

IN THE HIGH COURT OF JUDICATURE AT PATNA
Letters Patent Appeal No.1471 of 2019

In
Civil Writ Jurisdiction Case No.16057 of 2019

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1. Lalita Devi Wife of Ram Dayal Singh Resident of Village- Bhaluhi, Police Station- Mohaniya, District- Kaimur.
 2. Asmira Devi Wife of Bans Narayan Singh Resident of Village- Bhaluhi, Police Station- Mohaniya, District- Kaimur.
 3. Umrawati Devi Wife of Daya Shankar Singh Resident of Village- Bhaluhi, Police Station- Mohaniya, District- Kaimur.

... .. Appellant/s

Versus

1. The State of Bihar through the Principal Secretary, Revenue of Land Reforms, Govt. of Bihar, Patna.
2. Director Consolidation, Bihar, Patna.
3. The District Magistrate, Kaimur at Bhabhua.
4. Consolidation Officer, Mohania, District- Kaimur at Bhabhua.
5. Ram Awadhesh Singh Son of Saheb Singh Resident of Village- Alipur, Post- Darwan, Police Station- Ramgarh, District- Kaimur.
6. Most. Lahasi Kuer Wife of Late Bhimal Singh @ Bhomal Singh Resident of Village- Bhaluhi, Police Station- Mohaniya, District- Kaimur.

... .. Respondent/s

Appearance :

For the Appellant/s	:	Mr.Alok Kumar @ Alok Kr Shahi, Adv. Mr. Vivekanand Singh, Adv. Mr. Dhananjay Upadhayay, Adv.
For the State	:	Mr.Md.Khurshid Alam (AAG12) Ms. Nutan Sahay, Adv.
For the Resp. No.5	:	Mr. Yogendra Kumar, Adv. Mr. Dr. M.K. Gautam, Adv.

CORAM: HONOURABLE MR. JUSTICE ASHUTOSH KUMAR

and

HONOURABLE MR. JUSTICE NAWNEET KUMAR

PANDEY

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE ASHUTOSH KUMAR)

Date : 21-12-2022

Heard Mr. Vivekanand Singh, learned advocate for

the appellants and Mr. Yogendra Kumar for the respondent



no.5. The State is represented by Mr. Khurshid Alam learned AAG-12 assisted by Ms. Nutan Sahay.

The appellants are aggrieved by the cancellation of gift deed in their favour by the Collector, Kaimur, Bhabua vide his order dated 04.06.2019 passed in Misc. Case No. 90 of 2016 in exercise of powers under Section 32 of the Bihar Consolidation of Holdings and Prevention of Fragmentation Act, 1956 (hereinafter to be referred to 'the Act').

After the Collector, Kaimur declared the gift deed in favour of the appellants to be void, the appellants came before this Court vide CWJC No. 16057 of 2019 assailing the aforesaid order on the ground that the notification under Section 3 for consolidation may have been issued but in the absence of preparation of register under Section 10, the proscription for alienating any property where consolidation operations have been notified, would not operate. It was further submitted by the appellants before the learned Single Judge that the Collector under Section 32 of the Act,



referred to above, is only entitled to impose fine but he cannot cancel the deed of alienation by whichever mode.

The aforementioned argument of the appellants was not accepted by the learned Single Judge and rightly so, as plain reading of Section 32 of the Act clearly stipulates that the transfer of any land or fragment contrary to the provisions of the Act would 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 orders of the State Government, direct.

The learned Single Judge has, in this instance, held that the Collector has the power to impose fine over and above the act of declaration of such deeds of alienation as *void ab initio*.

The power to impose fine is only a deterrent for the land holders not to defy the mandate of the law namely not to sell or transfer any property when consolidation operations are afoot, after the notification. The order of the Collector declaring the gift deed to be void and imposition of fine of Rs. 250/- on the donee was thus ratified.



Mr. Singh, learned advocate for the appellants has contended that the order of the Collector does not clearly indicate whether necessary preparation of register under Section 9A and its publication along with the statements of principles and objects was made and, therefore, the order cancelling the gift deed cannot be sustained in the eyes of law. He has referred to the Division Bench judgment of this Court in ***Surendra Rai and Ors. Vs. The State of Bihar through the District Magistrate, Vaishali at Hajipur & Ors.; 2015 (2) PLJR 774*** wherein the Division Bench took note of the fact that in the absence of preparation of the register and publication of the statement and objections under Section 10, the proscription under Section 32 does not operate.

In that case, the matter was remanded to the District Magistrate to examine whether the deed of transfer was executed prior to the preparation/publication of the register under Section 10 of the Act, which was never done by the District Magistrate, Hajipur leading to interference of the Bench.



What can be deduced from the aforementioned judgment is that if any transfer is made during the pendency of the consolidation operations after its notification and the preparation/publication of the register of lands, such transfer shall be declared to be void by virtue of Section 32 of the Act and the Collector would be required to impose fine of Rs. 250/- on the donees/transferee.

We had asked for specific statement from Mr. Khurshid Alam, learned Additional Advocate General, about the dates of preparation and publication of register which has been provided through supplementary affidavit. The preparation under Section 9A and 10(1) of the Act was made between 05.11.1973 to 04.12.1973.

The learned counsel for the appellants however has read out from the order of the Collector that after the consolidation, there was no delivery of possession because of the objection and therefore the matter remained pending, to be decided by Consolidation Officer with respect to the consolidation.



There is no dispute with respect to no notification having been issued under Section 26A declaring closure of consolidation operations.

Thus, we find that the deed of gift was made during pendency of the consolidation proceedings and that also without seeking prior permission of the Collector of the district. The bar under Section 32 would operate.

The gift deed has rightly been declared to be void.

We have no reasons to interfere with the order passed by the learned Single Judge.

The appeal stands dismissed.

(Ashutosh Kumar, J)

(Nawneet Kumar Pandey, J)

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AFR/NAFR	NAFR
CAV DATE	NA
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