeal by the Commissioner moved before the Member, Board of Revenue. The Additional Member, Board of Revenue vide order dated 12.07.1989 after setting aside the order of the Collector and Commissioner remanded the case to the Court of Collector with a direction that the area transferred through deed of gift to six daughters



of the petitioner should be excluded from the proceeding. It is also directed that further enquiry be made about 25.25 acres and 6.99 acres which according to the petitioner belonged to other persons and third direction was that the question of share of the petitioner's sister should be considered after proper enquiry about the date of death of land holders' father and accordingly the revision was allowed aforesaid. On remand, the Collector vide order dated 05.12.1990 passed in Case No.69 of 1973-74 excluded 73.52 acres of land gifted to the six daughters prior to 22.10.1959 and held enquiry for the lands measuring 25.25 acres transferred to Kishori Prasad Singh and 6.99 acres land transferred to Chandrabaldhari Singh of village Belchi, District Nalanda and village Dharnahar, District Patna. Enquiry was held and it was found that those transfers were benami and sham and, therefore, those lands were included in the share of the landlord. Accordingly, the Collector declared 17.33 acres of land as surplus after deducting 73.52 acres of land gifted to six daughters out of 90.90 acres land already declared surplus. This order of the Collector was confirmed by the Commissioner as well as Additional Member, Board of Revenue vide Annexure 2 and 4.

4. Mr. K.N.Choubey, learned senior counsel for the petitioners-landlord and Mr. Mrigank Mauli, learned counsel for the transferees, the legal heirs of Kishori Prasad Singh and



Chandrabaldhari Singh submitted that the Collector, Commissioner as well as Additional Member has committed illegality in deducting the land measuring about 25.25 acres and 6.99 acres of land transferred to Kishori Prasad Singh and Chandrabaldhari Singh as surplus. It is submitted that in view of the provision as contained in Section 5(1)(iii) of the Land Ceiling Act, the transfer made prior to 22.10.1959 shall not be looked into. The learned counsel for the petitioner placed his reliance on the judgment of this court reported in 1976 PLJR 134(Mahabir Prasad & Ors. v. The State of Bihar & Ors.), BBCJ 1983 197(Chandrajot Kuer & Ors. v. The State of Bihar & Ors.), 1997(2) PLJR 516(Smt. Rajeshwari Devi & Ors. v. The State of Bihar & Ors.) and AIR 1976 Patna 256(Mahabir Prasad and others v. The State of Bihar and others).

5. On the other hand, learned counsel for the State submitted that even any transaction or transfer made prior to 22.10.1959 can be enquired.

6. The sole question arises for consideration as to whether the revenue authority is vested with the power to enquire about the genuineness of the transfer made prior to 22.10.1959. Section 5(1)(iii) says as follows:

“Notwithstanding anything to the contrary contained in any judgment, decree or order of any court or authority the Collector shall have power to, make enquiries in respect of any transfer of



land by a land-holder whether by a registered instrument or otherwise made after the 22nd day of October, 1959, and if he is satisfied that such transfer was made with the object of defeating, or in contravention of the provisions of this Act or for retaining, benami or farzi land in excess of the ceiling area, the Collector may after giving reasonable notice to the parties concerned to appear and be heard, annul such transfer and thereupon the land shall be deemed to be held by the transferor for the purposes of determining the ceiling area he may hold under this section.”

7. Plain reading of Section 5(1)(iii) shows that the Collector is vested with the power to enquire in respect of transfer of any land by land holder made after 22nd day of October, 1959 and if he satisfied that such transfer was made with the objection of defeating or in contravention of provisions of this Act or for retaining benami or farzi in excess of the ceiling area but Collector is not at all justified in holding any enquiry with regard to transfer made prior to 22.10.1959.

8. A Division Bench of this Court in the case of **Mahabir Prasad and others v. The State of Bihar and others** reported in **AIR 1976 Patna 256** has held in para 29 as follows:

29. Learned counsel for the petitioner contended that there were some transfers which were being illegally ignored. It is, therefore, necessary to examine the relevant provision being Section 5 (iii) of the Act (as amended). Section 5 (iii) is as follows:-

"5 (iii). The Collector shall have power to make enquiries in respect of any transfer of land by a land-holder whether made by a registered instrument or otherwise, made after the 22nd day



of October, 1959, and if he is satisfied that such transfer was made, with the object of defeating, or in contravention of the provisions of this Act or for retaining, benami or farzi, land in excess of the ceiling area, the Collector may after giving reasonable notice to the parties concerned to appear and be heard, annul such transfer and thereupon the land shall be deemed to be held by the transferor for the purposes of determining the ceiling area he may hold under this section."

A mere reading of the section which is clear and unambiguous leads to the following conclusions:-

(a) That transfers made prior to 22nd day of October, 1959 cannot be annulled under this provision. It is only transfers made after that date that are capable of annulment under the aforesaid provision.

(b) Annulment is possible only on existence of certain specified circumstances: They are-

(i) Where the transfer is benami or Farzi;

(ii) Where the transfer has been made with the intention of defeating the provision of the Act. Such intention must be present on the date of transfer;

(iii) Where the transfer is such as defeats the purposes of the Act.

It is only on existence of the conditions aforesaid that annulment is permissible under the Act.

8. In the case of Mohan Chaudhary & Ors. v. State of

Bihar reported in 2000(3) PLJR 780 it has been held in paragraph 21 that the Collector had to exclude the land transferred which was made prior to 22.10.1959 and the same cannot be included to be treated as land of the land holder. Even transfer after 22.10.1959, the Collector has to hold enquiry for the purpose of annulment by such transfer if he is satisfied that the landlord has transferred such land with a view to frustrate the object of the Act or hold the land as benami.



9. Having considered the facts and discussion made above, I find that the Collector has illegally held enquiry with regard to the land transferred by the land holder prior to 22.10.1959 in favour of Kishori Prasad Singh and Chandrabaldhari Singh and held that too without issuing notice to the transferee as required under the Act that the same land was held by the landlord himself. The Commissioner as well as the Member, Board of Revenue also committed the same illegality by confirming the order of the Collector. Therefore, I find that the order of the Collector, Commissioner and Additional Member, Board of Revenue are illegal and fit to be set aside.

10. In the result, these writ petitions are allowed. The order dated 05.12.1990(Annexure-1), order dated 17.04.1991(Annexure-2) as well as order dated 21.10.1995(Annexure-4) are set aside.

(Prabhat Kumar Jha, J)

Saurabh/-

AFR/NAFR	NAFR
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